

SYMPOSIUM ON RACE, RACISM, AND INTERNATIONAL LAW

ANTI-RACISM AT THE UNITED NATIONS

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Racial injustice and inequality remain contested internationally, and the United Nations remains a prominent site for this contestation. In this essay, we describe the architecture designated by the United Nations to address racism, racial discrimination, xenophobia, and related intolerance. We highlight recent normative and institutional innovations and their connection with older mechanisms and milestones. From our experience within this architecture, we reflect on shortcomings and dysfunctions that are built into it, and discuss pressing threats and challenges. We highlight the twenty-year-long, unprincipled opposition of members of the Western Europe and Other States Group (WEOG) within the United Nations to the Durban Declaration and Programme of Action (DDPA), which they have used to block progressive efforts to dismantle contemporary and historic racial injustice. We also highlight recent successes within the architecture, noting remarkable, if tenuous, shifts in the normative framing of racism and racial injustice at the United Nations.

Race and the UN System

When the United Nations was established in 1945, much of the world remained under European colonial domination buttressed by transnational legal and political regimes that enshrined racial domination. Whereas our focus in this essay is the architecture that the United Nations has explicitly developed to address racism, racial discrimination, and racial injustice,¹ this architecture must be situated within the broader context of a system that was birthed under the leadership of colonial and former enslaving powers that even at the time of its inception remained invested in global racial hierarchy.

The other essays in this symposium also provide important context for our analysis, alongside critical international literature that highlights the myriad ways that international law remains a means through which racial injustice is sustained in the present. Our analysis centers the sites of the UN system's most concerted efforts to address racism, racial discrimination, and related intolerance, which are within the international human rights framework. But, as others have noted, concentration of race concerns within this framework is a move that "fragments" race—narrowing focus to violations of states within their borders, while at the same time rendering transnational and

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¹ For a fuller account of this architecture, see E. Tendayi Achiume, *Governing Xenophobia*, 51 VAND. J. TRANSNAT'L L. 333 (2018); and Rosana Garcíandia & Philippa Webb, *The UN's Work on Racial Discrimination: Achievements and Challenges*, 25 MAX PLANCK Y.B. UN L. ONLINE 216 (2022).

interstate racial injustice largely illegible.² This approach curtails the potential legal and policy interventions available for undoing the racial constraints on the self-determination of formerly colonized or enslaved peoples and nations. Compounding the internationalist emphasis of traditional international human rights law is the fact that the United Nations' flagship initiatives for addressing transnational inequality and crisis, such as the 2030 Agenda for Sustainable Development or its climate and environment architecture, systematically marginalize racial justice and equality.³

Although we highlight this challenging terrain, anti-racism efforts at the United Nations cannot and should not be reduced to the conduct of states and the UN Secretariat. Since its inception, the United Nations has been a vibrant and urgent site of advocacy by civil society and social movements who have leveraged this global platform to fight racial justice battles that could not be won through purely local, national, or regional strategies. In a tradition that stretches as far back as W.E.B. Du Bois and the National Association for the Advancement of Colored People's 1947 "An Appeal to the World," racially subordinated peoples continue to rely upon, and even strengthen levers within the United Nations that contribute to tangible and meaningful shifts in struggles on the ground. Conceptualization of the UN system is incomplete if it fails to account for the many frontline communities and advocates who expend precious resources to engage with the system.

The Race and Human Rights Architecture

At the normative center of the United Nations' race and human rights architecture is the International Convention on the Elimination of Racial Discrimination (ICERD). ICERD defines prohibited racial discrimination, provides a framework for its ostensible elimination, and establishes the Committee on the Elimination of Racial Discrimination (CERD)—its monitoring body. Human rights obligations prohibiting discrimination on the basis of race also exists across the broader UN human rights treaty regime. The DDPA, which we discuss in more detail below, also deserves mention as a core anti-racism instrument. Among the so-called "Durban mechanisms" is the Inter-Governmental Working Group on the Effective Implementation of the DDPA, as well as the Group of Independent Eminent Experts on the Implementation of the DDPA.

