8. Durban 2001, the United Nations World Conference against Racism

The Durban NGO Forum and conference began with the high hopes of civil society and of nations that a conference held in the highly symbolic setting of post-Apartheid South Africa would bring new energy to the fight against racism and the more broadly ambitious agenda of racial discrimination, xenophobia and related intolerance. Instead, both the Forum and the conference degenerated into ugly confrontations between Palestinian supporters and Jewish representatives. One outcome was that a conference that in reality addressed a wide range of crucial social issues was reduced in the reporting and subsequent analyses to the single issue of anti-Semitism and expressed hostility to the state of Israel. Many saw this as a hijacking of the United Nations itself and an end to its legitimacy as the arbiter of universal human rights principles.

In terms of the discussion in this book, the NGO Forum and the conference covered many of the issues canvassed in the case studies and moved them into the international arena. The Durban conference tested, and came perilously close to jeopardising, the very human rights framework that provided the conditions for the ways in which each of the groups analysed in this book forged their specific encounters with modernity. At stake were fiercely contested notions of the good and of what constitutes the necessary conditions for a good society. In key areas, these questions remained unresolved. In the end, however, and in spite of the infamous reputation that has since attached to the conference, the official Durban documents did not qualify or limit the previously enshrined principles either of human rights or of respect for the bond of common humanity. These continue to provide a moral and political framework for ordinary people across the world, including many of us who participated in the NGO Forum, in striving to achieve a good life.

The NGO Forum

It was spring in Durban when I arrived with a delegation of young people for the Non-Government Organisations (NGO) Forum that preceded the 2001 United Nations World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The sun was shining over the Valley of 1000 Hills as our delegation was driven in the hotel bus to the site of the Forum at the Kingswood Cricket Stadium, and warmed us as we joined the thousands of other
NGO participants for the Forum’s opening ceremony. The temporary stage in front of the grandstands and the white meeting tents spread throughout the stadium added to the festival atmosphere of creative improvisation.

Despite some earlier frustration about the number and extent of outstanding issues remaining after four regional conferences, five expert seminars and three sessions of the Preparatory Committee, the atmosphere was also one of energetic hope and warm recognition that, of all the countries where the Conference might have been held, South Africa stands as a symbol of the possibility of changing seemingly unchangeable racist divisions and practices. As UN Secretary-General, Kofi Annan, expressed it in his opening address to the Conference:¹

For decades the name of this country was synonymous with racism in its vilest form. But today, Mr. President, you and your fellow citizens have transformed its meaning – from a by-word for injustice and oppression, into a beacon of enlightenment and hope, not only for a troubled continent, but for the entire world.

Where else, my friends, could we hold this conference? Who could teach us how to overcome racism, discrimination and intolerance, if not the people of this country? We salute you. We salute your leadership, Mr. President. We salute the heroic movement that you represent.

The point was also made in the welcoming speeches to the NGO Forum by both Mary Robinson, the UN Human Rights Commissioner, and Thabo Mbeki, the South African President. President Mbeki spoke from his experience as a South African:²

We welcome you to the African continent, as victorious fellow combatants in the struggle that finally liquidated the system of colonialism and transformed the last and most stubborn domicile of white minority rule in Africa into a democratic country.

We welcome you as comrades with whom we have combined, to form a world army of peoples united against racism, for the construction of a common universe of democracy, non-racism, non-sexism, human dignity for all and prosperity for all.

Nearly two weeks later, in her closing address to the Conference, the Conference President and South African Foreign Minister, Dr Nkozasana Dlamini Zuma,

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¹ World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Opening address by UN Secretary-General, Kofi Annan, Durban, 31 August 2001, <www.racism.gov.za/substance/speeches/unopen.htm>

also spoke of the meaning of having the Conference in South Africa, and bravely used the analogy offered by the renewal of spring to express hope at the end of what had proved to be a very difficult and often painful process.\(^3\)

At the end of this landmark and historic Conference, I think we will all agree that it was right that this conference was held and consensus reached on practical steps to be taken to push back the frontiers of Racism, Racial Discrimination, Xenophobia and Related Intolerance which are frighteningly on the rise in many parts of the world. I would imagine that we would also agree that it was proper that this conference should be held in South Africa, a country that has witnessed the most egregious form of institutionalised racism, yet rose to become a living testimony that racism can be defeated with the collective efforts of the international community...Like the blooming and blossoming flower in the spring, we have agreed on a fresh start and the new roadmap.

She went on to quote a poem written from the depths of Apartheid in the early 1970s by a South African poet:

In closing, I want to refer to one of our finest poets, Wally Mongale Serote, who had these beautiful words to say in his work *Ofay-Watcher Looks Back*:

'I want to look at what happened;
That done.
As silent as the roots of plants pierce the soil
I look at what happened
Whether above the houses there is always either smoke or dust...
I want to look at what happened,
That done,
As silent plants show the colour: green,
I want to look at what happened,
When houses make me ask: do people live there?
As there is something wrong when I ask—is that man alive?

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I want to look at what happened,

That done,

As silent as the life of a plant that makes you see it...

as silent as plants bloom and the eyes tell you: something has happened.’

She concluded: ‘Something historic has indeed happened here today.’

Those two moments—the opening of the NGO Forum and the closing of the Conference—expressed the high ideals about what constitutes a good society as well a good international community. In between, the more ambiguous events of these encounters unfolded. In their confronting ambiguity, they demonstrated that even the agreed foundations for a good international order as set out in pivotal documents like the Universal Declaration of Human Rights are subject to differing and often incompatible meanings, and that a good society, like a good life, is an ongoing project, never a final accomplishment.

**Durban and the human rights imaginary**

It has been suggested that the 1990s can be categorised as the decade of human rights, when human rights moved firmly to the centre of international discourse, representing a powerful moral charter for pursuing social change. As part of the broader UN project, the Durban Conference was the culmination of a decade of World Conferences or Summits. Taken together, they set out and pursued a comprehensive and human rights-driven social agenda for the international community. In developing this social agenda, the United Nations aimed to confirm and further develop a range of standards that, collectively, would be internationally agreed as the principles and practical measures needed to implement a universal notion of the good and of the essential requirements for a good society and a good life. The Conference against Racism, like earlier Conferences and Summits, was designed to continue and build on the principles previously agreed to in the 1945 Charter of the United Nations and in the International Bill of Human Rights, especially in the foundational document of the Universal Declaration of Human Rights (1948). Thabo Mbeki made the link explicit in his opening address to the NGO Forum:

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5 The International Bill of Human Rights consists of five documents: the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant of Civil and Political Rights; the Optional Protocol on Civil and Political Rights; and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Neither I nor anyone else can say anything more challenging and demanding than that all of us must act to ensure that the vision represented in the *Universal Declaration of Human Rights* is translated in our countries and throughout the world into a movement towards the universal achievement of these human rights. It is to define and to agree on the ways and means by which we can, practically, move all humanity towards the realisation of this goal that we meet here today, at this historic NGO Forum against Racism.

