

# CRS Report for Congress

## The 2009 U.N. Durban Review Conference: Follow-Up to the 2001 U.N. World Conference Against Racism

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# The 2009 U.N. Durban Review Conference: Follow-Up to the 2001 U.N. World Conference Against Racism

## Summary

In April 2009, U.N. member states will convene in Geneva, Switzerland, for the U.N. Durban Review Conference Against Racism (Review Conference) to examine possible progress made since the 2001 U.N. World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR), held in Durban, South Africa. At WCAR, participating governments, including the United States, sought to recommend ways for the international community to address racism. The United States withdrew from WCAR because of what it viewed as participating governments' disproportionate focus on Israel as a perpetrator of racism and intolerance in the Middle East.

The George W. Bush Administration has not participated in Review Conference preparations and voted against U.N. resolutions supporting or funding the Conference because of concerns that it may repeat the perceived mistakes of WCAR. The Administration has stopped short of announcing it will boycott the Conference, likely recognizing that a new Administration will make the final decision on U.S. participation. Canada and Israel announced that they will boycott the Review Conference, and other governments announced they will not participate unless it is demonstrated that the Review Conference will not target Israel.

Congressional perspectives on U.S. participation in the Review Conference vary. Some Members of the 110<sup>th</sup> Congress have introduced legislation supporting U.S. participation in the Conference, arguing that the United States should play an active role in combating international racism. (See, for example, H.Res. 1361). Other Members contend that the United States should not participate or fund the Conference because of WCAR's focus on Israel. (See S.Amdt. 4264 to S.Con.Res. 70.) Specifically, they propose that the United States withhold a proportionate share of its U.N. assessed contributions that fund the Conference. Because assessed contributions finance the U.N. regular budget in its entirety and not specific parts of it, withholding funds in this manner would not affect the Review Conference.

For many, U.S. participation or non-participation in the Review Conference touches on the broader issue of U.S. engagement in the U.N. system. Supporters contend that U.S. participation in U.N. efforts such as the Review Conference is important to the success and credibility of the United Nations as a whole. Opponents maintain that U.S. engagement in the Conference would give undeserved legitimacy to U.N. mechanisms that provide a platform for member states to target Israel.

This report provides information on the 2001 World Conference Against Racism and the circumstances of U.S. withdrawal. It discusses preparations for the Durban Review Conference, including U.S. policy and reaction from other governments. It highlights possible issues for the 111<sup>th</sup> Congress, including the Review Conference preparatory process, U.S. funding of the Conference, and the political and diplomatic impact of U.S. engagement. For related information, see CRS Report RL33611, *United Nations System Funding: Issues for Congress*. This report will be updated as events warrant.

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# The 2009 U.N. Durban Review Conference: Follow-Up to the 2001 U.N. World Conference Against Racism

## Introduction

From April 20 to 24, 2009, United Nations (U.N.) member states will meet in Geneva, Switzerland, for the U.N. Durban Review Conference Against Racism (Review Conference). Some Members of Congress and the Bush Administration are concerned that the Review Conference will repeat the perceived mistakes of the U.N. World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR), which was held in Durban, South Africa, from August 31 to September 7, 2001. At WCAR, participating governments, including the United States, sought to acknowledge and recommend ways for the international community to address racism and related intolerance. The Conference attracted a significant amount of national and international attention because of what many viewed as participating governments' disproportionate focus on Israel as a perpetrator of racism and intolerance in the Middle East. The United States withdrew from WCAR when, in its view, it became clear that governments, particularly members of the Organization of the Islamic Conference (OIC)<sup>1</sup>, would continue to target Israel while contemporary forms of racism remained unaddressed.

In December 2006, the U.N. General Assembly adopted a resolution calling for a Durban Review Conference to assess the implementation of WCAR's main outcome documents — the Durban Declaration and Program of Action. The Bush Administration opposes the Review Conference and has not participated in the preparatory process or voted for U.N. resolutions supporting or funding it. The final decision regarding U.S. participation in the Review Conference, however, will fall to the next Administration. Other countries, including Canada and Israel, have announced that they will boycott the Conference, and some governments stated they will not participate unless it is clear that the Conference will not target Israel.

Members of the 110<sup>th</sup> Congress demonstrated continued interest in the Durban Review Conference. Some Members, for example, were concerned that the United States would fund a U.N. conference that serves as a forum for anti-Semitism. They proposed legislation that would withhold a proportionate share of U.S. assessed contributions to the U.N. regular budget, which funds the Review Conference. Limiting U.S. contributions to the Review Conference in this manner would have no

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<sup>1</sup> The OIC is an intergovernmental group of 57 states with a goal to “safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world.” For more information, see [<http://www.oic-oci.org/>].

impact on the Review Conference because assessed contributions finance the U.N. regular budget in its entirety and not specific or separate parts of it. Other Members of Congress recognized the importance of combating racism internationally, and have proposed and passed resolutions urging the George W. Bush Administration to engage in diplomatic efforts to ensure that the Review Conference does not further discredit U.N. efforts to address racism by disproportionately focusing on Israel.<sup>2</sup>

Members of the 111<sup>th</sup> Congress will likely consider a number of issues when conducting oversight of the Review Conference and determining appropriate levels of U.S. participation and financial contributions. Some suggest, for example, that ongoing Review Conference preparations indicate that certain U.N. member states will continue to target Israel. Others are concerned about the potential diplomatic or political impact of U.S. participation, or lack thereof. Some, for instance, maintain that the question of U.S. participation in the Review Conference is inherently linked to the larger issue of U.S. participation in international organizations. Some are concerned that a selective approach to U.S. engagement in the United Nations may damage the reputation and negotiating influence of the United States both within and outside of the U.N. system. Opponents, however, contend that U.S. participation in the Review Conference contradicts the objectives of the Conference and would provide legitimacy to U.N. mechanisms that allow member states to criticize Israel in the context of racism.

This report provides background information on previous U.N. efforts to address racism and the 2001 World Conference Against Racism. The report further discusses the objectives of the Durban Review Conference, including U.S. policy and responses from other governments. It examines charges of bias against Israel in the preparatory process for the Review Conference, potential implications for U.S. participation or non-participation, and the impact of withholding a proportionate share of U.S. contributions to the Conference from the U.N. regular budget.

## **Overview of U.N. Activities to Address Racism**

The 2001 World Conference Against Racism and the upcoming Durban Review Conference are part of broader U.N. efforts to address racism and racial discrimination.

### **Previous U.N. Efforts**

Since the United Nations was established in 1945, member states have sought to address racism both in the broader context of human rights and as a stand-alone issue. Member states, for instance, incorporated the idea of racial equality into international documents such as the U.N. Charter in 1945 and the Universal

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<sup>2</sup> For specific examples of congressional interest in the Review Conference, see the “U.S. Response” under “The 2009 Durban Review Conference” section.

Declaration of Human Rights in 1948.<sup>3</sup> Through the 1960s, member states negotiated and ratified international agreements and declarations that addressed the issue. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), for example, requires parties to condemn and work to eliminate discrimination in all of its forms, regardless of race, sex, language, or religion.<sup>4</sup> The treaty, which entered into force on January 4, 1969, has been ratified or acceded to by 173 U.N. member states. It was ratified by the United States on October 21, 1994.<sup>5</sup>

U.N. member states have also addressed racism through U.N. bodies such as the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the main subsidiary body of the Commission on Human Rights (now the Human Rights Council).<sup>6</sup> In 1993, the Human Rights Council appointed a Special Rapporteur on racism, racial discrimination, and xenophobia to report to U.N. member states on contemporary forms of racism.<sup>7</sup>

In the past three decades, U.N. member states have focused on raising global awareness of racism and taking measures to address the issue through U.N. “Decades Against Racism” and three global anti-racism conferences.<sup>8</sup> During each Decade

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<sup>3</sup> Article 1 of the U.N. Charter, a treaty, notes the importance of racial equality, stating that the United Nations should “achieve international co-operation in ... promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” The Charter was signed on June 26, 1945, and entered into force on October 24, 1945. The Universal Declaration of Human Rights, which is non-binding, states, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind ... such as race, colour, sex, language, religion, political or other opinion...” (Article 2). The Declaration was adopted by the U.N. General Assembly on December 10, 1948, with 48 in favor (including the United States), zero against, and eight abstentions.

<sup>4</sup> ICERD also establishes a Committee on the Elimination of Racial Discrimination to review reports from parties about their implementation of Convention provisions and to examine complaints by parties. The treaty was adopted and opened for signature and ratification by U.N. General Assembly resolution 2106 (XX), December 21, 1965.

<sup>5</sup> ICERD entered into force for the United States on November 20, 1994.

<sup>6</sup> The Sub-Commission was established by the Human Rights Commission during the Commission’s first session in 1946. It was comprised of independent experts who conducted studies and made recommendations to the Commission concerning the prevention of discrimination of any kind relating to human rights and the protections of racial, national, or religious minorities. In 1999, the U.N. Economic and Social Council changed the title to the Sub-Commission on the Promotion and Protection of Human Rights. When the Human Rights Commission was replaced by the Human Rights Council in 2006, the Sub-Commission was abolished and replaced by the Human Rights Advisory Committee.

