

WebMemo



Published by The Heritage Foundation

No. 2399
April 19, 2009

The U.S. Is Right to Boycott the U.N. Durban II Conference on Racism

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On February 27, the Obama Administration indicated it would most likely not participate in the upcoming Durban Review Conference on racism due to the extremely biased content of the draft “outcome document.”¹ In an effort to prevent further boycotts of the conference and entice the U.S. to participate, countries supporting the more objectionable parts of the Durban II draft outcome document agreed to accept a shorter draft that eliminated many—but not all—of the provisions identified by the U.S. as problematic. The U.N. and human rights groups responded by demanding that the U.S. return to Durban II.

On April 18, the U.S. officially announced that it would not attend Durban II. A State Department spokesman explained that the outcome document remained unacceptable due to its reaffirmation of the flawed 2001 Durban Declaration and other troubling provisions.² The U.S. was right to ignore outside pressure and refuse to grant Durban II the legitimacy that U.S. participation would provide.

The Durban II Debacle. The 2009 Durban Review Conference (commonly referred to as 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 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.³

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.⁴ The council elected Libya as chair of the Bureau of the Preparatory Committee that 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 (OIC), 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 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.”⁵

Unsurprisingly, the early drafts of the outcome document for Durban II contained objectionable references to Israel. 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

This paper, in its entirety, can be found at:
www.heritage.org/Research/InternationalOrganizations/wm2399.cfm

Produced by The Margaret Thatcher Center for Freedom

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

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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.⁶

In addition to such biased treatment of Israel, the early drafts contained 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 claimed

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.⁷

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.⁸ 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, and where appropriate to incorporate, permissible limitations on the exercise of the right to freedom of expression into national legislation.”⁹

The U.S. Walks Away. Faced with the question of whether to participate in Durban II, the Obama Administration sent a delegation to February’s negotiations on the outcome document. The Administration announced that, pending progress on addressing problems with the text, the U.S. would consider attending Durban II in April 2009. 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.

1. 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> (March 4, 2009).
2. 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> (April 19, 2009).
3. 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).
4. 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>.
5. 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/spages/832229.html (March 4, 2009).
6. Preparatory Committee for Durban II, “Revised Version of the Technically Reviewed Text (A/CONE211/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 of January 23, 2009.
7. *Ibid.*, pp. 13–14.
8. 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>.
9. Preparatory Committee for Durban II, “Revised Version of the Technically Reviewed Text,” p. 33.

A conference based on this text would be a missed opportunity to speak clearly about the persistent problem of racism.¹⁰

The Administration, however, left open the 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],” 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.”¹¹

Shortly after the U.S. announcement, Italy similarly decided not to attend, and other European countries were rumored to be considering skipping the conference. To avoid a broad boycott by Western countries, the OIC and other nations pressing for the more objectionable parts of the declaration relented and agreed to remove overt references to defamation of religions, Israel, and reparations. They did not, however, remove the endorsement of the 2001 Durban Declaration that contains positions and provisions with which the U.S. strongly disagrees, including negative references to Israel. Based on the criteria announced by the Administration, this is a redline clearly not met and sufficient to preclude U.S. participation in Durban II.

In contrast, these changes mollified most European countries, and a boycott by European Union nations was seemingly avoided. The U.S. was more circumspect, and conflicting rumors continued to swirl in the press over whether the U.S. would attend and, if so, in what capacity. Sensing an opening, the U.N. High Commissioner for Human Rights urged the U.S. to attend, as did numerous human rights groups.¹²

The Right Decision. The Administration’s decision not to attend was the right decision. The U.S. announcement recognized that the current draft outcome document, while improved, “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.”¹³

The U.S. clearly recognizes that while the Durban II draft document no longer contains the worst elements of earlier drafts, the OIC and other countries hostile to Israel and freedom of expression will have ample opportunity to reinsert such unacceptable provisions during the conference itself. Attending the conference would simply place the U.S. and other countries opposed to these policies on the defensive—a scenario that would likely result in these nations being presented with an objectionable outcome that they will either be forced to reject or walk out on.

Durban II has been off the rails since the beginning, and it is unlikely that, by attending the conference, the U.S. and other countries could guide it to a positive outcome. Ironically, only the decision of the U.S. to announce its likely boycott of the conference succeeded in positively changing the draft outcome document. Returning to Durban II would only legitimize what has been a flawed process and send a signal that the U.S. will settle for less than it says it will in future forums.

10. U.S. Department of State, “U.S. Posture Toward the Durban Review Conference.”

11. *Ibid.*

12. See, for instance, Human Rights Watch, “US: Attend Conference on Racism,” April 18, 2009, at <http://www.hrw.org/en/news/2009/04/17/us-attend-conference-racism>; and “UN Rights Chief Urges All States to Take Part in Anti-Racism Conference,” UN News Centre, March 2, 2009, at <http://www.un.org/apps/news/story.asp?NewsID=30057&Cr=racism&Cr1=&Kw1=durban&Kw2=United+States&Kw3=pillay> (April 19, 2009); and “UN Rights Chief Urges Member States to Overcome Differences in Fight Against Racism,” February 23, 2009, at <http://www.un.org/apps/news/story.asp?NewsID=29995&Cr=durban+review&Cr1>.

13. Robert Wood, “Durban Review Conference,” U.S. Department of State, April 18, 2009, at <http://www.state.gov/r/pa/prs/ps/2009/04/121876.htm> (April 19, 2009).

A Valuable Lesson. The experience of Durban II should 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 but 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. While immediately applicable to Durban II, this lesson should also

prompt the Obama Administration to reconsider its decision to run for a seat on the U.N. Human Rights Council, which oversaw the Durban II debacle.

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