Speech by Mr Bacre Waly Ndiaye

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Ladies and Gentlemen,

I am grateful for the invitation to participate in the international commemoration of the 1981 Declaration on the elimination of intolerance and discrimination based on religion or belief. This 25th anniversary conference is an important occasion to reflect on one of the most basic freedoms of all: the freedom of religion or belief.

The city of Prague is a very fitting place to hold such an event as the two defenestrations went down in history and were both intimately linked with religious conflicts. The first defenestration in 1419 at the Prague town hall was a turning point of the existing tensions and it finally led to the Hussite Wars. The second defenestration in 1618, this time at Prague Castle, played an important role in the initiation of the Thirty Years’ War, which at the outset used to be a religious conflict between Protestants and Catholics. So, in the words of former Czech President and famous poet Václav Havel, the past of Czech lands is “marked by brutal acts of violence carried out in the name of religion”. Five years ago, just a month after the terrorist attacks of 11 September 2001 in the United States, he sent an intriguing message to the Representatives of World Religions here in Prague in St. Vitus’s Cathedral:

We believe the time has come to create a kind of ‘Grand Spiritual Coalition’, which would enhance the existing endeavors at the co-operation of the world’s religions, and their joint efforts to confront together the forces of destruction in the name of respect for life and human dignity, the brotherhood and equality of nations, and a just world order, as well as concern for the interests of future generations. The task of such a ‘spiritual coalition’ would be to seek and promote the basic ethical values shared by people of good will everywhere, and in the spirit of those values to influence the life of the world community.1

Indeed, the world community needs a global strategy to promote the basic ethical values and human rights, especially nowadays in the age of globalization. I would

1 Full text of the speech available online at http://old.hrad.cz/president/Havel/speeches/2001/1610_uk.html
like to highlight some of the main issues demanding our attention in the area of freedom of religion or belief. The focus of my speech will be to provide you with an overview of some recent activities undertaken by the United Nations and particularly by the Office of the High Commissioner for Human Rights.

OHCHR’s mission is to work for the protection of all human rights for all people; to help empower people to realize their rights; and to assist those responsible for upholding such rights in ensuring that they are implemented.

Which steps have the United Nations undertaken to address the current issues concerning freedom of religion or belief? Several recent developments are worthwhile noting, both at the UN level and also with regard to reports by Special Rapporteurs, UN treaty bodies and OHCHR.

In July 2005, the UN Secretary-General Kofi Annan launched the Alliance of Civilizations, an initiative which is co-sponsored by the Prime Ministers of Spain and Turkey. The Secretary-General appointed a panel of 20 experts in order to explore ways of addressing the increasing polarization between Muslim and Western societies. Last week, this High Level Group presented its final report to the Secretary-General. The experts maintain that although religion is often cynically exploited to stir passions, fuel suspicions and support alarmist claims that the world is facing a new “war of religion”, the root of the matter is political. The Report also puts forward a range of concrete proposals in the areas of education, media, youth and migration to build bridges and promote a culture of respect and understanding among Western and Muslim communities.

Upon receiving the High Level Group’s report, Kofi Annan stressed that “we need to get away from stereotypes, generalizations and preconceptions, and take care not to let crimes committed by individuals or small groups dictate our image of an entire people, an entire region, or an entire religion”. In September 2006, the Secretary-General submitted a report on the issue of “Combating defamation of religions” to the General Assembly. He concluded that there is a will on the part of Member States, the United Nations system and the wider international community to counter religious intolerance, but that much more needs to be done.

Several special procedures mandate holders have recently highlighted the problems in this regard. The Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir, has observed a marked increase in the level of religious intolerance in many regions of the world. She identified religious minorities as the main victims of violations of the right of freedom of religion or belief. We have to bear in mind that a certain religion may be a minority in one part of the world and suffer accordingly, however, it may constitute the religion of the majority of the population in another part of the world.

Mr. Doudou Diène, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, noted a serious upsurge in manifestations of discrimination against Muslims and Arab peoples and acts of
violence against their places of worship and culture. Together with Ms. Asma Jahangir he also submitted a joint report on incitement to religious hatred to the second session of the Human Rights Council. They recommended that Member States should avoid stubbornly clinging to free speech with absolute disregard for religious feelings, nor suffocating criticism of a religion by making it punishable by law.

Balancing freedom of religion and freedom of expression is a delicate issue, as has recently been highlighted by the Danish cartoons controversy. Let me just refer to the fact that the two Special Rapporteurs sent out a joint allegation letter to the Danish Government already in November 2005, which was two months before the issue eventually attracted worldwide public attention. In February 2006, they also issued a press release together with the Special Rapporteur on freedom of opinion and expression, Mr. Ambeyi Ligabo. They encouraged States to promote the interrelated and indivisible nature of human rights and freedoms and to advocate the use of legal remedies as well as the pursuance of a peaceful dialogue on matters which go to the heart of all multicultural societies. I am glad that one of this morning’s workshops discussed the protection of Religion or Belief vis-à-vis Freedom of Expression in detail.

