

THE UN WORLD CONFERENCE AGAINST RACISM: A RACIST ANTI-RACISM CONFERENCE

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INTRODUCTION

The World Conference Against Racism (Conference) became a forum for racism. Human rights was used as a weapon of political interests antithetical to human rights protection. Durban challenged nongovernmental human rights organizations, permitted to be more closely connected to a world conference than ever before, and states alike, to clarity of purpose and position on fundamental principles, racism, its definition and its defeat. Jewish nongovernmental organizations (NGOs), and the state of Israel as the embodiment of the self-determination of the Jewish people, would undoubtedly have preferred not to be the testing ground of their resolve. They had come to Durban to join the global effort to eradicate racism in all its forms. But they were singled out, and forced to leave as the only victims' voices deleted, and the only state condemned.

This outcome totally eclipses what might be called the limited success of others by way of selected textual provisions, or opportunities for networking, particularly in view of the abundance of existing anti-racism legal standards and mechanisms. The intervening six months have been a time of denial and cover-up, with frequent assertions that the media distorted events or entreaties to consider the glass half-full. The disservice to the human rights cause could not be more fundamental. The system of international human rights protection is rooted in the equality of humankind and it will founder on the exclusion of the Jew, just as the system of international peace and security is premised on the equality of all nations large and small and will founder on the exclusion of the Jewish state.

Durban is now being institutionalized with the passage by the General Assembly of the resolution on Durban follow-up.¹ The racism of an anti-racism world conference and the future anti-racism agenda of the United Nations are not theoretical problems. Racism has real consequences, as real as terrorism. Racism and xenophobia are surely some of terrorism's root causes. Confronting Durban is therefore essential to the international human rights movement.

In determining what went wrong, U.S. Representative Tom Lantos and James Jonah provide insider perspectives. One was a senior U.S. representative in Durban and the other a former senior UN official and secretary-general of the Second World Conference on Racism. Both lay much of the blame for the outcome of Durban on the UN High Commissioner for Human Rights, Mary Robinson, who was secretary general of the Conference.² At the same time, the context is important. Durban was not an aberration. It was the culmination of a long campaign under UN auspices both to turn Israel into a pariah state—the new South Africa—and to deny anti-Semitism as a human rights issue of our time. The primary embarrassment of Durban for the United Nations was

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¹ Comprehensive implementation of and follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, UN Doc. A/RES/56/266, March 27, 2002.

² Tom Lantos, *The Durban Debacle: An Insider's View of the World Racism Conference at Durban*, 26 FLETCHER F. WORLD AFF. 31, 32 (2002); James Jonah, November speech at the fall 2001 seminar series of The Ralph Bunche Institute for International Studies, The Graduate Center of the City University of New York (on file with author).

that its role in this campaign to demonize and delegitimize Israel was so undeniably linked to anti-Semitism, and in the midst of an anti-racism conference.

The preparatory conferences,³ and the regional and Geneva meetings⁴ largely determined the character and course of the Durban Conference itself. The draft on the table as the Conference began put in issue the mention of the Holocaust, anti-Semitism, the association of Zionism with racism, and the association of Israel with crimes against humanity, genocide, ethnic cleansing, and apartheid.⁵ The UN High Commissioner for Human Rights chose not to press the case for applying the same principles governing other human rights world conferences,⁶ such as not naming and isolating any single state or conflict. On the contrary, in the final days of the Third Preparatory Conference three weeks before Durban, she specifically called for inclusion of references only to the Israeli-Palestinian conflict which would give, in her words, “[r]ecognition of the accumulated sense of grievance and frustration because of prolonged military occupation, now in its fourth decade.”⁷ She also specifically supported the moral equivalence of the Holocaust and occupation by calling for inclusion in the final document of an “[u]nderstanding of the historical wounds of anti-Semitism and of the Holocaust, on the one hand, and of the accumulated wounds of displacement and military occupation on the other.”⁸

It was therefore clear before Durban that the Conference would be a bruising slinging match on these issues, requiring considerable effort just to defend existing standards against mob rule masquerading as consensus.

THE NGO FORUM

The NGO Forum⁹ that preceded the government conference was attended by a broad range of NGOs. Various “commissions” were held and smaller meetings took place in which individuals and groups claiming to be victims of racism and xenophobia spoke out for almost a week. But the discussions were overshadowed and ultimately overtaken by a single group of participants—Palestinians and their supporters intent on hijacking

³ First Session of the Preparatory Conference, 1–5 May, 2000; Second Session of the Preparatory Conference, 12 May–1 June, 2000; Third Session of the Preparatory Conference, 30 July–10 August, 2000.

