Teheran 1968 and the Origins of the Human Rights Council?

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Abstract

In late 1967, in anticipation of the First World Conference on Human Rights in Teheran, Iran, the British circulated a proposal to allies for the creation of a Human Rights Council. London’s plan was part of a larger power struggle within the Human Rights Commission between the newly-decolonized states and the Western European Group countries. But the idea was never pursued. By avoiding issues of enforcement at Teheran, delegates ensured that the World Conference would fail to live up to the lofty expectations attached to it, and, in doing so, precipitated the eventual demise of the Commission.

Introduction

From 22 April to 12 May 1968, the world community gathered in Teheran, Iran, for the First World Conference on Human Rights. The event was intended to be historic. It was to serve as an opportunity for both reflection and looking forward. Its purpose: to mark the respective occasions of the twentieth anniversary of the adoption of the Universal Declaration of Human Rights and the International Year of Human Rights, and chart a
new agenda for the UN human rights system, including the creation of new compliance mechanisms. Teheran marked a watershed moment in the history of international human rights. Through its final proclamation, the conference affirmed the indivisibility of political and civil and economic, social and cultural rights. But it was also a missed opportunity to give human rights an elevated prominence within the UN system.

In late 1967, London circulated a proposal to key allies calling for the creation of a new, supposedly more powerful Human Rights Council to replace the United Nations Human Rights Commission. The stated purpose behind the proposal was to strengthen the UN’s ability to enforce international human rights standards, principally by creating a body that was independent of the Economic and Social Council (ECOSOC). Deemed to be too political unfeasible for the times, the idea was never introduced (at least not by the British). Even so, the proposal is significant, and not simply because of its resemblance to the current Human Rights Council that was established in 2006.

At its core, London’s plan was part of a larger power struggle that had emerged in the mid-1960s within the Commission. The primary intent was to strengthen the UN’s capacity to protect rights. But it aimed to do so by creating a body that would mitigate the influence of the newly-decolonized states who had secured a majority on the Commission the year before, and whose human rights priorities differed considerably from those of the Western European Group countries. Indeed, the diplomacy that accompanied it is telling, for it offers new insights into the strategic nature of reforms at the UN. But more than this, by avoiding issues of enforcement at Teheran, delegates ensured that the World Conference would fail to live up to the lofty expectations attached to it, and, in doing so,
precipitated the decline of the UN human rights system more broadly, including the eventual demise of the UNHRC.

Racial Discrimination, Self-Determination and the Lead-Up to Teheran

The general consensus is that Teheran was a disappointment, a missed opportunity to move beyond standard-setting toward a regime that was capable of actually protecting the rights of vulnerable populations. In what is perhaps the most blunt assessment, Roger S. Clark, in his analysis of the UN’s human rights system in the 1960s, laments that “the output of the Conference was something of a damp squid,” despite an ambitious agenda that included, among other things, an evaluation of the effectiveness of the current machinery; the creation of a programs of action for the “rapid and total elimination” of racial discrimination, slavery and colonialism, as well as the advancement of women’s rights; and the establishment of “international machinery for the effective implementation of international instruments in the field of human rights.” Not surprisingly, the significance of the Teheran conference is generally down-played, particularly when compared to the 1993 Vienna World Conference on Human Rights, which accomplished so much, both in terms of normative advancements and the creation of new enforcement mechanisms, most notably the Office of the High Commissioner for Human Rights. Only recently have scholars begun to revisit the legacy of Teheran. Roland Burke, the first scholar to revisit seriously the historical significance of the first world conference, argues that the event was nonetheless a seminal moment in terms of “both the evolution of the international human rights project and the broader development of the UN organization.” Specifically, he argues that Teheran marked both “the culmination of a shift from the
Western-inflicted concept of individual human rights exemplified in the 1948 Universal Declaration to a model that emphasized economic development and the collective rights of the nation,” and “the declining respect for traditional human rights across the developing world.” Similarly, Daniel Whelan suggests that the event advanced the Third World notion that the “implementation of human rights [political and civil rights and economic, social and cultural rights] were dependent upon sound and effective national and international development policies.” Both of these related developments were a shift that was intrinsically linked to the broader anti-colonial movement. But the 1968 World Conference also served as the impetus for reforms designed to halt the very developments that Burke and Whelan examine in their respective studies, developments that had been festering since the founding of the UN and had come to a boil at the UNHRC in the 1960s.

