

Background

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Durban II: Lessons for U.S. Engagement with the U.N. on Human Rights

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The 2009 Durban Review Conference (commonly referred to as Durban II) was the follow-up to the 2001 United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa. The 2001 conference was hijacked by nations and nongovernmental organizations (NGOs) that used it as a platform to criticize Israel and the United States. After trying unsuccessfully to counter those efforts, the U.S. delegation walked out of the 2001 conference.

Durban II was eerily similar to the 2001 conference on a number of levels. As in 2001, the Organization of the Islamic Conference (OIC), composed of 57 countries hostile to Israel and generally unobservant of their own citizens' fundamental civil and political rights, sought to twist the conference to serve their agenda. Specifically, they sought to include in the Durban II outcome document discriminatory references to Israel and statements supporting efforts to constrain freedom of speech and expression to prevent the "defamation of religions."

The Obama Administration determined that these and other passages in the draft outcome document were too objectionable to justify America's participation in Durban II and announced that the U.S. would boycott the conference. Last-minute changes failed to resolve U.S. objections fully, and the Obama Administration walked away from the conference as the Bush Administration did in 2001.

In the end, Durban II did very little to advance efforts to combat racism. It echoed the first conference

Talking Points

- The 2009 Durban Review Conference did very little to advance efforts to combat racism.
- Instead, Durban II provided a global platform for representatives of Iran and other countries to make racist comments against Israel and provided justification for undermining and constraining the fundamental rights to freedom of opinion, expression, and assembly under the pretext of "defamation of religions."
- The failure of Durban II is a testament to the fundamental problem of U.N. conferences and other U.N. efforts to advance human rights. The U.N.'s universal membership allows the countries that are most opposed to advancing human rights to blunt and undermine the agendas of U.N. conferences and human rights bodies.
- In such venues, the best the U.S. can hope for is to maintain the disappointing status quo, but the more likely outcome is a retreat from and real harm to existing human rights principles.

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by providing a platform for repugnant statements that ran counter to its very purpose. Both conferences saw abhorrent presentations, by Yasir Arafat in 2001 and Mahmoud Ahmadinejad in 2009, attacking Israel as a racist, cruel regime guilty of committing atrocities against the Palestinians. While NGOs were largely restrained in their actions in 2009, they were complicit in the anti-Israel efforts in 2001, stating in their conference declaration that Israel is an “Apartheid regime” engaged in “institutionalized racism.”¹

Aside from unjustly singling out Israel and providing a global platform for racist comments by representatives of Iran and other countries, the 2009 Durban Review Conference outcome document actually endorses constraints on fundamental rights to freedom of opinion, expression, and assembly to prevent “defamation of religion.” While the Durban II outcome document is nonbinding, it will be referenced repeatedly in future U.N. documents, and various human rights treaty bodies will cite it as a definitive interpretation of the will of the international community. Regrettably, it sets the stage for a retreat from, rather than an advancement of, human rights.

The Durban II conference is a testament to a fundamental problem of U.N. conferences and other U.N. efforts to advance human rights. The U.N.’s universal membership allows the countries that are most opposed to advancing human rights to blunt and undermine the agendas of U.N. conferences and councils. This results in an institutional adherence to moral equivalence, which elevates and empowers the world’s worst human-rights abusers by treating them as morally equivalent to countries that truly observe and value human rights. At best, the outcome is disappointing, and it is more likely harmful to the advancement of human rights around the world.

The experience of Durban II should lead the Obama Administration to reevaluate its default posi-

tion of supporting and participating in U.N. conferences and bodies, such as the U.N. Human Rights Council. The U.S. presence lends undeserved legitimacy to their often destructive efforts by allowing them to claim that their efforts reflect the will of the international community.

