

Durban II: Rescuing Human Rights from the United Nations

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Introduction

To a large extent human rights is a Jewish concept. The exhortations of the Bible and the words of Hillel and others recorded in the Mishnah define Jewish conduct in relation to others.¹

In recent times Jacob Blaustein, then-president of the American Jewish Committee and a member of the US delegation to the formative 1945 meeting of the UN, persuaded the body that it should place human rights provisions in the UN Charter. René Cassin, the eminent French jurist, Nobel laureate and founder of the Consultative Council of Jewish Organisations, drafted the Universal Declaration of Human Rights; Raphael Lemkin, a native of Poland, was the originator of the term “genocide” and the draughtsman of the Genocide Convention. Both of these men drew on their Jewish learning and experience to act on these precepts.

In the aftermath of the Holocaust, Jews looked to the human rights mechanisms of the UN to prevent further tragedies to our people and to others. However, it rapidly became clear that geostrategic and political considerations prevailed. Sponsored by the USSR, General Assembly Resolution 3379 on the Elimination of all Forms of Racial Discrimination condemned Zionism as a form of racism and was passed in 1975. The adoption of that resolution gave impetus to the wave of anti-Zionist, and frequently antisemitic propaganda and violence that followed.² It dealt a serious blow to the perception of Israel in the West, which had already changed as a consequence of the 1967 Six-Day War and Israel’s occupation of Palestinian territory. The UN and its Human Rights Commission became one of the arenas in which this new battle was now waged.

The Durban Process

The road to the Durban Review Conference, held in Geneva from April 20–24, 2009, began in a sense with the World Conference on Human Rights held in Vienna from June 14–25 1993. There, the focus was on the general issues of human rights, and the recognition that many of these were subject to abuse in a world that was rapidly evolving after the era of de-colonialization. The Conference sought to put in place a system of rationalization of UN activities in order to strengthen the machinery. It reaffirmed the call of the UN declaration that human rights were universal, interrelated and interdependent. It noted in particular that the promotion and protection of human rights should be conducted unconditionally. In its closing paragraphs, it called for the “possibility of proclaiming a United Nations decade for human rights,” and that “the Commission on Human Rights annually review the progress towards this end.”⁵

Seven years later, the Palestinians, with Russian and Third World backing, sought to dominate the stage, to the exclusion of others. Yasir Arafat threatened that Palestinians would continue with their violent campaigns if their claims were not addressed to their satisfaction. The Jewish NGOs present sought, but failed, to secure a mention of antisemitism as a human rights abuse in the final declaration.

Prior to the Durban 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Israel and the Jewish NGOs realized what might be in store, not least because they were excluded from regional Preparatory Committee meetings. But they were shocked by the ferocity of the onslaught against Israel, Zionism and Jews by a malign coalition of NGOs from around the world at the NGO Forum that preceded the conference. What they found particularly intolerable was that many, if not a majority, of these NGOs were funded by Western governments and major foundations, particularly the Ford Foundation. The consequent walkout by the Israel and US delegations from the conference, and the resulting NGO Forum declaration, finally branded the UN’s global human rights processes as antipathetic to Israel and Zionism, not least because the balance of power between Europe and the West had tilted dramatically in favor of the Islamic, African and other Third World blocs. For them, these processes were seen as a means of promoting particular concerns rather than delineating universal human rights instruments and holding states to account.⁴

Unlike in Durban, the Jewish organizations made careful preparations for the Durban Review Conference (DRC) held in Geneva from April 20–24, 2009. Discussions between many of them began twelve months earlier with roundtable meetings for interested organizations in Jerusalem, Geneva, Amsterdam, New

York and London. Not all of them were Jewish, nor were all the participants. One meeting in New York and another in Amsterdam, organized respectively by the Jacob Blaustein Institute for Human Relations and the Magenta Foundation, resulted in a public statement of core principles signed by over a hundred NGOs.⁵ They were all bound by a common desire not to allow a repetition of the events that took place at the Durban NGO Forum, which was characterized by mismanagement, usurpation of democratic procedures and the harassment, including physical molestation, of Jewish and Israeli participants.

