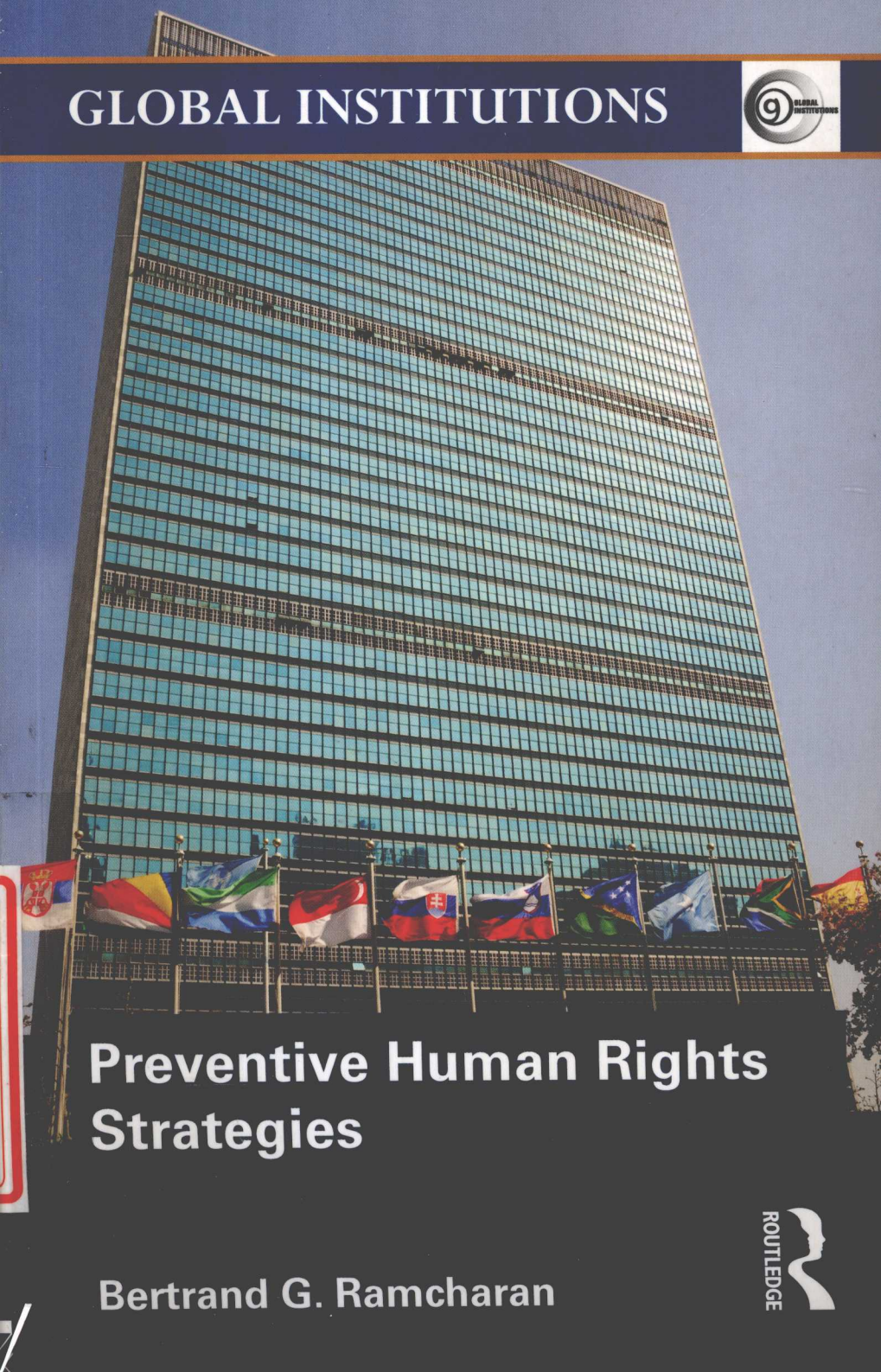


GLOBAL INSTITUTIONS



Preventive Human Rights Strategies

Bertrand G. Ramcharan

ROUTLEDGE



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Foreword

The current volume is the thirty-ninth title—several having already gone into second editions—in a dynamic series on “global institutions.” The series strives (and, based on the volumes published to date, succeeds) to provide readers with definitive guides to the most visible aspects of what many of us know as “global governance.” Remarkable as it may seem, there exist relatively few books that offer in-depth treatments of prominent global bodies, processes, and associated issues, much less an entire series of concise and complementary volumes. Those that do exist are either out of date, inaccessible to the non-specialist reader, or seek to develop a specialized understanding of particular aspects of an institution or process rather than offer an overall account of its functioning. Similarly, existing books have often been written in highly technical language or have been crafted “in-house” and are notoriously self-serving and narrow.

