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**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND
ALL FORMS OF DISCRIMINATION**

**Situation of Muslim and Arab peoples in various parts of the world
in the aftermath of the events of 11 September 2001**

**Report by Mr. Doudou Diène, Special Rapporteur on contemporary
forms of racism, racial discrimination, xenophobia and related
intolerance, submitted pursuant to Commission on Human Rights
resolution 2002/9**

Summary

This report is submitted pursuant to Commission on Human Rights resolution 2002/9 of 15 April 2002, in which the Commission requested the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance “to examine the situation of Muslim and Arab peoples in various parts of the world with special reference to physical assaults and attacks against their places of worship, cultural centres, businesses and properties in the aftermath of the events of 11 September”.

The report examines the different acts of discrimination against people of the Muslim faith and/or Arab origin and finds that there has been a resurgence in attacks and assaults on these people, their property and their places of worship in several parts of the world, particularly in the United States of America and in Europe. The report also highlights the negative impact on Muslims and/or Arabs of the legislation adopted in several countries to strengthen national security and combat terrorism. The Special Rapporteur also notes that, in several non-Muslim countries, there is an ideological dimension associated with anti-Muslim and/or anti-Arab violence, in the form of the explicit and public defamation of Islam and the equation of Islam with violence, terrorism and cultural and social backwardness by intellectual, political and media figures.

The Special Rapporteur is concerned that the grave situation of Muslims and Arabs in non-Muslim countries, which is a direct, proven and recognized consequence of the events of 11 September, may be a sign of the beginnings and dangers of a conflict between civilizations, of which it bears all the hallmarks: overdetermination in domestic policies and in relations between States of the pressing need to combat terrorism, to the detriment of international lawfulness and respect for human rights and humanitarian law; systematic violence against persons and property; the adoption and implementation of special discriminatory legislation; the common religious, cultural and ethnic background of the victims; the development of an ideology to legitimize and justify this violence and discrimination; open and public expressions of hatred, rejection and ostracism; stereotyping and demonization of the other; a hostile interpretation of diversity, especially religious, cultural and ethnic diversity, as a radical and insurmountable difference; ambiguousness on the part of the authorities, in the contradiction between their words and deeds; what can only be described as a culture of violence, discrimination and fear of the other that is nourished in the popular imagination by the press, books, television and film; and the re-emergence of the concept of the foreigner as an alien.

The Special Rapporteur therefore makes the following recommendations:

- The Commission on Human Rights should henceforth give high priority to the question of how to deal with terrorism while fully and scrupulously abiding by the instruments and principles of international law, human rights and humanitarian law;
- In this context, the Commission should pursue a dual strategy: a legal strategy to implement strictly the relevant international instruments and an intellectual strategy to root out the culture and ideology of discrimination, xenophobia and intolerance;

- For this purpose, the Commission should promote the idea that combating racism, discrimination, xenophobia and intolerance - in the spirit of, and by implementing, the Declaration and Programme of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance - is linked to and complementary to the urgently needed promotion of a dialogue between cultures, civilizations and religions;
- The dialogue between cultures, civilizations and religions should centre on three main objectives: to promote both mutual awareness of cultures, civilizations and religions and recognition of the interaction and cross-fertilization between them; to encourage cultural, religious and ethnic pluralism in the sense of recognizing, protecting, respecting and promoting diversity; and to create conditions that will lead the followers of religions and spiritual traditions to reflect on their shared values and also to act together to promote peace, development, human rights, social justice and democracy;
- Special attention should be paid in the pursuit of this dialogue to the way in which history is written and taught, intercultural education, the ethics of communication and information, and the purpose and priorities of science and technology;
- In particular, the Commission should, as a matter of urgency, encourage all States - especially those directly concerned by the situation of Muslims and Arabs as described in this preliminary report - to take preventive measures to guarantee the full and unfettered exercise of their religious and cultural rights and the protection of their cultural sites and places of worship, in order to protect detainees from arbitrariness and prolonged imprisonment and to guarantee the protection of fundamental rights such as the rights to equality before the law, personal integrity and a fair trial;
- Given that the situation of Muslims and Arabs shows that there is cause for concern about respect for human rights and international relations and also brings with it risks of conflict between cultures, civilizations and religions, the Commission should keep the matter under review.