Both the UN Charter and the Universal Declaration place human rights at the centre of the moral and practical endeavour for nations to work together to ensure sufficient agreement ‘to save succeeding generations from the scourge of war’. The Preamble to the Charter states:

*We the Peoples of the United Nations Determined*

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom,

*And for these Ends*

- to practise tolerance and live together in peace with one another as good neighbours, and
- to unite our strength to maintain international peace and security, and
- to employ international machinery for the promotion of the economic and social advancement of all peoples...

do hereby establish an international organisation to be known as the United Nations.

The purposes of the United Nations, set out in Article 1 of the Charter, include ‘friendy relations among nations based on respect for the principle of equal
rights and self-determination of peoples” and ‘respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion’.9

The Preamble to the Universal Declaration begins: ‘Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’; and states, in Article 1: ‘All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.’

Together these documents, crafted in response to the terrible experience of war, distil a vision of the possibility of peace, based on the ‘spirit of brotherhood’. In so doing, they embody a common understanding among nations of a ‘moral order underlying the political—the idea of order as mutual benefit’.10 This was not the first time that such an ideal had been expressed. But the UN documents were the first internationally ratified—that is, internationally agreed—documents setting out a moral order and framework and a common definition of human dignity and rights.

In contrast, the Covenant of the League of Nations (1920), dedicated like its successor, the United Nations, ‘to promote international co-operation and to achieve international peace and security’,11 focused only on the obligations of nations and the organisation and procedures of the League itself and its members. The Covenant set out a legal, not a moral, framework.

The moral framework and order of the UN Charter and the Universal Declaration of Human Rights have humanity at their centre. Despite the enormous political, religious, cultural and geographic differences among the original 51 member states,12 all of them subscribed to this understanding. Importantly, the UN Charter expresses a moral order that is not doctrinal or assumed to be external to humanity or ordained by a pre-existing moral—or religious—authority or source. On the contrary, the source of the moral order is humanity itself, a

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8 ibid., cl. 2.
9 ibid., cl. 3.
11 Covenant of the League of Nations 1920, Preamble.
12 The original members of the United Nations were Argentina, Australia, Belgium, Bolivia, Brazil, Belarus, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Russian Federation, Saudi Arabia, South Africa, Syrian Arab Republic, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela and Yugoslavia.
humanity that is equal and common to all. It resides in ‘the dignity and worth of the person’. And this moral order is built through agreement, based on and resulting from what Habermas would call communicative action.

The Charter’s affirmation of ‘faith in fundamental human rights’ is then elaborated in the first of the United Nation’s subsequent documents, the *Universal Declaration of Human Rights*. By 1948, with the addition of further member states to consider the adoption of the Universal Declaration, 48 states voted in favour, none against, and eight abstained. One of those which abstained was South Africa, in the same year and six months after the National Party had won government and introduced their program of *apartheid* (separateness). The incompatibility between human rights and racism was inherent in the beginning. The Universal Declaration makes even more patent than the UN Charter that human rights are rights of the person, not of states, and that the moral order elaborated in the elucidation of fundamental rights and freedoms embodies a shared idea of the good that is ‘the highest aspiration of the common people’.

The rights set out in the Universal Declaration, and in the later Covenants and Protocols that contain the measures needed to implement these rights, are fundamental, but not absolute, insofar as they may be subject ‘only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society’. Further, ‘these rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations’, nor be ‘aimed at the destruction of any of the rights and freedoms set forth’ in the Universal Declaration. While not absolute, therefore, the *International Bill of Rights* nevertheless affirms that there are certain rights that may never be suspended or limited, even in emergency situations. These are the rights to life, to freedom from torture, to freedom from enslavement or servitude, to protection from imprisonment for debt, to freedom from retroactive penal laws, to recognition as a person before the law, and to freedom of thought, conscience and religion.

Together, the UN Charter and the International Bill of Rights represent agreement—that has been achieved, not received—about a moral order that

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15 UN High Commissioner for Human Rights (n.d.: 3); Wallach (2006: 115).
17 *Universal Declaration of Human Rights*, cl. 29(2).
18 ibid., cl. 29(3).
19 ibid., cl. 30.
20 UN High Commissioner for Human Rights (n.d.: 6).
exists outside the individual person, but that is experienced by and through the individual person. This moral order is based on a shared idea of the good whose moral source and expression is the principle of respect for the common bond of humanity. The agents and subjects of this moral order are individuals who act in their primary role as moral agents, as well as being the subject of rights, and of justice. At the same time, individuals are related to each other. All human individuals, without exception, share the bond of common humanity and, as the Universal Declaration affirms, ‘are born free and equal in dignity and rights’ and ‘should act towards one another in a spirit of brotherhood’.

Further, all human beings ‘are endowed with reason and conscience’—that is, with the twin faculties central to human be-ing and action. These are the faculties that allow individuals to have a vision of a rational order, to which the key is the idea of the good, and to make moral evaluations and act on the basis of that idea. The UN Charter and International Bill of Rights express this moral order and the idea of the good in the language of rights, expressing what has been agreed to as universal moral norms and giving meaning to those rights as the necessary basic conditions for a good life for all human beings.

Nevertheless, there is:

The invisible worm,
That flies in the night,
In the howling storm…
And his dark secret love
Does thy life destroy.

Expressed more prosaically by critics of the United Nations and its processes, the not-so-invisible worm destroying any potential of the United Nations is the enshrinement in its very constitution of the principle of national sovereignty. Unwittingly echoing the much earlier and brilliant satirical stories of Shirley Hazzard on the UN bureaucracy, Douzinas is scathing: ‘Official thinking and action on human rights has been entrusted in the hands of triumphalist column writers, bored diplomats and rich international lawyers in New York and Geneva, people whose experience of human rights violations is confined to being served a bad bottle of wine.’

22 Universal Declaration of Human Rights, cl. 1.
23 ibid., cl. 1.
25 ibid., p. 11.
27 Hazzard (2006 [1967]).
He concludes that ‘in the process, human rights have been turned from a discourse of rebellion and dissent into that of state legitimacy’. What element of truth may be in that—and certainly state politics continue to undermine the expressed ideals—Douzinas’s assessment ignores the burgeoning of grassroots engagement with human rights:

The development of modern international and transnational human rights practices did occur in the late 1970s and early 1980s, particularly on the basis of the human rights struggles in Latin America and South Africa. It is by looking at these struggles and their relationship with the evolving international human rights protection systems and networks of human rights NGOs that one gets the richness of the contemporary human rights story contrary to overemphasizing the crossroads of international politics and human rights.

