

Castan Centre for Human Rights

Can the UN Combat Racism'

A preview of the Durban Review Conference

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In 1993, Canadian general Roméo Dallaire, took charge of the United Nations Assistance Mission to Rwanda to implement the Arusha peace accords. He subsequently witnessed a grotesque genocide that would claim the lives of more than 800,000 Rwandan Tutsis and Hutus in 100 days. The United Nations repeatedly refused to send reinforcements and General Dallaire's force diminished as member states withdrew their troops.

In an interview in 2005, Dallaire spoke of the failure of the world, led by the Americans, and supported by the French and the British, to protect the Rwandans. In answer to why the post-Holocaust promise of 'never again' has selective application, Dallaire said: "(W)e've simply become more overt with the prioritization of humanity, where some count more than others". The intervention in Bosnia and Kosovo – in contrast to the Rwanda and Darfur – is explained, he said, by

the residual of the colonial era which has influenced us all. Yugoslavia is white. Yugoslavia is in Europe. Yugoslavia is close to home. We know them, and their security there is a concern. So it is dominated by self-interest and the fact that they're "like us." It was also seen as a far more sophisticated exercise because we're talking about educated people who come from great nations of the past. They're not simply black Africans whom we trivialize by saying that they're going at each other because they've always done it under tribalism.¹

As Zimbabwe teeters between some false sense of resolution at a political level and the reality of cholera and deep poverty, and a resignation that accompanies life in a failed state, the world keeps its distance and abdicates a universal human responsibility, advocating, with an aura of apparent deliberation, an 'African solution'.

It was not long ago, that our home-grown 'Pacific solution' was being heralded by the Australian government as THE mechanism which would evidently deter desperate refugees fleeing the arbitrary and capricious behaviour of authoritarian governments in the hope of starting new lives in the lucky country. The scheme was triggered by the rescue by the *Tampa*, a Norwegian freighter, of about 400 predominantly Afghan asylum seekers from a

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¹ Interview with Jeffrey Fleischer, *Motherjones*, 25 January 2005 at <http://www.motherjones.com/politics/2007/11/mother-jones-interviews>

sinking boat in the Indian Ocean in August 2001 which the Howard government had refused permission to land in Australia.

The Australian government moved swiftly to implement new laws in September 2001 to execute its 'Pacific Solution', approaching a number of potential host Pacific Island states to accommodate the refugees, offering "significant financial and aid inducements"² in return for their hospitality. Most of the refugees were housed in camps established on two island states - Manus Island (Papua New Guinea) and Nauru. Fiji refused to participate arguing that it could not afford to exacerbate "already volatile" domestic racial divisions between indigenous and ethnic-Indian communities by adding "Afghans, Iraqis and Iranians to the mix." Tuvalu appeared to reject the offer in light of Australia declining to accommodate some of its citizens who were confronting the perils of rising sea levels.³

The Pacific Solution camps and the expanded detention centres on Australian soil became sites of inhuman and degrading treatment where Australia's international obligations towards refugees and our humanitarian sensibility seemed to give way to racist fears and deep intolerance, captured by the catch-cry of Prime Minister Howard when he trumpeted: "We will decide who comes to this country and the circumstances in which they come."

While Australia seems to be turning away from a period when those in roles of leadership came close to condoning a complicity with xenophobia, we are being challenged to show our understanding of 'other' once again, as the aspirations and entitlements of our own fellow citizens, victims of enduring racism both past and present, remain suspended.

The official response to the experience of the Stolen Generations has been described by Robert Manne 'as the most important contemporary public issue of our time.'⁴ While Australia has moved from a period of ignorance and denial of a generation of stolen children, a position held by the Howard government, to acknowledgement and apology under the Rudd government, reparations for the Stolen Generations are not within the contemplation of the current Federal Government. Despite the statement by Sir Ronald Wilson, President of the Australian Human Rights Commission during its national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families, that the forced removal policies were an 'attempted genocide'⁵, the recommendations of the *Bringing them Home* report and calls from leaders of the Aboriginal community who view the national apology as a first, albeit important step, the Australian government does not believe that the provision of reparations to the victims of a racist policy is, in the words of the current Minister for Indigenous Affairs, the 'right thing' to do.⁶

The Australian Government has however demonstrated a capacity to do the right thing and made an analogous gesture to acknowledge the harm incurred by Australians interned as prisoners of war, making annual ex gratia payments of \$25 000 to Japanese and North Korean prisoners of war or their widows. Similar payments have also been made to Australians held as prisoners of war in Europe during World War II⁷. The provision of

² Q&A: Australia's 'Pacific Solution', BBC News, 5 February 2002 at <http://news.bbc.co.uk/2/hi/asia-pacific/1802364.stm>

³ ibid

⁴ Robert Manne, 'The stolen generations', (1998) 42(1-2) *Quadrant*, 53-63 at 54.