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
Summary		2
Introduction	1 - 2	5
I. INCREASE IN ACTS OF DISCRIMINATION AND HOSTILITY TOWARDS ARABS AND MUSLIMS	3 - 30	6
A. North America	6 - 23	7
B. Europe	24 - 30	11
II. PROMOTION OF INTOLERANCE BY THE MEDIA AND INTELLECTUALS	31 - 43	12
III. THE IMPACT OF SECURITY AND ANTI-TERRORIST MEASURES ON ARABS AND MUSLIMS	44 - 55	15
IV. CONCLUSIONS AND RECOMMENDATIONS	56 - 57	17

Introduction

1. In its resolution 2002/9, dated 15 April 2002, on combating defamation of religions, the Commission on Human Rights requested the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance “to examine the situation of Muslim and Arab peoples in various parts of the world with special reference to physical assaults and attacks against their places of worship, cultural centres, businesses and properties in the aftermath of the events of 11 September 2001 and to submit a preliminary report ... for consideration by the Commission at its next session”.

2. On the basis of the information collected by the Special Rapporteur, which comes mainly from recognized human rights organizations and intergovernmental institutions and from a systematic review of the media in the countries concerned, this preliminary report is structured around the following observations:

The widespread pattern of physical assaults and attacks against the property, places of worship and cultural centres of Muslim and Arab minorities and communities in many non-Muslim countries;

The direct, chronological and explicit link between these physical assaults and attacks and the events of 11 September 2001 in the United States of America;

The ideological dimension of the explicit and public defamation of Islam and the equation of Islam with violence, terrorism and cultural and social backwardness by intellectual, political and media figures in non-Muslim countries, particularly in the United States and Western Europe;

The ambiguous position of the authorities in these countries, whose public statements condemning the assaults and attacks are accompanied by legislative and security measures that discriminate against Muslims and Arabs, whether or not they are citizens of the country concerned;

The deep sense of insecurity and injustice felt by Muslim and Arab minorities in the countries concerned;

The gravity of the situation faced by Muslims and Arabs in non-Muslim countries as a direct, proven and recognized consequence of the events of 11 September stems from the fact that it is a sign of the beginnings and dangers of a conflict between civilizations, of which it bears all the hallmarks: systematic violence against persons and property; the adoption and implementation of special discriminatory legislation; the common religious, cultural and ethnic background of victims; the development of an ideology to legitimize and justify this violence and discrimination; open and public expressions of hatred, rejection and ostracism; stereotyping and demonization of the other; a hostile interpretation of diversity, especially religious, cultural and ethnic diversity, as a radical

and insurmountable difference; ambiguousness on the part of the authorities, in their words and deeds; what can only be described as a culture of violence, discrimination and fear of the other that is nourished in the popular imagination by the press, books, television and film; and the re-emergence of the concept of the foreigner as an alien.

I. INCREASE IN ACTS OF DISCRIMINATION AND HOSTILITY TOWARDS ARABS AND MUSLIMS

3. Following the attacks of 11 September 2001, many public institutions and political figures tried to forestall a drift towards xenophobia and racism by calling specifically for the rejection of stereotypes based on nationality or religion. For example, immediately after the attacks, the former president of the United States, George Bush Sr., made a statement calling for the protection of Arabs and Muslims living in America. The current president, for his part, declared on television that care must be taken to treat Arabs and American Muslims "with the respect they deserve". During a visit to Washington's Islamic Centre on 17 September 2001, President George W. Bush added that "those who feel they can intimidate our fellow [Arab and Muslim] citizens to take out their anger don't represent the best of America, they represent the worst of humankind and they should be ashamed of that kind of behaviour". The House of Representatives and the Senate also immediately issued a call to combat acts and comments directed at Arabs, Pakistanis, Indians or Muslims.¹