The case studies explored in earlier chapters of this book indicate that Douzinas’s critique also ignores the impact of the human rights imaginary on people in their everyday lives. At the same time, in too many ways, Durban validated his identification of the paradox at the heart of the UN system:

Codification, from Justinian to the Code Napoleon, has always been the ultimate exercise of legislative sovereignty, the supreme expression of state power…The early declarations of rights helped bring into legitimate existence the sovereignty of the nation-state with its accompanying threats and risks for individual freedom. Something similar happened with the post-war expansion of international law into the human rights field. National sovereignty and non-intervention in the domestic affairs of states were the key principle on which the law was built, from the UN Charter to all important treaties.

**Durban and the human rights paradox**

Any account of the remarkable shift in the international moral order expressed in the UN Charter and *International Bill of Rights* must, then, take into account this paradox if it is to reflect the antagonisms and anguish experienced in the course of reaching agreement on these or subsequent treaties and documents. In many ways, the processes involved in negotiating and, even more problematically, in implementing such agreement reflect the continuing struggle between conflicting notions of the good and of the sources and expression of moral legitimacy; of the relationship between the individual and the state and the extent and limits of

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29 Rask Madsen (2002: 1).
the power of the state; of self-interest and national interest; of strategic action in opposition to communicative action; and of vastly differing modernities and pre-modernities. The United Nations is a site of struggle. But it is the only forum to bring people together to deal with sensitive but critical issues of common concern, and to do so within the framework of human rights. And the United Nations remains the only site also where states, numbering 192 in 2010, continue to come together as equals under the purposes and principles of the UN Charter, to work—despite recurrent agonising failures—‘to save succeeding generations from the scourge of war’.

These conflicts and contradictions were played out in the decade of UN World Conferences and Summits. This was also the period in which NGOs, both international and national, became more directly involved and influential. In 1990, the UN began the decade with the World Summit for Children. Subsequently, World Conferences or Summits were held on Environment and Development (Rio, 1992), Human Rights (Vienna, 1993), Population and Development (Cairo, 1994), Social Development (Copenhagen, 1995), Women (Beijing, 1995), Habitat (1996), Food (1996), the Earth Summit (1997), Social Development and Beyond (2000), and Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001).

Despite contention and difficulty, a majority of UN member states continued over the decade to reach at least some level of agreement on much of the social agenda encompassed in the Conferences. This included many highly charged issues such as, for example, family planning and reproductive rights (Cairo Programme of Action); Agenda 21, the Rio Declaration on Environment and Development; the Statement of Forest Principles; the UN Framework Convention on Climate Change and the UN Convention on Biological Diversity (Rio); and that women’s rights are human rights (Beijing Declaration). Not all of the Conferences or Summits produced separate agreed Declarations; but all achieved one form or other of an agreed plan or program of action. These had then to be implemented at the national level. Many have not been, have been only partially implemented, or have been comprehensively violated. Nevertheless, the documents, and the

31 Nafis Sadik, former executive director of the UN Population Fund, Panel discussion organised by the Conference of NGOs (CONGO), Durban, 7 September 2001.
32 <www.un.org> At the time of writing, this number of UN members was out of a total of 243 entities considered to be countries. As well as the 102 UN member states, of whom the most recent is Timor-Leste, this includes a range of complex arrangements under international law and practice. In 1998, for example, the General Assembly granted Palestine some additional rights ‘in its capacity as Observer’ (Press release, GA/9427). The Vatican, in its capacity as the Holy See, has gone from self-invited status as a UN ‘non-member permanent observer’ in 1964 to ambiguous but powerful non-member State Permanent Observer in 2004. The rights it was granted by General Assembly Resolution 58/314 on Participation of the Holy See in the Work of the United Nations are greater than the additional rights accorded to Palestine and include taking precedence ahead of Palestine and any other accredited observers (Robertson 2010: 96–111).
33 Charter of the United Nations 1945, Preamble.
34 This is not the full sum of UN World Conferences; it covers only those held between 1990 and 2001.
various mechanisms established to monitor their application, have set agreed international standards that demand accountability and against which the performance of national practice continues to be measured.  

All the Conferences generated intense debate among both NGOs and national governments and between NGOs and governments. Anecdotal reports suggest that most, if not all, of the World Conferences, the preparatory meetings and their associated NGO Forums were difficult, unwieldy, intense, frustrating, often chaotic. NGOs have on most occasions, including in Durban, complained bitterly about the hours spent in queues, inaccessibility, exclusion, lack of information, and disappointing and unsatisfactory outcomes. Many of the Conferences teetered on the brink of collapse because of what appeared to be intractable disagreements between national governments. Nevertheless, for NGOs in particular, the participation in these processes as representatives of civil society has also been seen as an opportunity to develop strong international networks, to engage governments in developing ever more inclusive policies in the articulation and implementation of human rights, and to contribute actively to the processes of international agreement. And in the end none of the Conferences wound back the work of previous Conferences or lowered any standard that had been agreed to. Durban seems to have come closest, but drew back at the last moment. This in actuality became hours after the last moment, when the clock was literally stopped at midnight on the last scheduled day so that the desperate final negotiations could continue. Dr Dlamini Zuma acknowledged this in her closing address:

Gathered at this conference, as Member States, we have at some time or another stood at the precipice. At each moment we stepped back and courageously dug deep into our strength and made a supreme effort to make the conference a success, that really it is. It was through the daring act of faith that sustained us through to the finish, because we must have said to ourselves that for the sake of posterity we must lay a firm foundation for the future of tolerance and harmonious co-existence that will be free from the cancer of racism. Indeed, we have found our way through the turbulent sea of events, at each point along the way, we had to respond creatively to both anticipated and unanticipated events.

35 The decision made by the General Assembly in 2006 (Resolution 60/251) to replace the Commission on Human Rights with the Human Rights Council was a way of demanding even greater accountability from member states (<http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>). The Commission’s history to date has been mixed, with membership sometimes including some of the worst human rights violators; but its establishment was an indication that these issues remain important to the international community.
NGOs and failures of a shared human rights imaginary

Durban was affected by a number of key, and potentially destructive, issues. Some were divisive mainly at the intergovernmental level of the Conference. Others were elaborated and supported by the NGO Forum, but rejected by the Conference. These latter issues defined the limits of NGO influence on the Conference proceedings, marking the gap between the urgent inclusiveness of the concerns of civil society and the narrower interests of governments. This was the experience across each of the World Conferences, but was particularly the case in Durban, where the organisers of both the Conference and the Forum made a commitment to highlighting the voices of victims, many of them victims as a direct result of the policies and actions of governments.

