

# European Union, Human Rights and International Politics. The Case of the Durban Review Conference (2009): A Lost Opportunity?

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## Introduction

This piece aims to examine the position of the European Union during, but also before, the recent Durban Review Conference. By describing the preparatory process, the political considerations before and during the conference as well as the external factors that played a role in forming the final EU position, it will be argued that the recent conference was a lost opportunity for the EU. The whole procedure is examined through the lenses of human rights, in a political rather than a legal approach (legal issues will be dealt with where necessary only), while the issue of intercultural dialogue among civilisations and its potential in a global scale is present throughout the analysis. The first part deals with the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban 2001, while the second part focuses on the Review Conference of 2009, the preparatory process and the conference as such. Finally, the last part analyses the outcomes of the 2009 conferences and draws some conclusions concerning the EU position. Some thoughts for the future are incorporated in the conclusions.

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## 1. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban 2001

<sup>1</sup> United Nations, General Assembly, *Third Decade to Combat Racism and Racial Discrimination and the Convening of a World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance*, A/RES/52/111, 12 December 1997.

In 1997, the General Assembly of the United Nations decided to hold a World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance<sup>1</sup>. The conference was held in Durban, South Africa, from 31 August to 7 September 2001 and its aim was to boost the struggle

against racism, racial discrimination and xenophobia. Alongside the new vision for the struggle against racism, a mechanism for the examination and follow up of the work and efforts of the governments was also meant to be established in Durban.

According to the objectives set forth by the General Assembly<sup>2</sup> the World Conference aimed to:

- review progress made in the fight against racism and racial discrimination, in particular since the adoption of the Universal Declaration of Human Rights, and to reappraise the obstacles to progress in the field and to identify ways to overcome them;
- consider ways and means to better ensure the application of existing standards and their implementation to combat racism and racial discrimination;
- increase the level of awareness about the scourge of racism and racial discrimination and formulate concrete recommendations on ways to increase the effectiveness of the activities and mechanisms of the United Nations through programmes aimed at combating racism and racial discrimination;
- review the political, historical, economic, social, cultural and other factors leading to racism and racial discrimination and provide concrete recommendations to further action-oriented national, regional and international measures aimed at combating all forms of racism and racial discrimination; and
- draw up concrete recommendations to ensure that the United Nations has the necessary resources for its activities to combat racism and racial discrimination.

The United Nations Commission on Human Rights acted as the preparatory committee for the World Conference. The preparatory process included intergovernmental meetings, several experts' seminars around the world and regional intergovernmental meetings<sup>3</sup>.

The 2001 Conference was well attended (more than 10.000 people from all regions of the world) and was the source of great controversy. This conference was marked by a lot of tension mainly regarding issues of the past, like colonialism, slavery and reparations for the victims of such practises, as well as issues related to the Middle East and Israel.

Here some clarifications are important in order to understand

<sup>2</sup> *Ibidem*.

<sup>3</sup> In Europe the regional intergovernmental meeting was held in Strasbourg in 2000.

what really happened in 2001. Alongside the state conference, an NGO Forum was organised, where some highly controversial proposals were adopted. The final text of the NGO Forum included passages singling out Israel as racist country and comparing it to apartheid while many of the NGOs were calling for a boycott of Israel<sup>4</sup>. This declaration was also criticised for other aspects like the selective reference to slave trade, etc. The outcome of the NGO Forum was very controversial indeed and many leading human rights NGOs (like Human Rights Watch and Amnesty International) clearly disassociated themselves from it. The NGO declaration was also denounced by the governments participating in the conference. The situation in the governmental conference was far from perfect, still not so dramatic, especially regarding the issue of Israel, at least not in the beginning. Even from the preparatory meeting in Geneva, the issue of Palestine and the Israeli practises was brought up. In the draft text the relevant references that associated Israel with racism and referred to the violations of the rights of the Palestinians were put in brackets and were expected to be replaced ahead the opening of the conference<sup>5</sup>. However, Israel and the United States decided to withdraw from the governmental conference claiming that it was turning to an anti-Semitic forum<sup>6</sup>.

### 1.1. The Outcome Document of the 2001 Conference

Despite the tensions and the withdrawals the conference managed to come up with a common (not legally binding) Outcome Document named Durban Declaration and Programme of Action (DDPA)<sup>7</sup>.

The DDPA is a rather long document that reasserts the principles of equality and non-discrimination as core human rights, urges states to adopt measures of affirmative or positive action and is including a number of strategies to achieve full and effective equality through international cooperation. The programme was meant to be a comprehensive, action-oriented document, proposing concrete measures to combat racism, racial discrimination, xenophobia and related intolerance. The final text of the conference also strongly condemns both anti-Semitism and the holocaust.

Concerning the two most controversial issues, that of slavery

<sup>4</sup> World Conference against Racism, NGO Forum Declaration, Durban, 3 September 2001, available at <http://i-p-o.org/racism-ngo-decl.htm> (consulted on 23 July 2009).

<sup>5</sup> D. Ezzat, *Reading between the Brackets*, in «Al-Ahram Weekly Online», no. 546, 9-15 August 2001, available at <http://weekly.ahram.org.eg/2001/546/fr2.htm>.

<sup>6</sup> Israel Minister for Foreign Affairs, *Israel's Reaction to the Conclusion of the UN Conference against Racism in Durban*, Press Release, 9 September 2001, available at <http://www.mfa.gov.il>.

<sup>7</sup> Durban Declaration and Programme of Action, available at <http://www.un.org/WCAR/durban.pdf>.

and that of Middle East, the DDPA acknowledges that slavery and the slave trade are crimes against humanity, and should have always been so<sup>8</sup>, expresses concern about the plight of the Palestinian people under foreign occupation and recognises the inalienable right of the Palestinian people to self-determination and the right to an independent state. It also recognises the right to security for all countries in the region, including Israel, and calls upon all governments to support the peace process and bring it to an early conclusion<sup>9</sup>.

## 1.2. The Role of the European Union and the Outcome of the Durban Conference (2001)

The European Union, under the Belgian Presidency, remained present until the end of the conference and played a pivotal role in the negotiations, moderating the language and eliminating the most problematic parts of the text, which finally made it possible for the participants to adopt the DDPA. It was widely acknowledged that the stance of the European Union was very constructive and contributed the most in concluding successfully the conference by adopting (negotiated) text.

The European Parliament (EP) was present with an *ad hoc* delegation in the 2001 Conference, but not taking part in the negotiations. The EP also adopted a resolution on the conference's outcome, declaring the conference «a step forward towards the elimination of all forms of contemporary racism and xenophobia, even if it did not succeed in meeting all expectations»<sup>10</sup>. The resolution, which more or less summarises the European Union's views, recognised the difficulties in reaching an agreement in view of the dispute over reparations for victims of slavery and the issue of the Middle East and welcomes the disassociation of Zionism from racism. The role of the Belgian Presidency in steering the conference towards an acceptable compromise is also recognised and at the same time, there is a criticism for the NGO Forum, convened prior to the conference promoting demands that were unacceptable. There is also welcome for the recognition by the conference of the «evil of slavery and slave trade practices, which would, if committed today be considered crimes against humanity»<sup>11</sup>.

