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# The First World Conference on Human Rights and the Challenge of Enforcement

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## Introduction

2018 marks the fiftieth anniversary of the First World Conference on Human Rights in Tehran, Iran. The aim of this special issue is to assess its significance half-a-century after the fateful event. As the other contributors have shown collectively, the conference's legacy is multifaceted and varied, depending on the vantage points and political agendas of the actor or actors in question. As Roland Burke argues so persuasively, for Africa, Asia and the Middle East, Tehran was an opportunity to exert its influence over the UN Human Rights System, to call into question the vary notion of universalism generally and the Universal Declaration of Human Rights specifically, and assert the primacy of development over rights.<sup>1</sup> For the West, Tehran was a

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<sup>1</sup>See Roland Burke, "From Individual Rights to National Development: The First UN International Conference on Human Rights in Tehran, 1968," *Journal of World History* 19, no. 3 (2008): 275-96.

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bust on several fronts. The conference solidified the fissure between North and South on questions of human rights that had been growing since the early 1950s beginning with the negotiations to draft binding international law—specifically the covenants on Political and Civil Rights, and Economic, Social, and Cultural Rights—at the now defunct United Nations Commission on Human Rights (CHR). For the United Nations human rights project more broadly, Tehran was a pivotal moment, one that brought to a head many of the failings of the UN human rights system that had been festering since the establishment of the Commission in 1946 and would continue to plague the project well after the conference was over, most notably questions of enforcement.

### **Enforcement and the Commission on Human Rights**

Human rights—as articulated in the 1942 Atlantic Charter—had been an important rhetorical tool for mobilizing support for the Allied war effort during the Second World War, and that after the war the founders of the United Nations understood its symbolic value to the post-war order.<sup>2</sup> But the UN Charter only spoke of human rights in very general terms, and the United Nations was only given the authority and responsibility to “promote” and “encourage” respect for human rights and fundamental freedoms (Article 1.3 of UN Charter) through international cooperation. It has no authority to “intervene in matters which are essentially within the domestic jurisdiction of any state” unless authorized by the Security Council (Article 2.7 of UN Charter).

When the Commission on Human Rights—the principal body within the UN responsible for human rights and the predecessor of the current Human Rights Council—was established in 1946, the enforcement of human rights took a back seat to codifying rights into law, or standard-setting, as it is also known. In a move that critics have pointed to as an example of the hollowness of the UN human rights project, the Commission in 1947 decided that it would take no action on the

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<sup>2</sup>See Elizabeth Borgwardt, *A New Deal for the World: America's Vision of Human Rights* (Cambridge, MA: Harvard University Press, 2005).

thousands of letters it received from individuals around the world who hoped that it would hear and act on their complaints.<sup>3</sup> It was a disappointing decision to be sure, but not one that was out of step with the times. Indeed, it reflected both the cautiousness of the day and the widely held view that human rights were a domestic matter between states and their citizens.

This particular outcome, however, was not pre-ordained. At the first meeting of the Commission on January 28 at Lake Success, officials agreed that “communications received would be brought to the knowledge of members of the Commission but they could not give them to the press.” Following the vote, the delegate from the Philippines noted that they had just established a policy that allowed member states to learn the identities of those filing the complaints against them, thus inadvertently exposing these individuals to potential reprisals. Recognizing the errors of their ways, the Commission struck a sub-Committee to recommend a more sensible policy for handling the appeals for help it received. The sub-committee proposed the creation of a permanent body consisting of three members of the Commission whose task it would be to review the communications and report back to the Commission at large. Prior to its meetings, the Secretary-General would be responsible for compiling “a confidential list of communications concerning human rights.” This list would then be disseminated to all members of the Commission, who were to be granted the “right upon request to consult the Secretariat, the originals of these communications.”<sup>4</sup> But even this was deemed to be too much of an intrusion on the domestic affairs of member states. Those around the table quickly determined that the Commission should not have the authority to investigate or act on the information it received.

This reluctance continued as the Commission set out to fulfil its first

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<sup>3</sup>Andrew S. Thompson, *On the Side of the Angels: Canada and the United Nations Commission on Human Rights* (Vancouver: University of British Columbia Press, 2017), 19.

<sup>4</sup>E/CN.4/SR.3, “Commission on Human Rights: Summary Record of the Third Committee,” Lake Success, New York, 28 January 1947, 7; E/CN.4/14, “Commission on Human Rights: Report of the Sub-Committee on the Handling of Communications,” 4 February 1947, 2.

task, namely to draft an international bill of rights. Indeed, the drafters of the 1948 Universal Declaration of Human Rights (UDHR), the foundational document in international human rights law, initially hoped for a binding treaty. But this idea was soon abandoned on the grounds that the political climate of the day would not allow for anything more than an aspirational document. Granted, the Commission quickly turned its attention to drafting the International Covenants on Political and Civil Rights and Economic, Social and Cultural Rights, but the stickiest points were arguably the articles that dealt with matters of enforcement.