How should we deal with the nefarious effect of hate speech without jeopardizing freedom of speech and other freedoms that form the very foundation of human rights? The OHCHR has addressed this issue and the High Commissioner recently reported on incitement to religious hatred to the Human Rights Council. When reviewing the status of the international, regional and national legal framework we see no consensus on critical elements of the law and practice varies considerably. First, there is uncertainty about the notion of incitement to racial or religious hatred and how to assess its applicability in practical situations. Although international tribunals, including the 1946 Nuremberg Military Tribunal, the International Criminal Tribunal on the Former Yugoslavia and the International Criminal Tribunal for Rwanda have passed judgment on some aspects relating to the issue, many of the key concepts are not uniformly defined. There is ambiguity about the objectives of the law, the extent of the public harm that should warrant limitations on essential freedoms, the limit that can appropriately be placed on freedom of expression and other freedoms, and the nature and scope of sanctions and remedies that can be applied against offending speech. The ICTR defined hate speech in the *Nahimana* Case as “stereotyping of ethnicity combined with its denigration”\(^2\); however, the two elements of stereotyping and denigration are not self-defining. So we would need to further study international jurisprudence, national practice and experiences; perhaps the UN treaty bodies, particularly the

\(^{2}\) Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze, Judgment and Sentence of 3 December 2003, Case No. ICTR-99-52-T, para. 1021
Human Rights Committee and CERD, will take up the idea to develop pertinent
general comments to give further guidance on this subject.

Both Committees have already dealt with the incitement to racial or religious
hatred in various concluding observations and in their jurisprudence. The Human
Rights Committee’s has issued decisions on several individual communications,3
endorsing limitations on the exercise of free speech because the restrictions were
deemed consistent with the ICCPR. The Committee on the Elimination of Racial
Discrimination has addressed religious discrimination, although this may appear
at first sight to be outside the Committee’s mandate, in cases of “intersectionality
of ethnic and religious discrimination”.

This leads me to the question of whether there is a nexus between racial and
religious discrimination. This point is also linked with the drafting history of the
1981 declaration as the General Assembly adopted two resolutions in 1962
requesting the parallel preparation of draft declarations and conventions both on
the elimination of racial discrimination and of religious discrimination. There are
a number of—mainly political—reasons why the drafting of these declarations
and conventions were detached; the outcome of this exercise was also self-
exploratory. While the international instruments on racial discrimination were
adopted in 1963 and 1965 respectively, the elaboration of instruments on reli-
gious intolerance proved to be more difficult. As you all know, there is still no
legally binding convention on freedom of religion or belief. Several draft articles,
as prepared by the Sub-Commission and the Commission on Human Rights in
the mid-1960s, mirrored provisions of CERD which had been adopted in 1965.
However, the drafting work on an international convention on freedom of reli-
gion or belief was deferred in 1967. So far we “only” have the 1981 Declaration
as an authoritative guidance adopted by the General Assembly concerning the
issue of intolerance and discrimination based on religion or belief.

I would like to raise the question of whether the nexus between racial and reli-
gious discrimination is now reemerging. In many cases it seems difficult to draw
clear-cut distinctions between racial and religious categories. Intolerance and dis-


3 Faurisson v. France (CCPR/C/58/D/550/1993); Ross v. Canada (CCPR/C/70/D/736/1997) and
Racism, Racial Discrimination, Xenophobia and Related Intolerance. Having traced the legal and factual aspects, he recommended action to strengthen protection and to prevent aggravated discrimination. Human minds are the source of intolerance and discrimination, so preventive activities such as dialogue between and within faiths and ethnic groups have a crucial role to play.

Concerning the nexus hypothesis mentioned earlier on, we may take into account the increasing attention to article 20 ICCPR and its interpretation. This article states that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. However, Ms. Asma Jahangir cautions against confusion between a racist statement and an act of defamation of religion. She argues that the criminal measures adopted by national legal systems to fight racism may not necessarily be applicable to defamation of religion as the elements that constitute a racist statement are not the same as those that constitute a statement defaming a religion.

Finally, I would like to share with you some concluding observations. Various reports from all over the world show that there is an ongoing scourge of human rights violations and persecution based on religion or belief. We are also witnessing the impact of globalization and national or international counter-terrorism activities on religions and beliefs. So we need to redouble our resolve and commitment to freedom of religion or belief which is central to the dignity of the human person. An education for tolerance is essential for the practical implementation of the 1981 Declaration. In this regard the Madrid Final Document, which was adopted exactly five years ago by an International Consultative Conference organized at the initiative of the Special Rapporteur on Freedom of Religion or Belief, may lead to more tolerant approaches in school education. Other preventive activities may be devised by means of inter-religious and intra-religious dialogue and by encouraging a modern approach to the interpretation of religious norms in a way that no one is forced to choose between his/her faith and a modern life.

Religious values should, on the contrary, help strengthening a culture of tolerance and diversity. This approach was called for from the heart of Mali in the 1930’s by the African Muslim spiritual leader Tierno Bokar:

De tout mon cœur, je souhaite la venue de l’ère de reconciliation entre toutes les confessions de la terre, l’ère où ces confessions unies s’appuieront les unes sur les autres pour former une voûte morale et spirituelle, l’ère où elles reposeront en Dieu par trois points d’appui: Amour, Charité, Fraternité.

Let me end my remarks by quoting from Václav Havel’s 1998 speech in Geneva, where he was invited by Mary Robinson, the former High Commissioner for Human Rights, to attend a commemorating event of the Universal Declaration of Human Rights:
Most importantly, the primeval foundations of all the main religious systems of the world contain, in different forms, the same basic principles, and the same moral imperatives. The various religions differ tremendously in accentuation, in spirit, in character and in liturgy, but somewhere deep down we always find the same fundament—the same call for humility before that which is around us and above us, for decency and for solidarity; the same reference to the memory of the universe where all our actions are proven for their true worth; the same emphasis on our responsibility for the whole world.4

Aren’t Václav Havel in 1998 and Tierno Bokar sixty years before preaching the same values?

Thank you very much for your attention.

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