⁴ Regional Meetings: Council of Europe, Oct. 11–13, 2000 (Strasbourg, France); Regional Conference of the Americas, Dec. 5–7, 2000 (Santiago, Chile); African Regional Meeting, Jan. 22–24, 2001 (Dakar, Senegal); Asian Regional Meeting, Feb. 19–21, 2001 (Tehran, Iran). Other Geneva meetings: sessional open-ended working group, Mar. 24–26, 1999; Informal Consultations, Jan. 15–16, 2001; Inter-sessional open-ended working group, Mar. 6–9, 2001; informal working group, May 7–11, 2001.

⁵ The language of the draft declaration going into Durban clearly illustrates the appropriation of the anti-racism agenda. Square brackets (which indicate language that was still under discussion and negotiation after the final preparatory conference, to be taken up in Durban) were placed around the words “holocausts/Holocaust” in paras. 32 and 36 of the Draft Declaration (UN Doc. A/CONF.189/4, August 20, 2001), and para. 96 of the Draft Programme of Action (UN Doc. A/CONF.189/5, August 20, 2001). “Holocausts” was put into the plural in para. 122 of the Draft Declaration. “Anti-Semitism” was put into square brackets in paras. 67 and 68 of the Draft Declaration, and paras. 150, 158, and 226 of the Draft Programme of Action. “Zionist practices against semitism” or the “racist practices of Zionism” was subject to ongoing discussion in paras. 67 and 68 of the Draft Declaration and paras. 150, 258, and 173 of the Draft Programme of Action. “. . . [Occupation of Jerusalem with Israel, together with all its racist practices]” was subject to ongoing discussion in para. 221 of Draft Programme of Action. See also paras. 33 and 124 of the Draft Declaration, and paras. 3, 179, 198, and 199 of the Programme of Action.

⁶ For example, pressure to name specific states was successfully resisted in the Vienna World Conference on Human Rights in 1993 and the Beijing World Conference on Women in 1995.

⁷ UN Doc. HR/WCAR/01/1, Statement by High Commissioner for Human Rights Preparatory Committee for World Conference Against Racism, Aug. 9, 2001, *available at* <<http://www.unhchr.ch>>. She made no mention of the context of successive wars over five decades launched by neighboring states, or the right of self-defense.

⁸ *Id.*

⁹ The NGO Forum ran from Aug. 28–Sept. 1, 2001.

the forum for their own political ends. The atmosphere in a UN-related framework was unprecedented.

To begin with, because NGO registration and entry badges identified all participants, individuals were identifiable as from Jewish or Israeli-based organizations. These participants were harassed from the outset in registration lines. Thousands of large, glossy posters portrayed alleged Israeli crimes and called Israel an apartheid state. Hundreds of Palestinian scarves fringed with ANC colors and T-shirts of many kinds again equating Israel with racism and apartheid were distributed freely.¹⁰ Booths with posters equating Zionists with Nazis were set up. Books freely distributed by the Arab Lawyer's Union contained cartoons again equating Israelis with Nazis, and picturing Jews with hooked noses, blood dripping from their hands, and fangs. The Protocols of the Elders of Zion, an infamous antisemitic tract, was on sale. Hundreds of flyers were distributed with a picture of Hitler and the words "What if I had won? the good thing—there would be no Israel." The South African who printed and distributed the handbills was reported by South African papers on September 9th as having "close links to Osama Bin Laden."¹¹

The only NGO Forum-sponsored event on anti-Semitism¹² was disrupted by an angry mob of protesters shouting, "You are killers. You are killers." The chair of the World Union of Jewish Students was unable to speak.¹³ It was the only organized "victim's caucus" at the entire NGO Forum that encountered such interference.

A news conference by a broad range of national and international Jewish organizations the following day, called to draw attention to events in Durban, was similarly interrupted and unable to continue by virtue of a shouting mob of conference participants screaming into TV cameras about the representatives' responsibility for alleged Israeli atrocities.¹⁴ Other conference panels with thousands in the audience heard speeches such as one read on behalf of Palestinian spokesperson Hanan Ashrawi, drawing parallels between Israelis and Nazis. Her speech alleged Israel was engaged in "demographic engineering," "forced birth control," and "racial purification."¹⁵

Over the week and at the simultaneous UN Youth Summit, Jewish delegates were told "You don't belong to the human race! Chosen people? You are a cursed people!" "Why haven't the Jews taken responsibility for killing Jesus?" "They've sucked our blood all these years."¹⁶

The language of the final NGO document was explicit. NGOs called "for the reinstatement of the UN resolution equating Zionism with racism" and "the complete and total isolation of Israel as an apartheid state," and condemned Israeli crimes against humanity, ethnic cleansing, and genocide.¹⁷

¹⁰ For example, literature of the Arab Lawyers Union, printed in English and Arabic by "Waleed For Modern Printing, Fax: 5745006, Tel: 5772193."

