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EDITED BY RICHARD B. BILDER

BOOK REVIEWS

A History of the UN Human Rights Programme and Secretariat. By Bertrand G. Ramcharan. Leiden, Boston: Brill Nijhoff, 2020. Pp. xvii, 262. Index. doi:10.1017/ajil.2021.4

The seventy-fifth anniversary of the United Nations and of its perennially embattled human rights endeavors has not been an uplifting moment, either for multilateralism or for international protection of human rights. The *New York Times* took the occasion to publish a downbeat assessment of the UN's current failures to prevent wars, curb refugee flows, alleviate poverty, meet development goals, confront the COVID-19 pandemic, reform the Security Council—and take human rights seriously.¹

Discouraging recent signs in the field of human rights abound. The United States has once again withdrawn from the UN Human Rights Council. The African group of states absurdly nominated, and the General Assembly irresponsibly elected, the thuggish regime of Isaias Afwerki's Eritrea to the Council. China was elected to a five-member committee to select UN human rights rapporteurs. Russia and South Africa joined China to block a Security Council resolution calling for fair elections in Venezuela. And in a report cheekily entitled *The People's Republic of the United Nations*, a bipartisan U.S. think tank slams the increasing influence at the UN of China's "particularist view of human rights, in which governments can cite 'unique'

local conditions to justify disregard for individual or minority claims."²

Despair not: we have been here before. That perspective emerges from Bertrand Ramcharan's *A History of the UN Human Rights Programme and Secretariat*. Ramcharan delivers far more than a modest recounting of a UN program and its staff, such as might be expected from his understated title. Ranging well beyond a narrow institutional history, his book describes UN human rights norms and processes as they have evolved over time, and the broader forces that have shaped and continue to shape them: geopolitics, big power interests, Cold War divisions, the emergence and maturing of former colonies as independent states, and competing regional and ideological blocs.

Viewed in this context, the mixed picture of UN human rights performance is one of high achievement in developing global norms, but low performance in actual protection on the ground. If human rights today are resisted and distorted by a rising power in the East, human rights in the past have been thwarted by powers in the West, North, and South.

Yet all has not been lost. From 1945 to the present, the countervailing pressures of some democratic states, moral conscience, courageous and committed UN human rights entrepreneurs—allied at times with some diplomats, and persistent lobbying and mobilization by nongovernmental organizations (NGOs)—have yielded human rights dividends.

In 1947, there was no clear set of international human rights norms, the UN refused to allow its Human Rights Commission to act on complaints

¹ Rick Gladstone, *As U.N. Turns 75, the Celebration Is Muted by Calamity and Conflict*, N.Y. TIMES (Sept. 15, 2020).

² Kristine Lee & Alexander Sullivan, *The People's Republic of the United Nations: China's Emerging Revisionism in International Organizations*, CTR. NEW AM. SECURITY, at 1 (May 2019).

of violations, and no state would have subjected itself to a UN human rights evaluation. Seventy-five years later the change is dramatic:

- (1) The UN has adopted and promoted a very widely accepted International Bill of Human Rights, covering not only civil and political, but also economic, social, and cultural rights;
- (2) Ten separate UN human rights treaty committees, and numerous experts appointed by the UN, monitor, report, review state reports, respond to complaints, and prod states on more than forty different human rights themes, ranging from the independence of judges and lawyers to the human right to safe drinking water; and
- (3) All UN members undergo a human rights peer review by other states every four and a half years which, however soft or politicized it may often be, reinforces a diplomatic culture in which states must regularly pledge allegiance to human rights.

None of this is enough. Gross violations of human rights remain rampant. Lately they may be getting worse in many countries. Norms and monitoring often do not translate into prevention, protection or remedies.

Nor is the UN system—which, for example, lacks a human rights court—the most efficacious international system for protecting human rights. That honor goes instead to regional systems in Europe and Latin America. They include, among other mechanisms, the European and Inter-American Courts of Human Rights, whose legally binding judgments against states generally yield greater remedies and improvements than do UN monitoring reports.