The Path to Durban II: Ample Warning Signs

The 2001 United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, became a platform for nations and NGOs to criticize Israel and the United States. After trying unsuccessfully to counter those efforts, the U.S. delegation walked out of the conference at the direction of then-Secretary of State Colin Powell.²

To the disappointment of many, Durban II followed in the footsteps of the 2001 conference. The U.N. Human Rights Council was appointed the Preparatory Committee for Durban II—a puzzling decision considering the council’s decidedly biased record against Israel and the role that anti-Israel sentiment played in undermining the 2001 conference.³

The council elected Libya as chair of the Bureau of the Preparatory Committee, which sets the agenda and objectives for the Review Conference, and elected Iran as one of the 19 vice-chairs. Both countries are members and strong supporters of the 57-nation Organization of the Islamic Conference, which has historically been hostile to Israel. Libya is also a member of the League of Arab States, which has called for the elimination of “Zionism” in its Arab Charter on Human Rights. Iranian President Mahmoud Ahmadinejad has infamously stated that Israel “must be wiped off the map” and that “Zionists are the true manifestation of Satan.”⁴

Unsurprisingly, the early drafts of the outcome document for Durban II singled out Israel through a number of biased references to Israel’s alleged mis-

1. “NGO Forum Declaration,” World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, September 3, 2001, para. 420, at <http://www.i-p-o.org/racism-ngo-decl.htm> (June 3, 2009).
2. Colin L. Powell, “World Conference Against Racism,” U.S. Department of State, September 3, 2001, at <http://2001-2009.state.gov/secretary/former/powell/remarks/2001/4789.htm> (March 4, 2009).
3. See Brett D. Schaefer, “The U.S. Is Right to Shun the U.N. Human Rights Council,” Heritage Foundation WebMemo No. 1910, May 2, 2008, at <http://www.heritage.org/Research/InternationalOrganizations/wm1910.cfm>.

treatment of Palestinians. For example, an early draft text:

Expresse[d] deep concern at the plight of Palestinian refugees and other inhabitants of the Arab occupied territories as well as displaced persons who were forced to leave their homes because of war and racial policies of the occupying power and who are prevented from returning to their homes and properties because of a racially-based law of return.⁵

In addition to the biased focus on Israel, the early drafts contained numerous troubling statements supporting efforts to constrain freedom of speech and expression to prevent “defamation of religions.” For example, the draft text claimed:

[A] most disturbing phenomenon is the intellectual and ideological validation of Islamophobia.... [W]hen it is expressed in the form of defamation of religions, it takes cover behind the freedom of expression.... [A]ssociation of terrorism and violence with Islam or any other religion, including through publication of offensive caricatures and making of hate documentaries, would purposely complicate our common endeavours to address several contemporary issues, including the fight against terrorism and the occupation of foreign territories and peoples.⁶

The proponents of defamation-of-religions laws desire to restrict such speech in the U.S. and the rest of the world. Yet in the United States, controversial

cartoons and films, however repugnant to adherents of a particular religion, are protected speech under the First Amendment to the U.S. Constitution.⁷

Faced with the question of whether or not to continue the Bush Administration’s policy of boycotting Durban II, the Obama Administration sent a delegation to the February 2009 preparatory meetings on the draft outcome document. It announced that, pending progress on addressing problems with the text, the U.S. would consider attending Durban II in April 2009. However, after participating in the February meetings, the Obama Administration concluded:

[T]he document being negotiated has gone from bad to worse, and the current text of the draft outcome document is not salvageable. As a result, the United States will not engage in further negotiations on this text, nor will we participate in a conference based on this text. A conference based on this text would be a missed opportunity to speak clearly about the persistent problem of racism.⁸

The Administration said it would participate in the April 2009 Durban II conference only if the outcome document was “shortened and [did] not reaffirm in toto the flawed 2001 Durban Declaration and Program of Action” (DDPA); did not “single out any one country or conflict, nor embrace the troubling concept of ‘defamation of religion’”; and did “not go further than the DDPA on the issue of reparations for slavery.”⁹

