

THE TANDEM PROJECT

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UNITED NATIONS, HUMAN RIGHTS, FREEDOM OF RELIGION OR BELIEF

FREEDOM OF OPINION & EXPRESSION & RELIGION OR BELIEF

Issue: Relating Freedom of Opinion and Expression to Freedom of Religion or Belief.

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

Review: The Special Rapporteur on Freedom of Opinion and Expression presented his report (A/HRC/7/14) in the second week of the seventh session of the United Nations Human Rights Council. The Special Rapporteur in his report refers to the **differences** in perception of Danish Cartoons depicting the Prophet Mohammed. “In recent years, and with increased frequency, particularly due to events that dominated international politics recently, an alleged dichotomy between the right to freedom of opinion and expression and the right to freedom of religion or belief has been purported.” “The Special Rapporteur strongly rejects such a view, as it contradicts the clearly established notion and widely accepted principle that human rights are indivisible rather than rival principles. In particular, the ensemble of human rights can only be fully enjoyed in an environment that **guarantees** freedom and pluralism.”

Several United Nations Human Rights Council member states belonging to the Organization of the Islamic Conference (OIC) reject as inadequate the Conclusions and Recommendations of the Special Rapporteur, while supporting the mandate on Freedom of Opinion and Expression. These differences are being discussed in drafting a **resolution** on Freedom of Opinion and Expression to be presented to the United Nations Human Rights Council at their seventh session. Extracts from the Special Rapporteur report are presented here that relate freedom of opinion and expression and freedom of religion or belief. The Tandem Project will publish an Issue Statement on the outcome of the draft resolution after the close of the seventh session on 29 March, 2008.

The Advanced Edited Version (A/HRC/7/14) of the Special Rapporteur on Freedom of Opinion and Expression for the Seventh Session of the HRC is available by clicking on this link:

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/7session/A-HRC-7-14.pdf>

Extracts from the Report of the Special Rapporteur on Freedom of Opinion and Expression begin on the second page followed by an Issue Statement

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?

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.*

Option: After forty years this may be the time, however complex and sensitive, for the United Nations Human Rights Council to appoint an Open-ended Working Group to draft a United Nations Convention on Freedom of Religion or Belief. The mandate of the Working Group could be written to assure nothing in a draft Convention will be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights, the International Covenants on Human Rights, and 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

Concept: *Separation of Religion or Belief and State – SOROBAS.* The starting point for this concept is the First Preamble to the 1948 United Nations 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 adopt fair and equal human rights protection for all religions or beliefs 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.

Urgent: United Nations Secretary General Ban Ki Moon, at a UN backed Alliance of Civilizations Forum in January 2008 addressed the importance 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.” A writer in another setting said, “The warning signs are clear: unless we establish a **genuine** dialogue within and among all kinds of belief, ranging from religious fundamentalism to secular dogmatism, the conflicts of the future will probably be even more deadly.”

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 *Issue Statement* for each Review.

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.

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.

Freedom of opinion and expression and freedom of religion

63. In recent years, and with increased frequency, particularly due to events that dominated international politics recently, an alleged dichotomy between the right to freedom of opinion and expression and the right to freedom of religion or belief has been purported. In particular, it has been argued that the dogmatic use of freedom of expression as a fundamental human right has undermined people's ability to fully enjoy other human rights, in particular freedom of religion. The Special Rapporteur strongly rejects such a view, as it contradicts the clearly established notion and widely accepted principle that human rights are indivisible rather than rival principles. In particular, the ensemble of human rights can only be fully enjoyed in an environment that guarantees freedom and pluralism.

64. Practices such as stereotyping and insulting ethnic, national, social or religious groups have serious and damaging consequences for the promotion of dialogue and living together among different communities. To fight intolerance and discrimination and to create a solid basis for strengthening of democracy, broad-based and long-lasting programs and actions need to be developed to promote respect for diversity, multiculturalism and human rights education.

65. The Special Rapporteur also emphasizes that existing international instruments establish a clear limit on freedom of expression. In particular, the International Covenant on Civil and Political Rights that provides that "any propaganda for war" and "any advocacy of nation, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." The main problem thus lies in identifying at which point exactly these thresholds are reached. The Special Rapporteur underscores that this decision which is ultimately a subjective one, should meet a number of requirements. In particular, it should not justify any type of prior censorship, it should be clearly and narrowly defined, it should be the least intrusive means in what concerns limitations to freedom of expression and it should be applied by an independent judiciary. The Special Rapporteur reiterates that these limitations are designed to protect individuals rather than belief systems, guaranteeing that every person will have all of his or her human rights protected.