<sup>8</sup> *Ibidem*, paras 13, 14, 100 and 101, available at <http://www.un.org/WCAR/durban.pdf>.

<sup>9</sup> *Ibidem*, paras. 63 and 151.

<sup>10</sup> European Parliament, *Resolution on the World Conference against Racism in Durban*, 3 October 2001.

<sup>11</sup> *Ibidem*.

## 2. The Preparatory Process of the Durban Review Conference (2009)

The decision to convene the Durban Review Conference was made by UN member states at a General Assembly meeting in 2006<sup>12</sup> and its declared goals were: to review the progress and assess implementation of the Durban Declaration and Programme of Action, to assess the effectiveness of the existing Durban follow-up mechanisms and other relevant UN mechanisms dealing with the issues, to promote the universal ratification and implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and to identify and share good practices. The UN General Assembly requested the Human Rights Council (HRC) to act as the Preparatory Committee for the Durban Review Conference. The Preparatory Committee (PrepCom) that was set up was planned to have three sessions in total and its work was open to the participation of all member states of the UN and members of specialised agencies and observers<sup>13</sup>. Additionally the Intersessional Open-ended Intergovernmental Working Group of the Preparatory Committee was set up in order to review recommendations submitted by countries and other stakeholders for possible inclusion in the Review Conference Outcome Document.

It should be noted here that, contrary to the 2001 Conference, there was no NGO Forum organised, only some UNHCR sponsored side events, probably due to the (negative for many) experience of the 2001 Conference.

The preparatory process was long and turbulent. The first meeting of the PrepCom took place on 27-31 August 2007 and dealt with organisational issues<sup>14</sup>. The substantial work of the PrepCom started in April 2008. The first meeting included contributions by relevant Special Rapporteurs like the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance<sup>15</sup>, the Special Rapporteur on Freedom of Religion or Belief<sup>16</sup> and the Special Rapporteur on the Right to Education<sup>17</sup>. An interesting contribution came from the Working Group of Experts on People of African Descent<sup>18</sup> which incorporated ideas that were later taken up by the African delegations. Among others, the text recommends the issue of reparations for victims of slavery

<sup>12</sup> United Nations, General Assembly, A/RES/61/149, 19 December 2006. Note that both the US and Israel voted against the resolution and the US have voted against the following decisions that included provisions about the funding of the 2009 Review Conference. The American ambassador in the UN has also announced that the United States will withhold a portion of its 2008 contribution to the UN regular budget that would fund the UN Human Rights Council, including money for the preparatory process for the Review Conference. For a detailed account of the US position after 2001 and before 2009 see L. Blanchfield, *The 2009 UN Durban Review Conference: Follow-Up to the 2001 UN World Conference Against Racism*, CRS Report to Congress, 20 November 2008.

<sup>13</sup> United Nations, Human Rights Council, Resolution 3/2 of 2006, available at <http://ap.ohchr.org/documents/E/HRC/resolutions/A-HRC-RES-3-2.doc>.

<sup>14</sup> United Nations, General Assembly, A/62/375, 2 October 2007.

<sup>15</sup> United Nations, General Assembly, A/HRC/7/19, 20 February 2009.

<sup>16</sup> United Nations, General Assembly, A/HRC/6/5, 20 July 2007.

<sup>17</sup> United Nations, General Assembly, A/CONF.211/PC.2/8, 18 April 2008.

<sup>18</sup> United Nations, General Assembly, A/HRC/7/36, 13 March 2008.

and slave trade to be considered in the Durban Review Conference<sup>19</sup>.

The second substantive meeting took place in October 2008 and it was this meeting where the substantial issues were put on the table. The European Union and the Organisation of Islamic Countries submitted their contributions in paper while the reports of the Regional Preparatory Conferences of Latin America and the Caribbean as well as that of Africa were also submitted. Already from those texts it was becoming evident what the thorns would be.

For the African states the issue of slavery and slave trade was important. These states did not only seek the condemnation of the slavery and all related practices but they also tried to reintroduce the issue of reparations for such practices<sup>20</sup>. During the Africa Regional Preparatory Conference the delegates adopted the proposal of the Working Group of Experts on People of African Descent and called for the question of reparations to be addressed in the Durban Review Conference<sup>21</sup>. This of course met with the opposition of the EU who resisted the introduction of such an item as it did for the introduction of any new elements that were not included in the DDPA.

The contribution of the Organisation of Islamic Countries (OIC), submitted in September 2008, was of particular interest as well. In this text it became apparent that the issue of «defamation of religions» was to be the most important for this bloc. A great deal of the rather short document is devoted to the issue. It underlines that defamation of religions is a contemporary form of racism and notes that:

[one] of the most worrying trends since 2001 include racio-religious profiling and discrimination, defamation of Muslims, their faith and beliefs, incitement to hatred and its concomitant effects on multiculturalism, national and international peace and stability as well as human rights of the affected communities<sup>22</sup>.

The document concludes that «[n]ational laws cannot deal with the rising tide of defamation and hatred against Muslims» and that an international framework is necessary that could be «compiled in a single “universal document” as guidelines for legislation aimed at countering “defamation of religions”»<sup>23</sup>.

<sup>19</sup> *Ibidem*, para. 118.

<sup>20</sup> The Asian states also supported such claim in the preparatory process. See *Contribution by the Asian Region to the Durban Review Conference*, United Nations, General Assembly, A/CONF.211/PC.3/5, 10 October 2008.

<sup>21</sup> United Nations, General Assembly, A/CONF.211/PC.3/4. The text also refers to the paras. 164, 165 and 166 of the DDPA in order to sustain the claim for reparations.

<sup>22</sup> Written OIC Contribution, United Nations, General Assembly, A/CONF.211/PC.3/10.

<sup>23</sup> *Ibidem*.

Finally in one of the recommendations the OIC proposes a mandatory prohibition by law to eliminate racio-religious profiling<sup>24</sup>.

In the same text there is also a paragraph devoted for the Palestinian issue, a rather weak provision especially in comparison to the space allocated to the issue of defamation of religions. The above extracts from the OIC text summarises their positions on what was going to be some of the most controversial issues during the preparatory process and the conference itself.

The European Union too, in October 2008, submitted a text as a contribution to the conference<sup>25</sup>. This document addresses many human rights issues and also, sometimes directly sometimes indirectly, the issues that the African and the OIC countries put on the table. Concerning slavery, the EU strongly condemns it as well as any slavery-like practices that persist today and acknowledges that victims of such practices are particularly vulnerable to racism and racial discrimination. However, there is no mention of reparations: it only welcomes the commemoration of the memory of the victims of such practice<sup>26</sup>. The EU did not want that reparations and in general issues of the past to be included in the Review Conference and this was made clear early enough in the preparatory process.

