



## **Never Again, But Always Too Late: Failed Preventive and Mediating Measures of the United Nations**

Devonne Brandys

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(<http://theblogprof.blogspot.com/2010/08/at-least-150-women-raped-in-weekend.html>)

## *Introduction*

After the devastation of World War II, the UN was founded on the idea that never again would such horrors be allowed to occur<sup>1</sup>. However, it is still the case that atrocities that equal and far exceed the accounts of the Second World War happen time and time again when another genocide takes place. Genocide is an act of violence that, once initiated, will result in the horrifying deaths of tens to hundreds of thousands of innocents before the violence has ceased. International institutions like the United Nations (UN) have been given the responsibility to respond to cases that have the potential to turn to genocide, as well as the duty to intervene within conflicts that have already taken this path<sup>2</sup>. The courses of action the UN utilizes as a means to inhibit genocide, like recommendations and military intervention, occur too late in the course of conflict and enable brutal violence to ensue when genocide is already a reality for conflicted societies. Mediation is futile when deep entrenched inequality and discrimination only fuel the conflict and limit effective communication. The international tribunals following most genocide are used to provide justice by trying perpetrators, and are used as a method of atonement in preventive measures. By examining the methods of prevention and mediation employed by the UN during the Rwandan and Bosnian genocides, this essay will argue that the dispute resolution approaches taken by the UN are vague and ineffective, and instead rely much too heavily on the tribunals that follow genocide.

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<sup>1</sup>William A. Schabas, "Preventing the 'Odious Scourge': The United Nations and the Prevention of Genocide." *International Journal on Minority and Group Rights*. 14 (2007): 380.

<sup>2</sup> United Nations. "United Nations." 13 Oct 2008. United Nations Website Services Section, Web. 22 Nov 2009. < <http://www.un.org/en/>>.

### *Applying Fruitless Methods of Prevention*

Genocide is defined as the attempted eradication of a particular group of people through a deliberate and planned effort<sup>3</sup>. The prevention of such violence implies active involvement before a conflict becomes the arranged massacre of a specific group. In preventing the horrific acts of genocide, article 8 of the 1948 Genocide Convention states that it is the obligation of the United Nations to answer a state call to utilize their forces “for the prevention and suppression of acts of genocide”<sup>4</sup>. The features of what entails prevention are vague and in no way outline what action should be taken to perform preventive justice<sup>5</sup>, stating that “UN agencies, departments and programmes contribute to the prevention of genocide in a variety of ways, including...supporting equitable development, promoting the protection of human rights, providing humanitarian assistance and interceding to ensure peace security and stability”<sup>6</sup>. Even when the International Court of Justice elaborated on the definition in 2007, they solely discussed prevention as a states responsibility to restrain the acts of genocide. The Convention only mandates the UN to respond, but does not outline what methods of prevention and mediation should be used in order to avoid genocide<sup>7</sup>. Additionally, the Security Council is the only body of the UN that has the proper authority to order states to react against genocide<sup>8</sup>. If the Security Council does not demand that a state responds in order to

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<sup>3</sup> Nesam Mcmillan. "'Our' Shame: International Responsibility for the Rwandan Genocide." *The Australian Feminist Law Journal*. 28 (2008):3.

<sup>4</sup> Schabas 384.

<sup>5</sup> Stanislas Kamanzi. “Preventing Genocide: The Role of the United Nations”. *ILSA Journal of International Comparative Law*. 10 (2004): 330-331.

<sup>6</sup> United Nations. < <http://www.un.org/en/>>.

<sup>7</sup> Mark Toufayan. “Deployment of Troops to Prevent Impending Genocide: A Contemporary Assessment of the UN Security Council’s Powers.” *The Canadian Yearbook of International Law*. 40 (2002): 197.

<sup>8</sup> Schabas 383, and 385.

prevent genocide, then preventive measures will not occur because an act of force from a state without the approval of the Security Council is prohibited<sup>9</sup>. This causes the UN to remain motionless until after the genocide has begun when it is the outcry of states that force them to act, which in some cases can take years.