<sup>7</sup> The Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance reports to the Human Rights Council and the General Assembly on alleged violations regarding contemporary forms of racism. See [<http://www2.ohchr.org/english/issues/racism/rapporteur/index.htm>].

<sup>8</sup> U.N. member states periodically designate years or decades to highlight special issues, (continued...)

Against Racism — 1973 to 1982, 1983 to 1992, and 1993 to 2002 — participating U.N. member states held world conferences against racism, including the 2001 World Conference in Durban, South Africa.<sup>9</sup> At each Conference, U.N. member states negotiated programs of action that would be implemented by governments and U.N. specialized agencies, funds, and programs.

Some U.N. member state efforts to address racism in U.N. fora have been controversial. Probably the most notorious effort occurred in 1975, when member states adopted General Assembly resolution 3379, which stated that Zionism is a form a racism and racial discrimination.<sup>10</sup> The United States strongly opposed the resolution, stating that it treated racism not as a serious injustice, but as an “epithet to be flung at whoever [sic] happens to be one’s adversary.”<sup>11</sup> Sixteen years later, on December 16, 1991, the General Assembly adopted a resolution to revoke resolution 3379.<sup>12</sup> Despite its repeal, many argue that the adoption of resolution 3379 greatly diminished the credibility of U.N. efforts to address racism and had a lasting and adverse effect on relations among U.N. member states — particularly among Israel and other Middle Eastern countries.<sup>13</sup>

## U.S. Role

The United States did not participate in the 1978 and 1985 World Conferences Against Racism because of its strong opposition to resolution 3379.<sup>14</sup> The Bush Administration decided, however, to participate in the 2001 World Conference Against Racism — in large part because of the 1991 General Assembly decision to revoke resolution 3379.

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<sup>8</sup> (...continued)

events, or disadvantaged groups, including refugees, the disabled, and women. In 1966, the General Assembly named March 21 the International Day for the Elimination of Racism Discrimination.

<sup>9</sup> The First Decade Against Racism focused on measures to implement various U.N. treaties addressing racism and racial discrimination. The First World Conference Against Racism was held in Geneva, Switzerland, in 1978. The Second Decade Against Racism emphasized recourse procedures for victims of racial discrimination and focused on the elimination of apartheid. At the Second World Conference Against Racism, held in Geneva in 1982, participants reviewed and assessed the activities of the First Decade Against Racism.

<sup>10</sup> U.N. document A/RES/3379 (XXX), November 10, 1975. The resolution passed with a vote of 72 in favor and 35 against, 32 abstentions, and three absent.

<sup>11</sup> “U.S. Participation in the United Nations, Report by the President to the Congress for the Year 1975,” Department of State, p. 213.

<sup>12</sup> U.N. document, A/RES/46/86, December 16, 1991, 111 in favor, 25 against, and 13 abstentions.

<sup>13</sup> Then-Secretary-General Kofi Annan called resolution 3379 a “low point” in Israel’s relationship with the United Nations, stating that the “negative resonance [of the resolution] ... is difficult to overestimate,” U.N. press release SG/SM/6504/Rev.1, March 25, 1998.

<sup>14</sup> *U.S. Participation in the United Nations, Report by the President to the Congress for the Year 1977*, Department of State, p. 172.

Congressional response to U.N. efforts to address racism has varied over time. Members have supported U.N. mechanisms that address racism, such as ICERD.<sup>15</sup> On the other hand, Congress has condemned the efforts of some U.N. member states to address racism that appear to target Israel. Many Members were particularly critical of General Assembly resolution 3379 and adopted a joint resolution condemning its passage.<sup>16</sup> Members also generally agreed with the U.S. decisions not to participate in the first two U.N. Decades Against Racism and first two World Conferences Against Racism.<sup>17</sup>

## The 2001 World Conference Against Racism

The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR or the Conference) was held in Durban, South Africa, from August 31 to September 7, 2001. Conference objectives included (1) reviewing progress made in the fight against racism, xenophobia, and intolerance; (2) increasing the level of awareness about racism; and (3) recommending ways to increase U.N. effectiveness through programs that combat racism and related intolerance. Conference participants also aimed to recommend ways to improve regional, national, and international measures to combat racism, and ensure that the United Nations had the resources to combat racism.<sup>18</sup> Unlike previous World Conferences that focused primarily on racism and racial discrimination, WCAR also addressed issues related to xenophobia and related intolerance.

The U.N. General Assembly designated the U.N. Commission on Human Rights (now the Human Rights Council) as the Conference preparatory committee,<sup>19</sup> and directed that the Conference secretariat operate out of the Office of the U.N. High

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<sup>15</sup> On May 25, 1994, the Senate Committee on Foreign Relations favorably reported ICERD to the full Senate (S. Exec. Rept. 103-29), and on June 24, 1994, the Senate provided advice and consent to U.S. ratification.

<sup>16</sup> P.L. 99-90, August 15, 1985 (S.J.Res. 98), “A joint resolution condemning the passage of Resolution 3379 in the United Nations General Assembly ... and urging the United States Ambassador and United States Delegation to take all appropriate actions necessary to erase this shameful resolution from the record of the United Nations.”

<sup>17</sup> See S.Con.Res. 73 (94<sup>th</sup> Congress), “Resolution relating to the United Nations and Zionism,” passed by the Senate on November 12, 1975; and H.Con.Res. 73 (94<sup>th</sup> Congress), “Resolution relating to the United Nations and Zionism,” passed on November 12, 1975.

<sup>18</sup> Drawn from U.N. document, A/RES/52/111, December 12, 1997. For more information on Conference objectives, see [<http://www.un.org/WCAR/e-kit/backgrounder1.htm>].

<sup>19</sup> U.N. document, A/RES/52/111, December 12, 1997. The then-U.N. High Commissioner for Human Rights was Mary Robinson of Ireland. The U.N. Human Rights Commission was replaced by the U.N. Human Rights Council in 2006 as the primary intergovernmental policymaking body for human rights issues. The Commission was widely criticized when perceived human rights abusers were elected as members. For more information, see CRS Report RL33608, *The United Nations Human Rights Council: Issues for Congress*, by Luisa Blanchfield.



Commissioner for Human Rights (OHCHR).<sup>20</sup> Participation was open to representatives from all U.N. member states, U.N. bodies and programs, regional organizations and commissions, non-governmental organizations (NGOs), and intergovernmental organizations.<sup>21</sup> Approximately 2,300 representatives from 163 countries attended WCAR, and nearly 4,000 NGO representatives were accredited. The Conference was funded through the U.N. regular budget and voluntary contributions from U.N. member states.

To prepare for WCAR, participating governments held a number of regional and organizational meetings where they made decisions related to the scope and agenda of the Conference.<sup>22</sup> At the regional sessions, for example, governments drafted Declarations and Programs of Action for their regions. At the second session of the Preparatory Committee, held in May 2001, governments established a working group of 21 states (Group of 21), which included the United States.<sup>23</sup> The group synthesized the outcome documents from regional meetings into the draft Declaration and Program of Action (hereafter “outcome documents”) that was considered at the Conference. Though the outcome documents were non-binding, many countries considered them crucial to the success of WCAR because they provided international guidance and credibility for governments and organizations aiming to combat racism.

## **Bush Administration Position**

Initially, the United States supported the World Conference on Racism. In December 1997, the Clinton Administration co-sponsored the U.N. General Assembly resolution that decided to convene the Conference<sup>24</sup> and established an interagency Task Force (WCAR Task Force) to coordinate U.S. participation in the Conference.<sup>25</sup> The Bush Administration supported the Conference and continued to

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<sup>20</sup> The General Assembly decided in resolution 54/154, December 17, 1999, that WCAR would be held in Durban, South Africa, and that regional and organizational meetings would be held to prepare for the Conference.

<sup>21</sup> U.N. document, A/RES/54/154, December 17, 1999. NGOs may participate in WCAR as provided for in U.N. Economic and Social Council resolution 1996/31, July 25, 1996.

<sup>22</sup> In 2000 and 2001, governments held three preparatory sessions in Geneva, Switzerland. Governments also held regional sessions in various countries. The European group met in France, the Americas group met in Chile, the African group met in Senegal, and the Asian group met in Iran. In 1999 and 2000, regional expert seminars were held in Ethiopia, Thailand, Switzerland, Chile, and Poland, where participants focused on issues such as protecting minorities, and economic and social measures for vulnerable groups.

<sup>23</sup> The Group of 21 comprised representatives from each of the five regions and a Chairman. It was chaired by South Africa, the host government. Members were Barbados, Brazil, Chile, and Mexico (Latin America and Caribbean); Kenya, Nigeria, Senegal, and Tunisia (Africa); Canada, France, Sweden, and the United States (Western Europe and others); Czech Republic, Croatia, the Former Yugoslav Republic of Macedonia, and the Russian Federation (Eastern Europe); and India, Iran, Pakistan, and Iraq (Asia).