## 2.1. The European Union «Red Lines»

Nevertheless, the European position regarding the Review Conference and the preconditions for a successful outcome were set even earlier. In September 2008 the French ambassador in the Human Rights Council, speaking on behalf of the EU sketched the conditions set by the EU<sup>27</sup>. The same positions, even more clearly, were repeated again in the HRC by the French Presidency on behalf of the EU<sup>28</sup>. The European Union was setting the lines that were not to be crossed in order for its member states to remain engaged in the Durban process, these limits came to be known as the EU «red lines». The lines not to be transgressed were:

a) the singling out of any country or region in particular. Obviously the aim here is to avoid turning the conference into an anti-Israel forum;

<sup>24</sup> *Ibidem*.

<sup>25</sup> *Contribution by the European Union to the Durban Review Conference*, United Nations, General Assembly, A/CONF.211/PC.3/6. Note that unlike the 2001 Conference no regional conference was held in Europe. Instead, countries held informal consultations in order to draft the documents.

<sup>26</sup> *Ibidem*, para. 25.

<sup>27</sup> EU statement, Human Rights Council 9th Session. General Debate of 19 September 2008, also available at <http://blog.unwatch.org/wpcontent/uploads/2008/10/france-eu-on-durban-ii.pdf>. See also European Parliament, *The EU Priorities for the 64th Session of the UN General Assembly*, 24 March 2009.

<sup>28</sup> Human Rights Council, *Statement Delivered on Behalf of the European Union*, 3 November 2008, available at [http://www.franceonu.org/spip.php?article2980&var\\_recherche=durban](http://www.franceonu.org/spip.php?article2980&var_recherche=durban).

b) reopening the 2001 Durban declaration by inserting new elements especially those designed to restrict free speech in favour of religion. The EU intended to keep the debate on the implementation of the 2001 declaration and avoid inserting new issues. The EU had in mind the attempt of the OIC countries to insert the term of «defamation of religions» in order to allow for restrictions of freedom of speech when this speech comes to criticise religions and especially Islam;

c) drawing up an order of priority among victims. The Review has to deal with issues of the future not with the past. The issues of slavery and reparations are the concern of the EU here;

d) politicising or polarising the discussion.

If any of those «red lines» were transgressed, the European Union would consider the boycotting of the conference. The European Parliament has also urged the EU member states to reconsider their participation, should those lines were breached<sup>29</sup>.

Regarding these red lines some remarks are useful in order to understand the EU position. Concerning the issue of «defamation of religions» (which appeared to be the most persistent during the negotiations) the EU opposed to any such reference considering correctly that only individuals, as a single human being or a group of persons, are the subject of human rights, and not religions. Additionally, the «defamation of religions», a political rather than a legal concept anyway, has been used by the OIC countries in order to limit certain human rights prescribed by international law, in favour of religion<sup>30</sup>. Therefore, the EU prefers to utilise the term «incitement to racial or religious hatred» and was not willing to negotiate any limitations on freedom of expression.

Regarding Israel, the EU opposed any mention in the situation in the Middle East. It has also made it clear that it will not accept any country to be singled out and until the end has been refusing every mention of Israel in the text. Contrary to what many expected based on the 2001 experience, this issue was not the hardest to overcome. Finally, there was the issue of slavery and especially the call for reparations. As mentioned earlier, the African group, supported sometimes by the GRULAC (Group of Latin America and Caribbean Countries) and ASIA group, would like to bring up the issue of

<sup>29</sup> European Parliament, *The EU Priorities for the 64th Session of the UN General Assembly*, cit.

<sup>30</sup> The OIC countries have been particularly successful in introducing resolutions, almost every year, on combating the «defamations of religions». See for example Commission on Human Rights Resolution 2003/4, *Combating Defamation of Religions*, 14 April 2003, available at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/%28Symbol%29/E.CN.4.RES.2003.4.En?Opendocument>, and also Human Rights Council, Resolution 7/19, *Combating Defamation of Religions*, 27 March 2008, available at [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_7\\_19.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_19.pdf).



reparations for slavery and colonialism<sup>31</sup>. The EU wanted to resist all disproportionate language concerning «the West» with regard to colonialism and especially reparations, and would not accept any language or demand that would go further than the text adopted in 2001.

## 2.2. The Drafting of the Outcome Document and the Positions of the EU Member States

By November it was clear what the thorny issues would be. The first texts presented were not compatible with the European positions. There was reference to Israel linking it with racial discrimination practises, the demand for reparations for «past tragedies» and colonialism was included as well as the term of «defamation of religions»<sup>32</sup>. It was evident that the starting position was far from the EU positions and a lot of work had to be made and decisive action was necessary. During the COHOM meeting of December 2008, the French Presidency concluded that the European Union remained engaged in the Review Conference and that it was crucial that the member states behave according to the common positions of the Union. Of course, if the «red lines» were breached, a withdrawal should not be excluded. From a political point of view the drafting of the «red lines» helped increase the coherence and strengthen the negotiating position of the EU, in the expense of flexibility of course. Even though this framework did not stop some countries from withdrawing, it has at least set a framework, bound the member states in it and those who wanted to challenge it had to prove their positions. Otherwise countries, under national considerations or the influence of powerful actors, might have come up with their own criteria and the attempted coordination would be almost impossible.

In the meanwhile the negotiations for the draft document to be presented in the conference had started in Geneva. From January 2009, the intersessional open-ended intergovernmental working group, under Russian facilitation, was responsible for receiving the proposals of the participants and negotiating the text. In January the text remained incompatible with the «red lines»<sup>33</sup> but some progress was seen in the direction of convincing the EU counterparts to comply with them. A long way was still ahead though while in the meantime the EU Presidency had changed.

<sup>31</sup> See United Nations, General Assembly, A/CONF.211/PC.3/5, 10 October 2008.

<sup>32</sup> See the initial compilation of proposals Human Rights Council, A/CONF.211/PC/WG.2/CRP.1, 27 November 2008.

<sup>33</sup> See the *Revised Version of the Technically Reviewed Text*, A/CONF.211/PC/WG.2/CRP.2, 23 January 2009, available at [http://www.un.org/durbanreview2009/pdf/intersession\\_open\\_ended19109.pdf](http://www.un.org/durbanreview2009/pdf/intersession_open_ended19109.pdf).

In January 2009 the Czech Republic took over from France and in the beginning the Czech Presidency seemed to endorse to Durban process or at least not objected to it.

The EU at that time remained united and engaged to the process. Not all countries were as such though. Israel had declared from the beginning that it would boycott the Review Conference and was lobbying hard all friendly governments to do so. The Israeli Minister for Foreign Affairs at that time, Ms Tzipi Livni, in her official announcement in November 2008, claimed that Israel has waited for the preparatory process to show positive signs but the hopes did not come true. It blamed the 2001 Conference for «vitriolic language» and concluded that «Israel will not participate and will not legitimize the Review Conference, which will be used as a platform for further anti-Israeli and anti-Semitic activity»<sup>34</sup>. The US administration did not show any signs of engagement either at this point. Along with their official boycott of the conference, the Israeli government tried to use all means of diplomatic pressure to their allies and friends in order to prevent them from participating<sup>35</sup>. The pressure continued all along the preparatory process and during the conference itself and was to be proven party successful. Canada<sup>36</sup>, subscribing to the Israeli arguments, decided to officially boycott the conference already in January but the European Union at this point remained united, not for long though.