4. Unfortunately, the statements did not have the desired effect. In the days immediately after the attacks, displays of intolerance towards people originating from the Near East, the Middle East and South-East Asia became more frequent. In a climate of extreme fear that was a breeding ground for xenophobia, Arabs and Muslims all over the world were the victims of acts of violence. Men, women and children were the targets of malicious acts and noxious crimes explicitly because of their religious beliefs or ethnic origin. A climate of widespread and systematic suspicion descended on Muslim and Arab communities in many non-Muslim countries. Muslims in all corners of the world suffered particularly from all kinds of stereotyping and verbal and physical harassment. According to numerous reports from human rights organizations, men, women and children were attacked in the United States, Canada, Western Europe and certain parts of Africa and Asia, not because of anything they had done, the way they acted or what they said, but because they belonged or were thought to belong to a particular religious or ethnic group or community. It is difficult, however, to measure the extent of this phenomenon, as the racist acts and violence were not always reported because the victims, who were often isolated or socially and financially vulnerable, did not always dare to file a complaint.

5. Although it would be misleading to talk of a wave of attacks against Arabs and Muslims in general after the attacks of 11 September 2001, specific acts of hostility towards these population groups were recorded in the United States and in many European countries. It is without question in the United States that the repercussions of the attacks of 11 September were most deeply and widely felt by Arab communities or, quite simply, by Muslim men and women. In Europe, however, for various reasons (the emotional shock of the attacks not having been as strong there), a distinction must be made between what happened in the immediate aftermath of 11 September and incidents and "reflex" actions that were often linked to a resurgence in discriminatory comments and practices aimed at a clearly identified group. The latter category

included, according to many American and European organizations, numerous verbal or physical attacks on, or even, in extreme cases, murders of, Arabs and, more generally, Muslims from Asia (Pakistan, Indonesia, the Philippines, etc.).

A. North America

6. It would be no exaggeration to say, that just after the attacks of 11 September 2001, the Arab-American community was gripped by a terrible fear. Hundreds, or even thousands of their members found themselves suspected by the American authorities of having links with terrorist movements, particularly al-Qa'idah. While hundreds of Arab-Americans or Muslims were cleared of suspicion following rapid inquiries, others were detained for long periods without any evidence of wrongdoing. In addition to the detentions of dubious legality reported by many publications, suspicion based on appearance became commonplace. Even one of President Bush's bodyguards, who is of Arab origin, was a victim.

7. Many accounts of acts of discrimination have been reported by the American press, human rights organizations and various Arab-American organizations. In a report published in August 2002 and updated in November 2002, the non-governmental organization Human Rights Watch gives a detailed account of thousands of interrogations of "people who might have information about or connections to terrorist activity".²

8. The Human Rights Watch report contains a long list of alleged cases of arbitrary arrest based on the origin and religion of the accused. All these cases, without exception, concern persons from the Middle East, North Africa, South Asia or Europe who share the same physical or "ethnic" appearance and who are all Muslims.

9. Men and women who were for the most part arrested solely on account of their physical appearance (for looking like Arabs or Middle Easterners) or because they are followers of the Muslim religion (recognizable by the fact that they wear the *hijab*, or headscarf, or attend a mosque) were thus routinely inconvenienced by numerous discriminatory measures. In almost every case, the lack of a valid residence permit was apparently used to justify long periods of detention (sometimes lasting several weeks), solitary confinement (which is not normal for a breach of the immigration laws) and, above all, numerous deportations from the United States. Many of those forced to leave the United States were apparently not in a position to claim their right to a defence, as they are entitled to do under United States law, let alone have the assistance of a lawyer. In some cases, it seems that the mere fact of being from a Middle Eastern country and being near a "sensitive" place was enough to arouse suspicion and lead to interrogation in a police station.