One of the most contentious issues for the Conference government delegations was the question of slavery and reparations, referred to as issues of ‘the past’. The crux of the debate was that African countries and countries with populations of African descendants wanted not only apologies for slavery from specific nations but also financial compensation to the victims of slavery and their descendants. This was fiercely resisted by countries like the United States and members of the European Union who could have been heavily implicated, although a number of developing countries suggested that reparations might take the form of debt forgiveness and developmental aid. In the final Declaration, the issue was dealt with by an acknowledgment that ‘slavery and the slave trade are crimes against humanity’ and that ‘Africans and peoples of African descent, Asians and peoples of Asian descent and Indigenous peoples were victims of these acts and continue to be victims of their consequences’. 36 Unlike the Declaration from the NGO Forum, 37 in the Conference Declaration no reference to reparations was included.

A further issue for governments, and one that ultimately proved intractable, was intersectionality, generally referred to as ‘the lists’: that is, the identification by the Conference of the multiple bases of racism and discrimination and the interplay among them. The lists were elaborated around the intersection of the key bases of race, class and gender, but went beyond them to include other bases of discrimination. Most controversial amongst these was that of discrimination based on work and descent, specifically on caste. The Indian Government in particular argued strongly against the inclusion of any reference to caste. Pakistan alarmed both many other governments and NGOs by wishing to delete hard-won references to gender. In the end, and despite intensive efforts by

37 Ibid., cls 71–6.
Mexico which had been given the task of developing an acceptable formulation, the lists were not included in the final documents; but the references to gender did remain.

Despite its ultimate unwillingness to formalise the issue of intersectionality, the Conference—held in the splendid International Convention Centre several blocks from the Kingsmead Stadium—did provide space for personal stories. It hosted a series of lunchtime presentations under the banner of ‘Voices Special Forum on Comparative Experiences of Racism’. These were popularly referred to as the ‘Voices of Victims’ sessions and gave minority groups a contained, but powerful, presence during the Conference. One presentation was given by Monica Morgan, a Yorta Yorta woman actively pursuing the Yorta Yorta native title claim in Victoria through the Australian court system. At the time, the Yorta Yorta people were in the process of appealing to the High Court from a decision of the Federal Court that their native title had been ‘washed away by the tide of history’. The High Court had not yet rejected the basis of their appeal by agreeing with the Federal Court that Yorta Yorta forebears had ceased to occupy their lands in accordance with traditional laws and customs. It would do so a year later.

In contrast to the ordered calm of the Conference, seared but ultimately not shattered by the emotional issues that confronted it, the NGO Forum was dominated by the colour and noise of difference, and exposed to multiple expressions of pain. One of the most constant of these were the Dalit groups, the Untouchables from the Indian subcontinent, formally present for the first time at a World Conference NGO Forum. Their procession of drums and cymbals became part of the Forum’s everyday background. Perhaps most poignant was a group of women from a coalition of community groups in Gauteng, the South African province north-west of Durban that includes both Johannesburg and Pretoria. It was reported that many of the more than 300 women were HIV positive. When they arrived at the registration tent, they found that their registration fees had not been covered by the scholarships that they had applied for to the South African NGO Coalition (SANGOCO). SANGOCO was the organising body, together with the International Steering Committee (ISC), responsible for the Forum. For the next three days, and to the distress of other participants, the women camped in a train at a railway station outside Durban while SANGOCO ‘looked into the situation’. Their entry into the Forum on its

38 Although these exact words are not used in the judgement, they reflect its general thrust and became a bitter descriptor for the judgement (Members of the Yorta Yorta Aboriginal Community v the State of Victoria & Ors [1997] 1181 FCA [29 October 1997]; Members of the Yorta Yorta Aboriginal Community v State of Victoria [Including Corrigendum dated 21 March 2001] [2001] FCA 45 [8 February 2001]).


second-last day was a celebratory takeover of a panel on globalisation chaired by the then Aboriginal and Torres Strait Islander Social Justice Commissioner, Dr Bill Jonas. He warmly welcomed the singing and dancing women and handed the session over to them.

The NGO Declaration mentioned by name many of the other groups whose voices were heard during the Forum—Roma and Travellers, Tibetans, Jews, Palestinians, Cubans, Indigenous peoples—as well as many unable to participate, and was, indeed, exhaustive in its inclusiveness. This was recognised by Mary Robinson and others as one of the most important contributions of the NGO Forum. In summing up this aspect, Bishop Mvume Dandala, the South African presiding Methodist bishop, said:41 ‘In the conference, we have given time to people—to name the cause of their suffering and give them visibility. As a family of nations around the world, we can no longer say: We did not know.’

Indigenous battles

Indigenous matters also became an issue of contention between the NGO Forum and the Conference. As in almost every meeting of Indigenous groups and governments under the auspices of the United Nations, they crystallised around what has been described as ‘the battle of the “s”’42 or ‘s-phobia’.43 The ‘s’ at stake either belongs, as Indigenous groups demand, to the term ‘indigenous peoples’ or not, which is the position taken by a number of states. The question reflects the critical importance of language in UN documents, not as a question of legal pedantry, but in this case, of rights:44

Hanging upon the ‘s’ is the question of whether indigenous peoples are the same ‘peoples’—with an ‘s’—so prominent in the Charter of the United Nations (the preamble of which is formulated in the name of ‘the Peoples of the United Nations’), and who therefore must be recognized as possessing all the rights that flow from that status, including the right to self-determination.

For national governments, including Australia and especially Canada, this raised the spectre of secession, loss of sovereignty and, given the location of many Indigenous peoples in remote but resource-rich areas, loss of resources. The question was critical particularly in the decade-long and unresolved negotiations

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41 Bishop Mvume Dandala, panel discussion organised by the Conference of NGOs (CONGO), Durban, 7 September 2001.
on the UN Draft Declaration on the Rights of Indigenous Peoples. This was the background to the contentious Article 27 in the Durban Conference’s draft Declaration, which stated:

The use of the term, ‘indigenous peoples’ in the World Conference… cannot be construed as having any implications as to the rights under international law. Any reference to the rights associated with the term ‘indigenous peoples’ is in the context of ongoing multilateral negotiations on texts that specifically deal with such rights, and is without prejudice to the outcome of those negotiations.

A number of the members of the NGO Forum’s Indigenous Caucus were not novices to UN processes, but battle-scarred veterans of this long debate. Their experience was of the United Nations not principally as an ‘unfathomable bureaucracy’ but as facilitator of the ‘original institutional space constituting a distinct social world’ created through the regular meetings of the Working Group on Indigenous Populations. In Durban, they used a number of avenues to campaign for the withdrawal of Article 27. Their press conference on the issue was held on the same day, the last day of the NGO Forum, as our Tampa press conference and information session and gained rather more coverage.