<sup>24</sup> U.N. document, A/RES/52/11, December 12, 1997, adopted without a vote.

<sup>25</sup> The WCAR Task Force was chaired by the Department of Justice and included the  
(continued...)

support the Task Force. It also agreed to pay the U.S. share of the Conference costs and to provide an additional \$250,000 in voluntary contributions to the U.N. Secretariat.<sup>26</sup> In addition, the Administration participated in Preparatory Committee and Group of 21 discussions.<sup>27</sup> As preparations for WCAR progressed, however, the Bush Administration increasingly expressed concern with two issues: anti-Israel language in the draft outcome documents, and proposals for reparations and compensation for victims of slavery.

**Anti-Israel Language.** In February 2001, at the Asian regional preparatory meeting in Iran, members of the Organization of the Islamic Conference (OIC) included language in the region's outcome documents that appeared to target Israel.<sup>28</sup> Some of the controversial text from the regional meeting was incorporated into the outcome documents negotiated at the Conference. Initial drafts of the WCAR Declaration, for example, included language that equated Zionism with racism.<sup>29</sup> Some countries, including the United States, Canada, and members of the European Union, strongly objected to these sentiments. They argued that WCAR was the wrong forum in which to raise the Israel-Palestine issue, and emphasized that individual countries and regional conflicts should not be singled out in Conference outcome documents. Countries in support of the text argued that the Israeli occupation of Palestine was racially motivated and therefore should be addressed at WCAR.

The Administration emphasized that it would not participate in the Conference if language in the draft outcome documents continued to target Israel.<sup>30</sup> Consequently, there were some questions regarding the level and extent of U.S.

<sup>25</sup> (...continued)

Department of State and the Small Business Administration. It solicited input from NGOs, coordinated government preparations for the Conference, and drew from the expertise of government agencies. It was represented on U.S. delegations to Preparatory Committee meetings and inter-sessional meetings. The Task Force office closed on September 30, 2001.

<sup>26</sup> Statement of William B. Wood, Principal Deputy Assistant Secretary, Bureau of International Organization Affairs, Department of State, at a hearing before the House Subcommittee on International Operations, "A Discussion on the U.N. World Conference Against Racism," July 31, 2001, U.S. Government Printing Office, Serial No. 107-36.

<sup>27</sup> According to Administration officials, at the meetings the United States attempted to (1) acknowledge historic injustices against Africans, Native Americans, and others; (2) focus the work of the Conference on present day manifestations of racism and intolerance, and how to combat them; and (3) share U.S. experiences with the world and learn from other countries. *Ibid*, p. 29.

<sup>28</sup> U.N. document, A/CONF.189/PC.2/9, April 10, 2001.

<sup>29</sup> U.N. document, A/CONF.189/PC.3/7, July 12, 2001, p. 18. The draft stated, "The World Conference recognizes with deep concern the increase of racist practices of Zionism and anti-Semitism in various parts of the world, as well as the emergence of racial and violence movements based on discriminatory ideas, in particular, the Zionist movement which is based on racial superiority."

<sup>30</sup> President Bush stated, "We have made it very clear ... we will not participate in a conference that tries to isolate Israel and denigrates Israel." Office of the Press Secretary, The White House, August 24, 2001.

participation, and, in late August 2001, the Administration announced that then-Secretary of State Colin Powell would not attend WCAR. The Administration stated that it would instead send a mid-level working delegation.<sup>31</sup>

**Slavery and Reparations Language.** The United States also expressed concern with language in the draft WCAR outcome documents that addressed reparations and compensation for slavery. At the African regional meeting in Senegal in 2001, participating governments agreed to language that requested an apology from states involved in the slave trade, as well as compensation and reparations for victims of racial discrimination and slavery.<sup>32</sup> Some of this proposed language was included in the outcome documents considered at Durban. The draft Program of Action, for example, urged countries to protect against racism by ensuring that all persons have access to “adequate remedies ... and adequate reparations” for damage resulting from racial discrimination. The draft Declaration also expressed “explicit and unreserved apologies” to victims of slavery and their heirs.<sup>33</sup> The trans-Atlantic slave trade, in particular, was cited several times in the draft outcome documents.

In July 2001, the Administration called the specific mention of trans-Atlantic slavery in the proposed Durban drafts “extreme and unbalanced,” noting that its mention was “selective,” and “inconsistent with the goals of WCAR.”<sup>34</sup> The Administration further stated that there was no consensus in the United States on the reparations issue,<sup>35</sup> and noted that the United States had consistently opposed calls for reparations and would continue to do so. Assistant Secretary Wood further stated that the United States was ready to join WCAR participants in expressing regret for historic injustices such as slavery. He also emphasized that the purpose of WCAR was to focus on contemporary manifestations of racism and intolerance. The Administration advocated what it described as a “future-oriented approach” on the

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<sup>31</sup> The Head of the U.S. delegation was Michael E. Southwick, Deputy Assistant Secretary of State for International Organization Affairs. Daily Press Briefing by Spokesperson Richard Boucher, U.S. Department of State, August 29, 2001.

<sup>32</sup> U.N. document, A/CONF.189/PC.2/8, March 27, 2001.

<sup>33</sup> Moreover, the draft Program of Action requested member states that “practiced and benefitted from the trans-Atlantic slave trade ... to initiate a constructive dialogue with people of African descent in order to identify and implement measures for ethical and moral satisfaction,” U.N. document, A/CONF.189/PC.3/8, July 12, 2001, p. 45.

<sup>34</sup> Statement of William B. Wood, U.S. Department of State, at a hearing before the House Subcommittee on International Operations and Human Rights of the Committee on International Relations, “A Discussion on the U.N. World Conference Against Racism,” July 31, 2001, U.S. Government Printing Office, Serial No. 107-36, p. 31.

<sup>35</sup> *Ibid.* Assistant Secretary Wood also stated, “It is not clear what would be the legal or practical effect of a call for reparations for injustices more than a century old. Nor is it clear that such a call would contribute to eliminate racism in the contemporary world.” For further discussion of this issue, see CRS Report RS20740, *Proposals for Reparations for African Americans: A Brief Overview*, by Garrine P. Laney.

reparations issue, expressing support for programs that aimed to overcome Africa's development challenges.<sup>36</sup>

**U.S. Walk-Out.** At the Conference, the United States participated in initial negotiations. When it became clear that the anti-Israel language would not be removed, however, the U.S. delegation withdrew under instructions from then-Secretary of State Powell.<sup>37</sup> Israel joined the United States in withdrawing from the Conference. Because of its withdrawal, the United States did not pay \$250,000 in voluntary contributions to WCAR.<sup>38</sup>

## Congressional Response to WCAR

Some Members of Congress viewed WCAR as a crucial international mechanism for combating racism and supported full U.S. participation. Others, however, were concerned that language in the draft outcome documents appeared to target Israel, and urged the Administration not to participate if such language remained.<sup>39</sup> Some Members viewed WCAR as an opportunity to address historic and contemporary factors that may have contributed to present-day racism. They urged the Administration to participate regardless of controversial text in the draft outcome documents, arguing that the United States could bring balance to the issue.<sup>40</sup> Some Members also viewed the Conference as an opportunity for the United States to acknowledge its role in the trans-Atlantic slave trade, and disagreed with the Administration's position that slavery reparations should not be discussed at the

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<sup>36</sup> Such programs included the New African Initiative — renamed the New Partnership for Africa's Development. See CRS Report RS21353, *New Partnership for Africa's Development*, by Nicolas Cook.

<sup>37</sup> *U.S. Participation in the United Nations for 2003, Report by the President to the Congress*, Department of State, March 2003, p. 65. Secretary Powell stated, "I know that you do not combat racism by conferences that produce declarations containing hateful language ... or support the idea that we have made too much of the Holocaust; or suggests that apartheid exists in Israel; or that singles out only one country in the world — Israel — for censure and abuse," Department of State Press Release, September 3, 2001.

<sup>38</sup> The State Department Bureau of Democracy, Human Rights and Labor provided \$25,000 to help develop a WCAR website. See [<http://www.state.gov/g/drl/rls/32959.htm>].

<sup>39</sup> On July 30, 2001, for instance, the House of Representatives passed a resolution stating that the Conference presented a "unique opportunity" to address global discrimination, but urged participants to address such prejudice without targeting specific regions or countries. See H.Res. 212 (107<sup>th</sup> Congress), "Expressing the sense of the House of Representatives that the World Conference Against Racism ... presents a unique opportunity to address global discrimination," introduced by Rep. Tom Lantos on July 27, 2001, and passed by a vote of 408 to 3 on July 30, 2001.

<sup>40</sup> Statement by Rep. Julia Carson at a House Subcommittee on International Operations hearing, "A Discussion on the U.N. World Conference Against Racism," July 31, 2001, U.S. Government Printing Office, Serial No. 107-36, p. 22.