With such an unclear notion of ‘prevention’ for the Security Council to follow, it is often too late before any intervention is taken as the genocide will have already commenced and the UN will have failed to follow its duty of prevention. Another area of inefficiency is found under the UN Charter<sup>10</sup>. It enables debates and recommendations to be used as mechanisms of prevention<sup>11</sup>, but words are ineffective when physical actions are required to end the murder. The UN can also take military action as a preventive method<sup>12</sup>. However, this is not usually done because the UN cannot impede upon the power of a sovereign state, as it must first request assistance<sup>13</sup>. In other cases it simply does not apply this option<sup>14</sup>. Regardless of these possibilities, the UN usually does not physically intervene in a conflict until the violence has already started, voiding the concept of *preventive* measures. Such was the situation for the Rwandan genocide as it “showed in the worst possible way that the United Nations needed to do more to prevent genocide.”<sup>15</sup>

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<sup>9</sup> Schabas 386.

<sup>10</sup> Toufayan 208.

<sup>11</sup> Toufayan 204.

<sup>12</sup> Toufayan 246.

<sup>13</sup> Toufayan 212.

<sup>14</sup> Stephen Ryan. “Ethnic Conflict and the United Nations.” *Ethnic and Racial Studies*. 13.1 (1990): 26.

<sup>15</sup> United Nations. < <http://www.un.org/en/>>.

In 1994, the Rwandan genocide highlighted the extent to which the UN methods of prevention utterly failed to meet their duty<sup>16</sup>. The slaughter of hundreds of thousands of Tutsi's occurred when they were placed in opposition with the Hutu's. This is a clear example of the unspeakable bloodshed that can result when conflicts are tied to colonialism and identity. By ignoring the violence and the evidence that supported taking action provided by the report produced by Lieutenant-General Roméo Dallaire<sup>17</sup>, the UN directly went against the very duty it has the responsibility to follow by not authorizing an intervention before the genocide began<sup>18</sup>. The report sent by Dallaire detailed the inevitable genocide and stated that immediate action was required. He was willing to disobey orders and intervene, but was denied from intercepting the conflict. Furthermore, the military support in Rwanda was ill-equipped<sup>19</sup> and too small to actively engage in preventive approaches that would have played a role in preventing the genocide, inhibiting the UN from following through with its own mandate<sup>20</sup>. The vague nature of the definition, and the lack of a hands-on approach, prevented the UN from declaring the violence of the conflict as a potential genocide<sup>21</sup>. Without this classification, no authorization was given by the Security Council causing the military troops present in Rwanda to stand idly by<sup>22</sup>, exhibiting the complete inefficiency of their so-called 'preventive measures'.<sup>23</sup>

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<sup>16</sup> Mcmillan 3.

<sup>17</sup> Mcmillan 5.

<sup>18</sup> Mcmillan 12.

<sup>19</sup> Mcmillan 15.

<sup>20</sup> Alan J. Kuperman. "The Other Lessons of Rwanda: Mediators Sometimes Do More Damage Than Good." *SAIS Review*. 16.1 (1996): 235-236.

<sup>21</sup> Mcmillan 3.

<sup>22</sup> Mcmillan 14.

<sup>23</sup> Mcmillan 11.

### *Consequences of Inadequate Mediation*

Mediation efforts of the UN are noted through its avocation of human rights, and its influence upon state and international cooperation<sup>24</sup>. Peacekeeping methods are used as a form of mediating between conflicting groups that could potentially lead to genocide. The form of mediation applied is facilitation where meetings are held between the main leaders of the conflicting groups<sup>25</sup>, in addition to the attempt to organize intergroup projects in order to build interests and common ground<sup>26</sup>. The problem lies not with the act of mediation, but with the environment in which the mediations are occurring. Peacekeepers are often wearing protective gear, including visible arms<sup>27</sup>, which can alter responses in the mediations due to the association a person may have with soldiers or mediators. If an individual is presented with an unknown person to talk to, there has been no relationship built up to enable easy and willing communication. The perspective a mediator holds concerning the conflict can also present bias and prevent a successful outcome, as mediators become instigators to conflict<sup>28</sup>. This occurs when the mediators are not adequately listening to the opposing groups and instead blame all parties for causing the conflict.