4. Mahmoud Ahmadinejad, “The World Without Zionism,” speech to the Islamic Student Associations conference, Tehran, Iran, October 26, 2005, at http://www.nytimes.com/2005/10/30/weekinreview/30iran.html?_r=2 (March 4, 2009), and “Ahmadinejad in Sudan: ‘Zionists Are the True Manifestation of Satan,’” *Haaretz* (Tel Aviv), March 1, 2007, at <http://www.haaretz.com/hasen/spages/832229.html> (March 4, 2009).
5. Chairperson-Rapporteur of the Intersessional Open-Ended Working Group, “Revised Version of the Technically Reviewed Text,” A/CONF.211/PC/WG.2/CRP.2, Preparatory Committee for Durban II, January 23, 2009, p. 9, at http://www.eyeontheun.org/assets/attachments/documents/7376_Durban_doc_1-28-09.pdf (March 4, 2009). This document reflects the status of negotiations in the working group as of January 23, 2009.
6. *Ibid.*, pp. 13–14.
7. Steven Groves, “Why the U.S. Should Oppose ‘Defamation of Religions’ Resolutions at the United Nations,” Heritage Foundation *Background* No. 2206, November 10, 2008, at <http://www.heritage.org/Research/LegalIssues/bg2206.cfm>.
8. Press release, “U.S. Posture Toward the Durban Review Conference and Participation in the UN Human Rights Council,” U.S. Department of State, February 27, 2009, at <http://www.state.gov/r/pa/prs/ps/2009/02/119892.htm> (June 1, 2009).

Shortly after the U.S. announcement, Italy similarly decided not to attend and other European countries were rumored to be considering skipping the conference. (Canada and Israel had already announced their boycott months earlier.) To avoid a broader boycott by Western countries, the OIC and other countries pressing for the more objectionable parts of the declaration relented and agreed to remove overt references to “defamation of religions,” Israel, and reparations. However, they did not remove the unqualified endorsement of the 2001 Durban Declaration, which contains provisions with which the U.S. strongly disagrees, including negative references to Israel.

With its conditions not fully met, the U.S. announced on the eve of the conference its final decision that it would not attend Durban II, noting that the draft outcome document “still contains language that reaffirms in toto the Durban Declaration and Programme of Action... which the United States has long said it is unable to support [and] singles out one particular conflict and prejudices key issues that can only be resolved in negotiations between the Israelis and Palestinians.” The U.S. also stated that it “has serious concerns with relatively new additions to the text regarding ‘incitement,’ that run counter to the U.S. commitment to unfettered free speech.”¹⁰

The Durban II Debacle

The conference proceedings on April 20–24 confirmed the wisdom of the U.S. decision to boycott. The first country representative to speak on racism was Iranian President Ahmadinejad, the world’s

most prominent Holocaust denier and anti-Semite. Seemingly unfazed by two young men wearing rainbow-striped clown wigs who rushed the podium, Ahmadinejad unleashed attacks on Europe and the U.S. for slavery and oppression and for using the U.N. Security Council as a means for imposing racism and “discrimination, injustice, violation of human rights and belittling the majority of nations and countries.”

Ahmadinejad questioned the Holocaust overtly in his prepared remarks and implicitly in his speech by referring to the “pretext of Jewish suffering.” He accused the U.S. and Europe of establishing a “most cruel and repressive racist regime in Palestine” and of continuing to support Israel while it commits “atrocities,” “brutality,” and even “genocide” against the Palestinians. He called on the international community to combat Zionism, calling it “a kind of racism which has tarnished the image of humanity at the beginning of the third millennium. World Zionism personifies a racism that falsely resorts to religion, and abuses religious sentiment, to hide its hatred and ugly face.”¹¹

All European delegates present walked out in the middle of the speech when Ahmadinejad made his anti-Semitic remarks.¹² The Czech Republic announced that it would not return to the conference because of the comments. Immediately following the speech, Norwegian Foreign Minister Jonas Gahr Støre declared that Iran was making itself the “the odd man out.”¹³ U.N. High Commissioner for Human Rights Navi Pillay similarly criticized the speech:

9. *Ibid.*

10. Press release, “Durban Review Conference,” U.S. Department of State, April 18, 2009, at <http://www.state.gov/r/pa/prs/ps/2009/04/121876.htm> (June 1, 2009).