Conference.<sup>41</sup> Some Members of the Congressional Black Caucus (CBC) were particularly supportive of WCAR's objectives and full U.S. participation.<sup>42</sup>

Members who attended the Conference as part of a congressional delegation held differing views on the U.S. withdrawal.<sup>43</sup> Some argued that singling out one country (Israel) in Conference outcome documents was unacceptable, and maintained that the Israel-Palestine dispute was not a racial issue.<sup>44</sup> Other Members disagreed with the U.S. decision to withdraw and emphasized that the United States should not allow one issue to overshadow the Conference's overall purpose of combating racism.<sup>45</sup>

## **WCAR Outcomes: The Durban Declaration and Program of Action**

After the United States and Israel withdrew from the Conference, the remaining member states engaged in a series of intense and difficult negotiations that resulted in WCAR's main outcome documents — the Durban Declaration and Program of Action.<sup>46</sup> These documents created international definitions and established new U.N. mechanisms to address racism and other related issues. In the Program of Action, for example, governments agreed to definitions of “victims of racism”<sup>47</sup> and “grounds for discrimination.”<sup>48</sup> Governments also decided to establish an anti-discrimination unit within the Office of the High Commissioner for Human Rights

<sup>41</sup> Ibid, statement of Rep. Barbara Lee, p. 16.

<sup>42</sup> Then-chair of the CBC Eddie Bernice-Johnson stated that it was “incumbent on the United States ... to ensure that this World Conference and any forum that seeks to address the issue of racism achieves its objectives to end this egregious violation here and abroad,” “Bush's WCAR Representative has no Comment,” by Hazel Trice Edney, *National Newspaper Publishers Association*, September 3, 2001.

<sup>43</sup> Members of the 2001 WCAR delegation included Reps. John Conyers, Eddie Bernice Johnson, Tom Lantos, Barbara Lee, Sheila Jackson Lee, and Diane Watson.

<sup>44</sup> “Transcript: Lantos Says Success of Racism Conference in Doubt,” U.S. Department of State, August 9, 2001.

<sup>45</sup> See, for example, statements of Reps. Barbara Lee and Diane Watson, *Congressional Record*, pp. H5446-H5448 (1645-1700), September 6, 2001.

<sup>46</sup> The Declaration and Program of Action were adopted on September 8, 2001. They are available at [<http://www.unhchr.ch/pdf/Durban.pdf>].

<sup>47</sup> Paragraph one of the Durban Declaration states that “the victims of racism, racial discrimination, xenophobia and related intolerance are individuals or groups of individuals who are or have been negatively affected by, subjected to, or targets of these scourges.”

<sup>48</sup> Paragraph two of the Declaration recognizes that “racism, racial discrimination, xenophobia and related intolerance occur on the grounds of race, colour, descent or national or ethnic origin and that victims can suffer multiple or aggravated forms of discrimination based on other related grounds such as sex, language, religion, political or other opinion, social origin, property, birth or other status.”

(OHCHR),<sup>49</sup> and requested that OHCHR work with five independent experts to follow up on the implementation of provisions in the Declaration and Program of Action.<sup>50</sup> The outcome documents also urged member states to establish and implement national policies and action plans to address racism, racial discrimination, and related intolerance.<sup>51</sup>

Some observers expressed concern that WCAR's focus on Israel and Palestine overshadowed other aspects of the Conference. Some, for example, spoke positively of the outcome documents' focus on the vital role of human rights institutions in combating racism. Many supported the outcome documents' focus on education and the role of good governance in addressing racial discrimination.<sup>52</sup> Yet, some maintain that WCAR's focus on Israel and Palestine diverted attention from subjects that they believe WCAR should have addressed more effectively—such as the rights of indigenous people<sup>53</sup> and specific instances of contemporary racism—such as caste discrimination in India.<sup>54</sup>

Prior to the adoption of the Declaration and Program of Action, however, some governments disassociated themselves from or expressed reservations about specific provisions in the text—particularly those that addressed the situation in the Middle East, the impact of historic injustices such as slavery and colonialism, and the rights of indigenous peoples.<sup>55</sup> Some countries also disagreed with text that appeared to equate colonialism with slavery and genocide.<sup>56</sup>

<sup>49</sup> The Discrimination Unit, now called the “Anti-Racial Discrimination Unit,” compiles data on racism, provides legal and administrative support to victims of racism, and collects background materials provided by states and NGOs under WCAR follow-up mechanisms.

<sup>50</sup> Five experts, representing different regions, are appointed by the U.N. Secretary-General from among candidates proposed by the Chairperson of the Human Rights Council, after consultation with the regional groups. For the list of experts and further information, see [<http://www2.ohchr.org/english/issues/racism/groups/eminent-experts/index.htm>].

<sup>51</sup> Durban Program of Action, paragraph 66.

<sup>52</sup> U.N. Information Service Press Release, GA/SHC/3681, “Opposing Views Expressed as Third Committee Considers Final Document of Durban Conference on Racism,” February 1, 2002.

<sup>53</sup> See, for example, Darren Dick, “The United Nations World Conference Against Racism,” *The Indigenous Law Bulletin*, vol. 5, no. 13, November/December 2001.

<sup>54</sup> See “Human Rights Watch, Caste at the World Conference Against Racism,” at [<http://www.hrw.org/campaigns/caste/>]. For more information on the caste system in India, see CRS Report RL33529, *India-U.S. Relations*, by K. Alan Kronstadt.

<sup>55</sup> Prior to the adoption of the outcome documents, statements and reservations were made by Australia, Belgium (on behalf of the EU), Canada, Chile, Ecuador (on behalf of Brazil, Canada, Chile, and Guatemala), Iran, Syria, and Switzerland. For a list of reservations by country, see the Report of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, U.N. document, A/CONF.189/12, pp. 117-144.

<sup>56</sup> Paragraph 99 of the Declaration acknowledges and profoundly regrets “the massive human suffering and the tragic plight of millions of men, women and children caused by slavery, the slave trade, the transatlantic slave trade, apartheid, colonialism and genocide.”

**Provisions on the Situation in the Middle East.** In the final WCAR outcome documents, governments expressed concern about the “plight of the Palestinian people under foreign occupation” and recognized “the inalienable right of the Palestinian people to self-determination and to the establishment of an independent State.”<sup>57</sup> They also called for the “the end of violence and the swift resumption of negotiations” in the Middle East. The outcome documents did not include text equating Zionism with racism. Members of the European Union viewed the final language as an improvement over previous drafts that appeared to repeatedly target Israel. Other countries, however, maintained that the situation in the Middle East should not be addressed at WCAR because it was a political situation rather than a racial one. Canada, in particular, disassociated itself from text that directly or indirectly mentioned the situation in the Middle East.<sup>58</sup> Conversely, some countries argued that the text did not go far enough to address the situation in the Palestinian territories.<sup>59</sup>

**Provisions on Slavery and Reparations.** The Declaration acknowledged slavery and the slave trade, including the trans-Atlantic slave trade, as a “crime against humanity,” and invited the international community to express regret or remorse for slavery.<sup>60</sup> The Program of Action also recognized that slavery has “undeniably contributed” to poverty and underdevelopment.<sup>61</sup> It urged countries to reinforce protection against racism by ensuring that all persons enjoy the right to seek just and adequate reparations from damage resulting from discrimination.<sup>62</sup> Further, it recognized the need to develop programs for the social and economic development of societies impacted by historic injustices such as slavery.<sup>63</sup> It called on developed countries and the U.N. system to support development mechanisms, particularly in Africa.<sup>64</sup> The outcome documents did not call for reparations or an explicit apology

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<sup>57</sup> Paragraph 161 of the Program of Action calls for respect for international human rights and humanitarian law, as well as for the principle of self-determination and the end of all suffering, “thus allowing Israel and the Palestinians to resume the peace process, and to develop and prosper in security and freedom.”

<sup>58</sup> Representatives from Canada stated, “We are not satisfied with this Conference. Not enough time has been dedicated to advancing its objectives.... We believe, we have said in the clearest possible terms, that it was inappropriate — wrong — to address the Palestinian-Israel conflict in this forum,” U.N. document, A/CONF.189/12, p. 119.

<sup>59</sup> For this reason, Iran dissociated itself with text addressing the Middle East. U.N. document, A/CONF.189/12, pp. 125-126.

<sup>60</sup> Durban Declaration, paragraph 13. Additionally, paragraph 100 notes that some have “taken the initiative of regretting or expressing remorse or presenting apologies.” It strongly condemns the fact that slavery and slavery-like practices still exist. Paragraph 29 further urges states to “take immediate measures as a matter of priority to end such practices.”

<sup>61</sup> Durban Program of Action, paragraph 158.

<sup>62</sup> *Ibid.*, paragraph 166.

<sup>63</sup> *Ibid.*, paragraph 158.