But these two regional systems have the advantage of memberships by states that are largely democratic and respect the rule of law.³

³ By comparison, Africa also has a formally similar regional human rights system, with a Commission and a Court, but African governments pay it little heed. Amnesty International, *Africa: States Frustrate*

With 193 member states worldwide, the UN does not have that luxury. Considering the number and diplomatic weight of authoritarian, corrupt, weak, and human rights-violating states whose envoys prowl hallways and conference rooms in New York and Geneva, one can appreciate all the more the importance of the UN's historic normative achievements, and its grudging advances in monitoring.

Few persons are better equipped to tell this story than Ramcharan. Although many aspects of UN human rights history have been told elsewhere, none put it all together over nearly the entire period since 1945, let alone from the perspective of one who occupied key human rights posts throughout much of that period. A native of Guyana, barrister at Lincoln's Inn, and doctor in international law from the London School of Economics, Ramcharan entered the UN Division of Human Rights in 1973. Almost immediately he became a close advisor and speech writer for Director Marc Schreiber. When Schreiber retired, Ramcharan served as special assistant to the successor program directors from 1977 to 1988. He then spent a decade at UN headquarters in New York. Returning to the program in 1998, Ramcharan served for five years as deputy high commissioner for human rights, and for over a year as acting high commissioner in 2003–2004.

The program existed for a quarter century before Ramcharan arrived. Even so, he is well versed in its history before his arrival. He knew some of the founders, and one of his first assignments was to research a history of the program up to that point.

Ramcharan was present throughout decisive moments forming the backbone of UN human rights activities nowadays. When he arrived in 1973, there was only one, newly functioning human rights treaty committee (under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which had issued its first general recommendations only a year earlier. The human rights

Continental Rights Bodies' Efforts to Uphold Human Rights (Oct. 21, 2019).

program's first country fact-finding mission and report (on General Augusto Pinochet's Chile) and first confidential referrals of country situations to the Human Rights Commission occurred in 1975. The two international Covenants came into force in 1976, and their treaty bodies were installed in 1977. The first individual country rapporteur (on Chile) was launched in 1978. The first human rights expert working group (on disappearances) was formed in 1980, and the first thematic rapporteur (on arbitrary and summary executions) in 1982. Ramcharan played a part in making all this happen. He was also there for the entry into force of treaties on discrimination against women in 1981 and on torture in 1987. And, finally, he was in the newly created Office of High Commissioner for Human Rights as deputy and acting high commissioner from 1998 to 2004.

Ramcharan's detailed history begins with the founding conference of the UN at San Francisco in 1945. While the powers of the day "consciously chose" to empower the UN to "promote" human rights, they "shunned" any idea of allowing the UN to "protect" human rights (p. 173). That reflected their human rights sins: "The United States was a country of segregation, the USSR a country of gulags, France and the United Kingdom countries of colonies, privilege, and inequality between metropolitan and colonial subjects" (pp. 70–71). (As a native of Guyana, which gained independence from Britain only in 1966, Ramcharan had presumably lived the inequality.)

In the face of these realities, "it was the lobbying of non-governmental organizations that brought about the human rights provisions" of the UN Charter (p. 248). Those include, principally, that a purpose of the UN is to achieve international cooperation in "promoting and encouraging respect for human rights" (Article 1); that the UN shall "promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (Article 55); that member states pledge "to take joint and separate action in co-operation" with the UN to achieve

these purposes (Article 56); and that the UN will set up a commission "for the promotion of human rights" (Article 68).

The new UN Human Rights Commission might have been expected at least to condemn gross violations of human rights, "wherever they took place." But the "major powers wished to condemn their adversaries and save themselves from criticism." The solution to this impasse was to disallow UN criticism of human rights violations by either side. In a "deal with the devil," the Commission ruled in 1947 that it had no competence to act on the thousands of human rights complaints coming before it. It was a "dark moment" (p. 67) and a "perfidious" obstruction of justice (p. 207).