Part of the issue was that the West had no interest in enforcement. At the beginning of the Commission's session in 1953, the U.S. announced it would not be ratifying the Covenants. Although Washington's allies were all, to one degree or another, sympathetic to Washington's reservations, reactions by member states of the developing world was far less generous. Chile's delegate, Umberto Dias Casanueva, lamented that the U.S.'s decision would have "tremendous repercussion on public opinion," and could lead to a loss of faith in the Commission, while Italo Perotti of Uruguay warned that "the peoples of the world would not understand such reluctance." India's delegate, Mrs. Kamaladevi Chattopadhyay, concurred; she cautioned that when "a country which had played a great part in the evolution of democracy announced that it would not ratify such a document, it raised doubt among the peoples."<sup>5</sup> The following day during the third plenary session, Jose Ingles of the Philippines told the Commission that the U.S. position was both "deeply regrettable," and misguided.<sup>6</sup>

In lieu of signing on to the covenants, Washington proposed a three-point "Human Rights Action Programme" for the Commission. Ac-

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<sup>5</sup>"Commission on Human Rights, Ninth Session: Opening of the Discussion on the Draft Covenants," Information Centre, European Office of the United Nations, Geneva, Press Release No. HUM/60, 8 April 1953, 1-3.

<sup>6</sup>"Commission on Human Rights, Ninth Session: Several Delegations This Morning Explained Their Position Following..." Information Centre, European Office of the United Nations, Geneva, Press Release No. HUM/61, 9 April 1953, 2.

According to Tolley, it was “uncontroversial” and not terribly effective, but had the potential – which would never be realized – to serve as a “tool for monitoring compliance with international norms.”<sup>7</sup> If adopted, the Programme would require governments to submit annual reports to the Commission on the human rights situations in their countries. The plan also called for the use of independent rapporteurs or expert advisors to counsel governments in the preparation of their reports. Finally, it recommended the establishment of “advisory services” for member states on “specific aspects of human rights.”<sup>8</sup>

Unsure of what to make of the Programme of Action and under pressure to provide feedback to the Secretary-General by 1 October 1953, Ottawa took its cues from the British, who disliked the proposal considerably. On 4 September, Canada’s High Commissioner informed the Department that London considered the Action Programme to be “in substance almost as objectionable as the Covenants,” and intended “to adopt stalling tactics in the Assembly” in the hopes of having the proposal “referred back to the Commission on Human Rights for further study.” According to the memorandum, the British did “not like the idea of reports from member governments,” did not consider human rights to be “an appropriate subject for technical assistance,” and were of the view that “separate studies of specific rights are unnecessary since they would overlap with the Human Rights Yearbook,” one of the annual tasks of the Commission.<sup>9</sup>

Ottawa concurred with its British colleagues that the Action Programme – which was “obviously designed to offset the effect of the United States’ announced decision not to ratify the Covenants at the present time (or in the near future)” – “did not merit a particularly fa-

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<sup>7</sup>Howard Tolley, *The UN Human Rights Commission* (Boulder, CO: Westview Press, 1987) 32, 42.

<sup>8</sup>For the full text of the three components of the “Human Rights Action Programme,” see E/CN.4/L.266/Rev.2, 28 May 1953; E/CN.4/L.267/Rev.1, 18 May 1953; and E/CN.4/L.268, 7 May 1953.

<sup>9</sup>LAC, Department of External Affairs fonds, RG25, “United Nations Economic and Social Council – Commission on Human Rights,” volume 6409, file no. 5475-W-40, pt. 8, file “Memorandum: No. 1525 re: 8<sup>th</sup> Session of General Assembly,” 4 September 1953.

vourable reply.”<sup>10</sup> Although intended to serve as a peer-review mechanism, officials at External Affairs were of the opinion that the reports “were unlikely to yield tangible results,” and, above all, would cause “constitutional difficulties” for the country. Furthermore, the prospect of having independent rapporteurs scrutinize Canadian policies was no more appealing. The concern was that these individuals could, if unsatisfied with the level of cooperation with governments, decide “to report separately to the Commission.” As such, “the Government would have no control of what would be sent to the United Nations and official United Nations publications might include statements in relation to Canadian affairs with which the Canadian government would not agree.”<sup>11</sup>