11. The prepared remarks differed slightly from the delivered remarks. For a transcript of President Ahmadinejad’s remarks as delivered, see Jeremy R. Hammond, “Full Text of President Ahmadinejad’s Remarks at U.N. Conference on Racism,” *Foreign Policy Journal*, April 21, 2009, at <http://www.foreignpolicyjournal.com/2009/04/21/full-text-of-president-ahmadinejads-remarks-at-un-conference-on-racism> (June 1, 2009). For a news story on the changes between the delivered and prepared texts, see Bradley S. Klapper and Alexander G. Higgins, “Ahmadinejad Dropped Holocaust Denial from Speech: UN Says Iranian President Dropped Holocaust Denial Reference from UN Speech,” ABC News, April 21, 2009, at <http://abcnews.go.com/International/wireStory?id=7386880> (June 1, 2009).

12. Frank Jordans, “Iran Leader Sparks Walkout at UN over Israel: Iran’s President Slams Israel, Sparks Western Walkout, Clown Protest at UN Conference,” ABC News, April 20, 2009, at <http://abcnews.go.com/International/wireStory?id=7376946> (June 1, 2009).

I utterly deplore the speech of the President of Iran delivered this afternoon at the Durban Review Conference against racism.... Much of his speech was clearly beyond the scope of the Conference. It also clearly went against the long-standing U.N. position adopted by the General Assembly with respect to equating Zionism with racism.¹⁴

Ahmadinejad was not the only outrageous speaker at Durban II. While not as bombastic as Ahmadinejad and eschewing the term “Zionist,” other delegates echoed his sentiments at the podium:

- The Palestinian representative attacked Israel as a racist state that violates international humanitarian law and human rights law, calling its occupation of Palestinian territories the “worst violation of human rights and the ugliest face of racism and discrimination.”¹⁵
- Syria included “foreign occupation” (an oblique accusatory reference to Israel) among the primary reasons for holding the Durban II conference, ranking it above racism, xenophobia, and intolerance. The Syrian representative recited a litany of alleged crimes perpetrated by Israel, including the ethnic cleansing of Palestinians and throwing them “into the sea.”¹⁶
- Cuba launched an attack on Western countries for the transatlantic slave trade and colonialism and demanded that Western countries provide reparation and compensation for those acts.

Cuba went on to state that racism and racial discrimination “has a greater impact and impunity in the countries from the rich and industrialized North.” After the obligatory attack on Israel as an “occupying power that does not recognize the limits of justice, moral[s], or the international law,” the Cuban delegate reached back to the 1970s for a solution to racism and inequality, calling for a “new international economic order... based on equality, solidarity, and social justice.”¹⁷

- Sudan—the regime that has committed massive human rights atrocities in Darfur that rise to the level of genocide in some people’s judgment—implausibly claimed that Sudan opposes all forms of racism and discrimination, rejected accusations of continued slavery in Sudan, and accused Israel of conducting a racist military campaign in Gaza.¹⁸

During the week, Durban II provided a forum for such human rights luminaries as Belarus, China, Eritrea, Libya, North Korea, Saudi Arabia, and Zimbabwe to profess their “dedication” and “commitment” to fundamental human rights and to combating racism while congratulating each other on their “contributions” to the Durban II process.¹⁹

To stanch the embarrassing news coverage following Ahmadinejad’s speech and to preclude additional boycotts, the attending countries agreed, in an unusual move, to adopt the outcome document on the second day of the five-day conference. Thus,