By March the issue of the Durban Review was starting to draw the attention of the media and on 5 March 2009 the first crack in the European position appeared. Italy, with no prior consultation with the EU member states, decided to disengage from the preparatory process. This was a blow for the EU as the Italian move was not anticipated, especially since other countries like The Netherlands, who were far more critical, remained within the EU bloc. At that time the negotiations for the text were ongoing and even though the text was still incompatible there was some progress towards meeting the EU positions and this made the Italian decision even more problematic for the EU. The Italian Minister for Foreign Affairs said that Italy wanted to give a strong political signal and claimed that «the withdrawal is based on a number of “unacceptable” points in the document, regarding the Israeli-Palestinian question and religious defamation»<sup>37</sup>. The Italian

<sup>34</sup> Israel Ministry for Foreign Affairs, *Israel Will Not Participate in the Durban 2 Conference*, Press Release, 19 November 2008, available at <http://www.mfa.gov.il>.

<sup>35</sup> See G. Steinberg, *Ahmadinejad Buries the Durban Process*, in «The Jerusalem Post», 21 April 2009, available at <http://www.jpost.com/servlet/Satellite?cid=1239710742347&pagename=JPArticle%2FShowFull> (consulted on 26 July 2009).

<sup>36</sup> For Canada's positions see Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/12, available at [http://www.unhcr.ch/huridocda/huridoca.nsf/AllSymbols/CB95DC2388024CC7C1256B4F005369CB/\\$File/No221543.pdf?OpenElement](http://www.unhcr.ch/huridocda/huridoca.nsf/AllSymbols/CB95DC2388024CC7C1256B4F005369CB/$File/No221543.pdf?OpenElement).

<sup>37</sup> See Italian Ministry for Foreign Affairs, *Italy Will Return to the Negotiations if the Durban 2 Text Is Amended*, Press Release, 12 March 2009, available at [http://www.esteri.it/MAE/EN/Sala\\_Stampa/ArchivioNotizie/Approfondimenti/2009/03/20090312\\_NegoziatiDurban.htm](http://www.esteri.it/MAE/EN/Sala_Stampa/ArchivioNotizie/Approfondimenti/2009/03/20090312_NegoziatiDurban.htm). See also Italian Ministry for Foreign Affairs, *Durban Conference: Reasons for “No”*, Press Release, 11 March 2009, available at [http://www.esteri.it/MAE/EN/Sala\\_Stampa/ArchivioNotizie/Approfondimenti/2009/03/20090311\\_ConferenzaDurban.htm](http://www.esteri.it/MAE/EN/Sala_Stampa/ArchivioNotizie/Approfondimenti/2009/03/20090311_ConferenzaDurban.htm).

withdrawal was the first of others to come while in the beginning of April the negotiations in Geneva were entering the final and most crucial face. The text was moving slowly but steadily towards the EU positions and the rolling text on the table during the meeting of 6-9 April should have been quite satisfactory for the EU<sup>38</sup>. The most important meeting of the preparatory was the one ahead, on 15-17 April. It would be the last one and the adopted text would be the one to be proposed for adoption during the conference. After hard negotiations the Preparatory Committee compiled a much shorter draft Outcome Document<sup>39</sup> to be the last one to be put in front of the delegations before the opening of the conference. Concerning the EU positions, the draft document makes no reference to Israel and it only lists foreign occupation as a factor contributing to racist and discriminatory practises<sup>40</sup>. The term «defamation of religion», probably the biggest thorn during the negotiations does not appear either. Instead the language of the 2001 text is reiterated, talking about «negative stereotyping of religions resulting in denial or undermining the rights of the people associated with them»<sup>41</sup> and listing not only Islamophobia but also anti-Semitism, Christianophobia, anti-Arabism. It also commemorates the Holocaust<sup>42</sup>. Concerning slavery and slave trade, the text condemns such practises (alongside with colonialism, apartheid and genocide), past or modern forms of slavery where they persist, and welcomes the actions undertaken to honour the memory of the victims<sup>43</sup>. No mention for reparations is included in the draft text.

## 2.3. The Final Draft Document

### 2.3.1. *The EU Divided*

The text was presented in the COHOM meeting of 14-15 April where it became apparent that the document was not satisfactory for all the member states. According to the most critical views the text still contained some significant shortcomings regarding stereotyping of religions and hierarchy of victims. The reference to «foreign occupation» was also criticised as an indirect reference to the Middle East. The disagreement on the content was not the only problem for the EU member states. The Iranian President Mahmoud

<sup>38</sup> United Nations, General Assembly, A/CONF.211/PC/WG.2/2, 3 April 2009.

<sup>39</sup> Draft Outcome Document, as at 15 April 2009, available at <http://www.un.org/durbanreview2009/pdf/DOD%20Rev.1%2015-4-2009.pdf>.

<sup>40</sup> *Ibidem*, para. 7.

<sup>41</sup> *Ibidem*, para. 11.

<sup>42</sup> *Ibidem*, para. 65.

<sup>43</sup> *Ibidem*, paras. 61 and 89.

Ahmadinejad had announced his presence in the conference and this was an additional reason for scepticism. Under the assumption that the Iranian President will use the forum for anti-Semitic propaganda many countries proposed that they will decrease their level of presence, making the Iranian President the most highly ranked official to be present. Despite the concerns raised, it was decided that the EU would enter into negotiations on the document in the days leading up to the opening of the conference but it had become apparent that many states were not in full support of the process anymore (especially The Netherlands who had presented an alternative text that was not endorsed by the rest of the EU members). During the following days, however, The Netherlands, Germany and Poland decided to join Italy and boycott completely the conference<sup>44</sup>. The German Minister for Foreign Affairs said that Germany took the decision after consulting with the other EU members and he urged those attending the conference to «stand up for the effective fight against racism and ethnic discrimination»<sup>45</sup>. The Dutch Minister for Foreign Affairs justified the position of his country and stated that «The conference against racism is too important to allow it to be abused for political purposes and attacks against the West»<sup>46</sup> while similar concerns were expressed by Poland too. The European Commission decided to participate as an observer however, because according to Vice-President Barrot the Commission shared the views of the majority of the states<sup>47</sup>.