Even so, Ottawa was reluctant to oppose the Action Programme publicly. Its fear was that any overt lack of support would lead to negative repercussions at home, and might require the federal government to provide “some justification for the existence of the Human Rights Commission and satisfy to some extent at least those elements of the population which feel strongly [in favour] on this subject both internationally and in the domestic field.”<sup>12</sup> With no alternative proposal of its own, Ottawa opted to “await the outcome of the [General] Assembly debate before making any commitment.” Its hope was that “a lack of response from member governments might cause [the Americans] to let the proposal die a natural death.”<sup>13</sup>

Perhaps nowhere was this politicization along regional lines more apparent than during the drafting of the terms of reference of the nine-member Human Rights Committee (HRC), a body whose broad mandate would be to “examine complaints on the violation of hu-

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<sup>10</sup>Ibid., “Memorandum from the United Nations Division: Human Rights,” 17 September 1953, 2; and “Memorandum from Charles Ritchie, Acting Under-Secretary of State for External Affairs to the Deputy Minister of Justice,” 25 September 1953.

<sup>11</sup>Ibid., “Memorandum: “Report of the Economic and Social Council: Comments on U.S. Proposals re: Human Rights Programme,” 8 September 1953, 2-3.

<sup>12</sup>Ibid., “Memorandum from the United Nations Division: Human Rights,” 17 September 1953, 2-3.

<sup>13</sup>Ibid., “Memorandum: “Third Committee – Human Rights” 28 September 1953.

man rights” and “establish the factual state of affairs.”<sup>14</sup> One question before the Commission was which rights the Committee would rule on, and which ones would fall outside its purview. Most Western European and Others Group (WEOG) members of the Commission had initially been supportive of the HRC when it had first been proposed earlier in the 1950s. But that was before economic, social and cultural rights were added to the mix. In 1953, the U.S., French and UK delegates all supported a complaints system for the International Covenant on Civil and Political Rights (ICCPR). But they opposed any measures beyond simply a reporting system for the International Covenant on Economic, Social and Cultural Rights (ICESCR) on the grounds that the rights it codified were aspirational, not judiciable. In contrast, the Polish and Chilean delegates endorsed implementation measures for both covenants, but only on the condition that they “take into account the special circumstances of each State” and “be adapted to the degree of development and facilities available to each country,” which would, in effect, mean that developing states could not be held to full account for any violations of either treaty. This was something the WEOG could not accept.

The members of the Commission also jockeyed to control the selection processes to determine both the composition of the HRC, and its potential caseload. With respect to the former, the original proposal was that the International Court of Justice would pick the jurists in order to ensure that qualified individuals sat on the Committee. The Yugoslav delegate, however, countered that the members of the Committee should be elected by the General Assembly, which was not controlled by the WEOG, so as to avoid the possibility that the HRC would become “a mere tool in the hands of the imperialists.”<sup>15</sup> As for

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<sup>14</sup>“Roundup of the Ninth Session of the Commission of Human Rights,” Information Centre, European Office of the United Nations, Geneva, Press Release No. HUM/119, 1 June 1953, 3-4.

<sup>15</sup>“Commission on Human Rights, Ninth Session: The General Discussion on Measures of Implementation Continues,” Information Centre, European Office of the United Nations, Geneva, Press Release No. HUM/64, 13 April 1953; “Commission on Human Rights, Ninth Session: End of General Discussion on Measures of Implementation,” Press Release No. HUM/65, 13 April 1953; and “Commission on Human Rights, Ninth Session: Continuation of the Discussion

the latter, imperialism, or more specifically decolonization, was very much on the minds of those states from the developing world. They contended that the HRC should have the authority to hear complaints from “non-self-governing territories.” Indeed, they saw the Committee as an instrument through which these territories could argue their cases for independence.<sup>16</sup> Predictably, several members of the WEOG – Australia, Belgium, France, Sweden, the UK and the United States – all objected on the grounds that any provision directed at the administering powers was inherently discriminatory.<sup>17</sup> René Cassin, one of the original drafters of the UDHR and a future Nobel laureate (he was awarded the prize in 1968), told the Commission that the Human Rights Committee possessed “neither the qualification nor the means to deal with communications regarding the people’s right of self-determination...it ought not to be given the responsibility for carrying out tasks which were essentially political.” On this matter, the Soviets and Ukrainians sided with the West, their position being that the “system of implementation now being drawn up by the Commission was a violation of the principle of non-interference in the domestic affairs of States.”<sup>18</sup>

As Europe’s empires disintegrated in the late-1950s there was a flurry of activity at the UN on matters relating to decolonization and bringing an end to racial discrimination, all of which had implications for the UN human rights system’s capacity to enforce international law.