⁵ Linda Mottram, 'Australia's apology one year on', Radio Australia News, 13 February 2009 at <http://www.radioaustralianews.net.au/stories/200902/2490789.htm>

⁶ Heather Ewart, 'Macklin under fire over compo issue', ABC 7.30 Report, 7 January 2008 at <http://www.abc.net.au/7.30/content/2007/s2133493.htm>

⁷ 'Billson 'listened and delivered' for ex-POWs in Europe', Media Release, Minister for Veteran Affairs, 25 May 2007 at http://minister.dva.gov.au/media_releases/2007/05_may/va063.htm

reparations signifies accountability and vindication, in the words of Mick Dodson, “of the aspirations of individual men, women and children who wish simply to have their humanity respected and their distinctive identity recognized.”⁸

And our government now tells us that the most fundamental protection against race discrimination in Australia is evidently open to selective application. That the extreme social and economic problems which afflict the Aboriginal people and their children in the Northern Territory require extensive and urgent remedy is not in question; what is of serious concern is that the laws and programs enacted ostensibly to address the crisis are racially discriminatory in their application and protections available for breaches of the Racial Discrimination Act, have been suspended. These intrusions into rights and protections are insidious indicators of the hallmarks of a system under which I grew up in apartheid South Africa, where the law was used to undermine at best, and deny, at worst a shield against racism for people whose lives were devalued and destroyed by virtue of the colour of their skin.

I use these few examples, most from my country which professes tolerance and egalitarianism— and there are countless others which are more compelling from many nations – simply to say that in a world where, in the words of in the words of American sociologist and writer, W.E.B Du Bois, “organised groups of men by monopoly of economic and physical power, legal enactment and intellectual training, are limiting with determination and unflagging zeal the development of other groups”⁹, it is ambitious, comforting and remarkable that a World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance has and continues to take place; remarkable given the increasing fears and entrenched beliefs about ‘other’; the crass duplicity of government and the absence of moral leadership on questions of race; our incapacity to learn from or be moved by history and that, in the words of Ghandi, “men (continue to) feel themselves honoured by the humiliation of their fellow beings.”¹⁰

Remarkable that in 2001, in Durban, South Africa, approximately 18,000 people gathered, for the most part peacefully and purposefully, to confront and debate the impact and challenges presented by racism in its various forms across 100s of countries. After much energetic and impassioned debate, the extensive and comprehensive Declaration and Program of Action that emerged from the World Conference against Racism was adopted by consensus. Several issues remain contentious among Member States but as UN High Commissioner for Human Rights, Louise Arbour observed at the First Substantive Session of the Preparatory Committee for the Durban Conference, “this is not surprising in a context in which a vast number of cultures, legal systems and national priorities come together.”¹¹

The Declaration comprises sixty pages of detailed discussion of racism against Asians, Africans, migrants, refugees, indigenous peoples, Roma or gypsies, Jews and Muslims. Thoughtful recommendations are made about how to address the causes of racism, to prevent its manifestation and to establish remedies for its victims. It provides a comprehensive and valuable guide for governments, non-governmental organizations and other institutions in their efforts to combat racism, racial discrimination, xenophobia and related intolerance. And it offers strategies and checklists against which governments and national institutions can

⁸ Michael Dodson, *Reshaping Perspectives*, First Report of the Aboriginal And Torres Strait Islander Social Justice Commissioner (1993)

⁹ W.E.B. Du Bois, *Dusk of Dawn: An Essay Towards an Autobiography of a Race Concept*. (1940) at 137-138

¹⁰ Quoted in John B. Severance, *Ghandi, Great Soul* (1997) at 33

¹¹ Address by Louise Arbour on the occasion of the Preparatory Committee for the Durban Review Conference, 22 April 2008 at http://www.hrea.org/wv/index.php?base_id=116&list_id=18&language_id=1&msg_id=8104

evaluate the efficacy and impact of measures implemented to protect and provide redress for victims of racist conduct. The decision to convene the Review Conference, scheduled for April this year, was primarily to review progress and assess implementation of the Declaration and identify and share good practices achieved in the fight against racism, racial discrimination, xenophobia and related intolerance. While many countries' 'report cards' will be wanting, the Declaration has provided momentum for countries keen to achieve some measure of racial justice.

