

THE TANDEM PROJECT

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UNITED NATIONS, HUMAN RIGHTS, FREEDOM OF RELIGION OR BELIEF

VEILED DEMOCRACY & REPUBLIC OF TURKEY

Issue: Reservations placed on international human rights treaties based on Islamic Sharia law

For: United Nations, Governments, Religions or Beliefs, Academia, NGOs, Media, Civil Society

Review: *Veiled Democracy?* By Noah Feldman, New York Times Op-Ed page, 8 February 2008 is an article on a **constitutional amendment** to the Constitution of the Republic of Turkey, to end the ban on women's headscarfs on university campuses. The article is printed in full on pages 2-3 of this review. Excerpts from Word Documents by The Tandem Project: *UN Human Rights Council Adopts Draft Resolution on Freedom of Religion or Belief*; *The Cairo Declaration on Human Rights in Islam*; *Saudi Arabia – CEDAW Committee Concluding Observations* follow this review to support the call for dialogue. The Word Documents are attached to this e-mail.

The Tandem Project does not endorse this article but applauds the attempt at describing the issue and proposing dialogue to resolve it. As the article *Veiled Democracy* points out this is about more than Turkey; it addresses the Muslim world at large which is "embroiled in its own epochal debate about whether an authentically **Islamic** government can and must respect individual freedoms and the equality of all citizens," including the right to change one's religion or belief. Turkey can be a model in this debate by bringing the secular and the Islamic world together.

The Republic of Turkey is a member of the Organization of the Islamic Conference (OIC) which places **reservations** based on Islamic Sharia' law on most international human rights treaties. Turkey, with Spain, is a co-sponsoring country of the UN backed Alliance of Civilizations which will report to the UN Human Rights Council in March 2008 on its January 2008 Madrid Forum on high level dialogue and future activities.

Objective: Build understanding and support for Article 18, International Covenant on Civil and Political Rights –Everyone shall have the right to freedom of thought, conscience and religion - and the 1981 UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. Encourage the United Nations, Governments, Religions or Beliefs, Academia, NGOs, Media and Civil Society to use these international human rights standards as essential for *long-term solutions* to conflicts based on religion or belief.

Challenge: In 1968 the United Nations deferred work on an International Convention on the Elimination of all Forms of Religious Intolerance, because of its apparent complexity and sensitivity. In the twenty-first century, a dramatic increase of intolerance and discrimination on grounds of religion or belief is motivating a worldwide search to find solutions to these problems. This is a challenge calling for enhanced dialogue by States and others; including consideration of an International Convention on Freedom of Religion or Belief for protection of and accountability by all religions or beliefs. The tensions in today's world inspire a question such as:

- Should the United Nations adopt an International Convention on Freedom of Religion or Belief?

First Response: Is it the appropriate moment to reinitiate the drafting of a legally binding international convention on freedom of religion or belief? Law making of this nature requires a minimum consensus and an environment that appeals to reason rather than emotions. At the same time we are on a learning curve as

the various dimensions of the Declaration are being explored. Many academics have produced voluminous books on these questions but more ground has to be prepared before setting up of a UN working group on drafting a convention. In my opinion, we should not try to rush the elaboration of a Convention on Freedom of Religion or Belief, especially not in times of high tensions and unpreparedness. - *UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, Prague 25 Year Anniversary Commemoration of the 1981 UN Declaration, 25 November 2006.*

Second Response: Forty years later may be the time, however complex and sensitive, to consider a new Working Group to draft a United Nations Convention on Freedom of Religion or Belief. United Nations Secretary General Ban Ki Moon, at the UN backed Alliance of Civilizations Forum in January 2008 addressed the urgency of dialogue; “Never in our lifetime has there been a more desperate need for **constructive** and committed dialogue, among individuals, among communities, among cultures, among and between nations.” This includes establishing genuine dialogue within and among all kinds of religions or beliefs, ranging from religious fundamentalism to secular dogmatism.

CONCEPT: *Separation of Religion or Belief and State – SOROBAS.* The starting point for this dialogue is the Preamble to the Universal Declaration of Human Rights; “*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.* It suggests States recalling their history, culture and constitution encourage nations, religions or beliefs to adopt by consensus fair and equal human rights protection as described in General Comment 22 on Article 18, International Covenant on Civil and Political Rights, UN Human Rights Committee, 20 July 1993 (CCPR/C/21/Rev.1/Add.4):

- **PARAGRAPH 2.** Article 18 protects *theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.* The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with international characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.