Part of the race and human rights architecture is located under the umbrella of the UN Human Rights Council's (HRC) Special Procedures, and includes the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Working Group of Experts on People of African Descent, which is also a Durban mechanism. Beyond its race-focused Special Procedures, the HRC in 2021 established the International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement (EMLAR). Alongside EMLAR, and similarly catalyzed by the 2020 racial justice uprisings, is the Four Point Agenda for Transformative Change of the UN High Commissioner for Human Rights (HC Four Point Agenda). There are other mechanisms focused specifically on Indigenous Peoples, the rights of Palestinians, and of Ethnic, Religious or Linguistic Minorities, that are a critical part of the anti-racism terrain.

² See, e.g., Darryl Li, *Genres of Universalism: Reading Race into International Law, with Help from Sylvia Wynter*, 67 UCLA L. REV. 1686, 1693 (2021).

³ Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, E. Tendayi Achiume, to the United Nations Human Rights Council, [2030 Agenda for Sustainable Development, the Sustainable Development Goals and the Fight Against Racial Discrimination](#), UN Doc. A/HRC/50/60 (May 2022); Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, E. Tendayi Achiume, to the United Nations General Assembly, [Ecological Crisis, Climate Justice and Racial Justice](#), UN Doc. A/77/2990 (Oct. 2022).

From Durban to 2022: Systemic Racism and Historical and Contemporary Racial Injustice

The DDPA, which is the outcome document of the 2001 World Conference Against Racism, marked a historic effort to reorient the UN system and its member states' approach to combatting racism, racial discrimination, xenophobia, and related intolerance.⁴ The DDPA fuses decolonial, anti-racist, and anti-xenophobic commitments, situating contemporary racism and xenophobia within necessary historical and structural context. It is a vital counter to traditional human rights approaches that more or less exclusively focus on individual acts of discrimination and ignore the necessity of confronting legacies of slavery and colonialism for reckoning with contemporary racism and intolerance.

The DDPA further links racism, racial discrimination, xenophobia, and related intolerance to economic and political inequality, and provides an actionable agenda for combatting discrimination and intolerance embedded in societal institutions. In addition to highlighting the many racial, ethnic, and national and non-national groups subject to racism and xenophobia, the DDPA is also among the first international human rights instruments to use explicitly the concept of “intersectional discrimination” to highlight the interlocking effects of gender, class, and related structures on the lived experience of racism.

International legal scholarship has failed to give the DDPA the prominence and attention it warrants. The DDPA is highly contested within the UN system itself, too, in the sense that former and contemporary colonial powers remain firmly opposed to its vision, which anchors urgent, ongoing demands for transformative reparations for colonialism and slavery. Furthermore, the DDPA, which affirms the human rights of Israelis and Palestinians, is now pretextually condemned by Israel, the United States, and other allies as anti-Semitic, notwithstanding the fact that its content can in no way be characterized as such.⁵ Our assessment, even in our official UN capacities, is that the opposition to the DDPA by members of the WEOG is unprincipled from a human rights perspective, and has been used for over twenty years since the Durban conference to block progressive efforts to dismantle contemporary and historic racial imperial projects.

Durban was unprecedented for the broad, transnational civil society presence that shaped the human rights vision it ultimately articulated. Almost twenty years after Durban, transnational racial justice uprisings and protests precipitated demands within the UN system that many had hoped the DDPA would help realize. The extrajudicial killing of George Floyd in the United States, in May 2020, during a peak of the COVID-19 pandemic—itsself manifesting along racial and ethnic lines, nationally and internationally—catalyzed protests against systemic racism against Black people around the world, and in some places expanded to include Indigenous, Palestinian, and other racially subordinated groups. Demands for international action from anti-racism experts within the UN system, a massive transnational civil society advocacy campaign, and action by the Africa Group culminated in an “urgent debate” of the Human Rights Council. When it began, the debate held the possibility of an HRC resolution that would establish an international commission of inquiry focused on systemic, anti-Black racism in U.S. law enforcement, and a thematic commission to explore this issue globally. Ultimately, these possibilities were thwarted by WEOG—including through economic and political threats against weaker states. Instead, the HRC tasked the High Commissioner for Human Rights with producing a report on systemic racism in law enforcement, and ultimately established EMLAR.⁶

⁴ For an analysis of the Durban Conference and the DDPA, see Gay McDougall, *The World Conference Against Racism: Through a Wider Lens*, 26 FLETCHER F. WORLD AFF. 135, 143–47 (2002); and Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, E. Tendayi Achiume, to the United Nations General Assembly, [Durban Declaration and Programme of Action, Historical and Contemporary Significance](#), UN Doc. A/76/434 (Oct. 2021).