¹¹ Buddy Naidu, *Activist Admits Hitler Handbill Was His Idea*, SUNDAY TIMES, Sept. 9, 2001.

¹² Wednesday, August 29, 2001. It was sanctioned only weeks before the conference despite considerable opposition.

¹³ Peleg Reshef, chairperson, World Union of Jewish Students.

¹⁴ Thursday, August 30, 2001. See Reuters, *Palestinians Disrupt Jewish Meeting in South Africa*, Aug. 30, 2001, available at <<http://www.nytimes.com/reuters>>.

¹⁵ Tuesday, August 28, 2001.

¹⁶ "Hate Speech at the World Conference Against Racism," produced by UN Watch, Geneva.

¹⁷ WCAR NGO Forum Declaration, available at <<http://www.racism.org.za/index.html>>. It stated in part:

160. . . . we declare and call for an immediate end to the Israeli systematic perpetration of racist crimes including war crimes, acts of genocide and ethnic cleansing. . . and state terrorism against the Palestinian people, recognizing that all of these methods are designed to ensure the continuation of an exclusively Jewish state with a Jewish majority. . . .

162. We declare Israel as a racist, apartheid state in which Israel's brand [sic.] of apartheid as a crime against humanity has been characterized by separation and segregation, dispossession, restricted land access, denationalization, "bantustanization" and inhumane acts.

The NGO Forum document was a compilation of the suggestions of NGO participants in the form of caucus groups—except for suggestions of the “Jewish caucus” that were brought to a vote and deleted. The Jewish caucus had included language stating that the equation of Zionism with racism, the attempt to delegitimize the self-determination of the Jewish people, and the targeting of Jews throughout the world for violence because of their support of Israel, was itself a form of anti-Semitism.¹⁸ A representative of the World Council of Churches, on behalf of the “Ecumenical caucus,” moved deletion of the proposal. Of thirty-nine caucuses, only the Jewish caucus voted against and then walked out in protest, with no caucus or organization going with them.¹⁹ A day later members of the Palestinian caucus stormed into the forum’s Drafting Committee and insisted on changes to an introductory paragraph characterizing the representative nature of the document—changes that were made after members of the Drafting Committee and the International Steering Committee walked out in protest.²⁰

The leading international human rights NGOs—Amnesty International, Human Rights Watch, the Lawyers Committee for Human Rights, the International Federation for Human Rights, the International Service for Human Rights—were specifically asked by members of the Jewish caucus to speak out. They were asked to vote against the anti-semitic language being proposed in the final NGO document. They refused. They said nothing. On the contrary, they proposed an opening paragraph that described the outcome as a genuine collection of the voices of the victims.²¹ Before the vote on their

418. Call upon the United Nations to ensure the . . . the right of return for refugees . . . Also call for the reinstatement of UN resolution 3379 determining the practices of Zionism as racist practices which propagate the racial domination of one group over another through the implementation of all measures designed to drive out other indigenous groups . . . and through the application of discriminatory laws of return and citizenship, to obliterate their national identity and to maintain the exclusive nature of the State of Israel as a Jewish state to the exclusion of all other groups. Also call for the repeal of all discriminatory laws within the state of Israel, including those of return and citizenship, which are part of the institutionalized racism and Apartheid regime in Israel.

424. Call upon the international community to impose a policy of complete and total isolation of Israel as an apartheid state as in the case of South Africa which means the imposition of mandatory and comprehensive sanctions and embargoes, the full cessation of all links (diplomatic, economic, social, aid, military cooperation and training) between all states and Israel. Call upon the Government of South Africa to take the lead in this policy of isolation, bearing in mind its own historical success in countering the undermining policy of constructive engagement with its own past Apartheid regime.

See also paras. 161, 163, 164, 165, 417, 419, 420, 421, 422, 423, and 425.