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of Article 52, Press Release No. HUM/76, 22 April 1953.

<sup>16</sup>“Commission on Human Rights, Ninth Session: Adoption of Articles 50 and 51 – Preliminary Consideration of Article 52,” Press Release No. HUM/74, 21 April 1953, 2.

<sup>17</sup>On 27 April 1953, the Commission overwhelmingly rejected a proposal that would have granted the “right of petition to individuals and non-governmental organizations” at the Committee on the grounds that it would open the door for politicized attacks on states framed as rights complaints, and that individuals’ status in international law should not be elevated to that of states. See United Nations Press Release SOC/1651, “Human Rights Commission Approves Draft Article Stipulating Procedure Whereby States Only May Bring Charges of Violation of Human Rights Before the UN,” 28 April 1953. See also “Commission of Human Rights, Ninth Session,” Press Release No. HUM/119, 1 June 1953, 4.

<sup>18</sup>“Commission of Human Rights, Ninth Session: Continuation of the Discussion of Article 52,” Press Release No. HUM/76, 22 April 1953, 1-2.

On 14 December 1960, the General Assembly passed the Declaration on the Granting of Independence to Colonial Countries and Peoples.<sup>19</sup> In 1961 and 1962, respectively it established the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, which “took over the functions previously exercised by the Special Committee for South-West Africa and the Committee on information from Non-Self-Governing Territories,” and the Special Committee on Apartheid “to deal with the racial practices of the Republic of South Africa.” Three years later in 1965, a reporting system was implemented in which country reporting would take place on a “three-year cycle, with civil and political rights in the first year, economic, social and cultural rights in the second, and freedom of information in the third.”<sup>20</sup>

The crowning achievement was the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly in 1965. Paul Gordon Lauren suggests that the Convention was groundbreaking for a number of reasons: it “marked for the first time in history a standard-setting and binding treaty that defined racial discrimination, pledged themselves to adopt all necessary measures to prevent and eradicate it, agreed that they could be subject to criticism from other states party to the Convention and individual petitioners, and, significantly, authorized the creation of the first international machinery for any United Nations-sponsored human rights instrument to implement compliance with the treaty itself.”<sup>21</sup> While the treaty-monitoring body, the Committee on the Elimination of Racial Discrimination (CERD), was in many respects a ground breaking innovation, agreement was only possible because of the inclusion of a reservations clause, which stated that “a reservation shall be considered incompatible or inhibitive if at least two-thirds of

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<sup>19</sup>UNGA Resolution 1541 (XV), 14 December 1960.

<sup>20</sup>Roger S. Clark, “Human Rights Strategies of the 1960s Within the United Nations: A Tribute to the Late Kamleshwar Das,” *Human Rights Quarterly* 21 (1999): 316-17, 26.

<sup>21</sup>Paul Gordon Lauren, “To Preserve and Build on Its Achievements and to Redress its Shortcomings: The Journey from the Commission on Human Rights to the Human Rights Council,” *Human Rights Quarterly* 29 (2007): 319.

the States Parties to this Convention object to it.”<sup>22</sup>

The CERD was only the first of a number of important developments in the mid-1960s relating to the enforcement capacity of the UN human rights system. In 1966, the ICCPR and ICESCR were opened for signature at the General Assembly, the former of which included a treaty-monitoring body, the Committee on Human Rights. The following year the Economic and Social Council (ECOSOC), in which the Commission was housed, adopted resolution 1235 (XLII) of 1967, which authorized the Commission to receive petitions, investigate cases of gross and consistent patterns of human rights violations including “policies of racial discrimination and segregation and of *apartheid*, in all countries.”<sup>23</sup> Moreover, membership on the CHR increased from twenty-one to thirty-two, which shifted the balance of power from the West to newly decolonized states from Africa and Asia. According to Howard Tolley, these new members “transformed” the Commission. They aligned themselves with the Soviet Bloc countries, forming “a new majority that regularly outvoted the Western and Latin American members,” their principal aims being, “to combat racial discrimination and advance the right of self-determination.”<sup>24</sup> As planning got underway for the First World Conference on Human Rights, the WEOG reacted to these developments by contemplating a series of reforms to be presented at Tehran, reforms that were motivated as much by a desire to take back control of the Commission’s agenda as they were by any principled commitment to strengthening the enforcement capacity of the UN human rights regime.

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<sup>22</sup>Egon Schwelb, “The International Convention on the Elimination of all Forms of Racial Discrimination,” *International and Comparative Law Quarterly* 15, no. 4 (1966): 1056.