⁵ See [DDPA Report](#), *supra* note 4, paras. 9–11, 80–86.

⁶ For a fuller analysis of the urgent debate and accompanying references, see E. Tendayi Achiume, *Transnational Racial (In)Justice in Liberal Democratic Empire*, 134 HARV. L. REV. F. 378 (2021).

The urgent debate was the “first and only [Special Session of the Human Rights Council] explicitly framed as concerning systemic racial injustice and anti-Black racism in a First World nation-state.”⁷ It was also the first time that civil society had such a direct role in pressuring the Council to create an anti-racism mechanism and in demanding a direct voice be given to victims and survivors of racial injustice in the debate, and in EMLAR’s operation. In the short term, elevating the role and voice of civil society and directly impacted groups has given enormous new momentum to the global anti-racism movement. The institutionalization of their participation may also result in further normative change and political action in the future.

The HC Four Point Agenda is noteworthy for its insistence on a historically informed, systemic account of racism in law enforcement, and for actively calling out “cultures of denialism” that remain a barrier to repairing this injustice.⁸ The Agenda builds on demands for transformative reparations for racial discrimination rooted in slavery and colonialism that have recently been elaborated by one of us in the role of Special Rapporteur on racism and by the Working Group of Experts on People of African Descent.⁹

Another effect of the debate and broader uprising was formal acknowledgement that racism exists *within* the United Nations in ways that negatively impact its potential as “fit for purpose” to fulfill its mission to guarantee rights based on non-discrimination and equality. The UN secretary-general made this acknowledgement in an unprecedented speech at a UN meeting,¹⁰ following a joint open letter by African UN Under-Secretary-Generals.¹¹ Outcomes have included the creation of a Strategic Action Plan on Addressing Racism and Promoting Dignity for All at the UN Secretariat,¹² a series of candid conversations about racism across the United Nations, and within the Office of the High Commissioner for Human Rights the establishment of a new diversity and inclusion goal and mechanism to fast-track the hiring, promotion, and retention of staff of African Descent.

Finally, the 2020 uprisings gave necessary momentum to the General Assembly finally to establish the Permanent Forum on People of African Descent, which had languished in limbo, vulnerable to WEOG attempts to eliminate or diminish it unless it could be decoupled from the DDPA. The creation of the Permanent Forum also gives momentum for the adoption of a UN Declaration on the Rights of African Descendants—the first international instrument to focus specifically on the human rights of people of African descent.¹³

We should note that recent international legal innovation within the anti-racism architecture predates 2020. For example, in deciding on its jurisdiction to hear the first ever interstate complaint in the international human rights system, CERD made far-reaching conclusions about the scope of the obligations codified in ICERD. In particular, the Committee affirmed the *jus cogens* and *erga omnes* nature of obligations that all states have to combat racial discrimination.¹⁴ This understanding in part motivates broader efforts by CERD under its Early Warning and

⁷ *Id.*

⁸ [Promotion and Protection of the Human Rights and Fundamental Freedoms of Africans and of People of African Descent Against Excessive Use of Force and Other Human Rights Violations by Law Enforcement Officers](#), UN Doc. A/HRC/47/53 (July 9, 2021).

⁹ See Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, E. Tendayi Achiume, to the United Nations General Assembly, [Reparations for Racial Discrimination, Slavery, and Colonialism](#), UN Doc. A/74/321 (Aug. 2019).

¹⁰ [Note to Correspondents: Secretary-General’s Letter to Staff on the Plague of Racism and Secretary-General’s Remarks at Town Hall](#) (June 9, 2020).

¹¹ [Citing “Weight of History,” Senior UN Officials of African Descent Issue Call to “Go Beyond and Do More” to End Racism](#), UN NEWS (June 14, 2020).

¹² [Message from the Secretary-General on Addressing Racism](#) (July 14, 2022).

¹³ See [Declaration on the Human Rights of People of African Descent](#).

¹⁴ [Palestine v. Israel Decision](#), para. 3.36, UN Doc. CERD/C/100/5.