<sup>64</sup> Specifically, it encouraged support for mechanisms such as the New African Initiative and the World Solidarity Fund for the Eradication of Poverty.

for historical injustices such as slavery. Consequently, some African and Caribbean states maintained that the Conference did not sufficiently address the issue.<sup>65</sup>

**General Assembly Adoption of Outcome Documents.** In March 2002, the U.N. General Assembly adopted a resolution on the Durban Declaration and Program of Action that endorsed the implementation of the outcome documents, urged U.N. member states to create national action plans and policies to combat slavery, and called for the creation of the Anti-Discrimination Unit and a Group of Experts to follow up on implementation of Durban outcomes.<sup>66</sup> One hundred and thirty-four countries voted for the resolution, two opposed it (United States and Israel), and two abstained (Australia and Canada). When explaining its vote, the United States stated that because it withdrew from the WCAR, it did not agree to the Durban Declaration and Program of Action. It opposed the creation of the Discrimination Unit and the group of experts, arguing that the cost of the new mechanisms would place additional pressure on the U.N. regular budget.<sup>67</sup>

## Non-governmental Organization (NGO) Forum

Representatives from local, national, and international NGOs held an NGO Forum parallel to the Conference in Durban.<sup>68</sup> At its conclusion, Forum participants agreed to the NGO WCAR Declaration, which a number of observers viewed as an unbalanced document that disproportionately focused on Israel. Specifically, the Declaration called for the end of “Israeli systematic perpetration of racist crimes, including war crimes, acts of genocide and ethnic cleansing,” and declared Israel a “racist, apartheid state.”<sup>69</sup> Because of the highly politicized wording of the Declaration, some NGOs disassociated themselves from the final text.<sup>70</sup> Then-U.N. High Commissioner for Human Rights Mary Robinson described the NGO Forum

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<sup>65</sup> See statements by the representatives of Barbados and Trinidad and Tobago, U.N. document, A/CONF.189/12, pp. 128 and 130, respectively. Also see the Declaration and Program of Action from the African Regional Meeting in Senegal, U.N. document, A/CONF.189/PC.2/8, March 27, 2001.

<sup>66</sup> U.N. document, A/RES/56/266, March 27, 2002.

<sup>67</sup> The U.S. statement is available in U.N. document, A/56/PV.97, March 27, 2002, p. 3.

<sup>68</sup> The Forum, which was held from August 21 to September 1, 2001, was organized and managed by NGOs; however, the U.N. Office of the High Commissioner for Human Rights (OHCHR) received voluntary contributions from donors to fund the event. OHCHR also funded the participation of some NGOs.

<sup>69</sup> “WCAR NGO Forum Declaration,” September 3, 2001, paragraphs 160 and 162. Paragraph 425 calls for the “condemnation of those states who are supporting, aiding and abetting the Israeli Apartheid state.”

<sup>70</sup> “ERRC Dissociates Itself from WCAR NGO Forum,” *European Roma Rights Center*, September 5, 2001. Since WCAR, other NGOs have expressed regret over the outcome of the Forum and pledged to learn from the shortcomings of WCAR. See “Statement of Core Principles For WCAR Follow-Up,” signed by over 90 NGOs, available at [<http://www.humanrightsfirst.org/media/disc/2008/alert/207/index.htm>].



as “hateful, even racist,” and refused to receive or endorse the NGO Declaration.<sup>71</sup> The Forum attracted significant attention from the international media, and some argued that it overshadowed the Conference itself.<sup>72</sup>

## The 2009 Durban Review Conference

Since WCAR, U.N. member states increasingly explored the possibility of holding a follow-up conference to review progress made on the implementation of the Durban Declaration and Program of Action. On December 19, 2006, the U.N. General Assembly adopted a resolution deciding to convene the Durban Review Conference.<sup>73</sup> The Conference will be held in Geneva, Switzerland, from April 20 to 24, 2009.<sup>74</sup>

### Objectives, Funding, and Participation

At the Conference, governments aim to

- review the progress and assess implementation of the Durban outcome documents by all stakeholders, including assessing contemporary manifestations of racism;
- assess the effectiveness of the existing Durban follow-up mechanisms and other related U.N. programs; and
- identify and share good practices achieved in combating racism.<sup>75</sup>

The preparatory process for the Review Conference is similar to the process for WCAR. The U.N. Human Rights Council, for instance, is the Preparatory Committee for the Review Conference.<sup>76</sup> All U.N. member states were invited to join the Review Conference Preparatory Committee to determine the objectives of the Conference. The Committee elected a Bureau composed of one chairperson and 20 vice-chairpersons (Group of 21) to decide on the objectives of the Review Conference.<sup>77</sup> As with WCAR, governments are engaging in organizational,

<sup>71</sup> See joint NGO document, “Statement of Core Principles For WCAR Follow-Up.”

<sup>72</sup> “NGO Forum at Durban Conference 2001,” *NGO Monitor*, available at [[http://www.ngo-monitor.org/article/ngo\\_forum\\_at\\_durban\\_conference\\_](http://www.ngo-monitor.org/article/ngo_forum_at_durban_conference_)].

<sup>73</sup> U.N. document, A/RES/61/149, December 19, 2006, adopted 179 votes to two, with four abstentions. The United States and Israel voted against the resolution, with Australia, Canada, the Marshall Islands, and Palau, abstaining.

<sup>74</sup> U.N. Office at Geneva press release, “Review Conference on Racism, Discrimination, and Intolerance to be Held in Geneva in April 2009,” May 27, 2008.

<sup>75</sup> U.N. document, A/62/375, October 2, 2007, p. 36.

<sup>76</sup> The Human Rights Council replaced the U.N. Commission on Human Rights in 2006.

<sup>77</sup> More information on the Group of 21 is available in the “Balance in the Durban Review (continued...)”

substantive, and regional meetings to determine the scope of the Conference and agree to regional outcome documents. (For more information on these meetings, see the “Issues for Congress” section.)

The Review Conference is funded through assessed contributions to the U.N. regular budget and through voluntary contributions from member states and organizations. On November 17, 2008, a report from the Secretary-General estimated that the overall additional financial requirements for the Durban Review Conference and its preparatory process was \$3,754,800.<sup>78</sup> The Secretary-General will ask for only \$570,400 because he anticipates that the remaining balance of \$3,184,400 will be absorbed by other human rights-related parts of the U.N. regular budget.<sup>79</sup> Funding for the Conference and the Human Rights Council does not overlap. Both the Council and the Review Conference are funded under separate parts of the OHCHR budget.<sup>80</sup>

Participation in the Review Conference is open to U.N. member states, U.N. bodies and programs, regional organizations and commissions, intergovernmental organizations, and NGOs.<sup>81</sup> It is unclear whether an NGO Forum will be held parallel to the Conference.<sup>82</sup>

## U.S. Response

**Bush Administration.** The Bush Administration has consistently opposed a Durban Review Conference. It has, however, stopped short of announcing it will boycott the Conference, likely recognizing that a new Administration would make

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<sup>77</sup> (...continued)

Preparatory Process?” section, and [<http://www2.ohchr.org/english/issues/racism/DurbanReview/bureau.htm>].

<sup>78</sup> This is lower than a preliminary Secretariat estimate of \$6,794,700 due to a number of developments, including the decision of some regional groups to cancel regional sessions. Moreover, OHCHR was able to absorb some additional costs within existing resources. (CRS discussions with OHCHR, October 2008.) The preliminary estimate is available in U.N. document, A/C.5/62/21, December 14, 2007.

<sup>79</sup> See “Programme Budget Implications of Draft Resolution A/C.3/63/L.51/Rev.1, Statement Submitted by the Secretary-General in Accordance with Rule 153 of the Rules of Procedure of the General Assembly,” U.N. document A/C.3/63/L.70 [draft], November 17, 2008.

<sup>80</sup> CRS discussions with OHCHR, October 2008. OHCHR is funded by the U.N. regular budget, for which the United States is assessed at 22%. For more information on U.N. funding, see CRS Report RL33611, *United Nations System Funding: Congressional Issues*, by Marjorie Ann Browne and Kennon H. Nakamura.

<sup>81</sup> NGOs are encouraged to participate as observers in the Review Conference, including preparatory meetings. They may participate in the Review Conference, as provided for in U.N. Economic and Social Council resolution 1996/31, July 25, 1996.

<sup>82</sup> NGOs would decide whether to hold a Forum, however the U.N. General Assembly would determine whether its venue will be on U.N. premises. Marc Perelman, “U.N. and the West Trying to Prevent Another Anti-Israel ‘Durban’ Meeting,” *The Forward*, October 8, 2008.

the final decision regarding participation. The United States, along with Israel, voted against the General Assembly resolution calling for the Review Conference in December 2006.<sup>83</sup> Similarly, in December 2007, the United States voted against a resolution related to the biennium budget for 2008-2009, primarily because it included funding for the Conference.<sup>84</sup> The Administration also declined to participate in the preparatory events for the Review Conference, and has consistently voted against U.N. General Assembly resolutions that support or fund the Review Conference.<sup>85</sup>

On April 8, 2008, U.S. Ambassador to the United Nations Zalmay Khalilzad announced, “the United States is not participating in the process and we have no plans to do so. We will not participate unless it is proven that the conference will not be used as a platform for anti-Semitic behavior.”<sup>86</sup> The Ambassador also announced that the United States will withhold a portion of its 2008 contribution to the U.N. regular budget that would fund the U.N. Human Rights Council, including money for the preparatory process for the Review Conference.<sup>87</sup>

**110<sup>th</sup> Congress.** Members of the 110<sup>th</sup> Congress demonstrated an interest in the Review Conference. Some Members introduced legislation stating the United States should not participate in the Conference because of WCAR’s focus on Israel.<sup>88</sup>

<sup>83</sup> See U.N. General Assembly Resolution 61/149, December 19, 2006, which decided to convene the Review Conference.