The line between promotion and protection was further drawn by the Commission's work plan. It decided in 1947 that it would work toward an international bill of human rights "consisting of three parts: a declaration, one or more treaties, and measures of implementation" (p. 66). The first part was achieved by the UN General Assembly's adoption in 1948 of the Universal Declaration of Human Rights, by a vote of forty-eight in favor, none opposed, and eight abstentions (the Soviet bloc of six states, plus Saudi Arabia and apartheid South Africa).

After being buffeted and delayed by the Cold War, the second part was partly achieved by the UN adoption in 1966 and entry into force in 1976 of the two international Covenants, one on Civil and Political Rights, and the other on Economic, Social, and Cultural Rights. Formal support for these treaties is today nearly, but still not quite, universal. By December 2020, the Civil and Political Covenant has been joined by 173 of the 193 UN member states (not including, for example, China). The Economic, Social, and Cultural Covenant has been joined by 171 states (not including, for example, the United States). In Ramcharan's view, the Commission's drafting of these and other normative instruments "must go down in history as one of its great, historic achievements" (p. 68). It is hard to disagree with this assessment.

However, the third part of the work plan—measures of implementation—was one with

which the Commission “would wrestle . . . until its demise” and replacement by the Human Rights Council in 2006 (p. 67). Indeed, Ramcharan writes, “The quest for protection would be the dominant theme of my four decades of involvement” in the UN human rights program (p. 172).

As noted at the outset of this review, that quest remains unfinished. Ramcharan details each “steer and inch forward” in “difficult circumstances” (p. 36) through the end of his tenure as acting high commissioner in 2004, and more that took place later up to the writing of his book in 2016 (p. 107). Going against the interests of states determined to avoid even criticism, let alone action against them, was an uphill slog requiring “guts—and stamina” (p. 188).

Each inch forward was generally achieved, where possible, by a “partnership among the Secretariat, Governments, and NGOs” (p. 197). Great effort was spent, and battles won and lost, over whether to allow even confidential referrals to the Human Rights Commission of states committing gross violations, or to persuade the Commission to make a public denunciation, or to conduct an investigation, or to set up a working group, or to create a special rapporteur, or to draft even nonbinding resolutions for the UN General Assembly on touchy subjects like the rights of human rights defenders and of Indigenous Peoples.

Along the way Ramcharan worked with or for many UN officials. Measured by human rights criteria, few UN secretaries-general come off admirably. Relying on the writings of John Humphrey, director of the human rights program from 1946 to 1966, Ramcharan reports that neither Trygve Lie nor U Thant had “any real interest in human rights,” and that Dag Hammarskjöld apparently would have abolished the human rights program if he could have (pp. 90–91). Kurt Waldheim, Javier Pérez de Cuéllar, and Boutros Boutros-Ghali were “cautious” in speaking out (p. 7). Of the more recent secretaries-general, freed from Cold War constraints, Ramcharan particularly praises Kofi Annan, who “was quite outspoken on human

rights matters and provided important leadership in this area” (*id.*).

Among UN human rights officials, the one who stands out for Ramcharan was Theodoor van Boven, program director during the years 1977 to 1982. Thanks largely to van Boven, those were the years when the UN “was transformed from promotion to protection” (p. 195)—however halting that protection might be. Van Boven was a “good, decent, honourable, courageous man” (p. 196), and “undoubtedly the most knowledgeable and courageous of all the human rights heads” under whom Ramcharan served (p. 179). Ramcharan wishes to “pay tribute” (p. 203) to van Boven’s “exceptional leadership” (p. 222), which was in many respects the “model” for Ramcharan’s own tenure as high commissioner two decades later (p. 196).

Resistance or support, depending on the issue, came from across the ideological and geopolitical spectrum. In 1982 van Boven’s contract was not renewed, “under US and Latin American pressure because of van Boven’s exposure of gross violations of human rights in Latin America” (p. 199). Referring to the bureaucratic upgrade of the Division of Human Rights into a Centre in 1982, Ramcharan comments that “even little moves like these were stoutly resisted by the Communist and Third World countries” (p. 118).