They ensured that Indigenous Caucus members had access to the treasured NGO passes permitting access to the Conference deliberations. They engaged in strategic lobbying of Conference delegates. Rigoberta Menchu, Nobel Peace Prize winner in 1992 ‘in recognition of her work for social justice and ethno-cultural reconciliation based on respect for the rights of indigenous peoples’, addressed a Conference plenary session. Her challenge to the Conference was unequivocal:

Government representatives have negotiated, and are attempting to impose on us, paragraphs 26, 27, and 51 of the draft Declaration of this Conference, which not only ignore our desires and aspirations, but constitute a flagrant violation of the principle of universality and indivisibility of human rights, are racist [and] illegal…We demand the withdrawal of these paragraphs and their replacement with others that will guarantee the full and unrestricted recognition of the rights

45 On 13 September 2007, the UN General Assembly formally adopted the Declaration on the Rights of Indigenous Peoples. The battle of the ‘s’ had been won. Australia was one of the countries that voted against its adoption. After the change of government later that year, Australia formally gave the Declaration its support (April 2009).
47 Discussed in Chapter 1.
48 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Plenary session, Durban, Tuesday, 4 September 2001. The translation from the original Spanish presentation is mine, and therefore not official.
of indigenous peoples...If this request is not accepted, we demand the removal of all reference to indigenous peoples in the Conference documents: our patience and our dignity are at stake.

For government delegations in Durban, however, the main debates were not around indigenous issues, and the offending paragraphs, though slightly altered, remained more or less intact. While fully recognising ‘the rights of indigenous peoples consistent with the principles of sovereignty and territorial integrity of States’, \(^49\) the final Declaration made clear that ‘the use of the term “indigenous peoples”...is in the context of, and without prejudice to the outcome of, ongoing international negotiations on texts that specifically deal with this issue, and cannot be construed as having any implications as to rights under international law’. \(^50\) This remains unfinished business for Indigenous peoples, including Australian Indigenous people.

### ‘Legalised anti-Semitism’\(^51\)

None of these issues, however, had the potential to divide and derail both the NGO Forum and the Conference. That role was taken by the Israeli/Palestinian conflict. Its content was the competing claims of opposed communities in which ‘the exchange of values, meanings and priorities’ was ‘profoundly antagonistic, conflictual and even incommensurable’. \(^52\) Its effect was to call into question the possibility of invoking the same moral standard to negotiate an understanding of the good that would include both parties to the conflict.

The way in which this played out in the Conference was dramatic but not altogether unpredictable. In the NGO Forum, its expression was unanticipated, unseemly, and often shocking. Again, the focus was the wording in the two draft Declarations: that of the NGO Forum and, more importantly, of the Conference. The passion surrounding the wording reflected the struggle for legitimacy offered uniquely by recognition through the United Nations: moral acceptance by the community of nations of what can be called, in Habermassian terms, the validity claims of one side’s truth against the other’s. \(^53\)

The centrality of this issue to the success of the Conference was flagged when reports began to circulate some weeks earlier that the United States might not attend. In a media briefing on 24 August, US President, George W. Bush, was

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\(^49\) World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance Declaration, para. 23.  
\(^50\) Ibid., para. 24.  
\(^51\) Cotler (2010a).  
\(^52\) Bhabha (1995: 2).  
reported as saying, ‘We will have no representative there so long as they pick on Israel’.\textsuperscript{54} This referred to the inclusion of proposed wording about Israel and Zionism in the draft Declaration as it stood at the end of the third session of the Preparatory Commission in August. The words remained bracketed, indicating that there had been no agreement on these parts of the text that referred to ‘[the practices of racial discrimination to which the Palestinians and the other inhabitants of the Arab territories occupied by Israel are subjected]’,\textsuperscript{55} and ‘[the emergence of racial and violent movements based on racism and discriminatory ideas, in particular, the Zionist movement which is based on racial superiority]’.\textsuperscript{56}

When it seemed that the United States would attend, the question then was whether the delegation would be headed by the Secretary of State, Colin Powell. In the end, it was not, and both the United States and Israel withdrew from the Conference on the third day. The Conference bureau made an urgent announcement:

The President of the Conference, Nkosazana Dlamini Zuma, convened a meeting of the bureau this evening to report on the withdrawal of two delegations from the Conference. The atmosphere of the meeting was one of determination to continue the work of the Conference, to build on the constructive work already done, and to bring the Conference to a successful end. Regret was expressed at the meeting at the withdrawal of the two delegations. At the same time, there were strong expressions of support for the Conference, its historic mission, and the importance of a successful outcome.

In her address to the plenary session on the following morning, Dr Dlamini Zuma commented that ‘in creating a just and tolerant society, nothing is beyond discussion. It is essential to talk, negotiate, and to keep on doing so’. Mary Robinson at the same session ‘regretted the decision by the United States and Israel to withdraw from the Durban meeting’, but urged other delegations ‘to persist in their endeavours for a ringing endorsement of tolerance and respect for human dignity’. Both women made the point that those who walked away would, in the end, be the losers. The withdrawal did, however, have a major impact on the Conference. Other delegations, including the European Union, Australia and Canada, reviewed their continuing participation on a day-by-day basis. Even on the last official day, the Conference remained, in the words of


\textsuperscript{56} ibid., para. 63.
one government delegate, ‘on life-support’ and it was a ‘bruised’ Dr Dlamini Zuma who presented her closing statement to the Conference after the frantic negotiations through the extra night and day finally reached consensus.\textsuperscript{57}

The Declaration addressed the Middle East issues by recalling ‘that the Holocaust must never be forgotten’, \textsuperscript{58} and by recognising ‘with deep concern the increase in anti-Semitism and Islamophobia’. \textsuperscript{59} Paragraph 61 expressed concern ‘about the plight of the Palestinian people under foreign occupation’ and recognised ‘the inalienable right of the Palestinian people to self-determination and to the establishment of an independent State’. At the same time, it also recognised ‘the right to security for all States in the region, including Israel’.

While the heat of the Conference debates took place behind closed doors, those at the NGO Forum were very public. The first intimation of the intrusiveness of the issue came at the NGO Forum opening ceremony, where a block of Palestinian groups and supporters shouted pro-Palestinian slogans through microphones over much of the proceedings. Once the Forum got under way, Palestinian representatives confronted Jewish representatives every day across one of the main general thoroughfares, which we came to refer to as the Gaza Strip. The confrontation was strident and occasionally erupted into physical violence, with the police called in on at least one occasion. There were many visible layers of anti-Jewish sentiment: a stall set up by the Arab Lawyers Union displayed anti-Jewish cartoons and sold copies of the notorious \textit{The Protocols of the Elders of Zion}; at one session, a Jewish speaker was drowned out by shouts of ‘Jew, Jew, Jew’. It was reported that the Jewish Caucus had been harassed to the point of choosing to meet outside the Forum venue at the Durban Jewish Club.

