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U.S. Boycott of U.N. Durban II Conference on Racism: The Right Decision by the Obama Administration

Brett D. Schaefer and Steven Groves

On February 27, the Obama Administration announced that it would not participate in the upcoming Durban Review Conference on racism due to the extremely biased content of the draft “outcome document.” In a welcome recognition of the limitations of multilateral engagement, the Administration specifically noted that it “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.”¹ The decision confirms the Bush Administration’s conclusion that the Durban Review Conference, otherwise known as Durban II, would not be a constructive discussion on racism and that U.S. participation would not benefit the U.S. or victims of racism around the world.

The Durban II Disappointment. Durban II is the follow-up to the 2001 United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The 2001 conference, held in Durban, South Africa, was hijacked by nations and non-governmental organizations that used it to criticize Israel and the United States. After unsuccessfully trying to counter those efforts, the U.S. delegation walked out of the 2001 conference.²

To the disappointment of many, Durban II followed in the footsteps of the 2001 conference. In some respects, such repetition was inevitable. For instance, the stated purpose of Durban II is to further the implementation of the 2001 Durban Decla-

ration. Since the 2001 Durban Declaration contains positions and provisions with which the U.S. strongly disagrees, it follows that Durban II likely will expand on an outcome that is incompatible with American interests.

However, the Durban II process itself has compounded the problems, beginning with the decision of the U.N. Human Rights Council to act as the preparatory committee for Durban II. This decision was a strong warning sign considering the council’s decidedly biased record against Israel.³ The council then proceeded to elect Libya as chair of the Bureau of the Preparatory Committee, which sets the agenda and objectives for the review conference. Among the 19 vice-chairs are Cuba, Iran, Pakistan, Russia, and South Africa, none of which has distinguished itself as a champion of equality or human rights during its tenure on the council.

Libya and Iran are particularly ill-suited to overseeing preparations for Durban II. 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, whose Arab Charter on Human Rights calls for the elimination

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of “Zionism,” and 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 draft outcome document for the Durban Review Conference contains several objectionable references to Israel. For example, the draft text:

Expresses 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 such biased treatment of Israel, the draft outcome document contains numerous troubling statements supporting efforts to constrain freedom of speech and expression in order to prevent the so-called “defamation of religions.” For example, the draft text claims

that 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 draft text clearly indicates what would be banned if laws restricting the “defamation of religions” were adopted: The “publication of offensive caricatures” is a reference to the publication of a series of rather innocuous cartoons by the Danish newspaper *Jyllands-Posten* in 2005, while “hate documentaries” refers to Dutch filmmaker Theo van Gogh’s 2004 film *Submission* as well as Dutch parliamentarian Geert Wilders’s film *Fitna*. Van Gogh’s film resulted in his brutal murder by a Dutch–Moroccan Muslim, while the death threats made in response to *Fitna* have forced Wilders to hire 24-hour bodyguards.

The proponents of “defamation of religions” laws desire to restrict such speech in the U.S. and the rest of the world. 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 The authors of the draft outcome document, however, seemingly found a solution for such constitutional barriers, since the document “[c]alls on States to develop,

1. Press release, “U.S. Posture Toward the Durban Review Conference and Participation in the U.N. Human Rights Council,” U.S. Department of State, February 27, 2009, at <http://www.state.gov/r/pa/prs/ps/2009/02/119892.htm> (March 4, 2009).
2. Secretary of State 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>.
4. Mahmoud Ahmadinejad, “The World Without Zionism” speech to the Islamic Student Associations conference, Tehran, Iran, October 26, 2005, at www.nytimes.com/2005/10/30/weekinreview/30iran.html (March 4, 2009); “Ahmadinejad in Sudan: ‘Zionists Are the True Manifestation of Satan,’” *Haaretz*, March 1, 2007, at www.haaretz.com/hasen/pages/832229.html (March 4, 2009).
5. Preparatory Committee for Durban II, “Revised version of the technically reviewed text (A/CONE.211/PC/WG.2/CRP.2) submitted by the Chairperson-Rapporteur of the intersessional open-ended working group to continue and finalize the process of negotiations on and drafting of the outcome document,” 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 at 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>.

