

THE TANDEM PROJECT

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UNITED NATIONS, HUMAN RIGHTS, FREEDOM OF RELIGION OR BELIEF

RELATED INTOLERANCE & FREEDOM OF RELIGION OR BELIEF

Issue: Relating Freedom of Religion or Belief to Racism, Racial Discrimination and Xenophobia

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

Review: This is a review of the report by the UN Special Rapporteur, Mr. Doudou Diene, on *Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance* (A/HRC/7/19), 20 February 2008. Aspects of his report calling for an international, multi-disciplinary dialogue on the root causes of racial discrimination and related intolerance is **promising**, as was a similar call by a Senator Barack Obama for deeper dialogue on race in the United States. Three aspects of his report need **review**:

- Relationship of: Racism, Racial Discrimination and Xenophobia, to Religion or Belief;
- Relationship of: Freedom of Opinion and Expression, to Freedom of Religion or Belief;
- Post-Durban Planning Process: Ad Hoc Elaboration of Complementary Standards.

The extracts for this review are on these aspects followed by an Issue Statement. Open this link to read the entire Special Rapporteur report (A/HRC/7/19).

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/7session/A.HRC.7.19.doc>

Extracts from *Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance: Follow-up To and Implementation of the Durban Declaration and Program of Action*, are in bold beginning 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 for an Open-ended Working Group would have to be written in a way to assure nothing in a draft Convention would 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 **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.” Dialogue on culture and ideology should include perspectives on the long term value of international human rights law.

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.

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.*

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.*

B. Incitement to racial, ethnic or religious hatred

53. The main challenge is now to define the threshold for legitimately restricting freedom of expression in order to protect the victims. In the recommendations contained in the joint

report of the Special Rapporteur and the Special Rapporteur on freedom of religion or belief, which concerned incitement to racial and religious hatred and the promotion of tolerance, the experts invited the Human Rights Committee “to consider the possibility of adopting complementary standards on the interrelations between freedom of expression, freedom of religion and non-discrimination, in particular by drafting a general comment on Article 20” of the Covenant. To this end, the Special Rapporteur is considering the organization, in cooperation with other mandate-holders, of an international seminar – for lawyers, the media, politicians, representatives of civil society and the United Nations mechanisms concerned – in order to propose principles and ways and means of strengthening the complementarity of freedom of expression, freedom of religion and belief, and the discouragement of racial, ethnic or religious hatred.

C. Religious Intolerance

56. The Special Rapporteur would first like to emphasize the growing trend of defamation of religions arising from the following factors: the conflation of race, culture and religion; the growing use of religion for political ends; and the intellectual and ideological questioning of religion. At the ideological level, the Manichean concept of a clash of civilizations and religions is gaining ground in the thinking and discourse of the political, intellectual and media elites. The concept of a clash of civilizations, and above all a clash of religions – which provides fertile soil for the defamation of religions – is the new front of the cold war theorists. With its pervasiveness and insidious but far-reaching influence, this new ideology is not only shaping the world view of a growing number of influential politicians and media chiefs, but is also becoming a new paradigm for intellectuals and academics. Its ideological effectiveness is based on the intellectual use of the defense of national identity and security, and on the fight against terrorism, reduced to its purely religious dimension. Using the simplistic, Manichean cold-war approach to deal with these issues serves to legitimize two main objectives: (a) the promotion of a purely materialist form of liberalism, marked by hostility towards, and questioning of, religion and spirituality, which are caricatured as running counter to progress and liberty, and (b) a selective, hierarchical, ideological interpretation of human rights and fundamental freedoms. It is against this background that we encounter a number of serious manifestations of the resurgence of racism and xenophobia: the electoral success of racist and xenophobic platforms and their infiltration into democratic institutions; the rise of racist violence; the growing expression of racism on the part of elites; the recycling by intellectuals and the media of concepts on which historical prejudices are based; the ethnicity-based approach to immigration, and the treatment of immigration on the basis of security aspects alone, and not respect for human rights.

IV. CONCLUSIONS AND RECOMMENDATIONS

74. The Human Rights Council is invited to draw attention of member States to the serious nature of the defamation of religion, anti-semitism, Christianophobia and, more particularly, Islamophobia, and to promote the fight against these phenomena by strengthening interreligious and intercultural dialogue concerning the common ethics of all religions, the critical introspection required of all religions on the historical and theological sources of defamation they are subjected to, and mutual understanding and joint action to meet the fundamental challenges of democracy, development, peace and the promotion of human rights.