The related rights of racial equality and self-determination had occupied the attention of the UN since its founding in the mid-1940s but to little avail. Prior to Dumbarton Oaks, the Chinese – the only “coloured” group to “participate in discussions about race” – submitted a proposal to the US, UK and USSR in which it contended that the UN uphold “the principle of equality of all states and all races.” At the time, the United States and the United Kingdom blocked the initiative, the former because of the ramifications that such legislation would have for the treatment of blacks in America, and the latter because of the implications for its colonial possessions. The USSR also opposed the Chinese proposal on the ground that it failed to see how human rights were relevant to an international security organization.
Issues of race and human rights were raised again at San Francisco. India, Haiti and Uruguay all argued for the inclusion of articles recognizing the relationship of racial dominance and war, as did NGOs such as the Council of Christians and Jews of London. Because of their efforts, language on race was inserted into a number of articles of the Charter, including Article 1, section 3, which encourages “…respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” Although, the protection of minorities did not disappear from international law (the 1949 Genocide Convention was drafted to protect minorities from physical harm), the feeling at the time was that group rights would be protected implicitly by individual rights legislation, and that states should have the right to “deal with minorities as they pleased.” Whereas the League of Nations had attempted to internationalize the problem of the rights of minorities, the UN largely left the responsibility of resolving international disputes to the offending state and the kin-state. Moreover, while there were some initiatives taken to come up with international solutions, the machinery that was established to examine the issue lacked the necessary political backing; the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, which advised the UNHRC, was often “ignored or rebuffed,” its existence “always in peril.”

The Western bloc’s influence on the Commission began to decline in the early 1950s. Perhaps nowhere was this more evident than on question of the “right of all peoples to self-determination,” which pitted governments in the West against those from the South, known at the time as the “Third Force.” The principal task of the Commission following the adoption of the Universal Declaration of Human Rights in 1948 was to draft an international bill of rights, which later took the form of the International
Covenant on Political and Civil Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Whether to include the right to self-determination was a fundamental component of the negotiations, at least in the minds of many developing states, and could not be divorced from discussions about the appropriate relationship between categories of rights.

On 4 December 1950, the General Assembly adopted resolution 421 D(V), which, among other things, called upon the Economic and Social Council (ECOSOC) to “request the Commission on Human Rights to study ways and means which would ensure the right of peoples and nations to self-determination and to prepare recommendations for consideration by the General Assembly at the sixth session.”11 Subsequently, on 5 February 1952, it adopted resolution 545 (VI), which called for the inclusion of the right of all peoples to self-determination in the ICCPR and ICESCR, and tasked the Commission with preparing the articles for debate at the seventh session of the General Assembly. To ensure compliance, the General Assembly later adopted a subsequent resolution, 549 (VI), in which it called upon ECOSOC to “instruct the Commission to give priority to the question of self-determination.”12 According to Whelan, these resolutions together altered the nature of the discourse about human rights at the UN in favour of the primacy of economic, social and cultural rights, the aims being to advance the grievances of the developing world.13

At its eighth session in 1952, the Commission drafted two recommendations, both highly contentious. The first, resolution A, equated colonialism to slavery in its preamble, and called for all members of the UN to “uphold the principle of self-determination of peoples and nations and respect their independence,” and for self-government to be
granted to any peoples of non-self-governing and trust territories who, through a UN-supported plebiscite, indicated a desire that their internal affairs be free of outside interference. The second, resolution B, called on administering states to submit information to the Commission on efforts being made to advance the right to self-determination in the states they governed. ECOSOC then forwarded both – without comment – to the General Assembly for debate in the Third Committee.

Debate at the Third Committee, which took place between 12 November and 3 December 1952, was highly charged, so much so that some observers speculated that the issue had the potential both to damage the United Nations – perhaps irreparably – and could even pose a threat to international peace and security. On one side were members from Latin America, Asia and the Middle East, all of whom were steadfastly united in support of the resolutions. On one side were the “administering states,” – Australia, Belgium, France, the Netherlands, New Zealand, South Africa, and the UK – none of whom could accept either of the recommendations, believing them to be both a direct attack on them, and a “backdoor” attempt to amend the UN Charter. The UK was particularly hostile to the resolutions. The view from 10 Downing Street was that they were “injurious, unjustified and contrary both to good sense and the provisions of the Charter itself,” since any immediate withdrawal from the administering territories would, in the majority of cases, lead to “anarchy,” the “collapse of government in large areas of the world,” the “uprooting, and perhaps the death, of millions of innocent people,” as well as the emergence of “some dictatorship and possibly in the institution of an autocracy.”

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The Americans, in part for historical reasons, were more receptive to the position of member states from the South. At the Third Committee, Eleanor Roosevelt submitted a series of amendments to resolution A intended to broker a compromise that was acceptable to both sides. All references to slavery were to be omitted, as were specific references to the non-self-governing and trust territories, thus making its application universal.