### 2.3.2. *The Position of the Rest of «West»*

The US position was not very positive. The Bush administration was negative since the beginning but has never explicitly stated that it will not participate to the conference, the decision was left for the new administration<sup>48</sup>. Around February it seemed that the Obama administration was considering to join the conference and it sent a delegation to participate in the preliminary meetings<sup>49</sup>. This attitude however, did not last very long fearing it could not drastically alter the text as it wished; the Israeli pressure was of course another decisive factor<sup>50</sup>. Even if there were some thoughts of engaging in the process, the State Department, already in February, was negative towards the conference:

<sup>44</sup> The decision was deplored by many human rights organisations, see for example Amnesty International, *Combating Racism Calls for Conviction and Determination*, Public Statement, 20 April 2009, available at <http://www.amnesty.org/en/library/info/IOA41/018/2009/en>.

<sup>45</sup> T. Lazaroff, *Germany Cancels Its Plans to Attend Durban II Conference*, in «The Jerusalem Post», 19 April 2009, available at <http://www.jpost.com/servlet/Satellite?cid=1239710721030&pagename=JPost%2FJPArticle%2FShowFull> (consulted on 22 April 2009).

<sup>46</sup> C. Liphshiz, *Obama: Durban II Risks "Hypocritical" Israel Hatred*, in «The Haaretz», 20 April 2009, available at <http://haaretz.com/hasen/spages/1079354.html> (consulted on 22 April 2009).

<sup>47</sup> For a collection of relevant statements by EU officials see [http://www.europarl.europa.eu/eplive/expert/shotlist\\_page/20090505SHL55137/default\\_en.htm](http://www.europarl.europa.eu/eplive/expert/shotlist_page/20090505SHL55137/default_en.htm).

<sup>48</sup> For the views of the US on the issue at that time see L. Blanchfield, *The 2009 U.N. Durban Review Conference, Follow-Up to the 2001 U.N. World Conference Against Racism*, Congressional Research Service Report for the Congress, 20 November 2008, available at <http://www.fas.org/sgp/crs/row/RL34754.pdf>.

<sup>49</sup> Human Rights First, *Rights Groups Welcome U.S. Engagement in Durban Review Process*, Press Release, 16 February 2009, available at <http://www.humanrightsfirst.org/media/disc/2009/alert/399/> (consulted on 27 July 2009)

<sup>50</sup> H. Krieger, *US Reaches Out to Jewish Leaders on "Durban II"*, in «The Jerusalem Post», 17 February 2009, available at <http://www.jpost.com/servlet/Satellite?pagename=JPost/JPArticle/ShowFull&cid=1233304801301> (consulted on 27 July 2009).

Sadly, however, the document being negotiated has gone from bad to worse, and the current text of the draft outcome document is not salvageable. As a result, the United States will not engage in further negotiations on this text, nor will we participate in a conference based on this text. A conference based on this text would be a missed opportunity to speak clearly about the persistent problem of racism. The United States remains open to a positive result in Geneva based on a document that takes a constructive approach to tackling the challenges of racism and discrimination. The U.S. believes any viable text for the Review Conference must be shortened and not reaffirm in toto the flawed 2001 Durban Declaration and Program of Action (DDPA). It must not single out any one country or conflict, nor embrace the troubling concept of «defamation of religion». The U.S. also believes an acceptable document should not go further than the DDPA on the issue of reparations for slavery<sup>51</sup>.

President Obama himself, a few days ahead the conference, announced the final decision to boycott the conference. According to him the draft document «raised a whole set of objectionable provisions» and risked a reprise of the 2001 predecessor summit in Durban, «which became a session through which folks expressed antagonism toward Israel in ways that were often times completely hypocritical and counterproductive»<sup>52</sup>. Many NGOs as well as the UN High Commissioner for Human Rights deplored the fact that the US boycotted the conference<sup>53</sup>. Canada, New Zealand and Australia decided also not to participate, putting forward arguments similar to the ones presented by the US. Needless to say, all these boycott announcements were immediately welcomed and applauded by Israel, who was leading the campaign against the Durban Review Conference.

Under these circumstances, with some of the main international actors away from the conference, the many problems that rose during the preparatory process and the high tension anticipated by the speech of the Iranian President, the fate of the Review Conference was standing at the knife edge. It should be noted here that most of the human rights NGOs deplored the decision of those Western countries that decided to boycott the conference<sup>54</sup>.

<sup>51</sup> US Department of State, Press Release, 27 February 2009, available at <http://www.state.gov/r/pa/prs/ps/2009/02/119892.htm> (consulted on 22 July 2009).

<sup>52</sup> *U.N. Racism Meeting to Open Without U.S.*, in «USA Today», 19 April 2009, available at [http://www.usatoday.com/news/world/2009-04-19-un-racism\\_N.htm](http://www.usatoday.com/news/world/2009-04-19-un-racism_N.htm) (consulted on 22 April 2009).

<sup>53</sup> See Durban Review Conference, Press Release, 19 April 2009, available at [http://www.un.org/durbanreview2009/coverage/press/pr\\_19-04-09.shtml](http://www.un.org/durbanreview2009/coverage/press/pr_19-04-09.shtml) (consulted on 23 April 2009).

<sup>54</sup> See for example Human Rights Watch, *UN Race Conference Undermined by Western Withdrawals*, 19 April 2009, available at <http://www.hrw.org/en/news/2009/04/19/un-race-conference-undermined-western-withdrawals>.

### 3. The Durban Review Conference (Geneva 2009)

The Review Conference began on 20 April in Geneva. During the high-level segment many EU member states took the floor. The participation of the EU was already diminished by the absence of Germany, Italy, The Netherlands and Poland and the highest ranking official participating was the Belgian Vice Prime Minister and Minister for Foreign Affairs Karel de Gucht (Belgium has been one of the most active states during the whole preparatory process and member of the working group). The European Commission was only present as an observer and the burden of the coordination for the EU member states was in the shoulders of the Czech Presidency.

During the first day of the conference, Mr. Amos Wako, Attorney-General of the Republic of Kenya, was elected President and the Secretary General of the UN Ban Ki-Moon addressed the conference. He said that despite decades of advocacy, racism still persists and called upon the participants to reaffirm the most fundamental values of mankind. The High Commissioner for Human Rights Navi Pillay also stated at the opening meeting that discrimination in all its forms must be forcefully rejected<sup>55</sup>.

Later that day, tensions rose dramatically when the President of Iran Mahmoud Ahmadinejad gave a speech in which he described Israel as being a «racist government» adding most notably that after World War II the United States and other nations had established an «oppressive, racist regime» in occupied Palestine. He did not explicitly deny the Holocaust but he did say that what followed in the region was done under «the pretext of Jewish suffering» and that «World Zionism personifies racism». He also made reference to the slave trade towards Europe and the US and he directly contested as unfair the international order established by the winners of World War II. The US and their presence in the Middle East did not escape its criticism either<sup>56</sup>.

In a coordinated action, already decided ahead the conference as mentioned earlier, all EU delegations present walked out of the room during the speech, but with the expressed intention of returning to the conference later. At this point, the Czech Republic withdrew completely from the conference and in the absence of the EU Presidency, the Swedish delegation, as next

<sup>55</sup> See Durban Review Conference, *United Nations Secretary-General Tells Durban Review Conference that Despite Decades of Advocacy, Racism Still Persists*, Press Release, 20 April 2009, available at [http://www.un.org/durbanreview2009/coverage/press/pr\\_20-04-09.shtml](http://www.un.org/durbanreview2009/coverage/press/pr_20-04-09.shtml) (consulted on 23 July 2009).