The confrontation was not without some rare lighter moments. Under the circumstances, few of us were prepared for the sight of a group of Orthodox Jewish men joining with Palestinian representatives and carrying signs: ‘Authentic Rabbis oppose Israel’, and ‘Authentic Rabbis have always opposed Zionism and the State of Israel’. \textsuperscript{60} Overall, however, the ubiquity of anti-Jewish action alienated many of the other NGO participants, who resisted the attempt to turn the Forum into a single-issue event and to impose a single and intransigent meaning that would exclude any possibility of rational communicative action.

These issues spilled over into the NGO Forum Declaration, already a highly vexed matter, although less vexed than it might have been had copies of the draft

\textsuperscript{57} Dlamini Zuma, interview with CNN, 8 September 2001.
\textsuperscript{58} \textit{World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance Declaration}, para. 57.
\textsuperscript{59} ibid., para. 59.
\textsuperscript{60} These ‘Authentic Rabbis’ belonged to a group, Neturei Karta, which refuses to recognise the State of Israel on the basis that ‘the entire concept of a sovereign Jewish state is contrary to Jewish Law’. Neturei Karta International Jews United against Zionism web site, <www.nkusa.org>
been made adequately available. This was not the case. An outline of the draft Programme of Action was included in the kit that we received at registration. No copies of the full draft Declaration were ever provided. On the evening of the second-last day, some parts, in English only, were left at the back of the main tent.

The processes for adopting the documents were equally flawed. The plenary session to decide this, scheduled for the last morning of the Forum, had to be postponed until 6.30 pm that evening because of the difficulties of getting a full English text of the draft available for discussion. As well, the procedures for adoption were not set out until the closing plenary session. Only then was it made clear that only caucuses—the formally registered representative bodies of particular groups—would be eligible to vote, and a list of the approved caucuses was circulated for the first time. As a result, and because the need to set up or belong to a caucus had never been specified, the first two hours were taken up with angry discussion about the proposed adoption procedures. A number of new caucuses (the exact number was never clear) were added on the spot to the 41 already approved. Because of other organisational muddles, some of us had never managed to locate our chosen caucus, and few caucuses had realised that they needed to develop an agreed position on the—non-available—draft.

Because of the lateness of the starting time, the plenary session continued until the early hours of the following morning. By that time a large number of delegates had left, some by attrition; others, including the Jewish Caucus and the Eastern and Central European Caucus, walked out in protest at the process.

A number of the caucuses subsequently circulated statements dissociating themselves from the documents on the basis of their inclusion of ‘unacceptable concepts and language’ and because ‘the language of the chapter “Palestine” as well as the deliberate distortions made to the chapter “Anti-Semitism” is extremely intolerant, disrespectful and contrary to the very spirit of the World Conference’. When the full version of the documents was finally made available—which was not until 3 September, two days after the official closing of the Forum—a significant number of international NGOs, including Amnesty International, Human Rights Watch and the Lawyers Committee for Human Rights, publicly dissociated themselves. The members of the Drafting Committee, after outlining, in an open letter to the NGO Forum, the enormous difficulties under which they had worked on the NGO documents, stated that:

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61 Even for the plenary session, there were not enough English copies for the several thousand delegates, and none in the other official languages of French and Spanish.
62 Eastern and Central European Caucus.
63 4 September 2001.
'We want to make it very clear that we, the members of the Drafting Committee, do not support any language in the NGO document that is racist or could be construed as racist.'

The Middle East issue also led to the unprecedented action by Mary Robinson of not commending the NGO documents in full to the Conference. This was because of their inclusion of clauses calling for ‘the reinstitution of UN resolution 3379 determining the practices of Zionism as racist practices’\(^\text{64}\) and

the establishment of a war crimes tribunal to investigate and bring to justice those who may be guilty of war crimes, acts of genocide and ethnic cleansing and the crime of Apartheid which amount to crimes against humanity that have been or continue to be perpetrated in Israel and the Occupied Palestinian Territories.\(^\text{65}\)

At the same time, Mrs Robinson agreed to attend an NGO briefing session on the last scheduled and fraught day of the Conference to explain her action. She outlined her position.\(^\text{66}\)

My position on the NGO documents: I did not reject them. I accepted them yesterday. But I am aware that the text contained provisions that were inappropriate and unhelpful—undermining what I was trying to do. I could not commend the documents to the conference delegates, which is what I usually do. This is the first time that I have not done this. What I have done is not to commend it in its entirety, but I have pointed out its useful parts...The conference has been very difficult. But it marks a great moment, and we will take these issues which are best represented in the NGO documents.

Although Mary Robinson did not formally commend the NGO documents to the Conference, Myrna Cunningham, a member of the International Steering Committee for the NGO Forum, presented them to the Conference plenary session on 5 September. Her presentation speech was an overview and summary of the documents and was, in the view of NGOs who heard it, unexceptional and, indeed, the kind of document that many had hoped and worked for. It contained none of the inflammatory language that made the formal NGO documents so

\(^{64}\) NGO Declaration, para. 419. UN Resolution 3379 was a resolution of the General Assembly passed in 1975 declaring that ‘Zionism is a form of racism and racial discrimination’. This resolution was revoked by the General Assembly in 1991 (Resolution 46/86).

\(^{65}\) NGO Declaration, para. 420. The retention of references to Israel as an apartheid state in the NGO documents was with the support of a number of South African groups. This was to some extent the outcome of the military cooperation between Israel and the previous South African Apartheid governments.

\(^{66}\) 7 September 2001.
controversial. Instead, it set out the key non-sectarian and inclusive issues on which general agreement had been indicated.\textsuperscript{67} In her introduction, she commented:

It has been a complex and difficult process, at times very hurtful. But we bring to you, today, the NGOs’ outcome, the Declaration and Programme of Action, on the understanding that it reflects [the] regional processes, but the more important fact is that it reflects the diverse voices of victims of racism, racial discrimination, xenophobia and related intolerance.

**Divergent imaginaries**

Like our *Tampa* information session and press conference outlined in Chapter 1, the NGO Forum can be seen as a clash of social imaginaries, all struggling for the recognition of their place in modernity, and disturbing any expectation of the sufficiency of rational goodwill. One imaginary constituted the Forum as a Habermassian public sphere, that space outside of formalised power where differences can be freely expressed and discussed among equals, where the potentially divisive and destructive consequences of conflict can be negotiated through rational debate, and where the practical focus and outcome would form an identification and mobilisation of the common good.\textsuperscript{68} For others, the Forum also offered a legitimising space for a public performance of victimhood, a demand from the excluded to have their histories, and their understandings and actions, given common meaning; to be recognised and embraced within the common good. For yet others, the Forum was precisely a political arena, a site for the extension of incommensurable conflict in which there could be no rational debate and no common good, but only the defeat of one imaginary by a different one.

