

The Threat from Anti-Zionism

(Report of the Second Session of the United Nations Human Rights Council)

by David Matas

Hatred of Jews has always victimized the Jewish community. But, before World War II, non-Jews were mostly left untouched.

With the Nazis, that changed dramatically. The German Nazi ideology of eliminationist antisemitism, the determination of the Nazi regime to kill Jews everywhere, precipitated, continued and prolonged World War II.

World War II was a loss beyond words for the Jewish community. The Jewish community lost six million souls, one third of its population. The Yiddish shtetl culture of Eastern Europe was obliterated.

But the War was also a disaster and a tragedy for the whole planet. Total casualties during World War II were sixty two million, 25 million military and 37 million civilian. Thirty one million non-Jewish civilians died in that War.

The link between antisemitism and Nazi aggression was direct, because Nazi Germany invaded foreign countries to kill their Jews. Lucy Davidowicz, in her book *The War against the Jews 1933-1945* writes that, in the minds of the Nazi German Leaders, World War II was a cover for its planned murder of the Jews¹.

But there was even a link between antisemitism and Japanese aggression, since the Japanese invasions in Asia were made possible by its Tripartite Pact with Italy and Germany and the power vacuum created in Asia by German attacks on the Asian colonial powers - France, the Netherlands and Britain. Hatred of Jews dragged the whole world down.

After the War, the damage continued. The Nuremberg Tribunal established in 1945 was abolished in 1948 with half its docket unprosecuted, including Kurt Waldheim who later went on to become Secretary General of the United Nations and President of Austria. Moreover, there were many thousands not yet identified, not yet charged that would have been caught by a full blown prosecution effort. The Allies were motivated by a desire to bring and keep West Germany onside in the Cold War².

For immunity against the Nazis to be effective, it had to be comprehensive. The creation of a general international criminal court, which had originally been part of the plans for post war institutions, was scrapped. Similarly, local systems of justice had to avoid the prosecution of Nazi mass murderers in their midst.

¹ Bantam Edition, 1976, New York, page 122.

² See David Matas *Justice Delayed: Nazi War Criminals in Canada* 1987 with Susan Charendoff published by Summerhill Press.

That immunity became a license for one genocide after another. There is a direct link between the immunity given to Nazi mass murderers after World War II and the killing fields of Kampuchea, the dirty war in Argentina, the disappearances in Guatemala and El Salvador, the ethnic cleansing in Bosnia, the genocide on Rwanda, the seemingly endless stream of post War crimes against humanity.

That was the old antisemitism. We are facing a similar dynamic with anti-Zionism, the modern face of antisemitism, the hatred of the Jewish state, the rejection of Jews as a people with a right to self determination. Anti-Zionism has not yet wreaked on the planet the devastation which the antisemitism of the last century did. The anti-Jewish wars since World War II have been confined to the Middle East.

But anti-Zionism fans the fires of global terrorism. Anti-Zionism was a part of the cocktail mix which fuelled the attack on the World Trade Center.

Iranian anti-Zionism holds out the spectre of nuclear armageddon. The nuclear destruction of Israel at which Iran is aiming will, if it occurs, wreak environmental havoc and radioactive damage throughout the planet.

Anti-Zionism is destroying our international institutions, the United Nations and the International Court of Justice. They are right now being consumed in the flames of hatred against the Jews.

Anti-Zionism demolished the United Nations Human Rights Commission, one of the core UN institutions set out in the UN Charter, central to the dream of what the founders of the UN thought the UN should be³. The Human Rights Commission became an Israel bashing Commission.

The Commission had two agenda items dealing with country human rights violations, one for Israel and the other for the rest of the world. For years, one third of the time and the resolutions of the Human Rights Commission were devoted to Israel alone.

Human rights violators came to realize that they could avoid accountability by becoming members of the Commission and then diverting Commission attention away from their violations to Israel. Anti-Zionism became the weapon of choice for real violators to shield themselves against criticism.