<sup>56</sup> The complete speech President Ahmadinejad delivered during the conference can be found at <http://www.presstv.ir/detail.aspx?id=92046> (consulted on 22 July 2009).

Presidency of the EU, took up the coordination of the EU member states. It should be noted that while the EU delegations walked out of the room there were many delegates that applauded the Iranian President.

The speech of the Iranian President was deplored by many, including the High Commissioner for Human Rights and the UN Secretary General<sup>57</sup>. The European reaction was immediate too. The President of the European Parliament, Hans-Gert Pöttering, in a press statement called «The European Union and the international community to decisively condemn these statements»<sup>58</sup> while the French President and the British Minister for Foreign Affairs were among the ones who immediately condemned the speech<sup>59</sup>.

The following day, 21 April, the delegates decided to adopt the Outcome Document by consensus. The adoption came a bit earlier than anticipated and this was due to the fear that the situation, after the Iranian President's speech, could deteriorate. Therefore, in order to avoid a breakdown the delegates, backed up by the High Commissioner, decided to go ahead and adopt the document.

<sup>57</sup> See Durban Review Conference, Press Release, 20 April 2009, available at [http://www.un.org/durbanreview2009/coverage/press/pr\\_20-04-09\\_iran.shtml](http://www.un.org/durbanreview2009/coverage/press/pr_20-04-09_iran.shtml) (consulted on 22 July 2009).

<sup>58</sup> See S. Nagpal, *European Parliament Chief Condemns Ahmadiyeh Speech*, 20 April 2009, available at <http://www.topnews.in/european-parliament-chief-condemns-ahmadiyeh-speech-2154209> (consulted on 22 July 2009).

<sup>59</sup> For more on the European reactions see V. Pop, *EU States Walk Out During Ahmadiyeh Speech*, in «EU Observer», 21 April 2009, available at <http://euobserver.com/?aid=27968> (consulted on 23 July 2009).

<sup>60</sup> *Outcome of the Durban Review Conference*, available at [http://www.un.org/durbanreview2009/pdf/Durban\\_Review\\_outcome\\_document\\_En.pdf](http://www.un.org/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf).

<sup>61</sup> Durban Review Conference, *Closing Statement of the United Nations High Commissioner for Human Rights, Ms Navanethem Pillay*, 24 April 2009, available at <http://www.un.org/durbanreview2009/stmt05-01-09.shtml>.

### 3.1. The Outcome Document of the Durban Review Conference

The Outcome Document<sup>60</sup> is divided in five sections and contains 143 articles in total. It deals with the assessment of the progress of the DDPA, the promotion of the universal ratification and implementation of the International Convention on Elimination of All Forms of Racial Discrimination, the best practises achieved in various levels and the further concrete measures that need to be undertaken.

The High Commissioner for Human Rights, Navi Pillay, in her closing speech declared the conference successful and «a platform for a new beginning». She also said that the conference proved to be «a celebration of tolerance and dignity for all», and that it produced a «meaningful outcome enshrining a common aspiration: to defy racism in all its manifestations and work to stamp it out wherever it may occur» and concluded by stating that the focus is now on implementation<sup>61</sup>. Most of the prominent human rights NGOs, including Amnesty International, Human Rights

Watch and FIDH have welcomed the achievements of the conference despite its shortcomings.

With regards to the EU concerns, in the Final Document there is reference to foreign occupation<sup>62</sup> but linked with cases of racism and xenophobia and does not refer to any part of the world in particular<sup>63</sup>. Concerning the issue of «defamation of religions», the term does not appear anywhere in the text instead «derogatory stereotyping and stigmatisation of persons based on their religion or belief» is described as an issue that needs to be addressed<sup>64</sup>. The next article also refers to religious hatred but clearly states that any prohibition in order to sanction hate speech must be consistent with freedom of opinion and expression<sup>65</sup>. Moreover, Israel and the Middle East in general is not mentioned<sup>66</sup> at all and the same applies for the reparations for slavery, even though slavery and slave trade (together with colonialism, apartheid and genocide) especially the transatlantic one are mentioned as issues that should never be forgotten<sup>67</sup>. Finally the Holocaust is commemorated too<sup>68</sup>.

<sup>62</sup> *Ibidem*, art. 5.

<sup>63</sup> However, according to the Israel's Ambassador in the United Nations the words «foreign occupation in the diplomatic world is code for Israel». See T. Lazaroff, L. Krieger, *Israel: Durban II Text Is Getting Worst*, in «The Jerusalem Post», 16 April 2009, available at <http://www.jpost.com/servlet/Satellite?pagename=JPost/JPArticle/ShowFull&cid=1239710698> 600.

<sup>64</sup> *Ibidem*, art. 12.

<sup>65</sup> *Ibidem*, art. 13.

<sup>66</sup> Even Israel, while condemning the Outcome Document, seemed satisfied. See Israel Ministry for Foreign Affairs, *Israel's Reaction to the Conclusion of the UN Durban Review Conference*, Press Release, 4 May 2009, available at <http://www.mfa.gov.il/>.

<sup>67</sup> *Ibidem*, art. 62.

<sup>68</sup> *Ibidem*, art. 66.

<sup>69</sup> The High Commissioner herself recognised the fact in her closing speech, Durban Review Conference, *Closing Statement of the United Nations High Commissioner...*, cit.

<sup>70</sup> For a short review of the shortcomings of the text see also FIDH, Durban Review Conference, Oral Intervention, 23 April 2009, available at <http://www.fidh.org/Durban-Review-Conference-Oral>.

### 3.2. The EU «Red Lines», Human Rights and the Outcome Document

Concerning the Outcome Document there are two issues that need to be examined. First is the compatibility with the famous «red lines» of the EU and second its compatibility with the international standards of human rights. To start with the latter, even though an extensive review of the issue goes further than the intention of this article, one could say that the text is acceptable even though far from perfect and definitely the outcome of a negotiated compromise<sup>69</sup>. There are many provisions that could have been better (e.g. reparations for victims of racism) and there are issues that were left out (e.g. caste-based discrimination)<sup>70</sup>, but it should be still considered acceptable given the context. It was not drafted by human rights-oriented specialists but was rather the outcome of a political compromise. This is not to say of course that those taking part in the negotiations did not have human rights concerns in mind. On the contrary the fact that they did have those concerns was the cause of such a long and hard preparatory process. However, it should be acknowledged that this has been a political process and the controversial unfolding



of the conference speaks for itself. This does not mean to imply that human rights should have been brushed aside for political considerations, not at all. The argument is that since the text is acceptable in human rights terms then putting forward political considerations is harmful given that this conference was very important at global level, especially since the relations among the West and the Arab world are continuously under pressure.