From another point of view, these divergent imaginaries were all mediated in Durban—as they were in each of the case studies examined in the book—through the secular concept of rights, and perhaps constituted more a clash within a range of possible alternative meanings for a modern social imaginary. Despite the differences, at the heart for all was an acceptance of a moral order articulated in terms of rights, and of the key principle set out in the *Universal

\textsuperscript{67} It needs to be noted that there are at least two versions of Ms Cunningham’s statement. The statement presented at the Conference plenary session and circulated at that time says only: ‘The NGO’s declaration affirms the right of the Palestinian people to self determination, statehood, independence and freedom and the right of the return as stipulated in UN Resolution 194.’ The version subsequently available on web sites (for example, <www.hri.ca/racism/major/ngoplenary.shtml>, <http://wcar.alrc.net/mainfil.ph/statements/67/> adds a further clause: ‘And recognizes their situation as a new form of apartheid.’ There is no explanation as to when, how, by whom, or on what authority this clause was added.

\textsuperscript{68} See Taylor (2004: 91).
Declaration of Human Rights—‘All human beings are born free and equal in dignity and rights’—a view expressed in different terms but with similar recognition by Alice Smith in Roebourne: ‘We Aborigine people, we know we all the same, doesn’t matter what sort of colour you got, black or white. We all got the same blood. We not different. All we different is the colour might be white, some of them black.’ At stake is how that principle is to be understood and translated in practice, within the distorting context of actual inequalities and the dialectics of power.

At the centre also, in a World Conference dedicated to tackling issues of ‘racism, racial discrimination, xenophobia and related intolerance’, was an intense encounter with the grim side of modernity—Weber’s ‘polar night of icy darkness’ or ‘iron cage’—in which race, itself an imaginary produced by impositions of hegemonic power, has become the ultimate metaphor of the Other. The Conference, but the NGO Forum even more, was an attempt to redefine an oppositional relationship between us and the Other. It did not succeed, because of profound difficulties and a range of intransigencies. But it took an important step in delineating the scope of the problem, its sources, causes, and possible remedies.

The aspiration of the NGO Forum, within its broader context of the World Conference, was to move away from a polarity of ‘us/them’ towards a mutual sense of ‘both/and’. The accomplishment, of both the Forum and the Conference, fell very far short. At the same time, the Forum, more than the Conference, operated as a ‘third space’, ‘the cutting edge of translation and negotiations, the in-between space’. Bhabha’s third space is a space outside the formal structures of competing cultural and historical traditions, a liminal space permitting a different encounter between, for example, the coloniser and the colonised, where the meanings of difference—but also of sameness and interdependence—can be acknowledged and renegotiated. In the process, this can become Franz Fanon’s ‘human world, that is a world of reciprocal recognitions’, a world that is relational.

In the words of Bishop Mvume Dandala in his reflections on the Conference:

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69 Universal Declaration of Human Rights, Article 1.
70 See Chapter 6.
72 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Opening address by Mary Robinson, Durban, 31 August 2001.
74 Referred to in Bhabha (1994: 8).
75 Bishop Mvume Dandala, panel discussion organised by the Conference of NGOs (CONGO), Durban, 7 September 2001.
This is not just a conference of victims. It is also one where both the victims and the perpetrators or descendants had the chance to dialogue. A large part of the world recognises the need for a robust dialogue if we are to end racism. But we have to recognise the problems of this conference in engaging in this kind of a dialogue. As well, the major democracies need to behave in ways that enhance belief in democracy. And we need to learn ways to engage in global dialogue...I am because you are, and you are because I am.

The third space ‘represents the act of encounter which is always in a fluid state since it is always in a state of becoming and, hence, cannot be fixed into any stable final formulation’. It is the space that comes between, ‘meddling, interfering, interrupting and interpolating: making possible and making trouble, both at once’. Combined with an identified principle of the equality of all participants, the third space is a place of formidable potential indeed. In Durban, the result was both possibility and trouble, with trouble having the greatest immediate impact.

From Durban to the ‘war on terror’

Three days after the close of the Conference, the 11 September attacks in New York and Washington initiated the ‘war on terror’ and, in the name of that war, on many aspects of the practice of human rights. Not even the right to freedom from torture has remained unchallenged in subsequent developments. Nor did the endorsement of the Conference documents by the UN General Assembly occur without disagreement. Although the adoption of the documents by the Conference on 8 September 2001 was by consensus, a number of countries had already left because of the unscheduled extra day; others, including Canada and Australia, made statements recording reservations. These covered a range of issues but were related particularly to the paragraphs on the Middle East.

When the various resolutions arising from the Conference were considered at the General Assembly meeting of March 2002, three draft resolutions were adopted by consensus. The fourth, the draft resolution on ‘Comprehensive implementation of and follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance’—the resolution, that is, that included the Durban Declaration and Programme of Action—was dealt with by vote. It was adopted by 134 votes, with two votes against—those of Israel and the United States—and two abstentions: Australia and Canada. In

78 General Assembly Resolution A/RES/56/266.
statements to the assembly made in explanation of their position by the United States and Canada, both countries affirmed their strong commitment to the fight against racism and to the objectives of the Conference, but identified, as had Australia in its earlier reservation, ‘unacceptable’ references to the Middle East as the key reason for their objections. All four countries have maintained these positions in subsequent General Assembly resolutions on the Durban Declaration and Programme of Action.\footnote{General Assembly Resolutions A/RES/57/195, 18 December 2002; A/RES/58/160, 22 December 2003.}

At the Conference’s end, therefore, and subsequently, there remains a serious question about whether the outcome was worth the pain of the process, or whether the experience had been effectively one of disconnection and alienation.\footnote{Alfredo Sfeir Younis, panel discussion organised by the Conference of NGOs (CONGO), Durban, 7 September 2001.} The more important question is whether the failure of consensus about the key Durban documents represents a fracturing of the agreed universal moral order and framework set out in the UN Charter and Bill of Rights.