The advent of electronic media has undoubtedly helped research and teaching by making data and primary documents of international organizations more widely available, but it has also complicated matters. The growing reliance on the Internet and other electronic methods of finding information about key international organizations and processes has served, ironically, to limit the educational and analytical materials to which most readers have ready access—namely, books. Public relations documents, raw data, and loosely refereed web sites do not make for intelligent analysis. Official publications compete with a vast amount of electronically available information, much of which is suspect because of its ideological or self-promoting slant. Paradoxically, a growing range of purportedly independent web sites offering analyses of the activities of particular organizations has emerged, but one inadvertent consequence has been to frustrate access to basic, authoritative, readable, critical, and well-researched texts. The market for such has actually been reduced by the ready availability of electronic materials of varying quality.

For those of us who teach, research, and practice in the area, such limited access to information has been frustrating. We were delighted when Routledge saw the value of a series that bucks this trend and provides key reference points to the most significant global institutions and issues. They are betting that serious students and professionals will want serious analyses. We have assembled a first-rate line-up of authors to address that market. Our intention, then, is to provide one-stop shopping for all readers—students (both undergraduate and postgraduate), negotiators, diplomats, practitioners from nongovernmental and intergovernmental organizations, and interested parties alike—seeking information about the most prominent institutional aspects of global governance.

Preventive human rights strategies

Since the signing of the Universal Declaration of Human Rights in December 1948, the compelling normative claim that all individuals have inalienable human rights has spread far and wide. And human rights mechanisms, which have evolved dramatically since 1948, are so essential that we were delighted that the very first book published in this series—now in a second edition—by Julie Mertus, dealt with them.¹

This book, the second in the series by our colleague Bertrand G. “Bertie” Ramcharan, complements his first on “contemporary human rights ideas,”² as well as Mertus’s “guide for a new era,” with an analysis of the institutions and strategies designed to prevent human rights violations. The normative revolution has been breathtaking: from the two conventions on economic, social, and cultural as well as civil and political rights, in the 1950s and 1960s; to the later developments in the rights of special groups and the right to development in the 1980s; to the World Conference on Human Rights in Vienna; to the establishment of the Office of the High Commissioner in the 1990s; and, most recently, to the creation of the Human Rights Council in 2006. Sadly, however, the human rights “business” seems always to be in the game of catch-up and trying to counter abuses once they have occurred rather than in the game of effective prevention of human rights violations.

Other books in this series have pointed to the links between international peace and security, development, sustainability, and human rights.³ This book contributes to the discussion, analyzing and critiquing previous preventive human rights strategies and suggesting directions for future ones.

We were delighted that Bertie Ramcharan decided to complement his first volume in the series on contemporary human rights ideas with

this volume on preventive human rights strategies. From 2006 to 2008, he was Professor of International Human Rights Law at the Geneva Graduate Institute of International Studies, and remains Chancellor of the University of Guyana. He completed a 32-year distinguished career in the UN Secretariat, which gave him substantial personal exposure to and experience with the kind of UN diplomacy about which he writes: early warning, conflict prevention, preventive diplomacy, peacemaking, peacekeeping, peacebuilding, and human rights. He served in the Office for Research and the Collection of Information, which Secretary-General Pérez de Cuéllar established to strengthen the capacity of the Secretariat for preventive diplomacy. He contributed substantial parts of the first internal draft of *An Agenda for Peace* and was a director in the Department of Political Affairs dealing with African issues. He was director of the International Conference on the Former Yugoslavia, working with Cyrus Vance, Lord Owen, Thorvald Stoltenberg and Carl Bildt in their efforts to negotiate peace in the Balkans. He was also director of the Office of the Special Representative for the Former Yugoslavia responsible for the UN Protection Force in the Former Yugoslavia (UNPROFOR) and was involved in the establishment of the first preventive deployment force for Macedonia. He served in the positions of Deputy and then UN High Commissioner for Human Rights *ad interim*, cumulatively over six years. In addition to these myriad responsibilities, he somehow found the time and energy in that period to author or edit some 25 books on international law, human rights, and the United Nations.⁴

The text has the stamp of a practitioner, benefiting from long years of reflection, but the academic in him maintains his focus on the core of the human rights ideas as presented in authoritative documents and the relevant scholarly literature. He lets the texts speak for themselves, but at the same time, each page brims with knowledge and insight, displaying the passion of someone who has labored—sometimes successfully, sometimes not—in the pursuit to halt current and prevent future human rights violations.