At the same time there was so much noise about Israel, there were no resolutions on major human rights violators, not on China or Zimbabwe or Chechnya or Iran. United Nations Secretary General Kofi Annan called the Commission a club in which countries gained membership "not to strengthen human rights but to protect themselves from criticism or to criticise others."

The problem was not just the debates and votes of the Commission proper, which was a forum of

³ United Nations Charter Article 68

states and inevitably political. Anti-Zionism also tainted the UN human rights special mechanisms, supposedly there to provide expert analysis and advice.

Year after year the Commission and its experts went through the same routine. Whatever Israel did to defend itself was decontextualized, condemned as gratuitous, spontaneous acts of violence against innocents.

There is a link between accountability for human rights violations and ending human rights violations. Violations of human rights are indefensible. When states are held firmly and unequivocally to account for their violations, they back off and lessen the suffering.

Every minute in the Human Rights Commission on Israel was a minute not spent on real human rights violators. In the later years of the Commission, anti-Zionism added to the suffering of victims of human rights violations everywhere.

The Commission had so disgraced itself that there was no one left to defend it. The promoters of human rights did not want the Commission any more. The violators of human rights did not care one way or the other. So, in March 15, of this year a UN General Assembly resolution officially ended its life to be replaced by a new Council.

But the political dynamic which destroyed the Commission could not be changed by institutional reform. Neither violator states nor anti-Zionism disappeared just because the UN structure had changed. Indeed, the new Council, because it was new, because it was not framed by traditional procedures, was more open to manipulation than the old Council. Violators were able to pull fast ones on the new Council they could have never have perpetrated on the old Commission.

The first session of the new Council in June was a sign of things to come. The Council had only one country resolution, on Israel. For the Commission, Israel was the leading human rights violator. For the Council, Israel was the only human rights violator.

Two special sessions of the Council followed, one on July 6th and one on August 11, both on Israel. In the whole life of the Commission, from 1948 to 2006, in fifty eight years, there were only five special sessions and only one on Israel. (The Commission as well in 2004 interrupted its agenda item on Israel to hold an emergency session on Israel.)

Though there are different ways of showing the degradation from Commission to Council, one simple way of seeing what is happening is looking at Cuba. Cuba, though far from the only violator or the worst violator on the new Council, is a harbinger and a microcosm of the degradation.

The very election of Cuba to the Council was a disgrace, not just because of their human rights record, but because of their election efforts. I was present at the last session of the Commission as well as at the first two sessions of the Council as a delegate of B'nai Brith International. According to what country delegates to the last session of the Commission told me, Cuba went from state to state promising to vote how the state wanted, offering to say what the state wanted, provided only that the state voted for Cuban membership on the Council.

Cuba did get elected and, at the first session of the Council, on the agenda item dealing with substantive human rights violations, devoted its whole speech to denouncing Israel with the standard anti-Zionist clichés. The Cubans were so preoccupied with Israel they could not find even one word for the behaviour of the United States, usually a favourite Cuban whipping boy. It looked like what was going on here was payback. Cuba had traded its way onto the Council with the 57 states and votes of the Organization of the Islamic Conference. For the Organization of the Islamic Conference, what mattered was anti-Zionism. Cuba was more than happy to oblige.

Cuban anti-Zionism did not end there. Whenever at the Council there was a vote to be cast or a speech to be made beating up on the Jewish state, Cuba was ready, willing and able. Cuba, in principle, has no obvious domestic or geopolitical interest in what happens in the Middle East. The country is thousands of miles away from Israel. It does not have a significant Muslim or Arab population. Yet, at the UN, it has been a lead critic of the Jewish state.

The new Council attempted an innovation, an interactive dialogue with its rapporteurs and working groups. Instead of just listening to reports from the expert mechanism, states and non-governmental organizations were invited to respond to them. The mechanisms in turn could react to these responses and answer any questions which might be posed.

One of the rapporteurs is Christine Chanet with a mandate to report on the human rights situation in Cuba. Cuba was vociferously opposed to allowing non-governmental organizations to participate in this interactive dialogue with Chanet. They clothed this objection in a more general form, that non-governmental organizations should not be allowed to participate in the interactive dialogue with country specific mechanisms. Cuba was negotiating from a strong position because it knew that, if the matter ever came to a vote, the anti-Zionist clique would side with Cuba in solidarity.