Extracts: Extracts are presented under the Eight Articles of the 1981 U.N. Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief. Examples of extracts are presented prior to an *Issues Statement* for each Review.

ARTICLE 1: 1981 UN DECLARATION

1. 1 *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practices and teaching.*

1. 2. *No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.*

1. 3 *Freedom to manifest one’s religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.*

ARTICLE 6: 1981 UN DECLARATION

6. 3 *To make, acquire and use to an adequate extent the necessary articles and materials related to the rites and customs of a religion or belief;*

VEILED DEMOCRACY?

By Noah Feldman, New York Times Op Ed Page, 8 February 2008

THE West doesn't know quite what to think of Turkey's Islamic-oriented ruling party: does it envision a liberal, European future for Turkey or an Islamist one? A vote this week on the seemingly minor issue of whether head scarves should be allowed at universities will help us begin to answer that question.

The ban on women covering their heads on campus has long been a thorn in the side of the Justice and Development Party. The rule has the perverse effect of keeping devoutly religious women out of higher education. A few years ago, while on a trip to lecture about Islam, I met a daughter of Prime Minister Recep Tayyip Erdogan — not in Istanbul, but at Indiana University, which she was attending at least in part so she could cover her head while getting an education.

The ban — a relic of the aggressive secularism enforced by modern Turkey's founder, Mustafa Kemal Ataturk — can be repealed only by a constitutional amendment. Such an amendment was just one of dozens of changes that the Justice and Development Party was expected to propose a few weeks ago as part of a comprehensive overhaul of Turkey's state-centered, ethnically narrow Constitution.

The description of the package of draft amendments that was leaked to the press would put Turkey on a decidedly liberal constitutional course. Reports said that it would vest sovereignty in the people, not the state, and acknowledge that the category "Turkish" in reality encompasses people of all ethnicities — implicitly including Kurds, whose separate identity has long been suppressed. The new Constitution would give parents increased control over their children's education, allowing them to opt out of state-mandated religious instruction. In this context, lifting the head-scarf ban could be seen as just another step toward the religious liberty that liberal, Western states claim to prize.

But before the amendment package could be formally introduced, a minority secularist party, the Nationalist Movement Party, introduced an amendment limited to ending the head-scarf ban. Support from that party essentially guarantees passage for any initiative the government favors — and, indeed, it passed a preliminary vote on Thursday and is likely to get final approval tomorrow. Apparently, Prime Minister Erdogan felt he could not turn down the opportunity to get the head scarf ban revoked.

Unfortunately, the passage of the head-scarf amendment casts doubt on whether the rest of the constitutional package will be introduced at all. Some hard-liners within the ruling party seem to be questioning whether it is worth the fight over liberal constitutional ideals if the gains to religion like lifting the head scarf ban can be achieved other ways. They have a point: the party must always be careful about provoking the military, which sees itself not only as the protector of secularism but of traditional Turkish nationalism, and is wary of any major liberalizing changes.

The issue raises a big question about Mr. Erdogan: is he dedicated to his party's plans for comprehensive constitutional reform, or is he simply serving the interests of religion? The latter would be a grave error — if Turkey is to continue its integration into European and Western civilization, it needs to show that liberal values and Islam are not only compatible but complementary. The audience for this message includes Europe, which for historical reasons is skeptical — perhaps too skeptical — about bringing a non-Christian nation into the orbit of the European Union.

Yet there is a more important audience: the Muslim world at large. The rising global Islamist movement is embroiled in its own epochal debate about whether an authentically Islamic government can and must respect individual freedoms and the equality of all citizens. The best possible refutation of the claim that Islam and democracy are incompatible would be to point to an existing government where liberal and Islamic values work together.

In Turkey, starting with the head-scarf amendment — a case study of religious freedom against coercive secularism — is perfectly fine. Liberalism, after all, has its roots in the desire to protect Christian religious liberty. But the historical staying power of liberal democracy has come from expanding citizenship and extending constitutional protections to minority groups and others vulnerable to government coercion. Turkey has the chance to blaze that trail in the Muslim world — it's up to Mr. Erdogan to keep moving ahead.

ISSUE STATEMENT: The 1948 Universal Declaration of Human Rights First Preamble reads as follows: “*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.* This principle suggests all States recalling their history, culture and constitution, provide equal protection as stated in international law; for *theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.* This statement is part of General Comment 22 on Article 18 of the International Covenant on Civil and Political Rights.