<sup>23</sup>According to Wheeler, Arab states used the Commission’s newly expanded mandate “to seek condemnation of Israel for its occupation of Arab territories during the Six Day War, which ended within days of the passage of Resolution 1235.” Ron Wheeler, “The United Nations Commission on Human Rights, 1982-1997,” 76. Up until 1974, Resolution 1235 was only used against Israel and South Africa.

<sup>24</sup>Howard Tolley, “Decision-Making at the United Nations Commission on Human Rights, 1979-82,” *Human Rights Quarterly* 5, no. 1 (February 1983): 27-29; Clark, “Human Rights Strategies of the 1960s Within the United Nations,” 319.

## Tehran and the Reforms that Never Were

In the months prior to Tehran, many members of the WEOG had misgivings about the conference, which were by no means unfounded. Indeed, the meetings of the preparatory committee responsible for organizing the event were fraught with tension. For example, delegates of the western states favoured granting wide access to the conference only to NGOs that were “primarily concerned with human rights” (virtually all of which were based in western countries), the Soviets wanted them restricted entirely, while the African and Asian delegates called for limited participation for NGOs and equal representation across regions. Unable to come to agreement, the committee referred the question back to the General Assembly on the understanding that access would indeed be “limited,” although by how much was unclear. The host Iranians preferred to limit participation to about twelve NGOs on the ground that that was all the conference facilities could accommodate. Much to the displeasure of the Soviet and Afro-Asian blocs, Canada co-sponsored a resolution at the Third Committee of the General Assembly that granted NGOs permission to circulate briefs about the state of human rights in particular countries prior to the proceedings.<sup>25</sup> Of particular concern was Item 11 of the provisional agenda, which dealt with the “formulation and preparation of a human rights programme” for the UN, and included, among other sensitive issues, “measures to achieve rapid and total elimination of all forms of racial discrimination in general and of the policy of apartheid in particular;” “the importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of all human rights;” and the “international machinery for the effective implementation of instruments in

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<sup>25</sup>LAC, SSEA fonds, RG 6 “Report of the Canadian Representative on the Preparatory Committee on an International Conference on Human Rights,” c. June 1967, 7-8; LAC, SSEA fonds, RG6, “International Conference on Human Rights, Teheran, 1968,” box 119, file, pt. 1, “Telex from Canadian delegation in New York to External Affairs: XXII UNGA: Third Committee: International Year of Human Rights,” 12 December 1967, 1-2.

the field of human rights.”<sup>26</sup> The first priorities were not only highly charged politically, but were specifically directed at the records of the WEOG, specifically their support for apartheid governments in Southern Africa. On 22 March 1968, the day after the International Day for the Elimination of Racial Discrimination, Ashkar Marof, the Guinean ambassador to the UN and chair of the Special Committee on Apartheid, accused European governments of aligning themselves with “fascist regimes or racist dictatorship to oppose non-white liberation,” and suggested that the “culpable impotence of the international community” had sparked a race war, something the British found to be particularly inflammatory.<sup>27</sup> At least initially, the West hoped that this last piece – the “international machinery” – might be tailored to undermine the ones that came before it.

There was no shortage of good ideas in circulation. One was to establish a High Commissioner for Human Rights, an idea that had been around since the mid-1940s but had become entangled in Cold War politics (the Soviets in particular were not keen on the idea), and WEOG mem-

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<sup>26</sup>Item 11 stated: “Formulation and preparation of a human rights program to be undertaken subsequent to the celebration of the International Year for Human Rights for the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, colour, sex, language, or religion, in particular: Measures to achieve rapid and total elimination of all forms of racial discrimination in general and of the policy of apartheid in particular; the importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of all human rights; the question of slavery and the slave-trade in all their manifestations and practices, including the slavery-like practices of apartheid and colonialism; measures to promote women’s rights in the modern world including a unified long-term United Nations programme for the advancement of women; measures to strengthen the defence of human rights and freedoms of individuals; international machinery for the effective implementation of international instruments in the field of human rights; other measures to strengthen the activities of the United Nations in promoting the full enjoyment of political, civil, economic, social and cultural rights, including the improvement of methods and techniques and such institutional and organizational arrangements as may be required. “International Conference on Human Rights, 1968: Provisional Agenda,” A/CONF.32/1, 1-2.