The debate over the Cuban position went on for days, ending in a saw off. The interactive dialogue for country specific mechanisms would terminate with statements and questions from states. Non-governmental organizations would be allowed to make statements on the reports of country specific mechanisms but the rapporteurs and working groups for those mechanisms could not respond.

Until this debate was resolved, the secretariat of the Council refrained from opening list of speakers from non-governmental organizations who would respond to the reports of country specific mechanisms. I planned to give a statement on behalf of B'nai Brith International in response to the report of John Dugard, the rapporteur on the human rights situation in West Bank and Gaza. As luck would have it, the rapporteurs for Cuba and the West Bank and Gaza were one after the other. In order for me to speak in response to the Dugard report, I had to wait for this Cuban dispute to get resolved.

Once it was resolved, Klaus Netter, another member of the BBI delegation to the Council got to the right place early and stood patiently in line waiting to sign us up. He was tenth in line. But a person in front of Klaus in the queue insisted on letting in someone he called a friend. So that

Klaus ended up being eleventh instead of tenth.

Christine Chanet, the rapporteur on Cuba and John Dugard, the rapporteur on the West Bank and Gaza, both gave their reports to the Council on Tuesday September 29. As a result of the agreed compromise, the president of the Council allowed twenty minutes at the end of the day for non-governmental organizations to respond to these two reports, each with a time limit of two minutes each. I sat patiently waiting and hoping that the prior ten non-governmental statements would be short enough to allow me to speak.

To my surprise, six out of the ten statements were not non-governmental statements at all, but rather statements made by the Government of Cuba through stooges. The Government had planted GONGOs, (governmentally organized non-governmental organizations) to foment pro-Cuban propaganda. These six each consumed the full two minutes they were allotted.

Lourdes Cervantes of the Organization de Solidaridad de los Pueblos de Africa, Asia y America Latina, Carolina Amador of the Federacion de Mujeres Cubana, Yvonne Perez Gutierrez of the National Union of Jurists of Cuba, Lazaro Pary of the Indian Movement Tupaj Amaru, Ronald Barnes of the Indian Council of South America, and Julio Avela of the Federation Sindical Mundial all defended the Government of Cuba against the criticism of special rapporteur Christine Chanet. Their combination meant that neither I nor any other non-governmental organization representative had a chance to speak against the report of Dugard.

Three of the other four who had managed to squeeze into the line up of ten did address the parlous human rights situation in Cuba. Only one out of the ten addressed the John Dugard report, and that one lamented human rights violations inflicted on Palestinians. Paula Schriefer, speaking for Freedom House, one of the three independent non-governmental organizations who directed their remarks to Cuba, observed that Cuba has exit controls and that any person who is neither part of the Government of Cuba nor prepared to support it would be allowed to leave Cuba to come to Geneva to make a statement at the Council.

One was to wonder, with its line up of stooges in place, why Cuba objected so strenuously to NGO participation in the interactive dialogue on country specific mechanisms. The objections give an insight into the repression in Cuba. For Cuba, an overwhelming government orchestrated chorus of support is not enough. Even one dissenting voice is intolerable.

One of the six Cuban GONGO speakers urged the Council to abolish all country mechanisms except the one that Dugard runs. It is hard to imagine anything more blatant than that. If Cuba and other violator states had their way, the UN Human Rights Council would focus on Israel alone all the time. For Cuba, the UN Human Rights Council should become the UN Anti-Zionist Council.

What I was prevented from saying by the Cuban line up and wanted to say was this:

"B'nai Brith International wish to express our concern that the United Nations Human Rights Council and its expert mechanisms are fomenting antisemitism world wide through phoney charges of criminality against the Jewish state. Anti-Zionists hurl these false charges to delegitimize the Jewish state. They lead to demonization of the Jewish people everywhere for

their actual or presumed support of this imaginary criminality.