Two main streams emerged from these meetings. One wished to participate in the DRC process unless and until it became impossible to do so because the planned final Outcome Document (OD) omitted mention of antisemitism, the Holocaust or because Israel was singled out as the sole human rights abuser. The other position, adopted by the Canadian Jewish community, Anne Bayevksy of the Eye on the UN monitoring body and eventually the ADL, argued that the DRC process, and indeed the UN Human Rights processes, were beyond salvation and that no Jewish NGO should participate.

At the event itself, the majority of groups (including the World Jewish Congress, European Jewish Congress, B'nai B'rith International, Jewish Human Rights Coalition UK, World Union of Jewish Students, European Union of Jewish Students, Union of Jewish Students, Holocaust Education Trust, NGO Monitor, and CEJI) followed the first trend. This led to the formation of an international Jewish caucus, which in turn produced a hitherto-unprecedented level of cooperation between Jewish groups. There were daily briefings, debriefings and electronic updates on the plenary and side sessions.

In addition, the American Jewish Committee-sponsored UN Watch monitoring group, which was not part of the caucus, organized a series of public meetings that allowed prominent human rights campaigners from Burma, Darfur, Egypt, Rwanda and elsewhere to plead their cases, an opportunity that was all but denied them by the UN, which after several contrary decisions finally allowed civil society an opportunity to speak during the penultimate and final days. The Geneva Jewish community arranged a Yom Ha'Shoah commemoration outside the UN Palais de Nations at which Elie Weisel, Bernard-Henri Lévy and others spoke.

Early on in the planning process, the Planning Committee decided not to allow for an NGO forum. Member states and some NGOs were mindful of the Durban legacy and had no wish to repeat it. It was also likely that far fewer NGOs would be present, as the agencies which had enabled them to participate in 2001 had since withdrawn their funding.

Indeed, the DRC limited any meaningful participation by NGOs other than at side events. The substantive business of the conference, adopting the OD, was concluded on April 21, the second day of the conference, and NGOs were only permitted to address the plenary in the general debate on the last agenda item — "Issues arising from the objectives of the Conference." At the daily briefings for NGOs held by the Civil Society Unit of the High Commissioner for Human Rights, NGO representatives complained that they, and the issues for which they campaign, had been sidelined and that they felt irrelevant to the process. In particular, they noted that there had been no discussion with, or input from, civil society. Some NGOs argued that the process was undemocratic, and the speaker from the African coalition asked, "How does this conference represent the people of the world?"⁶

Privately, Afro-Caribbean representatives complained that the conference had also been hijacked by Iran and that there had been too great a focus on Israel and the Palestinians, to the exclusion of their issues, many of which revolved around the consequences of slavery.

The purpose of the conference was to review the decisions taken in 2001 and to discuss progress made by states in implementing national Programmes of Action. In reality, few delegates even mentioned these, and indeed only a small minority had implemented such a plan. The consequence of President Ahmadinejad's outrageous address to the plenary on April 21, the second day, was that the conference was again diverted from its primary purpose.⁷ Criticism of the Iranian president preoccupied the Norwegian foreign minister, speaking on behalf of the European Union after the walkout by the delegation from the Czech Republic, (which currently occupies the EU presidency) and some of the EU representatives. The delegates from the Holy See, Uruguay and other countries also spent a substantial part of the time allotted to them admonishing Ahmadinejad, as did UN General Secretary Ban at a press conference later that day.⁸

The Implications of Durban

From a purely Jewish perspective, the final Outcome Document was not as extreme as the preliminary drafts. On this occasion, Russia played a more positive role than it had thus far. It is neither certain nor appropriate to state that it marks any change in the country's foreign policy, but the efforts of EU negotiators and Ambassador Yuri Boychenko in removing the toxic elements from the draft, and reducing its size to manageable and realistic proportions, were applauded by many.