<sup>84</sup> The United States joined consensus for the resolution, Programme Budget for the Biennium 2008-2009 (resolution 62/237, December 22, 2007), but only after calling for a vote on a related resolution, Questions Relating to the Proposed Programme Budget for the Biennium 2008-2009 (resolution 62/236, December 22, 2007). The United States was concerned that the ad hoc nature of the Secretary-General’s approach to the budget could allow the Durban Review Conference to be funded through the U.N. regular budget. See “Voting Practices in the United Nations — 2007,” Department of State, pp. 136-137.

<sup>85</sup> According to Administration officials, the United States has sent a note-taker to the Review Conference preparatory meetings to ensure an accurate report of the proceedings. U.S. Mission to the United Nations Press Release #075(08), “Statement by Zalmay Khalilzad, U.S. Permanent Representative, on the Durban II Conference and the Human Rights Council,” April 8, 2008.

<sup>86</sup> Ibid. Ambassador Khalilzad did not define or describe what actions constitute “anti-Semitic behavior.”

<sup>87</sup> Ibid. Similarly, at a House Subcommittee on International Organizations hearing, Assistant Secretary of State for International Organization Affairs Kristin Silverberg stated, “We will be withholding our funding this year for the Human Rights Council ... and also for Durban ... so we will be withholding the U.S. share of funding for both...” United Nations Peacekeeping Operations: An Underfunded International Mandate — The Role of the United States, U.S. Government Printing Office, Serial No. 110-161, April 2, 2008, p. 19.

<sup>88</sup> H.R. 5847, the United Nations Durban Review Conference (Durban II) Funding Prohibition Act of 2008, introduced by Rep. Scott Garrett on April 17, 2008, and referred to the Committee on Foreign Affairs on the same day; and H.Res. 879, “Objecting to United Nations funding of the Durban Review Conference using the United Nations regular budget,” introduced by Rep. Ileana Ros-Lehtinen, on December 17, 2007, and referred to

On March 13, 2008, the Senate unanimously passed an amendment to the FY2009 Budget Resolution to deny funding to the Durban Review Conference.<sup>89</sup> Some Members also expressed opposition to U.S. funding of or participation in the Review Conference in correspondence with Administration officials.<sup>90</sup> Nevertheless, some Members viewed the Conference as a key opportunity to address international racism. On September 23, 2008, for example, the House adopted a resolution expressing the sense of the House that the United States should lead a high-level diplomatic effort to ensure that the Durban Review Conference serves as a forum to review implementation of commitments made at the 2001 Durban Conference, rather than as a vehicle for anti-Semitism.<sup>91</sup>

## Participation of Other Governments

A number of governments have concerns about the Review Conference. In January 2008, Canada announced that it would boycott the Conference because of indications that it would repeat the mistakes of WCAR.<sup>92</sup> Other countries announced that they will not participate if it becomes evident that the Review Conference will target Israel.<sup>93</sup> French President Nicolas Sarkozy stated that France will “not allow a repeat of the digressions and extremes of 2001.”<sup>94</sup> Representatives of the United Kingdom announced that the government would not participate in an international conference with the “degree of anti-Semitism that was disgracefully on view” at

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<sup>88</sup> (...continued)

the Committee on Foreign Affairs on the same day.

<sup>89</sup> S.Amdt. 4264 “To deny funding for the United Nations Durban II Anti-Racism Conference,” to S.Con.Res. 70, “An original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2009...” Sen. Norm Coleman introduced the amendment March 12, 2008, and it was agreed to by unanimous consent on March 13, 2008. The Senate agreed to S.Con.Res. 70 by a vote of 48 to 45 on June 4, 2008, and House agreed to it by a vote of 214 to 210 on June 5, 2008.

<sup>90</sup> See, for example, “Coleman Continues to urge State not to Participate in the Durban II Conference,” Office of Senator Norm Coleman, February 8, 2008.

<sup>91</sup> H.Res. 1361 also aims to defeat “the campaign by some members of the Organization of the Islamic Conference to divert the United Nations Durban Review Conference from a review of problems in their own and other countries by attacking Israel, promoting anti-Semitism, and undermining the Universal Declaration of Human Rights.” It was introduced by Rep. Howard Berman on July 22, 2008, and passed by a voice vote on September 23, 2008.

<sup>92</sup> Canadian representatives stated that they hoped the Review Conference would “remedy mistakes of the past,” but based on preparations for the Conference, the government concluded that it would not. Press Release No. 16, “Canada Takes a Firm Stance on United Nations World Conference Against Racism,” Foreign Affairs and International Trade Canada, January 23, 2008.

<sup>93</sup> The government of the Netherlands stated it will not accept any attempts to call Israel a racist state, and would not hesitate to withdraw if similar events occur, “Netherlands Will not Accept Anti-Semitic Slurs,” Radio Netherlands Worldwide, May 18, 2008.

<sup>94</sup> “Speech by the President of the French Republic” at the Annual Dinner for the Representative Council of Jewish Institutions in France, February 13, 2008.

WCAR.<sup>95</sup> Initially, Israel stated that it would boycott the Review Conference unless it was proven that the Conference would not be used as a platform for further anti-Israeli sentiments and activities.<sup>96</sup> In November 2008, however, Israel formally announced it would not participate in the Conference, stating that the Conference “appears to be heading once again towards becoming an anti-Israel tribunal, which has nothing to do with fighting racism.”<sup>97</sup> U.N. High Commissioner for Human Rights Navanethem Pillay urged countries that announced they may not participate in the Conference to reconsider. She argued that the anti-racism debate and agenda will be significantly compromised without the participation of all countries.<sup>98</sup>

## Issues for Congress

Members of the 111<sup>th</sup> Congress may wish to consider a number of issues when conducting oversight and considering U.S. funding for the Durban Review Conference and possible follow-up activities.

### Balance in the Durban Review Preparatory Process?

Bush Administration officials and some Members of Congress have suggested that the United States should participate in the Durban Review Conference only if it is proven that the Conference will (1) focus primarily on the implementation of the Durban Declaration and Program of Action and (2) not become a vehicle for anti-Semitism. Consequently, Members of the 111<sup>th</sup> Congress may wish to consider U.N. member state actions during the Review Conference preparatory process.

**Scope of the Review Conference.** During the preparatory process, participating governments have aimed to determine the scope and agenda of the Conference. Countries such as Australia, Canada, and Israel, and members of the European Union, maintain that the Conference should focus primarily on member state and U.N. system implementation of the Durban Declaration and Program of Action instead of reopening controversial issues agreed to at WCAR.<sup>99</sup> Some hope that by concentrating on the implementation of WCAR outcomes, participants can achieve a broad consensus and avoid repeating the perceived mistakes of the previous

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<sup>95</sup> “Oral Answers to Questions, Durban II.” U.K. House of Commons Debates — Foreign and Commonwealth Office,” May 13, 2008.

<sup>96</sup> Address by Foreign Minister Tzipi Livni to the Global Forum for Combating Anti-Semitism, Israel Ministry of Foreign Affairs, February 24, 2008; and Tovah Lazaroff, “Israel Firm on Boycotting Durban II Despite U.N. Plea,” *Jerusalem Post*, September 2, 2008.

<sup>97</sup> “Israel Will Not Participate in the Durban 2 Conference,” Israel Ministry of Foreign Affairs press release, November 19, 2008.

<sup>98</sup> Address by Ms. Navanethem Pillay, U.N. High Commissioner for Human Rights on the occasion of the opening of the 9th Session of the Human Rights Council, September 8, 2008.

<sup>99</sup> Statement by H.E. Ambassador Francisco Xavier Esteves of Portugal on Behalf of the European Union, Opening Statement, Organizational Session of the Preparatory Committee of the Durban Review Conference, August 27, 2007.

Conference.<sup>100</sup> Other countries, particularly members of the Organization of the Islamic Conference (OIC),<sup>101</sup> contend that the Review Conference should focus not only on implementation of WCAR outcomes but also on “the contemporary scourge of racism,” including the plight and suffering of the Palestinian people and the defamation of religions, particularly Islam.<sup>102</sup>

**Composition of the Conference Bureau (Group of 21).** On August 27, 2007, the Review Conference Preparatory Committee elected a Bureau of 21 members (Group of 21) to determine Conference modalities and objectives.<sup>103</sup> A number of Conference observers and participants have expressed concern about the composition of the Group, which includes countries that expressed anti-Israel sentiments at WCAR, including Iran, Indonesia, and Senegal.<sup>104</sup> Some are particularly concerned that Libya and Cuba — states that many view as anti-Israeli and anti-democratic — are Bureau Chair and Vice-Chairperson Rapporteur.