John Dugard, the special rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, is a classic but far from the most egregious example of this problem. To begin with his very the mandate of this rapporteur is biased; it is indefinite, assuming that there are human rights violations now in the West Bank and Gaza and that these violations will continue indefinitely into the future. It is unbalanced, focussed on the West Bank and Gaza only, without regard to the violations the Palestinian authority and Arab and Muslim states perpetrate on Israel through terrorist attacks. It is tendentious, slapping the label of occupation on Israel presence and control on the same territories Jordan and Egypt once controlled without their ever having been accused of occupation. It is politicized, calling into question the existence of the State of Israel by suggesting that there are other so called Palestinian occupied territories, presumably Israel proper.

Mr. Dugard, by the gusto with which he has embraced his skewed mandate, has made a bad problem worse. Paragraph 36 of his September 5th report to this Council (A/HRC/2/5) says it all. It accuses Israel of war crimes. Yet, according to the statute of the International Criminal Court [Article 25(1)] and the Geneva Conventions on the Laws of War [Article 146, Fourth Convention], only individuals can commit war crimes. Accusing Israel as a whole of war crimes is a form of collective guilt.

Mr. Dugard accuses Israel of violation of Protocol I to the Geneva Conventions on the Laws of War. But that Protocol is a treaty which Israel has neither ratified nor even signed. No state is bound by a treaty to which it is not a party. Even if one can think of this Protocol as customary international law, a term, it should be noted, Dugard does not use, it would be a flagrant injustice to prosecute anyone for an act which is forbidden only by customary international law, and not set out either nationally by statute or internationally by a binding treaty. Dugard promotes this sort of flagrant injustice.

Dugard misquotes and misapplies the relevant standard found in Protocol I. He refers to the excessive use of force arising from disproportionate attacks. But that is not what Protocol I says. The Protocol criminalizes an attack which causes damage which would excessive "in relation to the concrete and direct military advantage anticipated". One can scour in vain through Mr. Dugard's reports for any consideration of the military advantage anticipated. Dugard is not a military expert. Nor does he seek any outside independent expert military advice. His condemnation of the damage inflicted without consideration of the military threat Israel faces or other alternatives Israel might have to the response Dugard decries is just one sided decontextualized Israel bashing.

Dugard makes a gratuitous charge of collective punishment. Collective punishment is more than just extensive damage. Like all crimes, it requires proof of intent. But Dugard provides none.

The mandate of John Dugard should be terminated. As long as that mandate continues, Dugard himself should be removed from his position. While he remains in that position, the slander in which he regularly indulges against the Jewish state should stop."

Dugard's anti-Israel credentials were so well established that he was invited to present not just one report to the Council but two, the second updating his first report. His first report was presented, as noted, on Tuesday September 26; the second was presented Friday September 29. Klaus Netter managed on the Friday, as a response to Dugard's second report, after I had left Geneva, to deliver on behalf of B'nai Brith International in modified and shortened form the statement the Cuban shenanigans had prevented me from delivering on the Tuesday.

If all the damage the Cuban horseplay inflicted was the delay of the BBI statement on John Dugard's report from Tuesday to Friday, it would have meant little. But Cuban behaviour meant more than that. It provided an insight into the dynamics of infanticide of the new born Council, the effect that anti-Zionism is having in undermining global institutional structures supporting human rights.

Anti-Zionism did not make or maintain Cuba as a grave human rights violator. But it did allow Cuba to hornswoggle its way into the Council and join the chorus of mischief makers once it got there. Anti-Zionism for Cuba became the tactic of choice to prevent its being held to account for its violations. Victims of human rights violations in Cuba likely do not see anti-Zionism as, in part, responsible for their victimization. Yet, the workings of the UN Human Rights Council show that it is.

If there is one lesson that humanity should have been learned from World War II, it is that hatred of Jews damages everyone. But that lesson has yet to be learned. The result is that we face again the corrosive effect of the hatred of Jews throughout the world.

.....David Matas is a
Winnipeg lawyer and senior honourary counsel to B'nai Brith Canada. His latest book is
Aftershock: Anti-Zionism and Antisemitism.