As always, we look forward to comments from first-time or veteran readers of the Global Institutions Series.

Thomas G. Weiss, The CUNY Graduate Center, New York, USA
 Rorden Wilkinson, University of Manchester, UK
 December 2009

Preface

This is a stimulating and important book. One of the great policy thrusts of our time is the quest for decisive action to prevent serious conflicts and to avoid atrocities. The United Nations (UN) was created to save succeeding generations from the scourge of war, and the UN Charter and the Universal Declaration of Human Rights sought to prevent the recurrence of genocides such as the Holocaust. Professor Ramcharan has had a distinguished career at the United Nations—therefore it is logical for him to focus on the accomplishments and future potential of the UN in preventing mass violence.

Article 99 of the UN Charter empowered the UN Secretary-General to act for the prevention of conflicts where possible, and every Secretary-General since the inception of the organization has sought to engage in preventive efforts. Trygve Lie advocated the establishment of a corps of UN guards who could be deployed rapidly in situations of need. Dag Hammarskjöld articulated the concept of preventive diplomacy and sought to place a ring of representatives of the Secretary-General in trouble spots around the world. Every Secretary-General since then has engaged in preventive diplomacy for the avoidance of conflict. U Thant sought to extend the preventive and urgent response efforts of the UN to humanitarian crises, and it was he who took the initiative for the establishment of the UN Disaster Relief Office, which is now part of today's Office for the Coordination of Humanitarian Affairs.

In his Jodidi Lecture at Harvard University, on the occasion of the 40th anniversary of the United Nations, Secretary-General Javier Pérez de Cuéllar called for resolute action to build up the informational and analytical base of the UN Secretariat to help the Secretary-General contribute to preventive diplomacy. This process received great impetus with Secretary-General Boutros Boutros-Ghali's *Agenda for Peace* and in the successive reports of Secretary-General Kofi Annan on *Prevention*

of Armed Conflict. Secretary-General Ban Ki-moon is now leading preventive diplomacy on some of the great contemporary challenges such as climate change, water shortage, international financial emergencies, and prevention of genocide.

While studies and analyses regarding the need for preventive strategies in the political and economic arena have been developing momentum, such as the many reports of the Carnegie Commission on Preventing Deadly Conflict, progress on preventive strategies in the human rights and humanitarian areas has not kept pace. The articulation of the concept of a responsibility to protect with prevention at its core was an advance, so too human security, and the establishment of the position of Special Adviser to the UN Secretary-General on the Prevention of Genocide was another important development. In my book on the prevention of genocide I sought to shed some light on how further advances might be made in this vital area, delineating various pillars of prevention and how they can be built through international cooperation.¹

In this work, Professor Ramcharan, who has served the United Nations in the human rights, policy planning, preventive diplomacy, peace-making, peacekeeping, and peacebuilding sectors, and who was head of the speechwriting service of the Secretary-General for a number of years, has performed a great service in mapping those preventive human rights strategies in existence at the present time and in offering ideas for their development in the future. This is a foundational work that builds upon his prior book on preventive diplomacy at the UN, published by the UN Intellectual History Project in 2008.²

After wisely highlighting the preventive core of the responsibility to protect, this new book traces the concrete obligations of governments in existing treaties to prevent crimes such as genocide and torture. In looking to the strengthening of preventive human rights activities in the future he makes a strong case for the importance of national protection systems and the role of the international community in helping to build and support such systems.

He shows that much more can be done to highlight the human rights dimensions of regional and international preventive strategies. He makes important policy recommendations for preventive human rights diplomacy by actors such as the United Nations Secretary-General and the UN High Commissioner for Human Rights (UNHCHR). He argues that peacekeepers, observers and human rights monitors can do a great deal to help prevent atrocities, and examines whether and how non-governmental organizations (NGOs) are contributing to preventive efforts in the human rights field. He believes in the preventive role of bodies such as the International Criminal Court. Moreover, he argues for the

maintenance of a comprehensive global watch over human welfare and security.