Regarding the «red lines» of the EU the case is somewhat clear, even though many EU member states do not see it this way. These lines have not been transgressed in the Outcome Document at any level. Obviously the countries that participated until the end in the conference feel that way but not only them. The European Commission holds the same opinion too: «the Commission takes the view that the EU “red lines” for the negotiations of the outcome document have been preserved»<sup>71</sup>. No reference to the Middle East or Israel, nor was the latter singled out, while the term of defamation of religions was not included. The European Parliament was in line with the European Commission: it

[w]elcomes the consensus reached in the Durban Review Conference on an outcome document on 21 April 2009 as a follow-up to the World Conference Against Racism, which inter alia fully protects the right to freedom of expression as defined under international law, affirms and strengthens the call for the protection of migrants' rights, and acknowledges multiple and aggravated forms of discrimination [...]»<sup>72</sup>.

<sup>71</sup> European Union, *EU Commission Position on Durban Review Conference in Geneva*, 21 April 2009, Ref: EC09-079EN, available at [http://www.europa-eu-un.org/articles/en/article\\_8649\\_en.htm](http://www.europa-eu-un.org/articles/en/article_8649_en.htm).

<sup>72</sup> European Parliament, *Human Rights in the World 2008 and the EU's Policy on the Matter*, 7 May 2009, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2009-0385>.

<sup>73</sup> For a detailed account of the debate see *Conclusions of the UN Conference on Racism ('Durban II' - Geneva)*, Wednesday 6 May 2009, Strasbourg, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20090506&secondRef=ITEM-010&format=XML&language=EN>.

During the relevant debate in the European Parliament, Commissioner Barrot repeated the position of the EU Commission while Jan Kohout, President-in-Office of the Council also stated clearly that the text respected the red lines set by the EU. Ms H el ene Flautre, Chair of the Sub-Committee on Human Rights of the European Parliament at the time, even though regretting the speech of the Iranian President, did agree that the text, even imperfect, was acceptable by any standards<sup>73</sup>.

The question that was in everybody's lips was why the EU appeared so divided during the conference.

### 3.3. The Results and Impact of the Conference

Was the Durban Review Conference successful? Taken into the account the difficulties it has encountered even before it began, it was a successful one. The major human rights NGOs have welcomed the outcome of the conference as well, even though they all agree that the document is not perfect<sup>74</sup> but, according to Human Rights Watch, «fully incorporates the legitimate concerns of EU and other Western governments»<sup>75</sup>. It is also true that taken into account the initial texts it was hard to imagine the final text would be finally compatible with the EU positions, a small victory that should be credited to the EU negotiators and that also meant that the OIC countries did make substantial concessions<sup>76</sup>. The exclusion of the term «defamation of religions» is a particular accomplishment as it contradicts the efforts of the OIC countries, as described earlier, to press the issue forward through various resolutions in the UN bodies.

The importance, however, of the conference lies not only in what it has achieved (an Outcome Document is that is by no means legally binding), but possibly in what it has avoided. This is true especially if one tries to imagine what would have been the impact of a failure. In times where intercultural dialogue is mostly needed, such an event would have had profoundly negative implications on the already problematic process of mutual understanding between cultures. A failure would have sparked a new round of provocative speeches, spread hostility and decreased the willingness for genuine dialogue. A failure at such a high level, and taken into account the 2001 Conference, would have severely hindered any other initiatives aimed to promote global causes like the fight against racism and xenophobia, intercultural dialogue, etc. Therefore, the conference could be recognised as a relatively successful one and we should wait to see if its Outcome Document will manage to fertilise the ground for the fight against the scourge of racism globally.

### 4. The EU Presence

The division of the EU was widely criticised especially since, as nearly everybody agrees, the Outcome Document was within

<sup>74</sup> See for example Amnesty International, *Combating Racism Calls for Conviction and Determination*, Public Statement, 20 April 2009, AI Index: IOR 41/018/2009, available at <http://www.amnesty.org/en/library/asset/IO41/018/2009/en/cf285b8e-7ce4-48d1-a2e6-502bfccfe9dc/ior410182009en.html>.

<sup>75</sup> Human Rights Watch, *UN Race Conference Undermined by Western Withdrawals*, cit.

<sup>76</sup> The fact was also acknowledged by the Commissioner on Human Rights herself during her opening speech. See *Opening Statement of Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights*, 20 April 2009, available at <http://www.un.org/durbanreview2009/statements.shtml>.

the EU «red lines». Some blamed the Czech Presidency for not acting decisively enough and it is true that the Czech Presidency did not perform extremely well. The decision to quit the conference after the speech of the Iranian President contributed a lot to the Presidency's bad image. The Presidency knew well in advance what was going to happen, like the rest EU members that participated, and still agreed to take part in the conference. However, the Czech Presidency is too easy a target. Maybe, if there were in charge a more powerful country, not confronted with internal political turmoil, things might have gone a little better, but the outcome wouldn't be dramatically different.

For the European Parliament things went clearly wrong, especially with regard to the image that the EU demonstrated during the conference:

[The European Parliament] is disappointed at the lack of leadership on the part of the Council and the inability of Member States to agree on a common strategy at the Durban Review Conference [...]; deeply deplores the lack of unity and cooperation, in particular against the backdrop of the expected intensification of EU foreign policies under the new EU Treaty; calls on the Commission and, notably, the Council to explain to Parliament whether an EU strategy was planned and what efforts were made to find a common line<sup>77</sup>.

One cannot but agree that the issues raised during the conference were very important and that there was a genuine risk that the whole procedure could easily go the wrong way. For quite some time during the preparatory process the text was unacceptable and only a few were optimistic for the outcome. The experience of the 2001 Conference was not forgotten either and for some Mr Ahmadinejad's presence alone was enough to fear the worst. However, the common position of the EU, as described in the «red lines», was a good one, both politically and in human rights terms, and at the time of its adoption it seemed to meet the consensus of everybody (including the European Commission and the European Parliament). It is a paradox that the countries who decided to boycott finally the conference did so while there were clear signs that the text was developing toward the desired direction (The

<sup>77</sup> European Parliament, *Annual Report on Human Rights in the World 2008 and the EU's Policy on the Matter*, cit.

Netherlands were causing much fuss in the last COHOM meetings ahead the conference). Some might blame for this paradox the Israeli influence. It is undeniable that Israel did its best to spur the European governments to boycott the conference and there is no doubt that Israel can be really effective if crucial matters are at stake. The fact that the states that finally boycotted the conference are the ones that are closer to Israel is also undeniable and that alone shows that the Israeli influence did play a role in their final decision. It would be a too simplistic approach though to claim that those countries boycotted the conference simply to satisfy Israel. They could have supported Israel much earlier as its positions were well known since the decision was taken to hold the conference<sup>78</sup>. Nevertheless, it seems that political considerations prevailed, at least for those who boycotted the conference. A big part of those considerations can be attributed to the Israeli influence while the nature of the EU and the context (as both described in the beginning) contributed to the final divided position of the EU.