Nevertheless, the final draft, agreed upon in the week before the conference began, was still not good enough to secure the attendance of the USA, Canada, Israel, Italy, Poland, Germany or Australia, as it reaffirmed the Durban Declaration and Programme of Action (DDPA), which had singled Israel out uniquely for condemnation.⁹

The sole reference to the Israel–Palestine situation in the OD is oblique and limited. It “emphasizes the need to address with greater resolve and political will all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance, in all spheres of life and in all parts of the world, including those under foreign occupation.”¹⁰

The OD links condemnation of antisemitism with condemnation of Islamophobia, Christianophobia and anti-Arabism, and urges Member States to implement paragraph 150 of the DDPA, which had called on states to counter antisemitism (and anti-Arabism and Islamophobia) and to take effective measures to prevent the emergence of movements based on racism and discriminatory ideas concerning these communities.¹¹

Paragraph 60 of the OD urges states “to punish violent, racist and xenophobic activities that are based on neo-Nazi, neo-Fascist and other violent ideologies,” whereas in paragraph 61 of the DDPA the language was limited to condemnation “of the emergence of racial and violent movements.” Significantly, the language of the paragraph on the Holocaust was strengthened.¹² The DDPA merely recalled “that the Holocaust must never be forgotten,” whereas paragraph 66 of the 2009 document “urges all Member States to implement General Assembly Resolutions 60/7 and 61/255.” The former designated January 27 as an annual day of commemoration in memory of the victims of the Holocaust; urged Member States to develop educational programs to inculcate future generations with the lessons of the Holocaust; and requested the UN Secretary General to establish an outreach program to mobilize civil society for Holocaust remembrance. The latter condemned, “without any reservation” any denial of the Holocaust and urged Member States unreservedly to reject any denial of the Holocaust as a historical event. This resolution had been passed unanimously by the General Assembly in January 2007, with only Iran dissenting. Thus, the state that promotes denial as an instrument of official policy is now thereby bound, in theory, to condemn it.¹³

Understandably, in the circumstances, the OD makes no call for further world conferences. Instead, it limits itself to incorporating the DDPA in the “human rights mainstreaming in the whole UN system”; appreciates the High Commissioner’s plan “to make its implementation a standing agenda item in her high level consultations with United Nations partners”; and requests that the Secretary

General provide the human rights agency “with adequate necessary resources to continue to implement the DDPA.”

At EU Member States’ insistence, any reference to defamation of religion was removed, as were stronger criticisms of Israel. However, despite the walkout by EU representatives, it is now apparent that the EU actually failed to reach a consensus. According to the Czech President in Office of the EU Council:

As was rightly pointed out – and I take it as a kind of criticism – at the end of the preparations for the conference we were not really able to find a common ground. There was never any common ground, so there was never an EU position before the conference. It was decided by consensus that there were no national positions, so the delegations left the room in their national capacities.... We will have to reflect and come back, because the EU did not take the “heroic” path at this conference. That must be noted.¹⁴

It is now obvious to many who participated, and certainly to those who declined to attend, that the Durban Review process is an inappropriate forum in which to discuss human rights, although the OD now offers some type of platform with which to proceed. Perhaps, in the shocked aftermath of World War II and the Holocaust, when there was a genuine desire to learn from history, it could have been an effective forum. To deal with the scourge of racism, the UN incorporated the pursuit of universal human rights into its agenda. The emergence from colonialism of states which themselves are human rights abusers now ensures that there can be no universal perception and acceptance of what constitutes human rights. Indeed, the DDPA published an appendix of reservations by states, including several Muslim states, which note that they cannot accept the concept of universal human rights. Muslim states recorded that they only accept “Shariah rights,” not universal human rights.¹⁵ UN membership now includes states that have no compunction in abusing the rights of its own citizens, or those of neighboring countries, and who routinely fail to abide by the agreements they sign. Western states show contrition for slavery but can find no material way to make amends. Some African and Muslim states still allow slavery, while the trafficking of women and children is a growing scourge that affects Western states.

Western states may now prefer to focus their attention and hopes on the Universal Periodic Review (UPR) mechanism that was established under General Assembly resolution 60/251, which created the Human Rights Council and which replaced the failed Human Rights Commission. It is hoped that it will replace the manifest imperfections and double standards of previous human rights reviews and the Durban process by instituting regular inquiries by small groups of states into other states’ human rights records.