**Organizational Meetings and Intergovernmental Working Group Drafts.** To prepare for the Review Conference, participating governments have attended several organizational meetings to consider the scope and agenda of the Review Conference.<sup>105</sup> Some governments also have participated in meetings of the newly established Intersessional Open-ended Intergovernmental Working Group of the Preparatory Committee, which is tasked with reviewing recommendations

<sup>100</sup> Disagreements over Review Conference objectives are reflected in member state votes for and against U.N. General Assembly and Human Rights Council resolutions that address Conference objectives and funding. Australia, Canada, and the United States, for example, voted against resolution A/C.3/62/L.65/Rev.1 (November 27, 2007) in the U.N. General Assembly’s Third Committee because it seemed to contradict a previous consensus that the Review Conference will focus on implementation of WCAR outcomes rather than issues negotiated at WCAR, including contemporary forms of racism and intolerance.

<sup>101</sup> On February 27, 2008, President Bush appointed a Special Envoy to the OIC, Sada Cumber. The envoy’s mission is to explain U.S. foreign policy to the OIC and Muslim communities worldwide, and to establish broader engagement with the organization — particularly related to education, women’s rights, health, and science and technology. For more information, see [<http://www.state.gov/r/pa/ei/biog/101432.htm>] and [<http://www.state.gov/p/io/rls/102742.htm>].

<sup>102</sup> Statement by Ambassador Masood Khan on behalf of the Organization of the Islamic Conference (OIC), Organizational Session of the Preparatory Committee of the Durban Review Conference, August 27, 2007.

<sup>103</sup> Members of the Bureau were elected at the first organizational meeting of the Preparatory Committee. A representative from Libya was elected as Chairperson. Vice-Chairpersons were elected from Argentina, Armenia, Belgium, Brazil, Cameroon, Chile, Croatia, Cuba (as Vice-Chairperson-Rapporteur), Estonia, Greece, India, Indonesia, Iran, Norway, Pakistan, Russian Federation, Senegal, South Africa, and Turkey.

<sup>104</sup> Seven Bureau members belong to the Organization of the Islamic Conference.

<sup>105</sup> The first organizational session was held from August 27 to 31, 2007; the first substantive session from April 21 to May 2, 2008; and the second substantive session was held from October 6 to 17, 2008. A third substantive session will be held from April 15 to 17, 2009. All sessions are held in Geneva, Switzerland. See [<http://www2.ohchr.org/english/issues/racism/DurbanReview/sessions.htm>].

submitted by countries and other stakeholders for possible inclusion in the Review Conference outcome document.<sup>106</sup> Some have expressed concern with drafts proposed by the Working Group. In May 2008, for example, the Working Group circulated a list of issues that may be included in the Conference outcome document. The list specifically referred to the “plight of the Palestinian people” and stated that the situation in the occupied Palestinian territories violates a range of civil and political rights.<sup>107</sup>

**Regional Meeting Outcome Documents.** Many governments have already met at regional sessions where they shared best practices for combating racism and negotiated text to be incorporated into the Review Conference outcome documents. Two regions, Latin America and the Caribbean, and Africa, held regional sessions and agreed to regional outcome documents. The Asian and European regional groups agreed to an outcome document without holding regional meetings.<sup>108</sup> The outcome documents from the Africa and Asia regional sessions have again generated controversy among some Conference participants and observers due to their apparent focus on the Israel-Palestine conflict and, to a lesser extent, on reparations and compensation for slavery. Some view the Africa outcome document as unbalanced because it focuses on Islamophobia as a particularly serious form of religious hatred and refers to “the plight of the Palestinian people under foreign occupation.”<sup>109</sup> It also urges states to issue formal apologies to victims of colonialism and historic injustices,<sup>110</sup> and calls upon the Review Conference to address the issue of reparations for people of African descent.<sup>111</sup>

Similarly, the Asian outcome document expresses “deep concern for the plight of Palestinian refugees who were forced to leave their homes because of war and

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<sup>106</sup> The Intersessional Open-ended Working Group was proposed by the Group of 21 and created at the first substantive session in May 2008. It met in Geneva from May 25 to 30, 2008, and on September 5, 2008. It will meet again on November 27, 2008. Zohrab Mnatsakanian, Ambassador of Armenia, was designated Chairperson of the working group by the Preparatory Committee. See U.N. document, A/CONF.211/PC.2/4, April 16, 2008.

<sup>107</sup> “Outcome Document — Inventory of Issues,” May 27, 2008, available at [<http://www.eyeontheun.org/durban.asp?p=577>].

<sup>108</sup> The Latin America and Caribbean regional session was held in Brasilia, Brazil, from June 17 to 19, 2008, and the African session was held in Abuja, Nigeria, from August 24 to 26, 2008. The European and Asian regional groups did not hold regional meetings because no member states in either region volunteered to act as host. Instead, countries held informal consultations and exchanged written views to draft regional documents (CRS discussions with OHCHR, October 2008).

<sup>109</sup> U.N. document, A/CONF.211/PC.3, August 26, 2008, paragraphs 21 and 32, respectively.

<sup>110</sup> *Ibid*, paragraph 48.

<sup>111</sup> *Ibid*, preamble, p. 3, “Calling upon the Durban Review Conference to address the issue of reparations for people of African descent with reference to paragraphs 164, 165, and 166 of the Durban Programme of Action.” Several provisions also mention slavery and the trans-Atlantic slave trade (preamble and paragraphs 60, 62).

racial policies of the occupying power.”<sup>112</sup> It re-emphasizes the responsibility to provide international protection for the Palestinian people under occupation, and calls for an international effort to “bring foreign occupation, together with all its racial practices, to an end” in Jerusalem.<sup>113</sup> The document reaffirms that “foreign occupation founded on settlements” contradicts the U.N. Charter and constitutes a violation of international human rights and a “new kind of apartheid, a crime against humanity, a form of genocide, and a serious threat to peace and security.”<sup>114</sup> The Asian document also reiterates its call on states to “apologize and pay reparations” for slavery and the slave trade.<sup>115</sup>

The outcome document agreed to by the Latin American and Caribbean states does not refer to the situation in the Middle East. It identifies the need for progress in the implementation of measures to ensure “just and adequate reparation” for victims of racism.<sup>116</sup> It also reiterates concerns regarding violence and discrimination committed against individuals on the grounds of sexual orientation and gender identity.<sup>117</sup>

**Draft Review Conference Outcome Document (as of October 16, 2008).** On October 27, 2008, the Office of the High Commissioner for Human Rights published a compilation of Review Conference outcome document proposals submitted by delegations during the second substantive session of the Review Conference Preparatory Committee.<sup>118</sup> The compilation reflects U.N. member discussions and contributions to the Review Conference draft outcome document as of October 16, 2008.<sup>119</sup> Text that has been objected to by certain member states was placed in brackets [bracketed] for further discussion. In the coming months, the Intersessional Open-ended Intergovernmental Working Group will continue to negotiate the outcome document and report back to the third substantive session of the Preparatory Committee, which will be held in Geneva from April 15 to 29, 2009.

Some are concerned that text in the October 18, 2008, draft outcome document, both bracketed and non-bracketed, focuses disproportionately on Israel and possibly limits freedom of expression. One section, for example, “[Reiterates concern about the plight of the Palestinian people and other inhabitants of Arab Territories under

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<sup>112</sup> “Contribution of the Asian Region to the Durban Review Conference,” October 8, 2008, paragraph 26.

<sup>113</sup> Ibid, paragraphs 27 and 18.

<sup>114</sup> Ibid, paragraph 19.

<sup>115</sup> Ibid, paragraph 45.

<sup>116</sup> U.N. document, A/CONF.211/PC.3/3, June 18, 2008, paragraph 73.

<sup>117</sup> Ibid, paragraph 159.

<sup>118</sup> U.N. document, A/CONF.211/PC/WG.2/CRP.1, October 27, 2008, available at [<http://www2.ohchr.org/english/issues/racism/DurbanReview/sessions.htm>] under number 6, “Compilation of proposals (CRP.1).”

<sup>119</sup> As of October 16, 2008, the Preparatory Committee has discussed paragraphs 1 to 146 of the draft document.



foreign occupation....].”<sup>120</sup> Another section “[Condemns the fact that the Palestinian people continue to be denied the fundamental right to self determination....]”<sup>121</sup> Additionally, some argue that the text could provide countries with authority to censor the media and invade the private lives of citizens based on their own definition of racism.<sup>122</sup> Some are also apprehensive about draft language that appears to focus on discrimination against Islam to the exclusion of other religions.<sup>123</sup> Moreover, some maintain that sections of the draft outcome document for the Review Conference were already discussed and agreed to at WCAR in 2001.<sup>124</sup>

According to some, such concerns indicate that the Review Conference will likely revive the controversies that surrounded WCAR by focusing on Israel. Others argue, however, that the draft outcome document is still in its preliminary stages and emphasize that the final outcome document to be considered at the Review Conference has not been negotiated or finalized. Supporters point to the difference between early WCAR drafts in 2001 that equated Zionism with racism and the final Durban Declaration and Program of Action, which contained, in the view of many, relatively moderate language by comparison.