#### 4.1. A Lost Opportunity?

Concerning the image that the EU presented at the conference, it is true that it could have been better. The message that the countries that boycotted the conference wanted to pass was clear, not to legitimise any wording or action by those who wanted to use the conference to attack the «West» or the international human rights standards. However, and even though the boycott strategy had these apparent goals, the EU did not exploit the potentialities of the conference. Given that the text was not unacceptable, a decisive and well coordinated presence of the EU could have made a big difference. The complete absence of any highly ranked dignitaries, the Belgian Minister for Foreign Affairs being the highest ranked state officer, meant that there was nobody equally ranked to answer the Iranian leader and defend the EU positions, well founded in the human rights<sup>79</sup>.

However weakened the EU position might have been due to the withdrawals, what was missing from the European presence in the conference was the leadership, which is something distinct from coordination. The lack of leadership meant that

<sup>78</sup> For the Israeli views on the matter see, Israel Ministry for Foreign Affairs, *Israel Will Not Participate in the Durban 2 Conference*, cit.

<sup>79</sup> Many NGOs also believed that the best approach for the EU was to answer the Iranian President. See for example Human Rights Watch, *UN Racism Conference: Defeat Bigotry by Standing Ground*, 20 April 2009, available at <http://www.hrw.org/en/news/2009/04/20/un-racism-conference-defeat-bigotry-standing-ground>.

Europe's voice could not be heard loud enough. No matter the stance, withdrawal, complete or partial participation, Europe could not make its point if a political figure, vested with the authority to speak on the behalf of the EU, was not present in order to express clearly and visible the European positions. There are personalities within the EU that could have taken up and successfully fulfil this role. A cemented EU front with a leading figure expressing it could have succeeded to raise the EU profile considerably, while it should be kept in mind that the political element in this conference was very strong anyway. Here of course, it is not implied that an aggressive or provocative position should have been adopted. On the contrary, a well balanced approach, based on the power of rationality and understanding, proposing EU's soft power would have been more effective in order to pass the message that all those seeking to create tensions and divisions among states and their people have no place in the international order. Here another element could be examined, hypothetical for sure, but not unrealistic, and this is a possible US participation. As mentioned earlier, for a moment the Obama administration considered to join the conference and most importantly the US returned to the Human Rights Council only a few weeks later. A firm, coordinated and timely reaction by the US and the EU would have made a great impact and also drag along all those who did not agree with Mr Ahmadinejad, and they were many. A strong stance, expressed by a prominent figure, Mr Obama being the ideal for such an event (but there were also many others within the EU with such qualifications), would not only have been very efficient but also not too complicate to orchestrate, especially since the draft Outcome Document of the conference was not unacceptable. Even if the US were not present, a strong stance by the EU supported by a similarly strong and balanced statement by the US could have had positive effects. Additionally, such a move would have left no room for extremism and the «West» would not have been placed in a defending position. After all, Obama made his famous speech in Cairo only a few weeks later and the Durban Review Conference could have offered a first opportunity to put forward his vision for cooperation and mutual understanding with the Muslim world. Probably the Geneva Conference was

not considered the best suitable setting and time for such a move by the US President, especially given the Israeli pressure and the precedent of Durban 2001. Nevertheless, a decisive EU position could have helped to convince the US administration to support its efforts by one way or another.

### **Conclusion (or Some Thoughts for the Future)**

The recent reengagement of the US to the HRC under the new administration offers a great potential for a fruitful cooperation in critical human rights issues, especially in those where the US can be regarded as the «natural» ally of the EU democracies (rule of law, freedom of expression, democracy, etc.). There is a thin line, however, not to be crossed. The EU risks losing its legitimacy and good image it holds if it goes too far in supporting the US and especially if the US continues the previous administration's approach. Some positions of the US are difficult to combine with the EU views and they are not expected to change dramatically with the new administration. To name only a few, the almost unconditional support of the US to Israel or issues like the ICC, etc. The EU should retain a clear strategy and an image that will not be associated completely with the US and therefore leave space for flexibility while avoiding direct confrontation and the polarisation of the HRC, a fact that the EU itself often deplors.

The issue of Israel will be a constant source of controversy for the future as well. While this country's human rights abuses with regards to the Occupied Palestinian Territories are often and rightly criticised, the EU is correct to support it when it is singled out or it is attributed false allegations. In this respect, the EU position before and during the conference was correct and constructive, at least the position of the member states that participated until the end. However, given the different views of the EU member states with regard to Israel, it is certain that this issue will divide the EU again in the future. Therefore, it is imperative that a strategy is developed and followed and no matter how difficult this seems for the moment, the probable entry into force of the Lisbon Treaty with its relevant provisions might offer an opportunity not to be missed for a more coherent position.

In any case, the result of the boycott of some countries was that the EU was perceived as divided, weak and with no leadership even in one of its favourite field. The reasons for such a stance have to do with the nature of the EU and the particularities of the conference. Arguably one of the most ambiguous areas of the EU is its external relations and foreign policy, not only because of the legal complexities but mainly because of the political setting that allows the EU to act as an international actor. The fact that the EU is pursuing its foreign policy in parallel with the national foreign policies does complicate the issue and amplifies both the possibilities and the dilemmas the member states have to face in international politics<sup>80</sup>. It has become almost a *cliché* to call the EU an «economical giant but a political dwarf» but regardless to what one thinks about the latter sentence, it is indisputable that this historically unique political hybrid is above all a shining example of cooperation and reconciliation but is also full of ambiguities and contradictions.

As for the conference as such, it has been a lost opportunity but one thing is for certain, there will be many opportunities to come in the near future. Unfortunately, issues like racism, the suffering of the Palestinian people and the attempts for one sided attacks on Israel will remain a thorn in the international scene for some time. So will the issue of «defamation of religions» that will be very high in the agenda of the OIC countries. The EU must be ready to respond to any challenges to the human rights standards while being cautious to keep an open door for cooperation with the rest of the world and utterly become the bridge among different civilisations and cultures. After all, the image of the «champion of human rights» is probably one of the most valuable elements of the EU foreign policy and one that is well-established within the international community. With coherence, leadership, developed strategy coherently applied, away from the neo-imperialistic tactics that the West is often – and sometimes rightly – accused of, the European Union can develop to become the leader in the approach between the West, Africa and the Muslim world while defending its most fundamental values and observing the highest human rights standards. Not an easy task but one that the EU has the pedigree to accomplish.

<sup>80</sup> For the full text of the speech see The White house, Office of the Press Secretary, *Remarks by the President on a New Beginning*, 4 June 2009, available at [http://www.whitehouse.gov/the\\_press\\_office/Remarks-by-the-President-at-Cairo-University-6-04-09/](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09/) (consulted on 25 July 2009). See also L. Aggestam, C. Hill, *The Challenge of Multiculturalism in European Foreign Policy*, in «International Affairs», vol. 84, no. 1, 2008, p. 107.