13. Jonas Gahr Støre, “Norwegian Statement,” Durban Review Conference, April 20, 2009, at <http://www.norway.org.sg/policy/organizations/Durban+Review+Conference.htm> (June 1, 2009).
14. Navanethem Pillay, statement on speech by President of Iran at Durban Review Conference, April 20, 2009, at http://www.un.org/durbanreview2009/stmt20-04-09_iran_pillay.shtml (June 1, 2009).
15. Riyad Al-Maliki, Minister for Foreign Affairs, Statement by Representative of Palestinian Authority, April 21, 2009, Webcast, at <http://webcast.un.org/ramgen/ondemand/conferences/DurbanConference/2009/durban090421am-eng.rm?start=00:40:20&end=00:55:35> (June 1, 2009).
16. Faysal Mekdad, statement by Syrian Arab Republic, Durban Review Conference, April 21, 2009, Webcast, at <http://webcast.un.org/ramgen/ondemand/conferences/DurbanConference/2009/durban090421am-eng.rm?start=01:47:59&end=01:59:23> (June 1, 2009).
17. Rafael Bernal Alemany, statement by Cuba, Durban Review Conference, April 21, 2009, Webcast, at <http://webcast.un.org/ramgen/ondemand/conferences/DurbanConference/2009/durban090421pm1-eng.rm?start=01:43:49&end=01:54:14> (June 1, 2009).
18. Abdel Daiem Zumrawi, statement by Sudan, Durban Review Conference, April 21, 2009, webcast, at <http://webcast.un.org/ramgen/ondemand/conferences/DurbanConference/2009/durban090421pm1-eng.rm?start=02:21:43&end=02:34:39> (June 1, 2009).
19. For respective statements of these countries, see Durban Review Conference, archived Webcasts, April 20–24, 2009, at <http://un.org/webcast/durbanreview/archive.asp> (June 1, 2009).

the Durban II conference achieved its primary purpose—agreement on the text of an outcome document—on Tuesday. Speeches by governments, U.N. human rights experts, NGOs, and other groups continued for three more days to no real purpose, giving their input for a document that had already been signed.

Unworthy of U.S. Support

In their speeches during the conference, U.N. officials, country delegates, and human rights groups repeatedly chastised the 10 countries that chose to boycott Durban II.²⁰ The final Durban II outcome document was hailed by its supporters as a triumph of compromise that, unlike earlier drafts, did not disparage Israel or undermine fundamental human rights. Boycotting nations were accused of being stubborn in failing to recognize the significance of the diplomatic achievement of the outcome document.

While the final document was relatively better than earlier drafts, it was improved only because the U.S. and other countries announced their intention to boycott unless the document was fundamentally changed. However, even the improved document does not merit U.S. support because it makes significant references—overt and implicit—that run counter to U.S. policy regarding Israel and the fundamental rights of freedom of speech and assembly.

On the matter of Israel, the first paragraph of the Durban II outcome document reaffirms without reservation the 2001 Durban Declaration and Program of Action.²¹ Under a section titled “Victims of racism, racial discrimination, xenophobia and related intolerance,” the DDPA states: “We are concerned about the plight of the Palestinian people under foreign occupation.”²² The DDPA’s direct implication that Palestinians were victims of Israeli racism, racial discrimination, xenophobia, or related intol-

erance was a key reason that the Obama Administration included support for that document *in toto* as one of the redlines that, if crossed, would lead it to boycott Durban II.

While specific references to combating “defamation of religions,” which would have serious implications for freedom of speech and expression, were removed from the Durban II outcome document, at least six paragraphs in the final outcome document call for constraints on the freedoms of speech and assembly.²³

- Paragraph 13 states that “all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as all acts of violence or incitement to such acts shall be declared an offence punishable by law.”
- Paragraph 39 “[u]rges States parties to the [International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)] to withdraw reservations contrary to the object and purpose of the Convention and to consider withdrawing other reservations.” This provision is unacceptable because U.S. reservations to ICERD relate to protecting the free speech rights of Americans, which would have been abridged if the treaty had been ratified without reservation.
- Paragraph 60 “[u]rges States to punish violent, racist and xenophobic activities by groups that are based on neo-Nazi, neo-Fascist and other violent national ideologies.”
- Paragraph 68 “[e]xpresses its concern over the rise in recent years of acts of incitement to hatred, which have targeted and severely affected racial and religious communities and persons belonging to racial and religious minorities, whether involving the use of print, audio-visual or electronic media or any other means, and emanating from a variety of sources.”

20. Australia, Canada, the Czech Republic, Germany, Israel, Italy, the Netherlands, New Zealand, Poland, and the United States.

21. Durban Review Conference, “Outcome Document of the Durban Review Conference,” April 20–24, 2009, at http://www.un.org/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf (June 1, 2009).

22. World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, “Declaration,” 2001, pp. 9 and 13, at <http://www.unhcr.ch/pdf/Durban.pdf> (June 1, 2009).