<sup>27</sup>LAC, SSEA fonds, RG6, “International Conference on Human Rights, Teheran, 1968,” box 119, file, pt. 2, “Telex from Permanent Mission in New York to Ottawa re: International Day for the Elimination of Racial Discrimination: Marof statement,” 22 March 1968, 1-3.

ber states were only supportive if the High Commissioner's authority was "strictly [limited]." <sup>28</sup> Moreover, the François "Papa Doc" Duvalier regime in Haiti had shrewdly (and ironically) sponsored a resolution that equated "practices of discrimination, colonialism, and slavery," as crimes against humanity, and called for the creation of a "Human Rights Commissioner-delegate" whose mandate would be to gather evidence of human rights violations in "colonial territories," something the Europeans could not accept. <sup>29</sup> As such, WEOG opted not to pursue the matter. A second potential reform proposed by Sean MacBride of the International Commission of Jurists was the establishment of an international penal tribunal – an International Criminal Court – for the most serious human rights violations. It was by no means a new idea, but it too was not pursued because of the geo-politics of the day. The Canadian government, for example, was of the mind that "certain countries" would attempt to advance their political agendas "through an over-liberal interpretation of the term 'genocide'." <sup>30</sup>

London contemplated more serious reforms. Specifically, it proposed replacing the Commission with a Human Rights Council "on par with and independent of ECOSOC" – specifically its Social Committee, a body that was "primarily concerned with questions of inter-agency cooperation and economic development," – whose purpose would be to "rationalize" the UN's human rights activities, and "help to restore human rights question to a position of prominence in the United Nations." <sup>31</sup> Its reasons for doing so were not motivated solely by a desire to advance rights. Rather, London was resentful that the Commission had "turned its attention almost completely away from technical ques-

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<sup>28</sup>Ibid., "Telex from External Affairs to London re: Human Rights Conference – Teheran," 6 March 1968, 5.

<sup>29</sup>Ibid., "Telex from Teheran to External Affairs re: UN Conference on Human Rights," 28 April 1989, 2-3.

<sup>30</sup>LAC, RG6, box 119, file, pt. 2, "International Conference on Human Rights, Tehran, 1968," "Telegram from External Affairs to London re: Human Rights Conference – Tehran," 6 March 1968, 2; "Telegram from Teheran to External Affairs re: Human Rights Conference: Draft Resolution on Human Rights and Armed Conflict," 6 May 1968, 1-3.

<sup>31</sup>LAC, SSEA fonds, RG6, "International Conference on Human Rights, Teheran, 1968," box 119, file, pt. 1, "Proposal for a New Human Rights Council," c. 1968, 1-2.

tions of human rights to become another propaganda organ of [the] UN for Afro-Asian and Communist Bloc views on such subjects as Vietnam, Rhodesia and South Africa.”<sup>32</sup>

London’s allies were generally sympathetic to the proposal, at least in principal. There was general agreement that the bureaucratic pathologies of ECOSOC hampered the work of the CHR and its Sub-Commissions, and that cutting ECOSOC out of the process of setting human rights standards would indeed streamline the UN’s human rights activities.<sup>33</sup> Moreover, the proposal did represent a bold reform, one that was in keeping with the overall vision of the conference. At least in theory, in elevating the importance of human rights within the United Nations it would have advanced efforts within the organization to enforce the standards that it set.

But the costs of pursuing the reform were high, and there was no guarantee that it would be adopted. For starters, the Soviet bloc countries, which had abstained on the vote to adopt the UDHR, would undoubtedly oppose any efforts to strengthen the UN’s ability to advance political and civil rights.<sup>34</sup> Moreover, such a reform would potentially require amending articles 7(1), 62(2) and 68 of the UN Charter (the articles that govern the Commission), something members of the WEOG were not keen to do.<sup>35</sup> The safer route would be to try to bolster the authority and enforcement capacity of the Commission.

The Member States of the WEOG had good reason to be cautious. Anti-western hostility had grown in the lead-up to the conference. As Burke has argued, the conference reflected the “UN’s postcolonial transformation,” and the assertion of a “collective rights ideology” based on “the

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<sup>32</sup>LAC, SSEA fonds, RG6, “International Conference on Human Rights, Teheran, 1968,” box 119, file, pt. 2, “Telex from London to Ottawa,” 26 March 1968, 1.

<sup>33</sup>The perception was that the Third Committee had become a “rubber stamp” for decisions made by the UNHRC and the Commission on the Status of Women, and that, despite scrutinizing treaties produced by its subsidiary bodies, it made few substantive contributions of its own. “Proposal for a New Human Rights Council,” 1-2, 4.

<sup>34</sup>Ibid., 3.