## U.S. Funding of the Review Conference

Bush Administration officials have indicated that the United States will not fund the Review Conference or its preparatory process unless it is proven that the Conference will not become a platform for anti-Semitic behavior.<sup>125</sup> The final decision regarding U.S. funding of the Conference, however, will be made by the Barack Obama Administration or Members of the 111<sup>th</sup> Congress. If the 111<sup>th</sup> Congress does not enact legislation prohibiting U.S. funding for the Review Conference, the Obama Administration may decide on its own to withhold the U.S. proportionate share of U.S. contributions prior to the Conference. If such a scenario occurred, it would raise the question as to whether the Administration would release funding for after the Conference if the outcome was acceptable to the United States.

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<sup>120</sup> Section one, part B, paragraph 136, U.N. document, A/CONF.211/PC/WG.2/CRP.1.

<sup>121</sup> Section one, part B, paragraph 137, U.N. document, A/CONF.211/PC/WG.2/CRP.1. In addition, other bracketed language reaffirms that foreign occupation founded on settlements “[constitutes a serious violation of human rights and humanitarian law, a new kind of apartheid, a crime against humanity, a form of genocide and a serious threat to international peace and security.]” (Section four, part A, paragraph 9.)

<sup>122</sup> Section five, paragraph 16 of the draft outcome document urges states to “[...adopt and enforce legal and administrative measures at the national and local levels, or to strengthen existing measures, with the aim of preventing and punishing expressly and specifically contemporary forms of racism, racial discrimination, xenophobia and related intolerance in public and private life...].”

<sup>123</sup> Section one, part A, paragraph 41, “Some of the most worrying trends since 2001 include racio-religious profiling and discrimination, defamation of Muslims, their faith and beliefs.”

<sup>124</sup> See, for example, “Shattering the Red Lines: The Durban II Draft Declaration,” *U.N. Watch*, October 2008, and “U.N. Releases New Draft of the Durban II Final Document,” *Eye on the UN*, November 8, 2008.

<sup>125</sup> See “U.S. Response” section for more information.

Specifically, some Members of the 110<sup>th</sup> Congress proposed that the United States withhold a proportionate share of its U.N. assessed contributions, approximately 22%, from the U.N. regular budget, which is used to fund the Conference. Withholding funds in this manner would not affect the Conference because assessed contributions finance the U.N. regular budget in its entirety and not specific parts of it. The U.S. decision to withhold a proportionate share of funding from the U.N. Human Rights Council for FY2008<sup>126</sup> would not affect funding for the Durban Review Conference or its preparatory process because funding for both mechanisms falls under separate parts of the budget of the U.N. Office of the High Commissioner for Human Rights.<sup>127</sup>

As of November 17, 2008, the Secretary-General estimates that the cost of the Review Conference and its preparatory process will be \$3,754,800.<sup>128</sup> However, the Secretary-General will seek only \$570,400 in additional funding because he anticipates that the balance of \$3,184,400 will be absorbed by other related parts of the U.N. regular budget.<sup>129</sup>

## **WCAR Outcome Documents and U.S. Participation**

Some suggest that the United States should participate in and provide funding for the Durban Review Conference in part because the final text that addresses the situation in Israel and Palestine in the Durban Declaration and Program of Action was significantly toned down from drafts that led to the U.S. withdrawal.<sup>130</sup> Some argue that the U.S. and Israeli withdrawals from WCAR were a turning point in negotiations and sent a powerful diplomatic message to Conference participants. They contend that the withdrawals pressured other governments to adopt more moderate language on the Middle East in the final outcome documents.<sup>131</sup>

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<sup>126</sup> The Department of State, Foreign Operations, and Related Programs Appropriation Act, 2008 (Division J of the Consolidated Appropriations Act, 2008 P.L. 110-161). Congress prohibits U.S. contributions to support the Council unless (1) the Secretary of State certifies to the Committees on Appropriations that Council funding is “in the national interest of the United States” or (2) the United States is a member of the Council. On April 8, 2008, Ambassador Zalmay Khalilzad stated that the United States would withhold funding for the Council due to its focus on Israel. U.S. Mission to the United Nations Press Release #075(08).

<sup>127</sup> CRS discussions with OHCHR, October 2008.

<sup>128</sup> U.N. document A/C.3/63/L.70 [draft], November 17, 2008.

<sup>129</sup> For more information on Review Conference funding, see the “Objectives, Funding, and Participation” section.

<sup>130</sup> Serge Schmemmann, “The Accord on Racism: U.S. Walkout; Was it Repudiated or Justified by the Conference’s Accord?” *New York Times*, September 9, 2001. Also see the “WCAR Outcomes: Durban Declaration and Program of Action” section.

<sup>131</sup> Some supporters, for example, note that Israel stated that it was “satisfied that the clauses full of hate and incitement against it and the Jewish nation were removed from the conference’s final outcome document.” Serge Schmemmann, *New York Times*, September 9, 2001. Also see “Israel’s reaction to the conclusion of the U.N. Conference Against Racism (continued...)”

Conversely, some contend that the language in the Declaration and Program of Action remains unacceptable to the United States. To support this view, opponents point to the Bush Administration's policy of consistently voting against resolutions supporting the Review Conference in U.N. fora. They maintain that the Declaration and Program of Action unfairly single out one regional conflict and refer to the plight of only one party — the Palestinians — with no mention of Israel.<sup>132</sup>

## Political and Diplomatic Impact of U.S. Engagement

For some, the question of U.S. participation or non-participation in the Durban Review Conference touches on the broader issue of U.S. engagement in the U.N. system. Supporters contend that U.S. participation in U.N. efforts such as the Review Conference is important to the success and credibility of the United Nations as a whole. They argue that instead of withdrawing from U.N. conferences that have processes or outcomes it opposes, the United States should fully participate and work from within to build member state coalitions in support of U.S. policies. If the United States does not fully participate in U.N. fora, some argue, U.N. member state actions might be determined by groups of member states advocating agendas that are contrary to U.S. interests. They maintain that U.S. absence from such U.N. efforts could create a vacuum in which views opposed by the United States hold supreme.<sup>133</sup> Supporters contend that a piecemeal and selective approach to participation in the United Nations damages the U.S. negotiating position and its influence both within and outside of the U.N. system.<sup>134</sup> Moreover, some argue that U.S. engagement in U.N. human rights efforts such as the Review Conference provides a valuable international tool for groups and individuals battling racism in countries where human rights is not a priority.

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<sup>131</sup> (...continued)

in Durban,” and “The Conclusion of the Durban Conference: Comments by Israeli Leaders and Officials,” Israel Ministry of Foreign Affairs Press Releases, September 9, 2001.

<sup>132</sup> Rep. Tom Lantos, “The Durban Debacle: An Insider’s View of the U.N. World Conference Against Racism,” *The Fletcher Forum on World Affairs*, The Fletcher School of Law and Diplomacy, Tufts University, vol. 26:I, Winter/Spring 2002.

<sup>133</sup> Such perspectives apply to United States-United Nations relations beyond WCAR and the Durban Review Conference. In 1974, for example, during the 29<sup>th</sup> session of the U.N. General Assembly, former U.S. Ambassador to the United Nations John A. Scali stated, “Each time that this Assembly makes a decision which a significantly minority of members regard as unfair or one-sided, it further erodes vital support for the United Nations among the minority....” He stated that at the time, the General Assembly demonstrated a “sharply increased tendency ... to disregard its normal procedures to benefit the side which enjoys the favor of the majority, and to silence, and even exclude, the representatives of Member States whose policies the majority condemns.” See “U.S. Position at the 29<sup>th</sup> U.N. General Assembly,” U.S. Department of State Publication 8800, No. 13, International Organization and Conference Series 119, February 1975.

<sup>134</sup> For a discussion of the possible implications of the United States withholding funding from the United Nations, see CRS Report RL33848, *United Nations Reform: U.S. Policy and International Perspective: U.S. Policy and International Perspectives*, by Luisa Blanchfield.

Opponents of U.S. participation in the Review Conference maintain that U.S. engagement would give undeserved legitimacy to U.N. mechanisms that provide a platform for member states to target Israel. They also argue that it would imply that the United States supports the anti-Semitism demonstrated at WCAR as well as what many perceive as unbalanced language in the Durban Declaration and Program of Action. According to some, U.S. non-participation in the Review Conference sends a clear message to U.N. member states that repeatedly targeting one country and regional conflict in U.N. fora is unacceptable to the United States. They contend that the long-term political impact of such a message outweighs the short-term diplomatic impact of U.S. non-participation or withdrawal. These opponents therefore agree with the Bush Administration's decision not to participate in the preparatory process until, as U.S. officials say, it is proven that the Review Conference will not become a platform for anti-Semitism. They argue that holding out the possibility of U.S. participation — as well as the participation of other like-minded governments who have made similar statements — may persuade U.N. member states to take a more balanced approach when drafting and negotiating Review Conference outcome documents in preparation for the April 2009 Conference.