Urgent Action procedure to go beyond an anemic, formalist non-discrimination approach. In the past, it has limited its reach to holding state parties responsible for outcomes solely within their borders, but now CERD is interpreting its mandate to call for state accountability for racist outcomes broadly within a state party's control, which may be beyond its territorial borders.¹⁵

Backlash

Momentum advancing substantive racial justice and equality has confronted formidable opposition. In the two years following 2020, the mandate for the Special Rapporteur on racism received reports of state repression of racial justice advocates, especially in jurisdictions that remain resistant to confronting historically embedded systemic racism. Backlash is also manifest in attacks against Critical Race Theory in the United States and beyond. This backlash propagates distorted caricatures of Critical Race Theory's tenets in order to mobilize law, policy, and a broader climate hostile to racial justice. In the past decade, racist, ethnonationalist populist politics have regained currency, especially in the vaunted liberal democracies of the West, but also in places such as India and Brazil. Ethnonationalism has fueled xenophobia, islamophobia, and anti-Semitism, and where anti-Semitism is concerned, instrumentalization of the tools for fighting it is itself driving racially discriminatory suppression of human rights, especially of Palestinians.¹⁶

Within the United Nations, backlash has also been intense. The harsh approaches taken to oppose robust action during the urgent debate described above offers evidence. Other examples include the WEOG-led boycott of the twentieth anniversary of the DDPA. The ongoing geopolitical mobilization to undercut the momentum for transformative racial justice was most recently manifest in the Human Rights Council vote count for the *From Rhetoric to Reality: A Global Call for Concrete Action Against Racism* resolution, adopted over opposition from most of the WEOG members, in October 2022.¹⁷ In a statement explaining its vote, the United Kingdom reiterated its position that states are not required "to make reparations for the slave trade and colonialism," and instead "the most effective way for us all today to respond to the cruelty of the past is to ensure that current and future generations do not forget what happened."¹⁸ In the face of growing demands within and outside the UN system for reparative accountability for the contemporary legacies of historic structures of racial injustice, one of the foremost authors and beneficiaries of colonialism and slavery insists remembrance is all that is called for.

Conclusion

As evinced by our own experiences working within this system, collaboration among UN member states to sideline any real reckoning for historical and contemporary racism and racial discrimination rooted in slavery and colonialism remains a feature of the UN system. But so does sustained anti-racism mobilizations that seek to push within and past the system and its institutional and political constraints. We venture no prognosis of overall

¹⁵ CERD's 2022 Statement on the lack of equitable and non-discriminatory access to COVID-19 vaccines offers an example, attributing the racial and ethnic impact of the pandemic to failures of responsible states to account for historical and contemporary structures of racial injustice tied to slavery, colonialism, and apartheid. CERD, [Statement on the Coronavirus \(COVID-19\) Pandemic and Its Implications Under the International Convention on the Elimination of All Forms of Racial Discrimination](#), Statement 3 (2020).

¹⁶ See Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, E. Tendayi Achiume, to the UN General Assembly, [Combating Glorification of Nazism, Neo-Nazism and Other Practices that Contribute to Fuelling Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance](#), paras. 71–79, UN Doc. A/77/512 (Oct. 7, 2022).

¹⁷ [UN Human Rights Council \(@UN_HRC\)](#), TWITTER (Oct. 7, 2022, 11:30 a.m.).

¹⁸ UN Human Rights Council 51: [UK Explanation of Vote on Racism Resolution](#).

optimism or pessimism about the future trajectory of racial justice and equality pursued within the UN system. Such a conclusion would do injustice to the complexity of the geopolitical terrain, and to the fact that struggles for racial and related forms of emancipation are inherently messy, contingent, and non-linear.

A more tractable, and perhaps more urgent upshot of our analysis, is that abandonment of the UN system as a site of contestation of global racial injustice and inequality remains an untenable luxury. The United Nations remains too powerful a channel of transnational power and influence for concerns about likelihood of success to curtail the meaningful engagement of those invested in a more just global order. The United Nations—as part of the problem of racial injustice—will not be the solution to racial injustice, but we view it as a non-negotiable site of contestation. For international lawyers and legal scholars invested in challenging racial domination in myriad forms, the work is and always has been to remain clear-eyed about how our very discipline is the vehicle through which such domination is codified, while making the most of any and all opportunities to short-circuit this domination.