<sup>35</sup>“Proposal for a New Human Rights Council,” c. 1968, 2-3.

primacy of economic development driven by a powerful, centralized state.”<sup>36</sup> Of course, Tehran did not deal with questions of enforcement. Ironically, Haiti submitted a resolution to establish a Council outside of ECOSOC. But it was never debated due to “a lack of time.”<sup>37</sup>

### **Enforcement post-Tehran**

The history of the diplomacy leading up to the Tehran World Conference on Human Rights in 1968 is not without relevance to contemporary challenges associated with enforcing international human rights law. The 1960s was time of great innovation and creativity, a time in which the seeds of the contemporary human rights system were sown though never permitted to flower. But the proposed enforcement mechanisms of the era were not solely intended to rectify gaps in the human rights governance architecture or limiting the ways in which states could treat their own citizens. Rather, they were also about control of the Commission following decolonization. Still, while Tehran was a missed opportunity for reform-minded states, it was an event that was in many ways ahead of its time, and marked the end of days when the CHR could only focus its attention on standard-setting.

The first major breakthrough occurred in 1970 with the adoption of ECOSOC Resolution 1503 (XLVIII) authorizing the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which reported to the Commission on Human Rights but was made up on individual experts acting in their own capacities rather than state officials, “to appoint a ‘working group’ to investigate specific allegations of human rights violations,” which would then share its findings with the Commission. As Wheeler notes, resolution 1503 “required strict confidentiality be maintained until any investigation had been completed,” but under the terms of resolution 1235, the Commission then had the authority to publicize the findings of the working group.<sup>38</sup>

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<sup>36</sup>Burke, *Decolonization*, 284-87.

<sup>37</sup>United Nations, *Final Act of the International Conference on Human Rights* (New York: United Nations, 1968), 46.

<sup>38</sup>Ron Wheeler, “The United Nations Commission on Human Rights, 1982-1997: A Study of Tar-

But the gains derived from resolution 1503 were short-lived. Displeased with the prospect of having their human rights records scrutinized in an international forum, a number of member states actively worked to undermine the Commission's activities, and mute the criticisms of their records (a practice that ultimately led to the dissolution of the Commission in 2006).

Throughout the 1970s and 1980s, new treaty-monitoring mechanisms were established, such as the Committee Against Torture (CAT), along with special rapporteurs responsible who "report and advise on human rights from a thematic or country-specific perspective."<sup>39</sup> Ted Piccone of the Brookings Institute rightly argues in his book on the special procedures and treaty-monitoring bodies, that "states can be persuaded but rarely compelled to do the right thing."<sup>40</sup> Moreover, the mechanisms are generally "slow and cumbersome, while too many states ignore their decisions" and are reluctant to "cooperate with rapporteurs." Coupling these problems with inadequate training for staff and a "morass of bureaucratic entanglements, tensions and clashes," it is little wonder that the system has failed to live up to expectations.<sup>41</sup> Despite these shortcomings, Piccone contends that the special procedures provide a number of critical services from fact-finding to norm development, to connecting a diverse set of UN stakeholders, to providing victims with access to the UN system. "By most accounts," he notes, "they have played a critical role in shaping the content of international human rights norms, shedding light on how states comply with such norms, and advancing measures to improve respect for them. They are considered by many to be, in the words of Secretary-General Kofi Annan, 'the crown jewel of the system.'"<sup>42</sup>

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geted Resolutions," *Canadian Journal of Political Science/Revue canadienne de science politique* 32, no. 1 (2009): 76.

<sup>39</sup>"Special Procedures of the Human Rights Council," <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

<sup>40</sup>Ted Piccone, *Catalyst for Change: How the UN's Independent Experts Promote Human Rights* (Brookings Institute Press, Washington D.C., 2012), 1.

<sup>41</sup>*Ibid.*, 3-4, 18, 58-59.

<sup>42</sup>*Ibid.*, 5.

One of the great innovations of the post-Cold War era has been the creation of the Office for the High Commissioner of Human Rights following the Second World Conference on Human Rights in Vienna in 1993, something that had not been possible in Tehran. The High Commissioner's mandate is to lead "the UN's global efforts to promote and protect all human rights for all people."<sup>43</sup> Despite the lofty ideals that inform the Office, it is often an impossible position for reasons that are not unexpected. The current High Commissioner, Prince Zeid bin Ra'ad Zeid al-Hussein of Jordan, who had been quick to criticize the permanent five powers for their human rights records, including the United States, has said that he will not seek a second mandate once his current one expires in August 2018, because to do so "in the current geo-political context," would require "bending a knee in supplication," thus undermining the integrity of the office.<sup>44</sup>

Throughout modern history there has been a norm that former heads of state are immune from prosecution in other countries for acts of war or human rights violations. In the 1990s things looked like they were changing. Following the atrocities in Rwanda and the former Yugoslavia, the UN established special tribunals to try perpetrators. What followed was a furious effort internationally to establish the International Criminal Court, a permanent body that would serve as the bedrock of international criminal justice. Moreover, the arrest of former Chilean dictator Augusto Pinochet in 1998 in the UK following an extradition request from Spain sent shockwaves throughout the world. Meanwhile, states around the world introduced universal jurisdiction laws that allow them to try alleged perpetrators of mass crimes on their own soil, even if the crime happened somewhere else. All of a sudden, it looked like no one was above the law.