75. The Council is invited to encourage member States to wage a systematic campaign against incitement to racial and religious hatred by maintaining a careful balance between

the defense of secularism and respect for freedom of religion and by acknowledging and respecting the complementarity of all the freedoms embodied in the International Covenant on Civil and Political Rights.

ISSUE STATEMENT: The UN Special Rapporteur report has promising aspects calling for an international seminar on the complexity and complementary aspects of racial and religious discrimination. However, there are aspects of his report that are disappointing:

- **Relationship of: Race, Racial Discrimination and Xenophobia, to Religion or Belief.** This report does not cite International Human Rights Standards on Freedom of Religion or Belief, which is surprising given the fact he was on the Preparatory Committee for the 2001 UN sponsored Madrid celebration of the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Freedom of Religion or Belief, a foundational concept under the Universal Declaration of Human Rights and International Human Rights Covenants, seems in this report too **narrow** a perspective focusing on discrimination against three Abrahamic monotheistic religions; Anti-Semitism, Christianophobia and Islamophobia. This emphasis may have some merit but ignores the multi-dimensional complexity of religion or belief and human rights protection for all *“theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief,* as called for by the United Nations Human Rights Committee in General Comment 22 on Article 18 of the International Covenant on Civil and Political Rights. This important mandate on “contemporary forms of racism, racial discrimination and xenophobia and related intolerance” will be approved by the United Nations Human Rights Council in the seventh session. Freedom of religion or belief should be **disassociated** from race and racial discrimination in the title of the mandate or for complementary reasons make sure the difference is clear between religion or belief and race, racial discrimination and xenophobia. To treat the mandate on freedom of religion or belief as related intolerance, subordinate to race in a post-Durban plan of action would be a mistake. (Word Document attached: Race & Religion or Belief).
- **Relationship of: Freedom of Opinion and Expression to Freedom of Religion or Belief.** The Special Rapporteur on Freedom of Opinion and Expression presented his report (A/HRC/7/14) in the second week of the seventh session. The mandate will be approved by the Human Rights Council in the seventh session, but the draft resolution under discussion may not be approved by consensus because of objections by Member States who are members of the Organization of the Islamic Conference (OIC). The debate within the Human Rights Council is over “defamation and abuse of religion” they think are allowed by freedom of opinion and expression. The Special Rapporteur on Freedom of Opinion and Expression believes the language embodied in Article 19 and Article 20 of the International Covenant on Civil and Political Rights **covers** all incidents of possible defamation of a religion and is a foundational concept of democracy that should not be altered. (Word Document attached: Freedom of Expression and Opinion and Freedom of Religion or Belief.) The members of the OIC on the Human Rights Council call for a “requirement” to report not just on violations of Freedom of Opinion and Expression, but on abuse of using Freedom of Opinion and Expression to defame religion. The Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance agrees with the OIC in order to contain abuses such as Muslims felt over the Danish Cartoons. This narrows the mandate and places restrictions on the foundational concept of democracy, Freedom of Opinion and Expression.
- **Post-Durban Planning Process: Ad Hoc Elaboration of Complementary Standards.** A third aspect of the Conclusions and Recommendations in his report will be discussed

on 25 March 2008 by the United Nations Human Rights Council. This discussion will reference reports currently not available for public distribution; (1) the Latest Report of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Program of Action, and (2) the Ad Hoc Committee of the Council on the Elaboration of Complementary Standards. The chair of the Ad Hoc Committee and gave an oral report to the Human Rights Council on Wednesday afternoon 19 January 2008. A written report is not available. The Ad Hoc Committee has commissioned a study by five experts. Among the items of the study are; Religious Groups, Religious Intolerance and Defamation of Religious Sites, which touches on the **concerns** expressed about the narrow perspective of religion without accounting for non-religious beliefs as stated in the first bullet point. Presumably the study is being prepared for the first Preparatory Committee meeting of the post Durban conference and may be available for the general debate on Tuesday afternoon, 25 March 2008.

The general debate on item 9, the mandate of the Special Rapporteur, and the two reports on the post-Durban plan of action can be heard on the UN Human Rights Council live web cast on Tuesday afternoon, 25 March. Resolutions on freedom of opinion and expression; and racism, racial discrimination, xenophobia and related intolerance will be discussed and available at the end of week which is the seventh session.

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. Michael M. Roan, mroan@tandemproject.com.

*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.