and where appropriate to incorporate, permissible limitations on the exercise of the right to freedom of expression into national legislation.”⁸

The Right Decision. Based on the predictable trajectory of the Durban Review Conference, as well as the subsequent actions of the Preparatory Committee, the Bush Administration decided to vote against proposals for a follow-up to the Durban conference, to forgo participation in the preparatory meetings, to vote against the U.N. budget that included funding for Durban II, and to withhold the U.S. portion of the expected costs for Durban II as well as that portion of its U.N. regular budget assessment that would fund the U.N. Human Rights Council.⁹

Although the Bush Administration chose not to participate in the Durban II preparatory meetings, the final decision on whether to attend the actual conference in April 2009 fell to the next Administration. Consequently, the Bush Administration could not and did not definitively announce a U.S. boycott. It did, however, strongly support the decisions of Canada and Israel to boycott Durban II.

Faced with the question of whether to continue the Bush Administration’s policy or participate in Durban II, the Obama Administration sent a delegation to February’s negotiations on the outcome document. It announced that, pending progress on addressing problems with the text, the U.S. would consider attending the Durban Review Conference in April 2009. According to the State Department:

This will be the first opportunity the Administration has had to engage in the negotiations for the Durban Review, and—in line with our commitment to diplomacy—the U.S. has de-

ecided to send a delegation to engage in the negotiations on the text of the conference document. The intent of our participation is to work to try to change the direction in which the Review Conference is heading. We hope to work with other countries that want the Conference to responsibly and productively address racism around the world.¹⁰

After participating in the February meetings, however, the Obama Administration concluded that

the 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.¹¹

The Administration left open the distant possibility of participating in the April conference if the outcome document was “shortened and [did] not reaffirm *in toto* the flawed 2001 Durban Declaration and Program of Action” (DDPA) and that it not “single out any one country or conflict, nor embrace the troubling concept of ‘defamation of religion’” and “not go further than the DDPA on the issue of reparations for slavery.”¹² However, considering the nations represented on the Bureau of the Preparatory Committee and the support these provisions have among a number of U.N. member states, it is highly unlikely that the text will be changed in such a drastic fashion.

Now that it has made the difficult philosophical decision to boycott the multilateral Durban II meet-

8. Draft Durban II outcome document, p. 33.

9. For more information, see Brett D. Schaefer, “Durban II: The Administration Moves in the Right Direction,” Heritage Foundation *WebMemo* No. 1896, April 17, 2008, at http://www.heritage.org/Research/InternationalOrganizations/wm1896.cfm#_ftnref6; and Brett D. Schaefer, “The U.S. Should Boycott the U.N.’s Durban II Conference on Racism,” Heritage Foundation *Background* No. 2112, March 6, 2008, at www.heritage.org/Research/InternationalOrganizations/bg2112.cfm#_ftn7.

10. Press release, “U.S. Participation in Consultations for the World Conference Against Racism,” U.S. Department of State, February 14, 2009, at <http://www.state.gov/r/pa/prs/ps/2009/02/117339.htm> (March 4, 2009).

11. U.S. Department of State, “U.S. Posture Toward the Durban Review Conference and Participation in the UN Human Rights Council.”

12. *Ibid.*

ings, the Obama Administration should follow through and similarly announce its decision to withhold the proportional U.S. share of any costs associated with the Durban II conference. The Administration should also urge its allies in Australia, the European Union, Japan, and elsewhere in the world that their collective presence at the Durban II grants the conference an undeserved legitimacy.

A Valuable Lesson. The Obama Administration now recognizes that attending the Durban II conference is a fool's errand.

Hopefully, this will serve as a valuable lesson that criticism of the previous 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 is a lesson that applies in the case of Durban II but should also lead the Obama Administration to reconsider its decision to participate as an observer in the U.N. Human Rights Council, which oversaw the Durban II debacle.

—*Brett D. Schaefer is Jay Kingham Fellow in International Regulatory Affairs, and Steven Groves is Bernard and Barbara Lomas Fellow, in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation.*