In 2003 the Republic of Turkey ratified the United Nations International Convention on Civil and Political Rights. The historical tension between secular and Islamic forces in Turkey; its co-sponsorship of the Alliance of Civilizations; and its initial report for the ICCPR yet to be written; may be the context for the country to propose to the UN Human Rights Council they renew the 1968 deferred UN Working Group to draft a UN Convention on Freedom of Religion or Belief.

UN HUMAN RIGHTS COUNCIL ADOPTS RESOLUTION ON FREEDOM OF RELIGION OR BELIEF (A/HRC/6/L.15/Rev.1)

The Human Rights Council resolution extending the mandate of the Special Rapporteur on Freedom of Religion or Belief by three years (A/HRC/6/L.15/Rev/1) was the only resolution not to pass by consensus. An attempt was made for consensus by leaving out 24 out of the original 40 paragraphs. According to the International Service for Human Rights report, “Portugal (on behalf of the EU) introduced the draft, regretted that despite intensive consultations since the end of the September part of the 6th session, **consensus could not be reached.** It said that the negotiations efforts were exhausted and it had no other option than bringing the draft to a vote. However, it pledged that it would take up the negotiations again; hoping that consensus on the issue could be re-established soon.” Before the vote, a total of 71 Member States and Observer States endorsed the Special Procedures resolution.

The International Service for Human Rights (ISHR) reported “Pakistan (on behalf of the IOC) tabled a number of amendments to the European draft. However, the OIC decided to **not pursue** action on its amendments, and therefore only the European draft resolution had to be decided on.

A number of States regretted that the EU was not ready to incorporate the amendments proposed by the OIC.”

The ISHR reported, “Portugal (on behalf of the EU) gave an extensive explanation of the vote before the vote. It said while the OIC opposes all forms of intolerance or discrimination based on religion or belief, and was always **supportive** of the mandate of the Special Rapporteur, it could not agree to the draft. Pakistan said that the draft touches some ‘concerns of fundamental importance to the members of the OIC’. In particular, the differences in the following areas could not be resolved:

- The OIC wanted a clearer denouncement of recent stereotyping of religions, their adherents and prophets in the media and by political parties in some societies.
- It wanted to see the respect for all religions or belief enshrined in the resolution. They disagreed with the approach taken by the EU, which calls for the promotion of diversity and tolerance instead.
- It called for the “respect for norms about the right to change one’s religion”. The EU draft explicitly urges States to guarantee **the right to change** one’s religion or belief, a requirement the OIC could not subscribe to.
- The resolution urges all Governments to respond favorably to requests by the Special Rapporteur. The OIC was of the view that States should only “consider responding favorably” to such requests.

Based on these disagreements, the OIC called for a vote, and said it would **abstain**. A large number of OIC members of the Council then took the floor to align with the statement by Pakistan, and, while regretting the failure to achieve consensus, announced their abstention as well.”

THE CAIRO DECLARATION ON HUMAN RIGHTS IN ISLAM

Cairo Declaration on Human Rights in Islam

Adopted and issued at the Nineteenth Islamic
Conference of Foreign Ministers on 5 August, 1990.

The Member States of the Organization of the Islamic Conference,

Reaffirming the civilizing and historical role of the Islamic Ummah which God made the best nation that has given mankind a universal and well-balanced civilization in which harmony is established between this life and the hereafter and knowledge is combined with

faith; and the role that this Ummah should play to guide a humanity confused by competing trends and ideologies and to provide solutions to the chronic problems of this materialistic civilization. – *The Cairo Declaration on Human Rights in Islam, 1990*

Article 24: All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari’ah. – *The Cairo Declaration on Human Rights in Islam, 1990*

**SAUDI ARABIA - CEDAW COMMITTEE CONCLUDING OBSERVATIONS
(CEDAW/C/SAU/CO/2) 1 FEBRUARY 2008**

EXTRACTS:

9. The Committee is concerned about the general reservation made upon ratification of the Convention by the State party, which is drawn so widely that it is contrary to the object and purpose of the Convention.

10. The Committee urges the State party to consider the withdrawal of its general reservation to the Convention, particularly in light of the fact that the delegation assured that there is no contradiction in substance between the Convention and Islamic Sharia.

Saudi Arabia State claims “there is no contradiction in substance between the Convention and Islamic Sharia.” This statement may be a starting point to consider removing general reservations on international human rights treaties.