23. Durban Review Conference, “Outcome Document of the Durban Review Conference” (emphasis omitted).

- Paragraph 69 “[r]esolves to, as stipulated in art. 20 of the ICCPR [International Convention on Civil and Political Rights], fully and effectively prohibit any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence and implement it through all necessary legislative, policy and judicial measures.” This is a serious matter because Article 20 instructs parties to constrain freedom of opinion and expression to prohibit “[a]ny propaganda for war” and “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”²⁴ When it ratified the ICCPR, the U.S. made a specific reservation limiting Article 20 based on the First Amendment to the U.S. Constitution, which protects freedom of speech and expression.
- Paragraph 99 “[c]alls upon States...to declare illegal and to prohibit all organizations based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote national, racial and religious hatred and discrimination in any form.”

No reasonable person wishes to be in the position of defending ignorant, intolerant, or racist speech or any individuals endorsing such sentiments. Yet freedom of speech and assembly mean very little unless they apply equally to everyone, even hate groups that are political or social pariahs. Noncontroversial ideas or organizations do not need to fear constraints on the rights to freedom of speech and assembly. A society’s true adherence to these rights is measured by the extent to which highly objectionable ideas and organizations are afforded protection.

For this reason, America’s Founding Fathers included such protections in the Bill of Rights. The U.S. worked hard to ensure that they remained protected and affirmed in the Universal Declaration on Human Rights, and the U.S. has insisted on expressing reservations in any treaty that would infringe these rights.

In the closing moments of Durban II, Pillay expressed her hope that the nations boycotting Durban II would eventually endorse the outcome document.²⁵ The U.S. should ignore this request. While the Durban II outcome document is nonbinding, it will be referenced repeatedly in future U.N. documents, and various U.N. treaty bodies will cite it as a definitive interpretation of the will and consensus of the international community. Regrettably, it sets the stage for a retreat on human rights rather than for advancing those standards. Endorsing the outcome document would serve neither U.S. interests nor international efforts to advance fundamental human rights and combat racism.

A Triumph of Disengagement

There is ample blame to go around for the embarrassment that was Durban II. Following the 2001 racism conference, the late Representative Tom Lantos (D-CA) observed:

To many of us present at the events at Durban, it is clear that much of the responsibility for the debacle rests on the shoulders of UN High Commissioner for Human Rights Mary Robinson, who, in her role as secretary-general of the conference, failed to provide the leadership needed to keep the conference on track. It must be added that the Bush administration also shares some responsibility for the meltdown. Six months of unilateralist

24. International Covenant on Civil and Political Rights, December 16, 1966, Art. 20, at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm (June 2, 2009).

25. During her closing press conference for Durban II, Pillay stated that “some countries decided to boycott it, although a few days earlier, they had actually agreed on what is now the final text. I consider this bizarre. You agree [to] the text on Friday evening, and walk out on Sunday. I think, it was unfortunate that a few states disengaged from the process. Although almost all of them had agreed [to] this text, they are not part of the consensus that adopted it. I do hope they will come back into the process now. They can still add their names to the list of 182 states that have adopted the outcome document.” Navi Pillay, opening remarks at closing press conference, Durban Review Conference, April 24, 2009, at http://www.un.org/durbanreview2009/stmt24-04-09_pillay.shtml (June 1, 2009).

foreign policies had created such a climate of hostility and mistrust toward the United States that marshaling support among our allies to prevent the conference from being taken over and abused became an almost impossible mission. The majority of blame for the failure of Durban, however, must be laid at the feet of several members of [the] Organization of the Islamic Conference (OIC). These regimes, some U.S. allies, proved unwilling to yield in their campaign to scuttle the noble agenda of the conference and to turn it into a forum to shun, isolate and de-legitimize Israel, America's key democratic ally in the Middle East.²⁶

Lantos concluded that the debacle occurred because the U.S. was not sufficiently engaged in the process. This is a common refrain and was often heard at Durban II. For instance, while High Commissioner Pillay criticized Ahmadinejad's racist speech, she simultaneously criticized the boycotting states for abandoning the conference to him and his allies: "The best riposte for this type of event is to reply and correct, not to withdraw and boycott the Conference."²⁷ Other country representatives continually voiced similar entreaties for boycotting countries to return to the conference.