The review conference has thus been specifically confined to an evaluation of the Declaration and members of the Review Conference Preparatory Committee have repeatedly emphasised the limited framework of the conference and that its participants should not re-open discussion on issues or introduce new issues.

What it does however offer is a revised examination of issues which continue to claim increasing numbers of victims of racist and discriminatory behaviour. This revised text is the product of the working group established to negotiate and finalise a draft outcome document for the Review Conference – which is based on responses to a questionnaire regarding performance and implementation as against the Declaration and negotiations that have been taking place in various preparatory meetings between member states.

While keeping to coverage of core aspects of the Declaration, it indicates some new directions and emphasis for their discussion which reflect these manifestations of racism and intolerance in changed economic, social, political and environmental settings which have emerged since 2001. It appears that the intersection of poverty and racism will call for significant focus - exacerbated by the global financial crisis which will turn delegates attention to questions of access and exclusion based on race and gender: questions of access in the main to work and equal pay and conditions; to health services; to education. The new Convention on the Rights of Peoples with Disabilities suggests a focus on how race and disability coalesce to diminish dignity. A few years ago our papers traced the tragic account of a Sudanese refugee in Sydney, an amputee without legs, who was housed in a first-floor apartment, where he had to crawl up the stairs and depend on passers-by to carry his wheelchair.¹² The treatment of refugees and migrant workers who are consistently denied entitlements to social security and housing, their existence often criminalized, and that of women and children caught up in the web of trafficking, will undoubtedly require examination at the Review Conference, as these social phenomena expand at alarming rates, activated by conflict, environmental degradation, religious intolerance and impoverishment.

And where war justifies impunity as women are raped and brutalized on a scale which in the words of the UN High Commissioner for Human Rights, Navi Pillay, has reached the "proportions of a pandemic," mass rape is being considered as an element of the crime of genocide¹³ – a crime of which Sudan's President Omar al-Bashir now stands accused before the ICC.

Given the critical importance of the issues under discussion at the review Conference, broad participation, as was the case with the Durban conference, is seen as essential and encouraged and the event will be open to participation by UN Member States; all regional organizations

¹² Greg Ray, 'The amputee who was told to take the stairs', *Sydney Morning Herald*, 13 February, 2006 at <http://www.smh.com.au/news/national/the-amputee-who-was-told-to-take-the-stairs/2006/02/12/1139679480775.html>

¹³ Address by Navanethem Pillay, 'Human Rights Challenges and Opportunities in the Contemporary World', Wilton Park, 22 January 2009 at <http://www.un.org/durbanreview2009/stmt22-01-09.shtml>

and commissions involved in the preparation of regional meetings; UN specialized agencies, regional commissions, bodies and programmes; representatives of UN mechanisms in the field of human rights; with observer status accorded to representatives of organizations with a standing invitation from the General Assembly; interested non-governmental organizations, in accordance with a UN Economic and Social Council resolution; and other interested governmental organizations.

What occurred at the NGO forum convened in parallel to the last World Conference against Racism held in Durban, South Africa in 2001, was undeniably divisive, destructive and counterproductive. Racist language, accusations and stereotypes clearly undermined aspects of the NGO process and contaminated the conference as a whole. As a consequence, many commentators on the Review Conference are keen to distinguish it procedurally and substantively from the Durban Conference. But the heat which may consume victims of racism, the inflammation that accompanies the wounding of dignity, the scars that crack open at the first signal or reminder of racist harm are often raw and simmering beneath the skin and as much as the overall intent of the gathering will be honoured, it would be imprudent not to anticipate some degree of strong sentiments being aired, particularly given the proximity of the recent conflict in Gaza. It is the anticipation and the management of these sentiments which requires imaginative and bold mediation and leadership.

As a consequence of the regrettable and diversionary conduct evidenced at the Durban Conference, the United States, Canada and Israel condemned the event as a shameful example of what it intended to oppose and mid-way through the conference, the United States and Israeli delegation walked out and disengaged from the process. The 2009 Review Conference and any potential repeat of Durban has been censured by many nation states (including some European Union countries), with some refusing to participate in preparatory meetings for the Review Conference and voting against the provision of funding and others, such as Canada and Israel, announcing that they will boycott attendance at the April event. To date, Australia continues to hedge its participation at the conference, basing its decision in the main, according to a DFAT spokesperson, on the content of the draft outcome document and on “consideration of whether, Australia, and other countries with a genuine interest in countering racism, can positively influence the Conference outcomes.”¹⁴