Another issue arises in the fact that conflicts originating from racial discrimination and social disparity often establish the foundation for these appalling actions. Stereotypes and prejudices can become deeply entrenched in a society and result in inefficient communication taking place between the two groups, which is essential for

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<sup>24</sup> Toufayan 202-203.

<sup>25</sup> Ryan 28.

<sup>26</sup> Ryan 27.

<sup>27</sup> Ryan 28.

<sup>28</sup> Kuperman 231.

mediation to succeed<sup>29</sup>. Methods of peacekeeping also fail through the sheer lack of peacekeepers employed by the UN<sup>30</sup>. Successful mediation can only occur when there is a strong support, such as peacekeeping troops, present to allow equal mediation to occur with the opposing group<sup>31</sup>. Without this, those performing the mediation hold no credibility, which is also essential in order for uninhibited communication to take place. “United Nations mediators have been known to work hard to come up with integrative agreements – in part because they have no compensation to offer”<sup>32</sup>. The lack of preventive measures taken, as well as the inefficient mediating tools – in addition to the scarce support to apply them – cause mediation to be ineffective, leaving a genocide that has started only to continue. This is demonstrated in the circumstances surrounding the Bosnian genocide.

In 1992, the fear of the creation of a fundamentalist Islamic state that would strip Serbians of their rights caused Serbia to react so fiercely that the genocide of Bosnia erupted, only to end three grueling years later with the Dayton Accords<sup>33</sup>. Furthermore, the violence also resulted from many years of planning to extend the Serbian borders to ‘rescue’ Serbians located in what they believed to be a “hostile, anti-Serbian environment.”<sup>34</sup> The peacekeeping troops had no credibility during this conflict because

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<sup>29</sup> Marieke Kleiboer. “Understanding Success and Failure of International mediation.” *The Journal of Conflict resolution*. 40.2 (1996): 381.

<sup>30</sup> Totten, Samuel and Paul R. Bartrop. “The United Nations and Genocide: Prevention, Intervention, and Prosecution.” *Human Rights Review*. (2004): 10.

<sup>31</sup> Michael Colaresi and Sabine C. Carey. “To Kill or To Protect: Security Forces, Domestic Institutions, and Genocide.” *Journal of Conflict Resolution*. 52.1 (2008): 59.

<sup>32</sup> Peter J. Carnevale, and Dong-Won Choi. “Culture in the Mediation of International Disputes.” *International Journal of Psychology*. 35.2 (2000): 108

<sup>33</sup> Arne Johan Vetlesen. “Impartiality and Evil: A reconsideration provoked by genocide in Bosnia.” *Philosophy & Social Criticism*. 24.5 (1998): 7.

<sup>34</sup> Vetlesen 8.

acts of aggression were still taken regardless of their presence<sup>35</sup> or mediation practices, which in turn furthered the violence<sup>36</sup>. The conflict was deemed a civil war, as it was the belief that all groups played an equal part in the brutality<sup>37</sup>. This association by the mediators themselves limited their view of the conflict and hindered mediation attempts<sup>38</sup>. The massacre began due to aggression initiated by Serbia. This lack of recognition by the mediators left their efforts flawed as a result of blaming Serbians, Croatians and Bosnian's equally for the violence, exacerbating the situation as a result of the lack of communication between the mediators and parties.

Due to the many groups in Bosnia and the deep entrenched hatred between them, the methods of mediation ultimately failed. The communication that was to facilitate mediation and end the violence was inhibited because of the resentment felt by the conflicting groups. The mediators were only able to talk with the opposing groups, but they could not facilitate effective discussion between them, causing the violence to wage on<sup>39</sup>. The attempt of the mediators to step in and negotiate with the groups was futile once the violence had started and the perpetrators did not wish to negotiate<sup>40</sup>. It is the result of such approaches that the UN acted too late<sup>41</sup> when it took until 1995 before authorizing NATO to forcibly intervene<sup>42</sup>.

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<sup>35</sup> Eric Melander. "Selected to Go Where Murderers Lurk? The Preventive Effect of Peacekeeping on Mass Killings of Civilians." *Conflict management and Peace Science*. 26.4(2009): 390-391.

<sup>36</sup> Kuperman 231.

<sup>37</sup> Vetlesen 18.

<sup>38</sup> Vetlesen 18.