10. Hundreds of arbitrary arrests for "crimes of appearance" have been reported all over the country, on grounds totally unrelated to any terrorist activity. Figures published by many institutions clearly highlighted the systematically discriminatory nature of the treatment meted out to persons whose only crime was to have the "wrong" physical appearance. The acts against them ranged from harassment (body searches) to short or long periods of detention in unlawful conditions. Among the many examples reported by human rights organizations were verbal or physical attacks on persons arrested in connection with the inquiries into the attacks of 11 September, the refusal by the police authorities to allow Muslim detainees to observe their

religious rites and the refusal to give them meals that were not prohibited by their religion. Similarly, many detainees awaiting the outcome of an identity check or further inquiries by the Immigration and Naturalization Service (INS) or the Federal Bureau of Investigation (FBI) are said to have been kept in the same cells as ordinary prisoners.

11. It is still difficult to know what happened to the hundreds or even thousands of individuals considered at best as potential witnesses and at worst as suspects who might have been able to provide information in connection with the investigation into the 11 September attacks. Their names, the precise charges against them and the names of their lawyers are not always known, but human rights organizations agree that most cases concerned offences under the immigration laws or the suspected use of false papers.

12. Despite appeals for calm and tolerance by President Bush, politicians and some major newspapers, attacks of varying degrees of severity on persons of Arab origin or Muslims were reported throughout the territory. These people were mostly the victims of “racial profiling”, as it is called by American commentators, not only in their private lives or in the workplace, but also in public places. It should be recalled that, after 11 September, certain American airlines did not hesitate to apply discriminatory treatment - including forcible disembarkation from aeroplanes - to Arabs, whether or not they were Americans, and to Muslims in general, purely on the basis of their physical appearance or clothes.

13. Such discriminatory practices were widely denounced by various organizations, such as the American Civil Liberties Union, one of the leaders of which, Harvey Grossman, asked in the *Chicago Tribune* of 16 October 2001 why detainees’ lawyers had been ordered to say nothing about the identity of the detainees, the reasons for their detention or prison conditions. That was, he said, an extraordinary step to take before bringing charges. Nothing like it had been seen since the day after Pearl Harbor, when 700 Japanese immigrants had been rounded up and imprisoned in complete secrecy and without any indictment.

14. The similarities with that period are brought out in a study that appeared in the journal of the American Immigration Law Foundation in October 2002, entitled “Have we learned the lessons of history? World War II Japanese internment and today’s secret detentions”.³

15. The authors of this article list scores of cases of arbitrary arrests and detention of Arabs and Muslims in general: “... since September 11, 2001, the Department of Justice ... has arrested, detained and, in some cases, deported, over 1,200 people with Arab or Muslim backgrounds under a veil of complete secrecy”. The authors are concerned about the secrecy surrounding judicial procedures involving these categories of persons. They support their argument by referring to directives issued by certain authorities, such as the one dated 21 September 2001 in which chief immigration judge Michael Creppy ordered judges to prohibit access to the courtroom in “special interest” cases. In fact, according to the same authors, over 1,200 non-citizens, mostly from Pakistan, Egypt and Yemen, were incarcerated in such special interest cases.

16. In these circumstances, many human rights organizations became alarmed at the situation of certain individuals awaiting deportation from the United States and those prepared to leave American territory voluntarily. In a request sent to the Inter-American Commission on

Human Rights on 20 June 2002, three organizations - the International Human Rights Law Group, the Center for Constitutional Rights and the Center for Justice and International Law - cited numerous cases of violations of the personal liberty and security of dozens of Muslims from Arab countries and South Asia who had been imprisoned by the INS.

17. In their request, these organizations called on the Inter-American Commission on Human Rights to ensure that precautionary measures were taken to protect individuals from arbitrary and prolonged imprisonment and to protect their fundamental rights, such as the rights to equality before the law, personal integrity and a fair trial. After taking note of the additional information provided by the applicants and the response of the United States Government, the Inter-American Commission, in a communication dated 26 September 2002, recognized that the prolonged detentions in question had no legal basis under either domestic or international law. Moreover, it admitted that it had no information on the conditions of detention or on any mechanism to monitor those conditions and reported that former detainees who had left the United States had described the treatment to which they had been subjected as very harsh.