Professor Ramcharan, who has served in the position of UN High Commissioner for Human Rights and has extensive experience with international mediators and peacekeepers in the former Yugoslavia and elsewhere, is uniquely qualified to make the case for the development of future preventive human rights strategies, and he does so with deep scholarship, strong conviction and courageous vision.

David Hamburg

President Emeritus, Carnegie Corporation of New York;
DeWitt Wallace Distinguished Scholar, Weill Cornell Medical College

Abbreviations

ACUNS	Academic Council for the United Nations System
AI	Amnesty International
APRM	African Peer Review Mechanism
APT	Association for the Prevention of Torture
ARF	ASEAN Regional Forum
ASEAN	Association of Southeast Asian Nations
AU	African Union
CAAC	children and armed conflict
CERD	Committee on the Elimination of Racial Discrimination
CEWARN	IGAD Conflict Early Warning and Response Mechanism
CPPG	Convention for the Prevention and Punishment of Genocide
CSCE	Conference for Security and Co-operation in Europe
DPKO	UN Department of Peacekeeping Operations
DRC	Democratic Republic of the Congo
ECHR	European Court of Human Rights
ECOSOC	UN Economic and Social Council
ECOWAS	Economic Community of West African States
ECPT	European Convention for the Prevention of Torture
FRY	Federal Republic of Yugoslavia
FYROM	Former Yugoslav Republic of Macedonia
GCRP	Global Centre on the Responsibility to Protect
HRW	Human Rights Watch
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICG	International Crisis Group
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross

ICRTP	Global Centre for the Responsibility to Protect
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDPs	Internally displaced persons
IGAD	Intergovernmental Authority on Development
IOC	Intergovernmental Oceanographic Commission
NEPAD	New Partnership for Africa's Development
NGO	nongovernmental organization
NHRI	national human rights institution
OAS	Organization of American States
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OHCHR	Office of the UN High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture
OSCE	Organization for Security and Cooperation in Europe
R2P	responsibility to protect
SADC	Southern African Development Community
SAPG	UN Special Adviser on the Prevention of Genocide
SARTP	UN Special Adviser on the Responsibility to Protect
SPT	Subcommittee on the Prevention of Torture
TWS	Tsunami Warning System
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCHR	United Nations High Commissioner for Human Rights
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNOMSA	United Nations Observer Mission in South Africa
UNPREDEP	United Nations Preventive Deployment Force
USDA	US Department of Agriculture
VRS	Bosnian Serb forces
WMD	weapons of mass destruction
WWI	Worldwatch Institute

The work of the United Nations to prevent genocide encompasses a wide range of activities. In the broadest sense, we promote human rights, the rule of law and the fundamental equality of all people. Through its global presence, the Organization provides practical assistance to States in building democratic institutions and resolving disputes through peaceful means. We have established an office dedicated to genocide prevention. And in 2005, Member States agreed unanimously on a new, groundbreaking global norm, the responsibility to protect, which aims to keep national leaders from hiding abuses behind the false cloak of sovereignty ... [T]he United Nations also seeks to ensure that perpetrators of genocide are brought to justice promptly ... Justice is not only one of our main goals; it is itself an important means of prevention.

UN Secretary-General Ban Ki-moon,
Message on the sixtieth anniversary of the Genocide Convention,
9 December 2008

[T]he obligation to promote and protect human rights and fundamental freedoms calls not only for measures to guarantee the protection of human rights and fundamental freedoms, but also for measures intended effectively to prevent any violations of those rights.

United Nations Commission on Human Rights
(E/CN.4/RES/1988/51, 8 March 1988)

The production, testing, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity.

United Nations Human Rights Committee,
General Comment no. 14: Article 6 (Right to Life)
adopted at the twenty-third session (1984)

Contents

<i>List of illustrations</i>	xiv
<i>Foreword</i>	xv
<i>Preface</i>	xviii
<i>List of abbreviations</i>	xxi
Introduction	1
1 Threats, challenges, and the responsibility to prevent	12
2 Obligations to prevent under international human rights treaties	36
3 The preventive role of national human rights institutions	48
4 Regional preventive strategies	60
5 Global preventive strategies	73
6 Preventive human rights diplomacy	84
7 The preventive role of peacekeepers, observers, and human rights monitors	93
8 Preventive strategies of NGOs	103
9 The preventive role of the international criminal tribunals and the International Criminal Court	112
10 Conclusion	123
<i>Notes</i>	128
<i>Select bibliography</i>	136
<i>Index</i>	138

Illustrations

Figures

9.1	Total number of reported killings and IDPs, 2002–2009: Darfur, Northern Uganda and DR Congo	121
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Tables

I.1	Preventive human rights arrangements, May 2009	2
8.1	Preventive strategies of NGOs	104

Introduction

The prevention of violations of human rights must become the dominant protection strategy of the twenty-first century, nationally, regionally, and globally. While a few preventive human rights arrangements exist today (see Table I.1) the need for more effective preventive arrangements is acutely felt. The key lies in strong national protection systems backed up by regional and international organs and an international criminal justice system.