Canada, which did not have any colonies of its own, was also generally supportive of the idea of self-determination (particularly as it pertained to Soviet bloc countries). However, it was also a member of the British Empire, and sympathetic to the difficulties that this issue posed for London. Like the British, Ottawa had never been enthusiastic about the resolutions, and its positions mirrored those of London. It believed that the whole concept was ambiguous, and, furthermore, that “the rights of peoples and nations” did not belong in a treaty concerned with individual rights. Nor was it comfortable with including it in both covenants, particularly because the draft article contained “reference to sovereignty over natural wealth and resources.” Finally, it shared concerns that the principle of self-determination could be construed as “the right to self-government and even the right to secession.”

Canada nonetheless endorsed the U.S. proposals, but only because doing so “might avoid something worse,” and offer “some satisfaction to the strong feelings on this subject of the Arab-Asian and Latin-American states without making more difficult administration of dependent territories.” On 10 November, the Canadian delegation at the General Assembly had asked Ottawa for instructions on Canada’s positions with respect to the amended resolutions. In a telegram to the Canadian delegation sent On 12
November, the opening day of discussions, Ottawa lamented that, “even as amended the resolution is a woolly and rather silly document.” It advised Canadian officials to considering pouring “a certain amount of cold water on the resolution as amended and indicate that you are voting for it because it removes the really obnoxious portions of the original resolution, it is addressed to all states and not only administering states and because the intention behind the resolution, rather than the actual terms of the resolution, accords with Canada’s general attitude.”

On the first resolution, Canada, as instructed, supported the U.S. proposal to amend the language of the text in order that it neither depicted the “colonial relationship as slavery” nor “made the resolutions applicable to all states; including both those with responsibility for the administration of dependent territories and those controlling the exercise by another people of the right of self-government.”

For the second, its position, like that of the British, was that the resolution was unreasonable, and that any reporting by administering states be made voluntary, and not a legally binding requirement.

India, the de facto leader of the proponents of the right to self-determination, supported the U.S.’s efforts, submitting its own sub-amendments that were intended to soften the language of the text on 24 November following the closing of the general debate. For its part, Washington responded favourably to India’s overtures, which it believed were quite sincere and friendly. So too did the Canadians, who supported the changes because of their “comparative harmlessness.”

Moreover, both the UK and Australian delegations informed the Canadians that “were they not administering powers, they might be disposed to support the Indian sub-amendments.” However, under pressure from the non-Western states, which felt betrayed by New Delhi’s actions, the
Indian delegation backtracked. Although the explicit references to slavery were dropped, it submitted new a sub-amendment, one that reflected the original language of the resolution that singled out the administering powers. Following this, a grouping of eight member states from Latin America and the Middle East sponsored a third resolution, resolution C, which called upon the Commission to undertake further study of the issue, something the administering powers objected to on the grounds that “it would be inappropriate to ask for the preparation of further recommendations until the exact meaning and scope of the right of self-determination had been precisely defined.”

The compromise gone, the U.S., Canada, and a few others from Scandinavia who supported the original deal in turn withdrew their support. But all three resolutions – the naming of the administrating powers; the creation of reporting system on progress in the non-self-governing and trust territories; and the call for further study – passed by overwhelming majorities in the Third Committee, receiving votes of forty to fourteen, thirty-nine to twelve, and forty-two to seven with eight abstentions, respectively. On 16 December 1952, all three were adopted by the General Assembly. The issue was eventually revisited by the Third Committee in 1956 after the Commission submitted the draft covenants to the body. After extensive deliberations the right to self-determination was eventually placed at beginning of each covenant. Its prominence was, according to Burke a reflection of the influence, both moral and political, of the member states from developing world that saw it as the right that enabled all other rights that followed, and, later on, a tool for upholding the principle of non-interference in a state’s sovereign affairs.
As Europe’s empires disintegrated in the late-1950s there was flurry of activity at the UN on matters relating to decolonization and bringing an end to racial discrimination. On 14 December 1960, the General Assembly passed the Declaration on the Granting of Independence to Colonial Countries and Peoples. 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.”

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.”
The mid- to late 1960s was a pivotal time for the Commission for other reasons as well. In 1966, the ICCPR and ICESCR were opened for signature at the General Assembly. Just as noteworthy, ECOSOC resolution 1235 (XLII) of 1967 gave the Commission the authority to receive petitions from individuals whose rights had been abused, investigate gross patterns of human rights violations, and recommend to the ECOSOC Council that action be taken against an offending government. Resolution 1235 (XLII) permitted the Commission to examine cases of gross and consistent patterns of human rights violations, including “policies of racial discrimination and segregation and of apartheid, in all countries.”