Sadly, the promise of the late 1990s was short-lived. After its election,

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<sup>43</sup>"Office of the High Commissioner for Human Rights," <http://www.unfoundation.org/how-to-help/donate/ohchr.html>.

<sup>44</sup>As quoted in "UN rights chief refuses to 'bend knee' after US clash, will not seek second term," *The Jordan Times*, December 22 December 2017, <http://www.jordantimes.com/news/region/un-rights-chief-refuses-bend-knee-after-us-clash-will-not-seek-second-term>.

the George W. Bush administration actively tried to undermine the International Criminal Court.<sup>45</sup> It was by no means alone. Indeed, the court is going through a legitimacy crisis at the moment, the perception being that it is a court of the strong against the weak. This criticism is particularly acute in part of Africa. Indeed, Burundi withdrew from the Court in 2017, and the Jacob Zuma government of South Africa attempted to withdraw, and would have done so had the South African courts not ruled that doing such a move would be unconstitutional.<sup>46</sup> More than this, universal jurisdiction laws have been weakened, and states have resisted going after former heads of states from other countries for fear of the potential for retaliation. The exception to this seems to be the Global Magnitzky Acts which give governments the ability to freeze the assets of known human rights violators. But for all intents and purposes, the norm of immunity for former leaders seems to have been re-affirmed.

Of course, the most recent innovation is the Human Rights Council, an idea whose origins can be traced back to the conference in Tehran. In March 2006, the United Nations General Assembly adopted Resolution 60/251 by a vote of 170 in favour, 4 against with 3 abstentions, which called for replacing the CHR, which had lost much of its credibility, with a new Council.<sup>47</sup> The Council is, in many ways, a significant upgrade over its predecessor. It reports to the General Assembly rather than ECOSOC, and it meets at least three times per year and can call emergency sessions. It also administers the Universal Periodic Review, a peer-review system in which all states have their rights records examined every four years, and General Assembly's decision in 2011 to suspend Libya from the Council in response to the Gaddafi regime's excessive use of force to crack down on popular anti-govern-

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<sup>45</sup>See Erna Paris, *The Sun Climbs Slow: Justice in the Age of Imperial America* (Toronto: Alfred A. Knopf Canada, 2008).

<sup>46</sup>Norimitsu Onishi, "South Africa Reverses Withdrawal From International Criminal Court," *New York Times*, 8 March 2017, <https://www.nytimes.com/2017/03/08/world/africa/south-africa-icc-withdrawal.html>.

<sup>47</sup>Those countries that voted against the resolution were the US, Israel, Palau and Marshall Islands, while Iran, Venezuela, Belarus each abstained.

ment protests set a “crucial precedent” and signaled that the Council was at least capable of acting in a way that the Commission could not, at least when there is the will to do so.<sup>48</sup> However, individual member states continue to use their influence to deflect criticism of their behavior and that of their allies and too often its actions become hostage to politics, all of which serves as a powerful reminder of the limits of the ability of the international human rights regime to move beyond standard-setting.

### Conclusion

For the West, the First World Conference on Human Rights was a disappointment, an event that entrenched the shift in the balance of power on the Commission that had begun in the early 1950s and was accelerated with the expansion of its membership in the mid-1960s. Although many observers deemed the event to be a failure, the reforms that took place in the years and decades that followed suggest that the conference did mark a turning point for the UN human rights system, if for no other reason than that it forced the international community to confront the issue of enforcement, even if its reasons for doing so sometimes had little to do with a desire to uphold universal human rights. But despite the gains that have been made over the course of the last five decades, there is still much work to be done. Indeed, fifty years after Tehran, the central challenge confronting the international human rights regime is still that the protection of rights is rarely if ever just about rights, and there is little evidence that this will change any time soon. Until this day comes, the promise of the First World Conference on Human Rights will, sadly, remain unfulfilled.

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<sup>48</sup>Thomas G. Weiss, *What's Wrong with the United Nations and How to Fix It*, 2nd ed. (Cambridge: Polity Press, 2012), 43, 152.