<sup>39</sup> Vetlesen 19-20.

<sup>40</sup> Melander 393.

<sup>41</sup> Totten and Bartrop 17.

<sup>42</sup> Toufayan 234.

*When Prevention and Mediation Fail: the Aftermath of Genocide*

In addition to their insufficient and vague methods of prevention and mediation, the UN focuses much of their effort on the tribunals *following* the genocide when they should instead be attempting to prevent the genocide all together. It is the reliance on the tribunals following the horrors of conflict, like the International Criminal Tribunal of Rwanda (ICTR) and the former Yugoslavia (ICTY), that act to make up for the failures of the UN when they did not intervene before the conflict started or employ effective measures of mediation<sup>43</sup>. The UN focuses around the attitude that if the genocide cannot be stopped, then the perpetrators will be tried through the tribunals. But this is not the case.

A problem with such a concentration on the tribunals is that not all of those guilty can be tried<sup>44</sup>. In a time of conflict, people's perspectives are altered and many will commit horrific atrocities<sup>45</sup>. During the Rwandan genocide alone, it is estimated that perpetrators ranged in the hundreds to thousands<sup>46</sup>. The tribunals are also used "to secure the conviction of an offender"<sup>47</sup>, not provide retribution to the victim. In this sense, victim's needs are not met and no healing can occur<sup>48</sup>. This is exacerbated by how long it can take before offenders are actually tried<sup>49</sup>. Instead of using the hearings as a method of atonement due to ineffective preventive and mediation measures, the UN should follow through with its mandate. This can be achieved through actively preventing a conflict

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<sup>43</sup> Clark, Janine. "Learning from the Past: Three Lessons from the Rwandan Genocide." *African Studies*. 68.1 (2009): 1.

<sup>44</sup> Clark 13.

<sup>45</sup> Clark 7.

<sup>46</sup> Clark 13.

<sup>47</sup> Clark 14.

<sup>48</sup> Clark 15.

<sup>49</sup> Helena Cobban. "Healing Rwanda: Can an international court deliver justice?" *Boston Review*. 28.6 (2003): 12.

from escalating to such a degree as to result in genocide, rather than being focused on punishment over prevention<sup>50</sup>.

The tribunals cannot rebuild the society or bring true reconciliation for those who have experienced the worst of the conflict. Reconstruction measures and the legal actions against the perpetrators cannot take back what has already occurred. Tribunals can be useful in the future to look back and see where changes need to be made. To focus on them, however, cannot bring back those who have died and do not provide help for others who have experienced great trauma. Although legal measures such as the tribunals aid to provide justice, and are a necessary tool in cases of genocide, the preventive and mediation tactics that have to be implemented during the conflict must be so as to prevent genocide in the first place. This is why it is imperative for the UN not to focus their efforts on the tribunals when more good could come out of applying greater attention to preventive and mediation measures that could *avoid* the genocide all together.

### *Conclusion*

The preventive measures taken by the UN, as outlined in the Rwandan genocide, occur too late during a conflict for there to be effective prevention. This is due to the vague nature of what is considered as 'preventive'. By neglecting to term a conflict as genocide, not all conflicts can be authorized to receive intervention, resulting in the UN disregarding its mandate to prevent genocide before it occurs. In addition, the UN applies inadequate mediation measures, as there were not enough soldiers available during the Bosnian genocide to offer sufficient support. Biases held by mediators resulted in exacerbating the situation by hindering effective communication, which is also inhibited

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<sup>50</sup> Toufayan 197.

by deeply embedded prejudices held by the parties. The presence of soldiers or unknown mediators can alter responses by not establishing a relationship or holding proper credibility to mediate the conflict.

The focus on international tribunals acts as atonement for the lack of UN intervention. A focus on punishing the offenders does not provide healing to those affected by the genocide as it can take years for those accused to be convicted. Furthermore, so many take part in the violence that it becomes impossible to try all of those who participated. The tribunals are useful in allowing a sense of justice to be given to those harmed, but they cannot bring back those who have died. This is why it is necessary for the UN to concentrate more on effective preventive and mediation measures that will act to stop a conflict before it turns into genocide, instead of responding only once the violence has commenced and thousands have died as a result.

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