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## JERUSALEM ISSUE BRIEF

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### Durban's Troubling Legacy One Year Later: Twisting the Cause of International Human Rights Against the Jewish People

Irwin Cotler

The World Conference Against Racism in Durban was originally planned as a platform to focus on the world's underrepresented human rights causes. Yet what was supposed to be a conference *against racism* turned into a conference of *racism against Israel and the Jewish people*.

### Prelude to the Durban Conference

The Durban World Conference Against Racism (August 31-

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September 7, 2001) tells us something not only about the position and status of Israel and the Jewish people in the world of human rights, but also about the world of human rights inhabited by Israel. It not only tells us something about the relationship of Israel to the Middle East, but also about the understanding of the Middle East in relationship to Israel. Yet, in fact, if September 11 *overshadowed* Durban and the World Conference Against Racism, Durban *foreshadowed* September 11.

When the World Conference Against Racism was first proposed in 1997, I was among those who greeted it with anticipation, if not excitement. This was going to be the first international conference on human rights writ large in the twenty-first century. Anti-racism was finally going to be a priority on the human rights agenda. The conference, to take place in Durban, South Africa, was going to commemorate as well the dismantling of South Africa as an apartheid state. It was going to give expression and a platform to the underrepresented human rights causes that would finally be given a profile at the conference.

Yet what was supposed to be a conference *against racism* turned into a conference of *racism against Israel and the Jewish people*. A conference to commemorate the dismantling of South Africa as an apartheid state called for the dismantling of Israel as an apartheid state. A conference that was supposed to be dedicated to the protection and promotion of human rights increasingly spoke about Israel as being a meta-violator of human rights and as the new anti-Christ of our time.

How did this happen? Where did it begin? What does it mean?

The World Conference Against Racism was organized around four regional conferences, in Europe, Africa, Latin America, and Asia. Each regional conference was to formulate a declaration against racism and a plan of action. Then the four regional declarations and plans of action were to be collated in Durban into a composite draft declaration against racism.

## The Teheran Document

The fourth regional conference, held in Teheran, Iran, in February 2001, began with the exclusion of Israel and Jewish non-governmental organizations from participation in its deliberations, a denial of international due process. Contrary to the United Nations' own principles with respect to universality and equality, a UN member state was excluded from the outset. Then the conference supported a country-specific indictment, which was itself a breach of international human rights principles and the UN's own procedures and rules in this regard.

The document emanating from the Teheran regional conference proved to be one of the most scurrilous documents relating to Israel and the Jewish people to appear since World War II. In the specific indictment of Israel at Teheran, the "occupation" was referred to as a crime against humanity, as a new form of apartheid, as a threat to international peace and security. Just as UN Security Council Resolution 1373 would characterize terrorism as a threat to international peace and security, Teheran and later Durban were to characterize the "occupation" in the same language. Indeed, in post-September 11 discourse, the Palestinians very often referred to terrorist actions against Israel as being a legitimate response to a threat to international peace and security.

Israel was also characterized as being, in essence, an apartheid state -- not only in the territories but in its very character. Since resistance against apartheid states is justifiable, this gave validation to terrorist acts against Israel, despite the fact that such acts were proscribed by Resolution 1373, the anti-terrorism resolution adopted in the wake of the September 11 attack.

Israel was further characterized as a meta-human rights violator, responsible for all the evils in the world today. Israel was accused of international crimes, war crimes, crimes against humanity, and genocide. Indeed, one month after the

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Teheran conference, the United Nations Commission on Human Rights condemned Israel for war crimes and crimes against humanity. Israel was even accused of the original sin of ethnic cleansing of Mandatory Arab Palestine in 1947-48, at the time of its creation.

Durban also introduced a new perspective on the notion of "holocausts," written in the plural and in lower case. Israel's treatment of the Palestinians was held to be an example of such a holocaust.

Finally, in Durban, Zionism was characterized not only as racism but as a violent movement of racist supremacy. In the ultimate Orwellian version, Zionism was anti-Semitism itself.

## **Evil will Triumph If Good People Do Nothing**

All of this was accompanied largely by silence within the international community, reminding us of Edmund Burke's words that the surest way to ensure that evil triumphs in the world is for enough good people to do nothing.

Israel has systematically been denied equality before the law in the international arena. Human rights standards should certainly be applied to Israel, but they must be applied equally to every state. Human rights must be respected, but the rights of Israel deserve equal respect. While major human rights violators enjoyed complete immunity, one particular state was singled out for differential and discriminatory treatment.

The reconvening of the Geneva Convention on December 5, 2001, was a prime example of discriminatory treatment. Fifty-two years after its adoption in 1949, the contracting parties of the Geneva Convention met again in Geneva to put Israel in the dock for violating the convention. Until that time, not one country in the international community was ever brought before the contracting parties of the Geneva Convention -- not Cambodia with regard to genocide, not the Balkan states with regard to ethnic cleansing, not Rwanda with regard to genocide, not Sudan or Sierra Leone with

regard to the killing fields in those countries. When politics overruns the law, the result is prejudice to the Geneva Convention and to the universality of its principles.

## **The Danger of a State-Sanctioned Culture of Hate**

What are the lessons to be learned?

The first lesson is the danger of a state-sanctioned culture of hate. We learned from World War II and the genocide of European Jewry that the Holocaust did not come about simply as a result of the industry of death and the technology of terror of the Nazis, but rather because of the ideology -- indeed pathology -- of hate. This demonizing of the other, this teaching of contempt, is where it all begins. As the Supreme Court of Canada put it in validating anti-hate legislation in Canada, "The Holocaust did not begin in the gas chambers; it began with words."