66. The special Rapporteur notes that a broader interpretation of these limitations, which has been recently suggested in international forums, is not in line with existing international instruments and would ultimately jeopardize the full enjoyment of human rights. Limitations to the right to freedom of opinion and expression have more often than not been used by Governments as a means to restrict criticism and silent dissent. Furthermore, as regional human rights courts have already recognized, the right to freedom of expression is applicable not only to comfortable, inoffensive or politically correction opinions, but also to ideas that "offend, shock and disturb." The constant confrontation of ideas, even controversial ones, is a stepping stone to vibrant democratic societies.

III. CONCLUSIONS AND RECOMMENDATIONS

On censorship

69. The Special Rapporteur recommends that Governments adopt legislation that unambiguously prohibits all forms of censorship in media outlets, both in the traditional media and the Internet. Defamation, libel and insult charges, particularly when stemming from public figures and specifically State authorities, do not justify any form of prior censorship.

On defamation offences

78. The Special Rapporteur strongly recommends that Governments decriminalize defamation and similar offenses, confining them to the domain of civil law. The amount of fines to be paid as compensation should be reasonable and allow the continuation of professional activities. The Special Rapporteur also urges Governments to release immediately and unconditionally all journalists detained because of their media-related activities. Prison sentences should be excluded for offences concerning the reputation of others, such as defamation and libel.

79. Governments should also refrain from introducing new norms which will pursue the same goals as defamation laws under a different legal terminology such as disinformation and dissemination of false information. Under no circumstances should criticism of the nation, its symbols, the Government, its members and their action be seen as an offence. Elected officials and authorities should accept the fact that because of their prominent and public role, they will attract a disproportionate amount of scrutiny from the press. Governments should also make sure that the right to privacy, especially in relation to family life and minors, is sufficiently protected without curtailing the right to access to information, which contributes to transparency and democratic control of public affairs.

On freedom of expression and freedom of religion

84. The Special Rapporteur urges media professionals, as well as the public at large, to be conscious of the potential impact that the ideas they express may have in raising cultural and religious sensitivities. The dissemination of intolerant and discriminatory opinions ultimately promotes discord and conflict and is not conducive to the promotion of human rights. Media corporations and journalists' associations, in cooperation with national and international organizations, should organize regular human rights training programmes in order to enhance professional ethics and sensitivity to cultural diversity of media professionals.

85. The Special Rapporteur further emphasizes that, although limitations to the right to freedom of opinion and expression are foreseen in international instruments to prevent war propaganda and incitement of national, racial or religious hatred, these limitations were designed in order to protect individuals against direct violations of their rights. These limitations are not intended to suppress the expression of critical views, controversial opinions or politically incorrect statements. Finally, they are not designed to protect belief systems from external or internal criticism.

ISSUE STATEMENT: The mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has been reviewed by the seventh session of the United Nations Human Rights Council. A resolution is being drafted to be presented for approval at the seventh session. The extracts of paragraphs above from the report of the Special Rapporteur are self-explanatory on his position regarding this right. Canada is responsible for drafting the resolution in consultation with other member states. All United Nations Human Rights Council member states have expressed support to continue this mandate but several states have expressed

oral reservations, especially regarding paragraph 65 of the report of the Special Rapporteur having to do with protections provided by human rights instruments, Article 19 and Article 20 of the International Covenant on Civil and Political Rights.

The Special Rapporteur in the extracted paragraphs expresses strong support for the current legal language of international human rights instruments on freedom of opinion and expression and recommends no changes in his Conclusions and Recommendations. Several UN member states, among them members of the Organization of the Islamic Conference (OIC), have differences with him on the impact of the right to freedom of opinion and expression on freedom of religion or belief. They believe expressions by the media and others have defamed the Islamic religion and may want stronger language in the mandate to prevent such expressions in the future.

International human rights instruments are designed to protect individuals and not belief systems. According to Article 2.1 of the 1981 UN Declaration; “*No one shall be subject to discrimination by any State, institution, group of persons or person on the grounds of religion or other beliefs.*” However, according to one commentator, “this text is subject to problems of **interpretation** and requires great care; the possibility of a clash between the granting of certain rights in the area of religion or belief with norms governing other fields should not be ignored.”

Reply: The Tandem Project Country & Community Database collects information worldwide on United Nations Human Rights Bodies. The information is used for UN Human Rights Council Universal Periodic Reviews (UPR); UN Treaty-based Reports; UN Special Procedures, Special Rapporteur Reports. Click on the link below to open the Database. Read the Instructions & Table of Contents: scroll to an Article of your choice and click to reply.

<http://www.tandemproject.com/databases/forms/card.htm>

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;

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.

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.