Also that year, membership on the UNHRC increased from twenty-one to thirty-two members, the new spots taken up by newly independent members from Africa and Asia. During the period from 1946 to 1967, the Commission had been “dominated” by member states from the West, most notably the United States. These new members immediately, to quote Tolley, “transformed” the Commission. They joined forces with the Soviet Bloc countries, forming “a new majority that regularly outvoted the Western and Latin American members,” their principal aims being, not surprisingly, “to combat racial discrimination and advance the right of self-determination.”

The Preparatory Committee, Enforcement Mechanism, and the Human Rights Council

In the lead up to Teheran, many governments, particularly among the western group, were dubious that anything of note would be accomplished, despite its being billed as “the most important conference on human rights since the adoption” of the UDHR. In
their minds, much of the problem stemmed from the expanded membership of the UN following decolonization. The Canadian attitude toward the human rights work of the UN is telling. Canada was a member of the conference preparatory committee, which initially consisted of seventeen member states, only about one-third of which were allies. But in 1967, the membership was expanded to include six new developing countries – Colombia, Kenya, Pakistan, Panama, Lebanon, and Mauritania – which, according to the Canadian delegate, had the undesired effect of “decreasing its efficiency proportionately.”

“Inefficiency” did not just refer to the unwieldiness of a large group. Rather, it was code for “different priorities” between the developed and developing states. In a rather candid admission, the Canadian delegate on the committee reported to his superiors in Ottawa that “suffice its to say at this point the agenda reflects, not the workman-like conference on UN Human Rights programmes that was the mind’s eye conception of most western delegations, but rather the highly emotionally and politically charged favourite topics of the African developing countries” – apartheid, slavery, racial discrimination, and decolonization. To the Canadians (as well as the British), these were “political” problems, not “human rights” issues, per se, that could be exploited, including by the Soviets. Indeed, in the months leading up to the conference, the fear was that Teheran would serve as a forum for attacking the West for its policies toward the developing world, which would in turn undermine efforts to strengthen the UN’s capacity to advance and protect rights, specifically political and civil rights.

Given the potential stakes, officials at the Canadian Department of External Affairs (now Department of Foreign Affairs and International Trade) recommended to
cabinet that Canada send a “strong” delegation led by either a member of cabinet or a parliamentary secretary that would include “prominent individuals” such as John Humphrey, the former director of the UN Human Rights Division; a “senior, experienced political officer,” such as George Ignatieff, Canada’s permanent representative at the UN; additional political advisors and human rights experts; “appropriate French-speaking representation and perhaps a woman representative.”

34 Secretary of State Judy LaMarsh was initially approached in late 1967 to head the Canadian delegation to Teheran, the reason being that she was the cabinet minister whose portfolio included the advancement of rights domestically (she was also the only woman in Prime Minister Lester B. Pearson’s cabinet).

LaMarsh was non-committal, eventually turning down the invitation. But on 26 February 1968, Secretary of State for External Affairs Paul Martin wrote to her reaffirming the department’s hope that she would agree to go. In his letter, Martin stressed the need for strong leadership in the face of what was becoming an increasingly hostile environment. In a highly ironic statement, he wrote,

“The Afro-Asians, in particular, are becoming increasingly restive about the situation in Southern Africa and it is not surprising that the Conference’s agenda (item 11 (a) and (b)), a copy of which is attached, concerns complex and controversial matters for Western countries i.e., apartheid and colonialism. The inclusion of these particular topics in an agenda reviewing human rights progress over the last 20 years, and measures to be taken for the future, will pose a great challenge to Western delegations in assisting the discussions to proceed constructively so that the Conference will realize the aim of constituting a major step forward in the advancement of human rights.”

35 There were other points of contention on the preparatory committee, including whether and in what capacity to include NGOs (which would be overwhelmingly from
developed states). 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 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.36

But the composition of the Canadian delegation and civil society participation were the least of Ottawa’s concerns. 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 the field of human rights.”37
One such issue was whether to establish a High Commissioner for Human Rights, an idea that had been around since the mid-1940s. The question had been on the agenda of the twenty-first session of the UNHRC in 1966, but no forward progress had been made. To expedite the situation, Costa Rica had raised the issue at the twentieth session of the General Assembly “in order to dramatize the issue involved and circumvent the danger of it being buried in subsidiary bodies.” The matter was referred back to the UNHRC for further study at its twenty-second session.

Reactions varied. Neither United States nor Canada opposed San José’s initiative, at least not in principle. Indeed, at the time there was considerable support for the idea, particularly among member states from the west and Latin America. But the Soviets did. Instead, they proposed that the single post be replaced by a committee of five commissioners, one for each region of the world. The British were not impressed. The feeling in London, which Ottawa shared, was that this was a thinly-veiled attempt on the part of Moscow to “thwart [the] advance of human rights in [the] UN context.” But the Soviets had the support of those states that feared the intrusive power to meddle in their internal affairs that any High Commissioner would undoubtedly possess. Thus, the Canadian position was that there was “considerable merit” in the idea so long as the High Commissioner’s powers are “strictly [limited].” Given the “obvious political difficulties,” Ottawa’s view was that the proposal should not be “pressed at Teheran.”