The UN Durban Review Conference on Racism (Durban II) held in Geneva in April 2009 did nothing to retrieve the badly sullied reputation of the earlier Conference. From many accounts, Durban II fared even worse than the original 2001 Conference. Once again, Israel and the United States did not participate. Nor did a number of other countries, this time including Australia. Others—the representatives of 23 states and organisations\footnote{Pogrund (2009: 1).}—walked out during the keynote address to the participants by Iranian President, Mahmoud Ahmadinejad. Anti-Semitism, expressed in terms of an anti-Israel discourse, again dominated the process, sadly reflecting the continuing anti-Israel blocs that increasingly dominate UN General Assembly debates and even those of the newly constituted UN Human Rights Council. Cotler points out that ‘in the first four years of its existence, the UN Human Rights Council has adopted 33 resolutions of condemnation. 26 of those resolutions, 80 per cent…single out one member state of the international community…Israel’.\footnote{Cotler (2010a).} The UN Human Rights Council has adopted no resolutions or investigative mandates ‘for such human rights violator countries as China, Cuba, Libya, North Korea, Russia or Iran, to name but a few—all being listed on Freedom House’s list of the 20 worst human rights abusers’.\footnote{Cotler (2010b).}
The human rights imaginary as ongoing project

Despite the failures of Durban and the grim intensification since then of the Israeli/Palestinian and other ethnic, racial and religious conflicts, the World Conference against Racism did not attack the principles either of human rights or of respect for the bond of common humanity. On the contrary, all protagonists invoked those principles as the very basis of their dissensions. The level of disunity and confrontation was itself a measure of the profound difficulty of the practical implementation of those principles that the organisers of the NGO Forum and the Conference so bravely attempted to address. Delegations represented multiple modernities and resistant traditionalisms.

At the same time, the progress of negotiation of the documents, with the text being constantly revised on screen in the main Conference meeting room, was also a negotiation of culture. In this international forum, cultural difference as well as national interest was asserted. It was also subject to negotiation. As an anthropologist—although that was not the official capacity in which I was in Durban—I found it impossible to resist making the connections between the formal discourse of human rights as represented in the documents and the ways in which human rights are interpreted and experienced by particular groups.

The concern of the anthropologist is human sociality and its cultural expression, and is therefore about rights at the level of social practice, human rights as embodied in social persons and embedded in social networks. Paradoxically, Durban, like many other UN processes, demonstrated the vitality of culture as a framework for difference, as well as its malleability in negotiating those differences within a broader moral framework of common humanity.

The Durban Conference documents, for all their compromises and limitations, did not pull back from or undermine any previously agreed principles. What they do starkly illustrate is two things: first, that the meaning of those principles, and what they are seen to demand in practice, is subject to the particular circumstances and interpretations of different groups; and second, that agreement about those principles, and the universal moral order and framework that they support, is never final and can never be taken for granted. Particular cultural meanings can prove non-negotiable. The strategic interests of particular countries and groups, pursued through aggressive strategic action, will always have the capacity to—and do—destroy agreement. The urge to war remains often stronger than the desire for peace, and hatred is a powerful opponent to reason.

Nevertheless, the dialectic interaction between strategic and communicative action is central to all UN forums, including the World Conferences. UN member

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84 Wilson and Mitchell (2003: 5, 8).
states and NGO delegations acted as participants in a—more or less—rational interaction, using language with the intention of reaching agreement. Part of that interaction required agreement concerning the reasonableness and the claimed validity of the range of utterances—negotiating points, national policies, strategic interests, and so on—that made up the content of the discussion. On many occasions, the mobilising of rationality was distorted by the mobilisation of interests, with the degree of conflict and cooperation varying with the given interest positions. These different interests defined the debate and identified the limits—political, economic, cultural—beyond which individual governments, or indeed NGO delegations, were not prepared to go. They also offered areas of commonality on which agreement could be painstakingly reached.

The process of reaching agreement, although ultimately the responsibility of governments, involved an important dialogue between governments and NGOs that was to some extent reflected in final Conference documents. Even in Durban, despite its problems, the NGO Forum had some impact on the deliberations of the Conference and made a range of significant contributions to the drafting of the final Declaration and Programme of Action. Kofi Annan, the UN Secretary-General, recognised the critical role played by civil society; in an address to the Forum, he said: ‘No United Nations conference is complete without its NGO Forum. Gatherings like this are the best answer to our critics, and perhaps one of the best reasons for having UN conferences at all. So often it is you, the civil society activists, who breathe life into these events.’

The NGO Forum achieved proper and important agreements, a number of which were acknowledged by Mary Robinson, despite her reservations about the full text of the NGO documents. Most importantly, the Forum reaffirmed the fundamental principle that human rights are not negotiable. Secondly, the NGO documents list the bases of discrimination—something that was not achieved in the intergovernmental conference—and recognise their intersectionality. Thirdly, the World Conference against Racism NGO process provided perhaps the first international forum for many groups, such as Dalits and Roma, to make their voices heard and to be taken seriously. Fourthly, the Forum and NGO parallel events during the conference ensured that major international issues such as globalisation, migrants, refugees and asylum-seekers, and trafficking in people, especially women and children, remained firmly on the agenda. In summary, both events built on the NGO partnerships established through the UN conferences of the 1990s to strengthen the participation of civil society.

86 Durban, 30 August 2001.
including its younger members,\textsuperscript{87} in the ‘robust’ dialogue that is essential to the shaping of the new forms of organisation and action at the local, regional and national, as well as international, levels.

The Conference documents themselves support and develop the content of the universal moral order affirmed in the UN Charter and the \textit{Universal Declaration of Human Rights}. As with all moral orders, breaches, including those being undertaken in the name of the ‘war on terror’, do not of themselves necessarily constitute a rejection of the moral order itself, or of the framework that allows a judgement about whether or not particular practices are acceptable in the terms of that order. They do, however, have the potential to undermine both the moral order and the framework, especially when the breaches are carried out in the name of an alternative moral order, whether religious, political or nihilist.

To date, and despite the massive changes to national borders over its history, particularly over the past 15 years, the United Nations offers legitimacy, albeit a fragile one, as the one truly international legal organisation dedicated to achieving international cooperation and to promoting the welfare of the people of the world. The United Nations has come under much criticism, from within and without, and from civil society as well as from governments. It has recorded many failures as well as achievements. The veto rights of the founding countries and permanent members of the Security Council all too often block decisions crucial to the United Nation’s effectiveness in carrying out its mandate. Like all organisations, it could and must do better. But it can operate effectively only with the goodwill and good faith of all its members. Acts that defy its authority, such as the 2003 war against Iraq, place in jeopardy not only the organisation of the United Nations but also the human rights principles of which it remains the guardian and on which it is based.

Such acts call into question the practical implementation and universal applicability of the moral order and framework expressed in and through the United Nations. In a world still very much subject to the scourge of war, and to the rise of authoritarian alternative moral orders and social imaginaries, the United Nations, for all its multiple faults, remains the only medium for an expressed common understanding of the good, of what constitutes a good society, and of the necessary conditions for a good life. The world, whether expressed as the international community or experienced by people in our everyday lives, cannot afford its failure.

\textsuperscript{87} I have not dealt here with the Youth Summit that preceded both the NGO Forum and the Conference. It was the first time that the United Nations had organised such a summit. It was subject to many of the same pressures and problems as the NGO Forum but it provided a forum for young people, including our Human Rights Delegation, with their introduction to the processes of UN World Conferences.