¹⁸ The paragraph articulating the voices of Jewish victims of racism stated:

We are concerned with the prevalence of anti-Zionism and attempts to delegitimize the State of Israel through wildly inaccurate charges of genocide, war crimes, crimes against humanity, ethnic cleansing and apartheid, as a virulent contemporary form of anti-Semitism leading to firebombing of synagogues, armed assaults against Jews, incitements to killing, and the murder of innocent Jews, for their support for the existence of the State of Israel, the assertion of the right to self-determination of the Jewish people and the attempts, through the State of Israel, to preserve their cultural and religious identity.

Press Release 1/9/01, *Jewish Caucus Walks Out of NGO Forum Against Racism*.

¹⁹ The Eastern European Caucus reported later that their representative did vote against the deletion of the language of the Jewish Caucus, but this cannot be verified. The Eastern European Caucus participated fully in the plenary but shortly after the conclusion of the NGO Forum took public action to distance itself from the result.

²⁰ This account was relayed to me by Miroslav Prokes, Coordinator, Central and Eastern Europe, United for Intercultural Action (a member of the International Steering Committee who was present).

²¹ On behalf of the INGO (international nongovernmental organizations) Caucus, Irene Khan, Secretary-General of Amnesty International proposed, at the final plenary, the following amendment be included in the first paragraph of the preamble to the NGO document:

On most of the issues contained in this Declaration and Program of Action there is widespread agreement among us. The victims of racism and related intolerance have described their own realities of racism and related intolerance as they experience it. Given our diversity on some issues, we have varied views. This Declaration and POA is an inclusive text which enables our various perspectives to be presented at the World Conference.

proposal, the Jewish caucus asked them to indicate expressly that these voices did not represent a consensus,²² but spokesperson Irene Khan, secretary general of Amnesty, refused. Instead, they chose not to vote at all, and failed to vote on the deletion of the words of only one victim group, namely, Jewish participants.

In a subsequent press conference these leading international NGOs appealed to journalists to focus on the government conference, and when asked for their organizations' view of the substance of the NGO document, Amnesty, Human Rights Watch, and the Lawyers Committee each answered that the document was a collection of the voices of the victims, and as Amnesty put it, their voices had been heard.²³ No mention was made of their responsibility for the outcome of the NGO Forum or the deletion of Jewish voices.

In Durban, therefore, NGOs played a pernicious role. Having insisted for years that the UN human rights apparatus include them as partners, they would assume no responsibility for safeguarding international human rights standards and their accurate and fair application. Instead, they trumpeted a "victim-oriented" approach to human rights protection, which turned out to mean *alleged* victim-oriented approach or claimants-rule, or the self-selection of the loudest, most aggressive, or best-funded of the gang. On the contrary, the governing framework should have been universal standards and remedying legitimate claims, not answering "voices" whatever they say.

THE GOVERNMENT CONFERENCE

The Government Conference began as the NGO Forum ended.²⁴ On tables set up beside the official document distribution center, in the back of the drafting committees, and throughout the conference center, there was daily distribution of literature decrying "Nazi-Israeli apartheid."²⁵ Individuals wearing T-shirts alleging Israeli atrocities were permitted into the conference center, while T-shirts reading "Fight Racism, not Jews"²⁶ were confiscated at the front door by security guards.

Substantive drafting was done by two drafting committees and three small working groups. The closed working groups dealt with the three "difficult" issues: the Middle East, "the past" or an apology and reparations for slavery and its legacy, and the grounds of discrimination or who was to count as a victim of racism and related intolerance.

Ms. Khan then said,

If this proposal is accepted we see no need for a vote. However, we believe that all States should be held accountable by the international community for their human rights violations. As a consequence, the Caucus of INGOs will strongly support proposals from other caucuses to identify any State that commits violations.

The text of the INGO proposal was agreed upon and written at an INGO meeting on Sept. 1, 2001, and with the active involvement of such INGOs as Amnesty International, Human Rights Watch, and the Lawyers Committee for Human Rights, represented by Irene Khan, Reed Brody, and Michael Posner, respectively.

²² By Karen Mock, co-chair, Jewish Caucus.

²³ Amnesty stated: "this document is a collection of the voices of the victims. We don't believe it was appropriate to vote. . . . The angry voices of the victims at this conference have been heard. . . . The angry voices are the failure of governments" (spokesperson: Irene Khan, secretary-general). Human Rights Watch said: "the document gives expression to all voices" (spokesperson Smita Narula, senior researcher, Asia Division; with Reed Brody, advocacy director, present). The Lawyers Committee for Human Rights stated: "the document is a multiplicity of views, backgrounds, experience from which we come. There is language in it we do not endorse, but let's understand it [the document] for what it is" (spokesperson Michael Posner, executive director).