The idea was particularly problematic for the Europeans, however. Days before the conference, 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.” In the face of deadlock, the proposal was shelved yet again.

The creation of a High Commissioner was not the only initiative proposed to strengthen the UN’s human rights mechanisms. A foreshadow of reforms that would take place nearly four decades later, the British solicited feedback from Washington, Canberra and Ottawa on a proposal that would see the Commission and the Social Committee of ECOSOC replaced by a new Human Rights Council “on par with and independent of ECOSOC.” Its purpose: to “rationalize” the current system, and “help to restore human rights question to a position of prominence in the United Nations.”

London’s motives were hardly altruistic. Indeed, the United Kingdom had soured on the UN’s human rights mechanisms. Its dissatisfaction stemmed in part from the cumbersome reporting requirements, but also from the increased attention to issues of racial discrimination that was one of the consequences of the expanded membership of the Commission. Its view was that the UNHRC had “turned its attention almost completely away from technical questions 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.”

Specifically, the British were opposed to the creation of new enforcement mechanisms designed to shed light on government’s domestic records, including the establishment of implementation machinery such as the Committee on the Elimination of Racial Discrimination (CERD) outlined in the ICEFRD, as well as additional reforms that would allow the UN to take action on individual communications or petitions. Indeed,
London was generally opposed to any serious reforms, including proposals calling for the establishment of compulsory national special human rights committees, and an international criminal court to try crimes of genocide. On issues of minority rights, it hoped that the UN could be persuaded to “distinguish between countries where racial discrimination is official policy (e.g. South Africa and Rhodesia) and those countries trying to promote better race relations (e.g. Malaysia, UK and USA),” and that it “should direct more of its attention and resources toward more positive encouragement of those governments genuinely attempting to promote better racial relations.” Its hope was that allies in the Western Group would take up some of these positions on the UK’s behalf.

Ottawa questioned whether pursuing the idea was worth the effort. On the one hand, it was sympathetic to London’s view that the current arrangement had become dysfunctional. It sensed that the predominant view at the UN was that most member states considered ECOSOC to be a body that was “primarily concerned with questions of inter-agency cooperation and economic development,” whose “human rights role” was largely unimportant. Under this proposal, the Social Committee – whose role many Western states considered to be redundant – would be cut out altogether from the process of crafting international human rights law. Such a Council would also be able to strike its own sub-committees, and would have the advantage of not being bound by ECOSOC’s schedule of meetings, which often obstructed the UNHRC and its sub-commissions from completing their work in a timely manner.

Yet officials at External Affairs feared that a change of this magnitude would require amending the UN Charter, specifically articles 7(1), 62(2), and 68, which outlined the terms of reference for the Commission. Altering the Charter represented a potential
Pandora’s Box for the UN with the unintended consequence of opening “the floodgate to further proposals for amendment.” Nor was Ottawa convinced that the USSR would support the creation of a new Council. Human rights, particularly political and civil rights, were a source of embarrassment for the Soviets, and in the months leading up to the Teheran conference, it was not clear that Moscow would welcome an initiative designed to give more weight to the UN’s human rights activities.

At its meeting on 31 January, the Government of Canada’s interdepartmental committee on human rights decided that External Affairs should “inform the British that the reaction of officials to the proposal was not enthusiastic.” It was a reluctant decision. Officials acknowledged that the proposal had some merits. They conceded that ECOSOC lacked any real authority, that the purpose of the World Conference was to “produce something that would enable a great advance to be made in human rights,” and that the council represented just such a “major leap forward.” But it was too bold for Canadian sensibilities. Instead, the committee determined that it was better to reform ECOSOC than to marginalize it further.

The respective positions toward the proposal for the Commissioner and the Council were in keeping with a general opposition toward reforms aimed at strengthening the UN human rights implementation capacities. Also up for discussion was a renewed call, this time coming from Sean MacBride of the International Commission of Jurists, for the establishment of an international penal tribunal for the most serious human rights violations. But the Canadian government’s position was that “certain countries” would attempt to exploit the body for political gains “through an over-liberal interpretation of the term ‘genocide’.” Consequently, Canada was even unwilling to co-sponsor a
resolution by the International Commission of Jurists to protect civilians from mass human rights violations in situations of armed conflict despite requests from the Indian government to do so. Instead, Ottawa was content to continue to lend its support to the UN’s Human Rights Advisory Programme, which, although not insignificant, hardly served as a deterrent against rights violations.