Violence against women is the most pervasive violation of human rights in the world today, affecting more than half of the world's population. So it is imperative to heighten preventive strategies for the protection of women. The genocide in Rwanda in 1994 took the lives of 800,000 people in a few months—genocide must be prevented in the future. Torture takes place in numerous countries the world over and is systematic in some of them. Its consequences are dehumanizing for the victims, for the perpetrators, and for the world at large. Preventive strategies against torture have so far built on international legislation and the idea of periodic visits to prisons and places of detention. More needs to be done to prevent torture and other gross violations of human rights.

Let us take the problem of trafficking and exploitation of human beings. It is reliably estimated that about 1 million young women are trafficked into prostitution or servitude every year in numerous parts of the world. Sexual exploitation of children is rampant. How can supposedly civilized humanity allow this to continue? Is there not a need for international mobilization to prevent these pernicious practices and to protect the dignity and rights of the victims—and also to protect the dignity of humanity at large?

The *New York Times* correspondent Nicholas D. Kristof has written searing articles on the problems of trafficking and exploitation. In an article in the *International Herald Tribune* on 8 May 2009, he wrote

Table I.1 Preventive human rights arrangements, May 2009

<i>Arrangement</i>	<i>Approach</i>	<i>Assessment</i>
<i>I Violence against women</i>		
1 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women	Normative and reporting	Just started
2 European ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence	Normative and research	Just started
<i>II Genocide</i>		
3 UN Convention on the Prevention and Punishment of Genocide	Normative	Law on the books
4 UN Special Adviser on the Prevention of Genocide	Alert	Just started
<i>III Torture</i>		
5 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Normative, reporting, complaints	Law on the books; some case law
6 Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	National prevention, visits to prisons and detention centers	Just begun
7 UN Sub-Committee for the Prevention of Torture	Visits to prisons and detention centers	Just started
8 European Convention for the Prevention of Torture	Visits to prisons and detention centers	Regular visits
9 European Committee for the Prevention of Torture	Visits to prisons and detention centers	Regular visits and follow-up
10 Inter-American Convention to Prevent and Punish Torture	Normative	Law on the books
11 Association for the Prevention of Torture	Visits to prisons	Quiet prevention
<i>IV Violations of human rights</i>		
12 National human rights organs	Mainly promotion	Little prevention
13 National visiting mechanisms to prisons	Regular visits	Just started
14 UN Human Rights Council	Diplomatic	Little results

Table continued on next page.

Table I.1 (continued)

<i>Arrangement</i>	<i>Approach</i>	<i>Assessment</i>
15 UN Special Adviser on the Responsibility to Protect	Promotional	Just started
16 UN and regional conventions on human rights and their monitoring organs	Normative, reporting, petitions, inquiries	Indirect prevention
17 UN special human rights procedures	Fact finding	Some prevention
18 UN Secretary-General	Agenda setting	Uses exhortation
19 UN High Commissioner for Human Rights	Promotional	Indirect prevention
20 European Commissioner for Human Rights	Promotional	Indirect prevention
<i>V Human rights and conflict prevention</i>		
21 UN Security Council	Diplomatic	Some prevention
22 UN Department of Political Affairs	Diplomatic	Some prevention
23 OSCE High Commissioner on National Minorities	Diplomatic	Effective
24 International Crisis Group	Fact finding	Effective
25 Article 4 of the Charter of the African Union	Diplomatic	No results yet
26 Regional and sub-regional conflict prevention mechanisms	Diplomatic	Indirect prevention
<i>VI Peacekeeping and observer arrangements</i>		
27 Peacekeeping and observer forces	Observation/intercession	Some prevention
<i>VII Judicial arrangements</i>		
28 International Criminal Court	Justice	Just started
<i>VIII New threats and challenges</i>		
29 UN Human Rights Council endeavors on climate change	Research/policy	Just started
30 UN Human Rights Council Rapporteur on Toxic Wastes	Research	Unknown