²⁴ The Government Conference ran from Aug. 31–Sept. 8, 2001. It had been scheduled to finish on Sept. 7 but was held over for 18 hours.

²⁵ "Down with the Nazi-Israeli Apartheid," CNAB Brasil, Afro-Brazilian National Congress.

²⁶ The T-shirts were produced by the Durban Jewish Community Centre.

In the public drafting committees there were repeated efforts from the outset to discuss the Middle East. There were long delays in the consideration of other subjects as a consequence of debates about whether “foreign occupation” or “settler ideology,” for example, belonged in the working group on the Middle East or in the public drafting committees.

The drafting committees of an anti-racism conference included a public dialogue about the legitimacy of references to anti-Semitism or the Holocaust.²⁷ Syria objected to including the study of the Holocaust. Iran objected to the imbalance and favoritism of adding a reference to the Holocaust. The United Arab Emirates thought references to the Holocaust detracted from the essence of the paragraph calling for an accurate representation of historical events related to racism. Persistent objection was made to all references to anti-Semitism by states such as Egypt, Cuba, China, Sudan, Iraq, Chile, and Jamaica. Iran said “anti-Semitism is a complicated issue”; Syria called it a “curious and bizarre concept”; Pakistan called it “a difficult area.”²⁸

As these public discussions wore on, private negotiations in the working groups continued. The Americans wanted an early commitment that the conference would not serve to isolate Israel and undercut Middle East negotiations. The Norwegians put forward a proposal to include a general reference to the Middle East conflict, calling for its resolution through negotiation. The latter would have been a major concession, since it would have been the only conflict subject to specific comment in the context of a global antiracism agenda. U.S. and Israeli approval was anticipated. The Arab states, along with South Africa the host country, categorically rejected the proposal. The UN High Commissioner for Human Rights would not support an early resolution of the matter and in her meetings with the American representatives criticized their position as “warped, strange and undemocratic.”²⁹

It therefore became clear that the language criticizing only Israel, with provisions inconsistent with existing international legal standards, would be the requisite of a final declaration. The United States and Israel chose to leave. The United States acted despite the anticipated criticisms that its departure was based on an unwillingness to confront other issues, such as slavery and reparations. The United States was also criticized for a lack of leadership, ironically by the same personalities that criticized American heavy-handedness. The subsequent process and end result of the Conference clearly justified the American and Israeli departure, followed by all Jewish NGOs from across the globe.

In the remaining five days, the South Africans used their position as president of the Conference to put forward proposals heavily weighted in favor of the views of Arab states. The European Union had little trouble agreeing to references only to the “plight of Palestinians,” not of Israelis,³⁰ and wholly new UN language on a “right of refugees

²⁷ Draft Declaration, *supra* note 5, at paras. 96, 110, 112, pmb. para. 30; Draft Programme of Action at para. 226.

²⁸ Written records of author and UN Watch monitors.

²⁹ Lantos, *supra* note 1, at 47.

³⁰ The language adopted was, “63. We are concerned about the plight of the Palestinian people under foreign occupation. We recognize the inalienable right of the Palestinian people to self-determination and to the establishment of an independent state and we recognize the right to security for all States in the region, including Israel, and call upon all States to support the peace process and bring it to an early conclusion.” *Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, 31 August–8 September 2001*, UN Doc. A/CONF.189/12, at para. 63.

to return to their homes.³¹ The European Union protected itself from having to pay reparations for slavery—which had always been its primary concern. References to anti-Semitism, even those that had been unbracketed coming from the final PrepCom, were deleted throughout the document except in two paragraphs that were considered part of a Middle East package. That is, anti-Semitism went in only as long as the criticism of Israel as engaged in racism was included. Anti-Semitism was deleted in every other context, such as combating anti-Semitism through encouraging the role of political leaders and parties, or by legal and judicial cooperation. Also deleted was any reference to the Holocaust in the program of action, bringing to justice those who incite racial hatred (including Holocaust-denial), and to encouraging the study of the Holocaust in order to foster racial harmony.³²