The Tandem Project: a non-profit, non-governmental organization established in 1986 to build understanding and respect for diversity of religion or belief, and prevent discrimination in matters relating to freedom of religion or belief. The Tandem Project has sponsored multiple conferences, curricula, reference materials and programs on Article 18 of the International Covenant on Civil and Political Rights – Everyone shall have the right to freedom of thought, conscience and religion - and the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. The Tandem Project initiative was launched in 1986 as the result of a co-founder representing the World Federation of United Nations Associations (WFUNA) at a 1984 United Nations Geneva Seminar, *Encouragement of Understanding, Tolerance and Respect in Matters Relating to Freedom of Religion or Belief*, called by the UN Secretariat on ways to implement the 1981 UN Declaration. In 1986, The Tandem Project organized the first NGO International Conference on the 1981 UN Declaration.

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*The Tandem Project is a UN NGO in Special Consultative Status with the
Economic and Social Council of the United Nations*

WORD DOCUMENT ATTACHED

**THE 1981 U.N. DECLARATION ON THE ELIMINATION OF ALL
FORMS OF INTOLERANCE AND OF DISCRIMINATION
BASED ON RELIGION OR BELIEF**

Proclaimed by the General Assembly of the United Nations

25 November, 1981 (Resolution: 36/55)

Considering that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the Organization to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights and the International Covenants on Human Rights proclaim the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion or belief,

Considering that the disregard and infringement of human rights and fundamental freedoms, in particular the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to humankind, especially where they serve as a means of foreign interference in the internal affairs of other States and amount to a kindling hatred between peoples and nations,

Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion or belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible,

Convinced that freedom of religion or belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

Noting with satisfaction the adoption of several, and the coming into force of some conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

Concerned by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

Resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the grounds of religion or belief,

Proclaims this Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief:

ARTICLE 1: LEGAL DEFINITION

1. 1 *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practices and teaching.*

1. 2. *No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.*

1. 3 *Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.*

ARTICLE 2: CLASSIFYING DISCRIMINATION

2. 1 No one shall be subject to discrimination by any State, institution, group of persons or person on the grounds of religion or other beliefs.

2. 2 For the purposes of the present Declaration, the expression ‘intolerance and discrimination based on religion or belief’ means any distinction, exclusion, restriction, or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

ARTICLE 3: LINK TO OTHER RIGHTS

3. 1 Discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

ARTICLE 4: EFFECTIVE MEASURES

4. 1 All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

4. 2 All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

ARTICLE 5: PARENTS, CHILDREN, STATE

5. 1 The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

5. 2 Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians; the best interests of the child being the guiding principle.

5. 3 The child shall be protected from any form of discrimination on the grounds of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for the freedom of religion or belief of others and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

5. 4 In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.

5. 5 Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account Article 1, paragraph 3, of the present Declaration.

ARTICLE 6: NINE SPECIFIC RIGHTS

In accordance with Article 1 of the present Declaration, and subject to the provisions of Article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

6. 1 To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;

6. 2 To establish and maintain appropriate charitable or humanitarian institutions;

6. 3 To make, acquire and use to an adequate extent the necessary articles and materials related to the rites and customs of a religion or belief;

THE West doesn't know quite what to think of Turkey's Islamic-oriented ruling party: does it envision a liberal, European future for Turkey or an Islamist one? A vote this week on the seemingly minor issue of whether head scarves should be allowed at universities will help us begin to answer that question.

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6. 4 To write issue and disseminate relevant publications in these areas;

6. 5 To teach a religion or belief in places suitable for these purposes;

6. 6 To solicit and receive voluntary financial and other contributions from individuals and institutions;

6. 7 To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;

6. 8 To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;

6. 9 To establish and maintain communications with individuals and communities in matters of religion or belief at the national and international levels.

ARTICLE 7: NATIONAL LEGISLATION

7. 1 The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

The ban — a relic of the aggressive secularism enforced by modern Turkey's founder, Mustafa Kemal Ataturk — can be repealed only by a constitutional amendment. Such an amendment was just one of dozens of changes that the Justice and Development Party was expected to propose a few weeks ago as part of a comprehensive overhaul of Turkey's state-centered, ethnically narrow Constitution.

The description of the package of draft amendments that was leaked to the press would put Turkey on a decidedly liberal constitutional course. Reports said that it would vest sovereignty in the people, not the state, and acknowledge that the category “Turkish” in reality encompasses people of all ethnicities — implicitly including Kurds, whose separate identity has long been suppressed. The new Constitution would give parents increased control over their children’s education, allowing them to opt out of state-mandated religious instruction. In this context, lifting the head-scarf ban could be seen as just another step toward the religious liberty that liberal, Western states claim to prize.

ARTICLE 8: EXISTING PROTECTIONS

8. 1 Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.