But to what purpose? The writing was on the wall well before Ahmadinejad's speech at the opening of the conference. The Durban II draft outcome document contained provisions that denigrated Israel and were hostile to the freedoms of speech, expression, and assembly. Attempts to remove objectionable provisions in the final days before the conference failed, and it is highly unlikely that they would have been fixed even if the U.S. and other countries had attended. The best outcome the U.S. and other states could have hoped for was to prevent further deterioration of the outcome document. Since the draft was unworthy of endorsement, the situation amply justified abandoning the conference. The Obama

Administration rightly concluded that the process was beyond redemption.

The time to fix the Durban II outcome document was in the early stages. Critics of the Bush Administration's decision to skip the early negotiations over Durban II argue that stronger U.S. participation could have salvaged the conference. This is unlikely. The Obama Administration, bolstered by a vastly higher level of goodwill among other delegates than the Bush Administration enjoyed, was unable to salvage the document during the negotiations in February 2009. Similarly, repeated efforts by many other Western countries to amend the document to address their concerns were rebuffed by OIC members and other nations with highly questionable human rights records. If High Commissioner Pillay had been more forceful in trying to excise these problematic passages from the draft document in the preparatory meetings instead of publicly defending the flawed process and lashing out at those who criticized Durban II, she might have helped to secure the changes that would have led the boycotting countries to change their minds.

Ironically, only the U.S. decision to announce its likely boycott of the conference succeeded in changing the draft outcome document in a positive way—albeit not as much as the U.S. wished. This might be called a triumph of disengagement. If the U.S. and other countries had not decided to boycott unless specific redlines were met, the draft outcome document almost certainly would not have been changed.

Indeed, even agreeing to participate in the conference after the draft document was changed would have been counterproductive because it would have legitimized a flawed process and signaled that the U.S. will settle for less than it says it will in future forums. Worse, nothing would have prevented the OIC and others from amending the document during the conference to reinsert the objectionable provisions. Once locked into the conference, the European countries would likely not have rejected the outcome document even if the objectionable

26. Tom Lantos, "The Durban Debacle: An Insider's View of the UN World Conference Against Racism," *The Fletcher Forum of World Affairs*, Vol. 26, No. 1 (Winter/Spring 2002), p. 32, at <http://fletcher.tufts.edu/forum/archives/pdfs/26-1pdfs/Lantos9.pdf> (June 1, 2009).

27. Pillay, statement on speech by President of Iran at Durban Review Conference.

provisions were included. This conclusion is bolstered by the experience of the 2001 conference, from which only the U.S. and Israel walked out, and by continued European participation in the U.N. Human Rights Council despite its biased mistreatment of Israel and willful refusal to confront dire human rights problems around the world.

In the end, the fear that more countries might walk out forced U.N. officials and the nations in charge of the conference proceedings—specifically, Pillay and the countries serving on the Main Committee—to adopt the outcome document prematurely. Indeed, as conference president Amos Wako of Kenya hailed the final outcome document as a triumph of engagement, he refused to recognize Libya's boisterous effort to be recognized and, purportedly, express its desire that the outcome document include more condemnatory language on Israel.

What the U.S. Should Do

The Durban II experience should serve as a valuable lesson that criticism of the Bush Administration's alleged lack of commitment to multilateral negotiations was often off-target. Multilateralism is only a means to an end, and participation in multilateral negotiations is no guarantee of beneficent outcomes. On the contrary, sometimes U.S. participation only lends credibility to a process that deserves none.