The final hours of the conference, like the NGO Forum, made the hijacking of the conference by one set of actors again obvious. The Conference had been due to close a day earlier. The Syrians and Pakistanis sought agreement on additional language criticizing Israel,³³ and their filibuster resulted in a further half-day delay. It prevented other delegations from bringing forward bracketed text on any subject that could not be agreed upon in the drafting committees. The Syrians attempted to bring the provisions relating to Israel to a vote. The European Union tabled a motion to adjourn consideration of the issue. South Africa was one of two delegations that spoke against the EU motion and then voted against the motion, which carried by a relatively small margin. All the bracketed text was then left unadopted, and the remainder was adopted by consensus. Syria made a final statement objecting to the paragraph remembering the Holocaust as relevant only to Europeans.³⁴ The High Commissioner closed the Conference by choosing to stress that the nature of the tragedy in the Middle East made it unsurprising that it had played such a prominent part in the Conference.³⁵

ANALYSIS

Durban was not about legitimate critique of policies affecting human rights in all nations with equal or worse human rights records. It was about grossly distorting the nature of one conflict for political gain. Durban was not, however, an isolated event. It originated and evolved as part of a pattern with which the United Nations has long been associated. Until 1991 and for seventeen years thereafter, the Jewish settlement of Israel and the self-determination of the Jewish people was called racism by the infamous “Zionism is racism” General Assembly resolution.³⁶ “Anti-Semitism” is not in the 1993 Vienna Human Rights Declaration because, in the words of the Chair of the Drafting Committee, it was too controversial a subject.³⁷ At the 1994 Commission on Human Rights the addition of the word “anti-Semitism” in a resolution on racism resulted in a

³¹ The language on the right to return was, “65. We recognize the right of refugees to return voluntarily to their homes and properties in dignity and safety, and urge all States to facilitate such return.” *Id.* at 18, para. 65. Cf. United Nations Millennium Declaration, 18 September 2000, UN Doc. A/RES/55/2, at para. 26; Palestine—Progress Report of the UN Mediator, 11 December 1948, UN Doc. A/RES/194 (III) at para. 11.

³² The following references to anti-Semitism or the Holocaust which appeared (usually in square brackets) in the draft Declaration and Programme of Action were deleted: (Programme of Action), paras. 67, 68, 96, 112, (draft Declaration), paras. 9, 67, 68, 84, 96, 158, 173, 226. They were replaced with only paras. 58, 61 in the Declaration, and para. 150 in the Programme of Action. Report of WCAR at 16–17, 53.

³³ They sought to include preambular paragraph 30 in the Declaration and paragraphs 3 and 179 of the Draft Programme of Action.

³⁴ WCAR at 112. See also Statement of the United Arab Emirates, Bahrain, Kuwait, Oman, Qatar and Saudi Arabia, WCAR at 122–23.

³⁵ WCAR at 154.

³⁶ UN General Assembly Resolution 3379, adopted Nov. 10, 1975.

³⁷ Ambassador Gilberto Saboia of Brazil.

roll-call vote that seventeen members of the Commission refused to support.³⁸ In October 1995, the Holocaust was omitted from the General Assembly Declaration in Connection with the Fiftieth Anniversary of the End of the Second World War on the grounds that this would not permit consensus.³⁹ Current UN Human Rights Commission resolutions decry the “Judaization” of what is said to be Arab land.⁴⁰ In recent years, Jewish NGOs have repeatedly been singled out for differential treatment in their efforts to get ECOSOC accreditation.⁴¹

At the same time, Israel is the major preoccupation of UN human rights machinery. Twenty-eight percent of Commission on Human Rights resolutions over a thirty-five-year period are on Israel alone, while states such as China or Syria are totally omitted. Six of ten emergency sessions of the General Assembly since 1956 have been on Israel. A long list of UN mechanisms focus only on Israel. Israel is the only state that is the subject of an entire agenda item at the Commission, as it has been for the past twenty-six years. By contrast, complaints to the United Nations of gross and reliably attested human rights violations in the past five years against Syria, Saudi Arabia, Lebanon, United Arab Emirates, and Yemen have all been quietly dropped under the ECOSOC Resolution 1503 in camera procedure. Perhaps the most obvious bias is the UN’s failure to admit only Israel to full and equal membership in any regional group. As a result, Israel is currently the only UN member state not permitted to stand for election to the full range of UN bodies, including the Commission on Human Rights.