But the issue of apartheid was not something that could be avoided, reforms or no reforms. On 22 March, the day after International Day for the Elimination of Racial Discrimination, Canadian officials at the UN reported that Ashkar Marof, the Guinean ambassador to the UN and chair of the Special Committee on Apartheid, had marked the occasion by accusing the former colonial powers of aligning themselves with “fascist regimes or racist dictatorship to oppose non-white liberation,” and claiming that the “culpable impotence of the international community” had sparked a race war that had been preventable. To head off criticism, the British proposed a general resolution on racial equality that avoided mention of apartheid, and asked if Canada would co-sponsor it at Teheran. Wishing to avoid being drawn into what was essentially a dispute between Western Europe and its former colonies, Ottawa said no. London was not amused. On the eve of the conference the British once again approached the Canadians to see whether they were willing to revisit their position. Believing that a constructive debate on racial discrimination was impossible, the Canadians declined a second time.

Although Ottawa was not prepared to support a major overhaul of the human rights system, it was willing to advance more modest reforms that it felt transcended political and ideological allegiances, and that it believed would not only lead to a genuine improvement in people’s lives, but would also deter states from committing rights
violations against their citizens. In April 1968, it proposed a resolution on the right to universal legal aid at the national level, the rationale being that one of the root causes of human rights violations was inequitable access to legal rights. Specifically, it called on governments to, among other things, develop “comprehensive legal aid systems,” that helped both defer financial costs and provided “competent legal assistance” to those individuals whose “fundamental rights have been violated.”

Both London and Washington were highly supportive (in fact, Washington hoped that it would not preclude a similar initiative at the international level which individuals could access once all domestic avenues were exhausted), while other members of the Western group were not opposed, in part because the proposal would help divert the discussion away from apartheid and colonialism. But perhaps more importantly, the Canadian proposal also had support outside the Western Group. Costa Rica looked favourably on the idea of legal aid, and speculated that other states in Central America – El Salvador, Panama, and Honduras – would as well, although it conceded that Guatemala and Nicaragua would oppose it on the ground that leftists might exploit this right for political gains. The resolution also had the support of Tanzania and Mexico, although both cautioned that such a right would likely be too expensive for many developing countries to implement even if they agreed with it in principle. Despite these concerns the Canadians found no shortage of co-sponsors when the time came to submit it formally to the conference, the likes of which included India, Nigeria, Jamaica, Costa Rica, and the Philippines.

On 9 May, the resolution passed by an overwhelming vote of fifty-three in favour, none against, and two abstentions (Liberia and Ivory Coast). Even the Soviets supported
it. The only addition was an amendment by the U.S. requiring the UN to provide assistance to countries that wish to set up legal aid programs through the Human Rights Advisory Services Programme.\textsuperscript{57} Although not grand, it was not an insignificant victory for the cause of human rights enforcement. But it was a relatively safe resolution that left human rights enforcement in the hands of states. It was proposed and adopted in lieu of the creation of robust international enforcement mechanisms that would have prompted an ugly clash between the western group, the Soviets and the states from the developing world.

But as Burke observes, Teheran belonged to the Afro-Asian countries, who at the time of the conference “commanded vastly more votes and considerably more intellectual energy” than either the Western or Soviet countries, whose presence reflected the “UN’s postcolonial transformation,” which was an illiberal transformation.\textsuperscript{58} While countries in North America and Western Europe were experiencing domestic “rights revolutions” at the time, the “Afro-Asian supremacy [at Teheran] accelerated the disengagement of the Western states, which had essentially abandoned the promotion of their ideas and facilitated still further tightening of Afro-Asian control.”\textsuperscript{59} The event featured numerous attacks on the relevance of the individualism embodied in the Universal Declaration of Human Rights along with a “collective rights ideology” based on “the primacy of economic development driven by a powerful, centralized state.”\textsuperscript{60} Ironically, Haiti did put forward a similar resolution to establish a Human Rights Council outside of ECOSOC that would help to enforce political and civil, and economic, social, and cultural rights (the resolution also included a calls for the creation of an international court of human rights, and for greater cooperation between UN agencies). But it was never debated at
Teheran. In the Final Act of the conference, it tops the list of resolutions that delegates were “unable to consider owing to a lack of time.”