This lesson applies both to Durban II and to the U.N. Human Rights Council, which oversaw the Durban II debacle. Consequently, the U.S. should:

- **Refuse to endorse the Durban II outcome document.** In the closing moments of Durban II, High Commissioner Pillay expressed her hope that the nations boycotting the conference would eventually endorse the outcome document. Germany has already done so.²⁸ The document is unworthy of support, and the U.S. should not lend the outcome document the legitimacy that a

U.S. endorsement would convey. While the Durban II outcome document is nonbinding, it will be referenced in future U.N. documents, and various U.N. treaty bodies will cite it as a definitive interpretation of the will and consensus of the international community. Endorsing the outcome document would serve neither U.S. interests nor international efforts to advance fundamental human rights.

- **Reevaluate America's default position of supporting and participating in U.N. conferences and bodies.** The U.S. presence lends undeserved legitimacy to the often destructive efforts of U.N. conferences such as Durban I and Durban II and human rights bodies such as the Human Rights Council by allowing them to claim that they reflect the will of the international community. The Obama Administration should heed the lessons of Durban II and participate in a U.N. conference only if the outcome is likely to support U.S. interests and America's commitment to basic civil and political rights and fundamental freedoms. If a conference appears to undermine those principles, the Administration and Congress should work together to oppose funding for such conferences through the U.N. regular budget as the Bush Administration attempted with Durban II.²⁹ Similarly, Congress should withhold the U.S. portion of the cost of such conferences from its appropriation for the U.N. regular budget.
- **Press for serious reform of the Human Rights Council in the 2011 review.** Although the U.S. won a seat on the council and will soon participate fully in its deliberations, the U.S. presence is unlikely to improve the effectiveness of the council significantly.³⁰ In the upcoming review of the council, which must occur before April 2011, the Obama Administration should press for adoption of serious membership criteria and

28. See Anne Bayefsky, "German Double Cross on Durban II," *EYE on the UN Alert: Durban Watch*, May 14, 2009, at <http://www.eyeontheun.org/durban.asp?p=829> (June 1, 2009).

29. Mark Wallace, "Explanation of Vote by Ambassador Mark Wallace, United States Ambassador for Management Reform, on Agenda Item 128: Questions Relating to the Proposed Program Budget for the Biennium 2008–2009, in the Fifth Committee of the General Assembly," U.S. Mission to the United Nations, December 22, 2007, at http://www.usunewyork.usmission.gov/press_releases/20071222_387.html (June 1, 2009).

other reforms.³¹ To spur reforms, Congress should withhold the equivalent of the U.S. share of the council's budget from its appropriation for the U.N. regular budget until the General Assembly adopts and implements more stringent membership criteria.

Conclusion

The Durban II failure is a testament to the fundamental problem of permitting the United Nations to take the lead on human rights issues. The U.N.'s universal membership and institutional adherence to moral equivalence lead to a situation in which the "inmates run the asylum." It elevates and empowers the world's worst human rights abusers by treating them the same as it treats countries that actually promote and protect basic human rights and fundamental freedoms. It gives them a global stage to voice their lies and hypocrisies as they mock the process and debase the debate.

The lessons of the past 60 years amply demonstrate the limitations of working through the U.N.

to advance human rights. In the end, perhaps the best the U.S. can hope for in these venues is to maintain the disappointing status quo, confirming already existing standards and human rights principles. Far more likely, regrettably, is an outcome that actually retreats from existing principles and harms the advancement of human rights around the world.

If the Human Rights Council proves immune to serious reform, the U.S. should work with countries that are genuinely interested in advancing fundamental human rights to establish an alternative human rights forum independent of the U.N. and the institutional constraints that impede its efforts in advancing this noble cause.³²

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30. Brett D. Schaefer, "The Obama Administration Will Not Make the U.N. Human Rights Council Effective," Heritage Foundation *WebMemo* No. 2432, May 11, 2009, at <http://www.heritage.org/Research/InternationalOrganizations/wm2432.cfm>.
31. For detailed recommendations, see Brett D. Schaefer, "U.N. Human Rights Council Whitewash Argues Against U.S. Participation," Heritage Foundation *Background* No. 2255, April 2, 2009, at <http://www.heritage.org/Research/InternationalOrganizations/bg2255.cfm>.
32. Kim R. Holmes, *Liberty's Best Hope: American Leadership for the 21st Century* (Washington, D.C.: The Heritage Foundation, 2008), p. 122.