Durban made the connection of these two tactics unmistakable. One and the same states sought to minimize or exclude references to the Holocaust and redefine or ignore anti-Semitism, as sought to isolate the state of Israel from the global community as a racist practitioner of apartheid and crimes against humanity. The vestiges of Jewish victimhood were to be systematically removed by deleting references to anti-Semitism and the Holocaust. They were to be displaced by references to the Palestinian victim living under racist, Nazi-like, oppression. Success on the political battlefield was to be accomplished by using the language of human rights to demonize and then dismember the opponent. Human rights served as a weapon to wrongly characterize the “plight of the Palestinian people” as one of racial persecution, to fan the flames of anti-Semitism, and ultimately to provoke irrational passions that undermine both the cause of peace and of human dignity.

Durban follow-up is now more of the same. UN member states understood the Durban agenda in the General Assembly this past fall as an opportunity to continue to associate Israel with racism. In the words of the Iranian Ambassador speaking in the General Assembly debate, Israel has been “the most vivid manifestation of institutionalized racism . . . for half a century.”⁴² The draft racism resolutions tabled in early February by the G77 deliberately deleted anti-Semitism from the express concerns of the Third Decade on Racism and from the mandate of the Special Rapporteur on Racism and

³⁸ UN Commission on Human Rights Resolution 1994/64. *See also* Report of the Fiftieth Session of the UN Commission on Human Rights, Mar. 11, 1994, UN Doc. E/CN.4/1994/132, at paras. 662, 666–68.

³⁹ Commemoration of the Fiftieth Anniversary of the End of the Second World War, Oct. 18, 1995, UN Doc. A/RES/50/5.

⁴⁰ UN Commission on Human Rights Resolution 2001/7, Question of the violation of human rights in the occupied Arab territories, including Palestine, UN Doc. E/CN.4/RES/2001/7. “Condemns [preparing the path] for the . . . Judaization of Jerusalem . . .”. *Id.* at para. 8; (adopted by a roll-call vote of 28 votes to 2, with 22 abstentions, Apr. 18, 2001).

⁴¹ This has occurred with applications for ECOSOC accreditation in the past few years, for example, from the International Association of Jewish Lawyers and Jurists, and Hadassah.

⁴² Iranian Ambassador H.E. Mohammed Hassan Fadaifard, Feb. 1, 2002.

Related Intolerance.⁴³ The result over weeks of negotiation was to drop the reference to anti-Semitism that had been present in the previous version of the Third Decade resolution in order to retain the reference in the mandate of the Special Rapporteur.⁴⁴

The Durban legacy, however, is more dangerous than UN Conferences or resolutions. The Conference ended September 8th. In the immediate aftermath of September 11, it was widely reported in the Arab media, and by Moslem religious leaders in the US, that four thousand Jews had been “tipped off” to stay away from work at the World Trade Center, and that Jews had sold their shares in United and American Airlines.⁴⁵ Not only were Jews said to be the perpetrators, but the root causes of September 11th, that is the real victims were said by Arab political leaders to be the Palestinians, and their plight was a root cause of September 11.⁴⁶ Thereafter, during the General Assembly’s general debate on terrorism the Saudi Ambassador called for “a clear distinction between terrorism . . . and armed resistance to . . . racism and foreign occupation.”⁴⁷ The Working Group of the Sixth Committee failed this past January to adopt a Comprehensive Convention on International Terrorism because the Organization of Islamic Conference insisted on exempting all activities of parties in situations of foreign occupation.⁴⁸ The reports of Arab states pursuant to the Security Council terrorism resolution, now being examined in camera, repeatedly invoke the 1998 Arab Convention on Terrorism which states that armed struggle against aggression for self-determination is not an offense—except when it prejudices the territorial integrity of any Arab state.⁴⁹

⁴³ UN Doc. A/C.3/56/L.83, Feb. 8, 2002, Third Decade to Combat Racism and Racial Discrimination and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, introduced by Venezuela on behalf of the States Members of the United Nations that are members of the Group of 77 and China; and UN Doc. A/C.3/56/L.85, Feb. 8, 2002, Measures to combat contemporary forms of racism and racial discrimination, xenophobia and related intolerance, introduced by Venezuela on behalf of the States Members of the United Nations that are members of the Group of 77 and China. See UN Doc. A/RES/55/84, adopted Dec. 4, 2000, pmbl. para., and UN Doc. A/C.3/56/L.83, Feb. 8, 2002, introduced by the Group of 77 and China. Cf. Third Decade to Combat Racism & Racial Discrimination and the Convening of the World Conference Against Racism, Racial Discrimination, Xenophobia & Related Intolerance, pmbl., UN Doc. A/RES/84 (2000); Measures to Combat Contemporary Forces of Racism and Racial Discrimination, Xenophobia and Related Intolerance, para. 22, UN Doc. A/RES/55/83 (2000).