Conclusion

For the UN, the challenges of enforcement did not end after 1968, and arguably became more pronounced. In 1970, ECOSOC passed Resolution 1503 (XLVIII), which authorized the Sub-commission on Prevention of Discrimination and Protection of Minorities “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, although 1503 “required strict confidentiality be maintained until any investigation had been completed,” under the terms of resolution 1235, the Commission then had the authority to publicize the findings of the working group, which it did in the cases of South Africa, Rhodesia and Israel after the Six Day War of 1967. 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, including those coming from NGOs. They pushed to have one NGO’s consultative status with the ECOSOC Council suspended on the grounds that the organization’s submissions to the Commission were both “politically motivated” and “contrary to the provisions of the Charter of the UN.” In practice, this meant that NGOs were silenced; in response, many organizations turned away from the Commission altogether.
Teheran was a missed opportunity for reform-minded states. Although the British proposal for the creation of a new Council would undoubtedly have been met with significant opposition – especially if countries from the developing world had rightly perceived it as an assault on either their new-found dominance of the UNHRC or their ability to advance rights claims relating to racial discrimination, self-determination and apartheid – it nonetheless would have given currency to those state and non-state actors who believed that the UN could play a far greater role in the enforcement of rights and not just standard-setting, which in turn would have represented an assault, albeit a symbolic one, on the well-entrenched principle of absolute state sovereignty. Instead, states’ unwillingness to confront the structural limitations of the UN Human Rights Commission ensured that the conference would fail to achieve its second objective, namely to set a new agenda, an act of omission that guaranteed that human rights would remain relegated to the margins of the UN system.

**Postscript: The New Human Rights Council**

In March 2006, the United Nations General Assembly passed Resolution 60/251 in favour of the creation of a Human Rights Council that would replace the much-maligned Commission. That it did so was not surprising. Over the course of its sixty-year history, but especially after the late 1960s, the UNHRC’s “credibility and professionalism” had been damaged. Member states with poor human rights records had taken up key leadership positions within the body and used their seats at the table to block criticism of their own practices. The Commission had also failed to protect vulnerable populations from serious rights violations, despite the establishment of an intricate international
human rights regime. Nonetheless, at the time the Council, along with the creation of the Peacebuilding Commission, was hailed as one of the few notable successes of the larger UN reform effort spearheaded by then Secretary-General Kofi Annan.

The history of the diplomacy leading up to the Teheran World Conference on Human Rights in 1968 is not without relevance to the UN Human Rights Council’s present difficulties. In many respects, the British proposal for the creation of a new Council foreshadowed the reforms of 2005-2006. 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.

Had Annan’s original proposal been adopted, it is conceivable that the make-up of the membership would have privileged the industrialized democracies of the West while intentionally disqualifying many states from the Global South, thus giving the former the upper hand in determining the agenda and activities of the Council. It is a powerful reminder that even t seemingly progressive reforms cannot be divorced from calculations of power.

Like Teheran, Annan’s reforms may also come to be viewed as a missed opportunity. Although much of the new Council is an improvement over the Commission – it is no longer a subsidiary of ECOSOC, and it meets more than once a year and can hold emergency sessions – five years into its tenure, much of the lustre has worn off, largely because many of the same political problems that plagued its predecessor have
persisted. Individual member states continue to obstruct criticism of their own practices, and can do so easily because the voting structure, which is organized according to regional blocs, encourages deadlock. Annan’s original proposal called for a “smaller” Council, the fifty-three seats on the Commission considered to be too unwieldy. Members would be elected through secret ballot by a two-thirds majority vote in the General Assembly, and would be subject to universal periodic reviews, something, as Murphy notes, the European Union members pushed for strenuously during the reform process. The thinking at the time was that seats would be reserved for those member states with the strongest human rights records, and that the human rights “pariahs” – Libya, Cuba, Sudan or any other country deemed to be committing “gross and systemic violations of human rights” – would find themselves on the outside looking in.

The General Assembly, however, rejected the rationale for a significantly smaller body, settling on forty-seven members. As a result, the African and Asian blocs were each allotted thirteen seats versus seven for the “European and Other States” group, which collectively gives them an absolute majority on the Council, the pariahs have still been at the table (although Libya was suspended in March 2011 for violations against civilians protesting the Gadhafi regime), and it is not clear that the Council has been any more effective at protecting rights than its predecessor. For this and other reasons, Roger Normand and Sarah Zaidi have concluded that the reforms to the Council were “modest, reflecting back-door compromises” and “largely procedural.” It is much too early to write-off the Council as an ineffective body. Still, just as current scholars have done with the Teheran conference, future scholars may come to look back on Annan’s reforms and lament what might have been.
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Endnotes

1 I would like to express my thanks to Dr. Rhoda Howard-Hassmann for her superb comments on an earlier draft of this paper. I would also like to acknowledge the financial support of the University of Waterloo/SSHRC Seed Grant Program.