With the primary and intended focus of the Review Conference centering on the progress made by UN member states in relation to the 2001 Durban Declaration and Program of Action, the conference presents an important opportunity for countries to demonstrate their commitment to the eradication of racism and to hold its participants to principles of respect for democratic discourse. To speak out against intimidation and incitement, the misuse of terminology and violations of procedure, is a critical demonstration of a nation’s “genuine interest in countering racism”. The presence of rather than a boycott by Australia and other countries provides them with the opportunity to positively influence its procedures and its outcomes. As my colleague Ben Saul and I wrote in the Sydney Morning Herald in July last year:

The withdrawal of a few Western nations from the Review Conference will have little effect and those delegates with harsh and extreme voices will simply be handed unimpeded access to a global platform for their vitriol and polemic. ... Participating in the Review Conference does not cloak it (or its predecessor) with legitimacy just as participation in the UN General Assembly does not indicate

¹⁴ Comment made by Department of Foreign Affairs and Trade spokesperson to author in telephone discussion on 2 March 2009.

Australia's agreement with any abhorrent views expressed by countries there. Australia can however shape the terms of its engagement ... and exploit the opportunity to oppose racist voices and consolidate global advocacy against racism.¹⁵

Our article was written in response to an oration delivered in Australia (and subsequently published in the SMH) by Canadian human rights scholar, Professor Anne Bayefsky. Bayefsky, who experienced the "notorious hate-fest" atmosphere that undoubtedly marred aspects of the Durban NGO forum and Conference, asserted that the Review Conference, "is destined to encourage racism" and encouraged America and Australia to follow Canada and Israel's decision to boycott the April event.¹⁶

Jerry Leaphart, a civil rights lawyer and member of the New York Bar, attended the World Conference in Durban as a representative of two American NGOs. In an article he wrote which appeared in the Fletcher Forum of World Affairs, Leaphart disagrees that the Bush Administration walk-out from the World Conference (which meant that the US delegation did not participate in most of the debate or in discussion leading to the adoption, by consensus, of the Declaration) was "a principled act to save the United States from association with a process that had been 'hijacked.' ... To the contrary," writes Leaphart,

the US walk-out did more harm than good to the anti-racism agenda that so many countries and people around the world are fighting for. ... (t)he move was more like a temper tantrum characteristic of a country accustomed to acting unilaterally in its foreign affairs."¹⁷

Despite Bayefsky's call and the stance adopted by the Bush administration (which agreed with Israel last year that the U.S. would not participate unless it received guarantees that the conference would not become a stage for anti-Semitism and one-sided criticism of Israel), the Obama administration recently announced it would participate in the preparatory meetings and subsequently develop a decision whether it will participate in the Review Conference. Despite concerns about the direction in which the Review Conference may be heading, a statement released by the US State Department advised that:

In line with our commitment to diplomacy, the U.S. has decided to send a delegation to engage in the negotiations on the text of the conference document. ... We hope to work with other countries that want the Conference to responsibly and productively address racism around the world."¹⁸

The United States participated in a Preparatory Committee meeting in February and met with the UN High Commissioner for Human Rights and a range of national delegations to discuss concerns and possibilities relating to the conduct and content of deliberations at the Review Conference. At the time of writing, the United States had not made a decision about participating in the Durban Review Conference.¹⁹

¹⁵ Ben Saul and Andrea Durbach, 'We must stay in the racism debate', *Sydney Morning Herald*, 24 July 2008 at <http://www.smh.com.au/news/opinion/we-must-stay-in-the-racism-debate/2008/07/23/1216492536691.html>

¹⁶ Anne Bayefsky, 'We must stay in the racism debate', *Sydney Morning Herald*, 24 July 2008 at <http://www.smh.com.au/news/opinion/we-must-stay-in-the-racism-debate/2008/07/23/1216492536691.html>

¹⁷ Jerry V. Leaphart, 'The World Conference against Racism: What Was Really Achieved', (2002) 26 (2) *The Fletcher Forum of World Affairs*, 153 – 158 at <http://fletcher.tufts.edu/forum/archives/pdfs/26-2pdfs/leaphart.pdf>

¹⁸ Robert Wood, 'U.S. Participation in Consultations for the World Conference Against Racism', US State Department, 14 February, 2009 at <http://www.state.gov/t/pa/prs/ps/2009/02/117339.htm>

¹⁹ Gordon, Duguid, 'February 16-19 Consultations on the Durban Review Conference (World Conference Against Racism)', US State Department, 20 February 2009 at <http://www.state.gov/t/pa/prs/ps/2009/02/119413.htm>