⁴⁴ This resolution as adopted by the 56th General Assembly omitted the reference to antisemitism together with the rest of the paragraph. Third Decade to Combat Racism and Racial Discrimination, UN Doc. A/RES/56/265 (2002).

⁴⁵ See Joseph Lelyveld, *All Suicide Bombers Are Not Alike*, N.Y. TIMES MAG., Oct. 28, 2001, at 53; Tucker Carlson, *Our Man in Islamabad*, N.Y. TIMES MAG., Oct. 22, 2001, at 24; Laurie Goodstein, *New York Cleric’s Departure from Mosque Leaves Mystery*, N.Y. TIMES, Oct. 23, 2001, at B4; Neil MacFarquhar, *U.S. Has a Long Way to Go to Bring Around Egyptians*, N.Y. TIMES, Sept. 26, 2001, at B5; Donald G. McNeil, Jr., *More and More, Other Countries See the War as Solely America’s*, N.Y. TIMES, Nov. 4, 2001, at B1; Jonathan Rosen, *The Uncomfortable Question of Anti-Semitism*, N.Y. TIMES MAG., Nov. 4, 2001, at 48.

⁴⁶ See, e.g., Sheik Abdullah bin Zaid al-Nahayan, information minister of the United Arab Emirates, who said, “Israel can’t be a member of the coalition while they behave as terrorists against Palestinians.” Douglas Jehl, *Worldwide Antiterror Coalition Will Be Shifting, Loose and Anything but Grand*, N.Y. TIMES, Sept. 30, at B4. King Abdullah of Jordan suggested that “the bloodshed might have been avoided had there been greater progress in resolving the Arab-Israeli dispute.” Douglas Jehl, *Arab Allies Not Jumping to Join U.S. Side*, N.Y. TIMES, Sept. 27, 2001, at B3. The Foreign Ministers from six Persian Gulf states meeting in Saudi Arabia two weeks after the bombings issued a statement “arguing that any antiterror campaign should not ignore acts of terror that many Arabs say are being inflicted by Israel on innocent Palestinians.” *Id.*

⁴⁷ Statement of H. E. Ambassador Fawzi A. Shobokshi, Permanent Representative of the Kingdom of Saudi Arabia, Oct. 2, 2001. See also Statement of M.E. Mr. Abuzed Omar Dorda, Permanent Representative of Libyan Arab Jamahiriya to the UN on behalf of the Arab group, Oct. 1, 2001: “The Arab Palestinian people are victims of modern terrorism. . . . The Arab Group stresses its determination to confront any attempt to classify resistance to occupation as an act of terrorism.” “[R]esistance to occupation is one of the most important obligations, not only legitimate rights, for people whose lands are occupied by the foreigners. . . . [T]he Palestinian people, the Lebanese people, and the Syrian citizens in the Syrian Golan Heights have the full right to resist the occupation of their lands.”

⁴⁸ Report of the Ad Hoc Committee on Measures to Eliminate Terrorism (established by GA Res. 51/210), UN Doc. A/AC.252/2002/CRP.1 and Add.1.

⁴⁹ The Arab Convention on the Suppression of Terrorism, Apr. 22, 1998, Article 2(a).

Durban was therefore part one of a two-part strategy. Suicide-bombers were part two. First, the Palestinian people were declared to be the victims of Israeli racism. Second, terrorism—or armed struggle—is advocated as a means to combat racism, to defend against Judaization. In other words, Durban defined the ends in a way that justified the means.⁵⁰ To those who ask, what about the other half of the glass, other paragraphs of the Declaration? The Convention on the Elimination of Racial Discrimination, the work of the CERD Committee, the antidiscrimination unit the UN High Commissioner for Human Rights was able to put in motion before there was a Durban Declaration, the work of the UN special rapporteur on racism, the concluding years of the Third Decade to Combat Racism, related work of the Committee on Women's Discrimination—all of these forums and legal standards are operational and do not require Durban in order to make progress.

Durban gave us anti-Semitism in the name of fighting racism. Exclusion and isolation of the Jewish state in the name of multilateralism. Durban provides a platform for hate and violence, which ought to be deactivated down before it corrupts the entire anti-racism agenda of the United Nations.

⁵⁰ *See, e.g.*, UN Doc. S/2001/1204, Dec. 14, 2001, Report of Syria to the Security Council Counter-Terrorism Committee, para. 4.