7 Ibid., 18.


10 Burke, “From Individual Rights to National Development,” 279.


13 Whelan, Indivisible Human Rights, 137.


21 Both the United States and India advocated removing any reference to slavery in the article on the right to self-determination. The Indian proposal was a modified version of Washington’s. The hope was that it would be more palatable to all sides.
The US amendment stated: “1. The States members of the United Nations shall uphold the principle of self-determination of peoples and nations and respect the independence of all States. 2. The States members of the United Nations shall recognize and promote the realization of the right of self-determination of the people of any territories or nations under their control; shall grant this right to the people of any such territories or nations whenever practicable by ascertaining the wishes of these people through United Nations or other plebiscites or other appropriate means; and shall respect the maintenance of the right in other States.

The Indian sub-amendment stated: 1. The States members of the United Nations shall uphold the principles of self-determination of all peoples and nation. 2. The States members of the United Nations shall recognize and promote the realization of the right of self-determination of the peoples of all territories including those of non-self-governing and trust territories who are under their administration and shall grant this right to the peoples of such territories according to particular circumstances of each territory and the freely expressed wishes of the people being ascertained through a plebiscite under the auspices of the United Nations or other recognized democratic means.”


Article 1 of the ICESCR and ICCPR state: 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations. See International Covenant on Economic, Social and Cultural Rights. GA Res 2200A (XXI), 16 December 1966. Entry into force 3 January 1976, in accordance with article 27; International
Covenant on Civil and Political Rights. GA Res. 2200A (XXI), 16 December 1966. Entry into force 23 March 1976, in accordance with Article 49. See also Burke, Decolonization, 37, 44, 57.  

25 UNGA Resolution 1541 (XV), 14 December 1960.  


28 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.” Wheeler, “The United Nations Commission on Human Rights, 1982-1997,” 76. Up until 1974, Resolution 1235 was only used against Israel and South Africa.  


32 Ibid., 6.  


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:

(a) Measures to achieve rapid and total elimination of all forms of racial discrimination in general and of the policy of apartheid in particular;
(b) 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;
(c) the question of slavery and the slave-trade in all their manifestations and practices, including the slavery-like practices of apartheid and colonialism;
(d) measures to promote women’s rights in the modern world including a unified long-term United Nations programme for the advancement of women;
(e) measures to strengthen the defence of human rights and freedoms of individuals;
(f) international machinery for the effective implementation of international instruments in the field of human rights;
(g) 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.


In late 1967 there was speculation that the front-runner for the post, should it be created, was a Tunisian diplomat with UN experience named Taieb Slim, who had also served as ambassador to Canada. The feeling in Ottawa was that Slim was an adequate, but not exceptional choice who could “be expected to do a fairly good job” despite Tunisia having a questionable human rights record, particularly on matters relating to freedom of expression. LAC, SSEA fonds,
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,” c. 1968, 1-2.

Compounding problems for the Canadians and British was that Haiti made a similar proposal for the creation of a council that would be independent of ECOSOC, along with an “international court for human rights.” Those in the Western group were not amused, particularly given the Papa Doc government’s human rights record, and hoped that the Latin Americans would dissuade the Haitians from pursuing the matter. LAC, SSEA fonds, RG6, “International Conference on Human Rights, Teheran, 1968,” box 119, file, pt. 2, “Telex from Teran to External re: UN Conference on Human Rights Conference-Teheran,” 17 January 1968, 1-5.

Ibid., 3.


46 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.


48 Ibid., 3.


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Specifically, the initial draft of the Canadian resolution on legal aid recommended the following: a) That all governments encourage the development of comprehensive legal aid systems for the protection of human rights and fundamental freedoms; b) That all governments consider ways and means of defraying the expenses involved in providing adequate legal services for the protection and vindication of human rights and fundamental freedoms; c) That governments take all possible steps to simplify substantive and procedural laws so as to reduce the demands on the financial and other resources of the individual; d) That governments cooperate to the extent appropriate in extending the availability of competent legal assistance to all aggrieved individuals; e) That guidelines be adopted for granting financial, professional and other legal assistance in appropriate cases, to those whose fundamental rights have been violated. LAC, DSS fonds, RG6, “International Conference on Human Rights, Teheran, 1968,” box 119, file, pt. 2, “Telex from Teran to External re: UN Conference on Human Rights – Canadian Draft Resolution on Legal Aid,” 24 April 1968, 1-3.


59 Burke, Decolonization, 110.

60 Ibid., 284-87.


66 Murphy, “New Phase in UN Reforms,” 49.

67 In the discussions surrounding the Council, this troika of countries were often pointed to as evidence that the UNHRC was broken and in need of being reformed. See *The Economist*, “The U.S. has announced it won’t seek a seat on the new U.N. Human Rights Council,” 58, no. 1 (8 May 2006): 6; “Convicts Running the Jail: United Nations – Human Rights,” *Canada and the World Backgrounder*, 71, no. 1 (Sept 2005): 20-21.