Ramcharan was especially disappointed by the turn-around on human rights of the newly independent states. From the adoption of the Universal Declaration in 1948, to the adoption of the Covenants in 1966, UN membership more than doubled, from fifty-eight to 122 member states.⁴ During the years 1956 to 1965 alone, twenty-seven new African states joined the UN.⁵ At first, the result for human rights was positive (p. 36). Thanks largely to the newly independent states, the first of the UN core human rights treaties, CERD, was adopted in 1965, and the Cold

⁴ See UN, *Growth in the United Nations Membership, 1945–Present*, at <https://www.un.org/en/sections/member-states/growth-united-nations-membership-1945-present/index.html>.

⁵ *Id.*

War logjam on the Covenants was finally broken by their adoption in 1966.

However, once the governments of the newly independent states themselves became vulnerable to human rights charges, their posture reversed. Their stance against the UN dealing with gross violations was “immoral” (p. 49). Their efforts to “hollow-out” UN human rights protection activities were “shameful” (p. 60). Their “mantra” that the Human Rights Council, which in 2006 replaced the Human Rights Commission, should eschew confrontation in favor of “dialogue and cooperation” (p. 38) “sounds good in principle,” but “has pernicious results in many instances” (p. 53).

Political skewing of human rights at the UN is structurally embedded, in at least three senses. First, except for vetoes in the UN Security Council, voting in UN bodies, including the Human Rights Council, is one state, one vote. Second, members of UN bodies like the UN Human Rights Council reflect “equitable geographical distribution” among UN “regional groups.”⁶ For example, the forty-seven states on the Human Rights Council are distributed as follows: African states, thirteen; Asian states, thirteen; Eastern European states, six; Latin American and Caribbean states, eight; and “Western European and other” states, seven.⁷

Simple addition reveals the voting realities. Acting together, African and Asian states, with twenty-six seats, can win every vote. In contrast, acting together, Western European and others (which include Canada, Australia, New Zealand and, in elections, the United States), even hypothetically combined with all the Latin American and Caribbean votes, can manage only fifteen votes. They can never, by themselves, attain a majority.

Voting does not go strictly according to regional groups. However, these numerical points of departure go far to explain how a country like Eritrea—among the worst human rights violators, as even the Council recognizes⁸—can

win a seat on the Council, whose elections are supposed to take into account a state’s human rights record.⁹

Third, the Council is composed of states, not individual experts. Those bodies that do consist of such experts (such as human rights treaty bodies, Council rapporteurs, and working groups) can only recommend, not decide, on UN human rights policies and actions. Power is reserved to political bodies such as the Council.

Still, despite the discouraging UN political realities, Ramcharan observes that although “Third World countries,” when criticized, “sought to stifle their creations” of human rights protection mechanisms, those states “often stultified their efficacy [of the mechanisms] but they have never succeeded in killing them off.” UN expert procedures continue to “document gross violations of human rights world-wide” (p. 258). The International Bill of Human Rights (the Universal Declaration, the two Covenants, and the individual complaints procedure) remains a “beacon of hope,” even if implementation “still faces serious problems and is in need of reinforcement” (pp. 258–59).

Some readers might prefer that Ramcharan bolster his assertions, pro and con, by considering the body of theoretically informed scholarship on the effectiveness, or lack thereof, of UN human rights mechanisms.¹⁰ But the value added by Ramcharan’s book is his perspective as a practitioner, not as an academic (although he has written books and taught at prestigious universities). The largely direct experience he recounts is precisely one form of evidence on which scholars

Situation in Eritrea, UN Doc. A/HRC/44/23 (May 11, 2020).

⁹ GA Res. 60/251, *supra* note 6, para. 8.