18. The Inter-American Commission on Human Rights therefore called on the United States Government to abide by the law and to adopt within 30 days the necessary measures to protect the fundamental rights of the detainees awaiting deportation and of those who had agreed to leave American territory. This procedure, which is still under way, gives at least an idea of the unrest caused by the many acts of discrimination against persons with an Arab or Muslim background in the United States after the attacks of 11 September.

19. The actions by human rights organizations at various levels - through the media or legal channels, at the national or international level - should not be seen in isolation from the very prompt reactions of the American authorities to the attacks on Muslims and Arabs. As early as 17 September, President Bush visited Washington's Islamic Centre to reassure the Muslim community living in the United States: "America counts millions of Muslims amongst our citizens, and Muslims make an incredibly valuable contribution to our country And they need to be treated with respect Women who cover their heads in this country must feel comfortable going outside their homes. Moms who wear cover must not be intimidated in America. That is not the America I know. That is not the America I value".⁴ The comments by the President of the United States were intended to calm the fears of the Arab-American community, which had been conveyed to him by representative bodies such as the Arab-American Institute Foundation and the American-Arab Anti-Discrimination Committee.

20. The range of violent acts raises questions about the desire of the perpetrators to target this category of the American or non-American population. In fact, the information disseminated by Arab-American organizations is broadly in line with that already published by human rights institutions. The most common (though nonetheless odious) instances of violence - being spat at, arguments, discrimination in employment - go together with more blatant acts of violence. The latter may go as far as physical aggression, including by some police officers, or even, unfortunately, beatings that have the barely disguised intention of killing. Even though this extreme case is actually very rare, it is evidence of a widespread climate of insecurity felt by many in the Arab-American community across the United States. In fact, American citizens of Arab origin or who are simply Muslims have not been spared the discriminatory treatment, physical or verbal aggression or the reported attempts to murder Arabs and Muslims in general.

Whether they live in Detroit, where there are 220,000 of them, Los Angeles, where their numbers are put at almost 2.8 million, or New York, where there are about 1.6 million of them, Arab-Americans have been affected by the fallout from 11 September 2001. While a few thousand interrogations, hundreds of secret detentions, dozens of cases of discrimination by airlines and hundreds of cases of discrimination in employment are no basis for claiming that all 3 million Arab-Americans (who represent 25 per cent of all Muslim Americans) have been threatened, it would still be fair to say that most of them have come under a great deal of stress.

21. Even though the anxiety and fear of the first days and weeks after the attacks of 11 September have receded somewhat, both the Muslim and Christian Arab-American communities are still wary of acts of discrimination, particularly in the light of a possible war against Iraq. In an article in the *Philadelphia Inquirer* on 11 November 2002, the communications director of the American-Arab Anti-Discrimination Committee, Hussein Ibish, talks about the fears of the Arab-American community during Ramadan, the Muslim month of fasting, and before Christmas. He also mentions the attacks by leaders of certain evangelical movements. For example, in an interview with Bob Simon (from the CBS channel) that was broadcast during the "60 minutes" programme, the Reverend Jerry Falwell, the well-known leader of the Southern Baptist Convention, describes the prophet Muhammad as a "terrorist", while Pat Robertson, founder of the Christian Broadcasting Network (CBN), is said to have called him a "killer" and "brigand", while claiming that the Koran preaches violence.