Human rights processes that engage fewer states might appear to solve the problems encountered by the Durban process, but it is apparent that there is little symmetry between perceptions of human rights. Moreover, states that have ratified international conventions and instruments have greater obligations than those that have yet to do so. The time required to review each state's record on a regular basis means that reviews will be perfunctory at best, and potentially susceptible to bias.

Human Rights High Commissioner Navanethem Pillay's glossing over of the outcome of the DRC, and admonition of those states that did not attend, failed to address the obvious assessment of the conference—that the UN human rights process had once again been taken over by a rogue element that sought to use the platform it had been given to advance its own dangerous strategy. In so doing, the aims of the conference were diverted and the voices and hopes of indigenous peoples, Roma and Sinti, and others were neither heard nor adequately reflected in the OD.

Conclusion

The current desire of the US to take its seat once again within the human rights processes should not lead it to imagine that it or any other state can set the UN back on the path from which it has been diverted. Other agencies of the UN perform valuable services and render much-needed aid and assistance. The Human Rights Council is not one of them, and the UPR is unlikely to advance the cause much further than has the Durban process, unless very drastic changes are made to its composition (currently based on regional blocs). Even then, the differences between states, the failure to agree on what constitutes universal human rights, and to genuinely seek to abide by the agreements already entered into, represent a real barrier to meaningful progress. In the meantime, the UN is being diverted from its original human rights agenda.

Notes

- ¹ "If I am not for myself, who will be for me? But if I am only for myself, who am I? If not now, when?" Hillel the Elder, *Pirkei Avot* [Ethics of the Fathers], 1:14.
- ² Resolution No. 3379, adopted by the General Assembly on Elimination of all Forms of Racial Discrimination, January 10, 1975, <http://domino.un.org/UNISPAL.NSF/a06f2943c226015c85256c40005d359c/761c106>
- ³ Vienna Declaration and Programme of Action, World Conference on Human Rights, June 14–25, 1993, <http://www.unhchr.ch/huridocda/huridoca.nsf>.
- ⁴ WCAR NGO Forum Declaration, September 3, 2001, http://www-personal.umich.edu/~hfc/mideast/NGO_WCAR.htm; see also: Joelle Fiss, "The Durban Diaries: A

- remarkable testimony to Jewish Youth,” European Union of Jewish Students website, [Hhttp://www.eujs.org/news/article/23](http://www.eujs.org/news/article/23) .
- ⁵ Statement of Core Principles for WCAR Follow Up, read out at the first substantive Preparatory Committee meeting for the DRC on April 28, 2009 by the representative of Human Rights First, available at <http://www.magenta.nl/projects>.
- ⁶ “Why did we come? – Political NGOs Marginalised at the Durban Review Conference,” *NGO Monitor*, April 27, 2009, available at http://www.ngo-monitor.org/article/_why_did_we_come .
- ⁷ President Ahmadinejad’s speech at the Durban Review Conference on Racism, Press TV, April 20, 2009, available at <http://www.presstv.ir/detail.aspx?id=92046>.
- ⁸ See, for example, Transcript of Statements by Secretary-General and High Commissioner for Human Rights at Press Conference on Opening of Durban Review Conference, UN Information Service, Geneva, April 20, 2009; Norwegian Statement at Durban Review Conference, Norwegian Mission to the UN, April 20, 2009, available at http://www.norway-un.org/Statements/OtherStatements/200409_DurbanStatement.htm; Statement by HE Peter Gooderham, Permanent Representative, UK Mission to the UN, Geneva April 22, 2009.
- ⁹ Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR), August 31–September 8, 2001, United Nations, A/CONF.189/12.
- ¹⁰ Outcome Document of the Durban Review Conference, Para 5, available at http://www.ohchr.org/Documents/Press/Draft_outcome_document.
- ¹¹ *Ibid*, para 12.
- ¹² *Ibid*, para 60.
- ¹³ *Ibid*, para 66.
- ¹⁴ Jan Kohut, President in Office of the Council, European Parliament Debates, Strasbourg, May 6, 2009, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=//EP//TEXT+CRE+20090506+ITEM-010+DOC+XML+VO//EN&language=EN>.
- ¹⁵ Statement by the representative of the United Arab Emirates on behalf of Saudi Arabia, Kuwait et al., WCAR p. 138.