¹⁰ For example, one of many such works not cited in Ramcharan’s brief bibliography (pp. 263–65) is: Yuval Shany, *The Effectiveness of the Human Rights Committee and the Treaty Body Reform*, in DER STAAT IM RECHT. FESTSCHRIFT FÜR ECKART KLEIN ZUM 70 (Marten Breuer, Astrid Epiney, Andreas Haratsch, Stefanie Schmahl & Norman Weiß eds., 2013) (Hebrew University of Jerusalem Research Paper No. 02-13), available at <https://ssrn.com/abstract=2223298>. See also Douglass Cassel, *Does International Human Rights Law Make a Difference?*, 2 CHI. J. INT’L L. 121 (2001).

⁶ GA Res. 60/251, para. 7 (Mar. 15, 2006).

⁷ *Id.*

⁸ See generally, e.g., Human Rights Council, Report of the Special Rapporteur on Eritrea, Human Rights

may properly rely for their more detached assessments. Moreover, in the experience of this reader, Ramcharan's rendition of UN realities rings true.

His final chapter takes a step back from the intricacies of the UN human rights program to survey the current panorama of human rights challenges (pp. 260–61). He sees them as structural (“lack of democratic and accountable governance in numerous countries”), strategic (no major power can assure stability against extremist movements which have “no compunctions” about human rights), political (lack of adequate political strategies), institutional (governments run the UN Human Rights Council), and normative and policy-oriented (it is “far from clear” that leading powers give “full backing” to the UN Charter, the Universal Declaration, and the two Covenants) (p. 260). In addition, there are global challenges of “poverty, inequality, and widespread lack of human dignity,” climate change and the environment, terrorism, and massive displacements (p. 261).

In the face of all this, Ramcharan argues that strengthening national protection systems is “one of the most strategic for the universal realization of human rights.” This includes six “key dimensions”: “constitutional, legislative, judicial, institutional, educational, and preventive” (p. 168). While the UN has a catalytic and monitoring role to play, “The protection of human rights should take place in one's country, where one lives and comes face to face with authority or power” (p. 113).

To strengthen both national and international systems, and quoting B. R. Ambedkar, a champion of the Indian Dalits, Ramcharan counsels that we must engage civil society and the young in a strategy of “educate, organize, and agitate” (pp. 261–62). Ramcharan recognizes that exposure of human rights violations is important. “But, at the end of the day, this is fire-brigade work.” He looks to the long run: “Information, education, and advisory services are seed-planting work. In the long-term they will be more decisive. Much more remains to be done in these areas” (p. 247).

At the UN, this should be done with diplomatic skill and sensitivity. Long experience as

an insider has taught Ramcharan to attend to matters of style and presentation. “Where deep issues of principle are involved, one should be ready to raise them. But the manner of wording them should be wise, not foolhardy” (p. 235). Recently “many NGOs have taken on a stridency . . . that sometimes results in an adversarial and accusatory posture” (p. 249). Striking the right balance can be difficult. This challenge calls for “reflection as we move into a potentially treacherous future” (p. 235).

In the end, Ramcharan—who has seen firsthand both the highs and the lows of UN human rights performance over decades, and who is acutely aware of the range of current challenges—has not lost hope: “We must continue to strive . . . for the universal protection of human rights” (p. 262).

DOUG CASSEL

Notre Dame Law School

Negotiating Civil War: The Politics of International Regime Design. By Henry Lovat. Cambridge, UK: Cambridge University Press, 2020. Pp. xv, 368. Index.

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Why have states in the post-1945 period agreed to treaty regimes that limit their freedom of action to deal with civil war? This is the question addressed by Henry Lovat, a lecturer in international law and politics at the University of Glasgow School of Law, in *Negotiating Civil War: The Politics of International Regime Design*.

Lovat's approach is to decide on the theoretical analytic lenses that should be used in considering the negotiation of the three civil war regimes that the book covers: Common Article 3 of the 1949 Geneva Conventions; Article 1(4) of the 1977 Addition Protocol I and of Protocol II to those Conventions; and Article 8(2)(c)–(f) of the Rome Statute establishing the International Criminal Court. *Negotiating Civil War* focuses more on political science theory than on legal