While disassociating itself from some of the language in the Declaration (relating to the Middle East), after the World Conference in Durban, Australia – whose own record on countering racism has been justifiably criticised by the UN - declared “its unequivocal opposition to racism in all its forms” and joined the World Conference “in condemning the scourge of racism and supporting strong action at all levels to combat it, both domestically and internationally.” The Australian Government urged that the “positive outcomes of the Conference be protected and nurtured” and stated that it “is the responsibility of all of us, governments and citizens alike, in Australia and globally, to take forward the best of the exchanges in Durban in a forward looking and constructive spirit.”²⁰

It is that constructive spirit which is required if peddlers of racism are to be curtailed, and exemplary voices of tolerance heard. That spirit also suggests why the call for a boycott is misguided and counter-productive. Refusing to engage with opposing views often succeeds only in entrenching polarised positions and the opportunity to correct assumptions, present informed criticism, dismantle stereotypes and shape pragmatic strategies against racism, is lost.²¹ Keeping in mind the sharp lessons from Durban, participation in such a significant global event carries the risk and the benefit of hearing the voices of victims of racism; ultimately, an unwillingness to appreciate and address their fears and aspirations is the first step to fermenting resentment, hostility and ultimately, violence.

On the 21st January, an article that appeared in the Israeli newspaper Haaretz²² re-appeared in newspapers around the world. It told of the death in Gaza by an Israeli tank shell of the 3 daughters and niece of Dr. Ezzeldeen Abu al-Aish, a tragedy wrote Haaretz journalist, Avirama Golan that “had managed to finally penetrate the layer of cast lead that has sealed the ears of the Israeli public since the Gaza operation began.”

At a subsequent press conference, Dr Abu al-Aish pleaded for an end to the Gaza war. An Israeli mother of 3 soldiers and others drowned out his plea. Many members of the media, including the Israeli press, restrained the women. "I feel your pain, I'm totally with you, but", she said, “who knows what was going on in your house” (suggesting that Hamas had been there). In an interview with The Australian Middle East correspondent, John Lyons days after the event, Dr Abu-al Aish said the media had acted wrongly and should have allowed the Israeli woman to express her views. She had legitimate concerns with 3 sons in the Israeli army, he said. After the press conference, Dr Abu al-Aish arranged to meet with the Israeli woman, telling her:

“We can disagree but we must listen to one another.”²³

The struggle against racism is not one for amateurs or political grand-standers. It requires bold leadership that is willing to break with the past, leaders with the appropriate insights and language; with skills which are geared towards an understanding of the deep complexity of racism, its origins, its guises, its consequences. And importantly, the struggle against racism demands leaders with the capacity to respond to and manage the potentially destructive

²⁰ Australia Welcomes Conclusion of the World Conference Against Racism', Joint Media release from the Australian Minister for Foreign Affairs, Alexander Downer, and the Minister for Immigration and Multicultural Affairs, Philip Ruddock, 10 September 2001 at http://www.foreignminister.gov.au/releases/2001/fa138j_01.html

²¹ Saul and Durbach above

²² Avirama Golan, 'Hear the other side', *Haaretz*, 2i January 2009 at <http://www.haaretz.com/hasen/spages/1057370.html>

²³ John Lyons, 'Will the cycle be unbroken', *The Australian* 31 Jan – 1 Feb 2009 at <http://www.theaustralian.news.com.au/story/0,25197,24986290-28737,00.html>

manifestations of racism, discrimination, xenophobia and intolerance. Our failure to confront racism “keeps us from squarely facing our own complicity” in its expression.²⁴

The best way for Australia and other Western nations to exercise leadership in the struggle against racism is to have a voice in that struggle, rather than by retreating from their responsibility to participate in the ongoing resolution of one of the greatest threats to peace and security. The philosopher, writer, and social activist, Simone Weil wrote in her book *Gravity and Grace*:

If we know in what way society is unbalanced, we must do what we can to add weight to the lighter scale. Although the weight may consist of evil, in handling it with this intention, perhaps we do not become defiled.²⁵

Contrary to Bayefsky’s position, participation does not legitimise the crass sentiments expressed at Durban; a refusal to participate however carries the risk of being side-lined with unintended consequences and undermines our legitimacy as a significant and vocal global advocate against racism, an advocate keen to reclaim its role internationally as an authentic player in the UN system of global governance.²⁶

²⁴ Barack Obama , ‘A more perfect union’ - Barack Obama’s Speech on Race, The New York Times, 18 March 2008 at <http://www.nytimes.com/2008/03/18/us/politics/18text-obama.html?em&ex=1206763200&en=1877f15179da1aad&ei=5087%0A>

²⁵ Simone Weil, *Gravity and Grace* (1997) at 224

²⁶ Australia has budgeted nearly \$2 million in 2009 to finance its attempts to win a temporary seat on the United Nations Security Council.