In fact, some 50 years later those lessons remained unlearned and the tragedies were repeated, because both in Bosnia and in Rwanda it was government-sanctioned hate speech that led to ethnic cleansing. Regrettably, in the Middle East, and particularly with regard to the Israeli-Palestinian conflict, this government-sanctioned hate speech has not been given the importance it deserves. It is this state-sanctioned culture of incitement that is the most proximate cause of violence and terror. The assault on terrorism should, in fact, begin with efforts to end this state-sanctioned incitement.

Professor Fuad Ajami wrote immediately after the Passover Seder massacre in Israel, with respect to a government-sanctioned culture of incitement and international acts of terror: "The suicide bomber of the Passover massacre did not descend from the sky. He walked straight out of the culture of incitement let loose on the land. He partook of the culture all around him, the glee that greets those brutal deeds of terror, the cult that rises around the martyrs and

other families. The menace hovering over Israel is the great Arab-Palestinian refusal to let that country be, to cede it a place among the nations."

## **Recognizing the Legitimacy of a Jewish State**

The second lesson to be learned is that this is not a conflict over borders, though borders are in dispute. This is not a conflict over territory and resources, though territory and resources are in dispute. The core of the Arab-Israeli and Palestinian-Israeli conflict has been and continues to be the unwillingness of many in the Arab and Palestinian leadership to recognize the legitimacy of a *Jewish* state in the Middle East.

In the course of protracted discussions over many years with Arab and Palestinian leaders, I have repeatedly asked them, "If Israel were to withdraw from all the territories and an independent Palestinian state would be created and there would be shared sovereignty over Jerusalem, would you then be prepared to accept the legitimacy, as opposed to the existence, of a Jewish state, as distinct from a state called Israel, in the Middle East?"

The responses were three-fold. First, there were those who said, "Well, you know, we Muslims, Christians, and Jews have always been able to live together, and we can continue to live together in a democratic and secular Palestine." But this did not answer my question. There were others who said, "Well, you know, Israel is there, it's a fact, it's a reality, and we are prepared to co-exist with it." This still did not answer my question.

Then came the answer, "Israel has to cease being a racist state." "What is a racist state?" I asked. "Israel has to cease being a Jewish state." Now each of the Arab states has Islam as the state religion. If that is their view of self-determination, so be it. But self-determination has to be given equal value and respect everywhere else.

They added that Israel had to freeze Jewish immigration and

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permit all the Palestinians the right to return. Then they added, "It is not a question of compensation or the right of return; it is compensation for 52 years of dispossession *and* the Palestinian right of return."

Finally, they said, "Israel has to become a member of the Mideast family of nations." "What does that mean?" I asked. "Israel has to become a Middle Eastern state like any other state."

So I received my answer: Those with whom I spoke were not prepared to recognize the legitimacy of Israel as a Jewish state in the Middle East.

## The Return of Genocidal Anti-Semitism

A new, virulent, escalating, globalizing anti-Jewishness has emerged in the world which singles out Israel and the Jewish people not only for differential and discriminatory treatment in the family of nations, but also for specific, targeted terrorist assault. It takes the form of genocidal anti-Semitism -- the public call for the destruction of Israel and the Jewish people.

The covenant of the terrorist group Hamas publicly calls for the destruction of Israel and the killing of Jews anywhere. This is a call for genocide that comports with the international, juridical definition of the word -- advocating the killing of a people, in whole or in part, and in this instance also the destruction of a state.

There is a religious dimension as well. Religious *fatwas* or execution writs are regularly issued by radical Islamic clerics. At one time Iran issued a *fatwa* against the Muslim writer Salman Rushdie, and European countries responded with moves for sanctions against Iran because of the *fatwa*. Today, *fatwas* are issued regularly by Iran and radical Islamic clerics against the State of Israel, making Israel the Salman Rushdie of the nations, but no one speaks of sanctions against those who issue these *fatwas*. Sanctions are only

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being considered today against those who respond to the terrorist acts against them in compliance with those *fatwas*.

Finally, the ultimate manifestations of genocidal anti-Semitism are the publicly declared threats by countries like Iran and Iraq to destroy Israel with atomic weapons.

Terrorism has to be seen, as the United Nations itself put it, as a clear threat to international peace and security; as a crime against humanity; as an assault upon the most fundamental rights to life, liberty, and personal security.

We must guard against any implied legitimization of acts of terrorism against Israel on the grounds that the "occupation" constitutes a threat to international peace and security, as Durban purported to put it, or any imputation that Israel is an apartheid state. There is no cause or grievance that can justify the kinds of lethal mass murder of Jews that we have been witnessing in Israel.

The struggle for human rights has to be anchored in principles of universality and equality, and the non-singling out of any state for differential and discriminatory treatment. There can be no false moral equivalences or the application of double standards. We must pursue the promotion and protection of human rights in accordance with the principles and purposes of the UN Charter, which was envisioned and organized around the notions of universality and equality of all states, large or small. These same principles must be applied now to the International Criminal Court which is about to come into being.

If this is not done, the result will be to denigrate the United Nations, under whose auspices these events take place, as well as international human rights law, in whose name these resolutions are enacted. In the end, the assault will be on human rights itself, and we will all be the losers.

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