22. Despite the tense atmosphere of anti-Arab and anti-Muslim feeling, United States officials have continuously expressed support and sympathy for the populations targeted by the attacks. This is true of President Bush and Congress. The Department of Justice has also taken tough measures to combat crimes and all forms of discrimination. The Department of State produced a documentary to show how the Muslim population in the United States is completely integrated and accepted by society. The avowed aim is to broadcast this documentary in various Muslim countries to counter the predominant perception that the United States is against Islam. Critics of the documentary have denounced it as propaganda and for targeting Muslim countries. The Special Rapporteur believes that it is an initiative that should be welcomed as part of an education campaign which also indirectly confirms that there is a serious problem. The Special Rapporteur suggests that priority should be given to broadcasting the documentary widely in the United States itself, not only by television stations, but also at public screenings and in universities, and using it as the basis for a critical and forward-looking debate between members of all communities.

23. In Canada, judging from the reports from Toronto, Halifax, Montreal, Calgary and Vancouver, hostile acts related to 11 September took place all over the country. The annual report of the Hate Crime Unit of the Toronto police force put the number of attacks in 2001 at 338. According to the report, the terrorist acts of 11 September 2001 were the main cause of the 66 per cent rise in reported cases of hate crimes.⁵ According to the Canadian Race Relations Foundation, in the three weeks following the attacks, a number of racist incidents were reported, including bomb alerts in mosques, arson, physical attacks, harassment and threats against Muslim students.⁶

B. Europe

24. Although they were not as widespread or as serious as in the United States, acts of racism or discrimination against Arabs and Muslims in general (from Africa and Asia) were also committed in Europe. As the emotional shock of the 11 September attacks was not as strong as in the United States, these displays of racism mostly took the form of verbal and physical attacks, damage to places of worship and, sometimes, press campaigns.

25. The report published in Vienna on 10 October 2001 by the European Monitoring Centre on Racism and Xenophobia (EUMC) leaves the reader in no doubt that the acts of discrimination reported in the various countries of the European Union were on a smaller scale than in the United States. Although the tension was palpable in the days following the 11 September attacks, it soon subsided. However, this does not mean that Arab and Islamic communities were free from what might be called the “usual” racism they have to put up with. Nevertheless, in all the countries of the European Union, the authorities decried any attempts to equate Arabs and Muslims with terrorists and condemned anti-Muslim attitudes. Many newspapers showed a similar concern for calm in their coverage of the various events directly or indirectly linked to the attacks of 11 September 2001. However, although this approach eventually prevailed, overtly hostile attitudes towards Islam were often expressed by certain extreme right-wing European political parties and publications.

26. Thus, one month after the attacks and on the basis of national reports, EUMC announced that “... a latent Islamophobia has used the present circumstances to come to light, finding its expression in ... acts of physical and verbal abuse.”⁷ All the national reports speak of repeated attacks on Muslims and everything that symbolizes and personifies Islam. According to an EUMC report dated 22 May 2002, “the most prevalent ... [visual identifier is] the *hijab* or headscarf that many Muslim women choose to wear. The *hijab* seems to have become the primary visual identifier as a target for hatred, with Muslim women being routinely abused and attacked” across the countries of the European Union.⁸ Men wearing turbans are another sizeable group that is repeatedly attacked in most parts of the European Union. There have also been reports of many attacks on mosques, ranging from petty vandalism and graffiti to arson and bomb attacks. According to EUMC, the rejection of Muslim communities in European Union countries following the attacks of 11 September is reflected in the recent increase in racist and xenophobic violence in Europe, although the anti-Muslim acts differ widely from one country to another.

27. The report by the previous Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Maurice Glèlè-Ahanhanzo, submitted at the fifty-eighth session of the Commission on Human Rights,⁹ and the EUMC reports describe the kind of incidents that affect Arabs and Muslims throughout Europe, including threats and hate mail sent to Muslim organizations, verbal abuse in the street and in public places such as schools, fires and damage to their places of worship and mosques, and physical assaults.

28. Examples of the violence reported in Europe include: extreme cases of physical violence in Great Britain;¹⁰ in Germany, reports by the Central Council for Muslims of a general increase in attacks on Arabs and Muslims, especially on women wearing the veil;¹¹ in Denmark, further worsening of the already antagonistic relations between Muslims and the rest of the population;¹²

and, meanwhile, according to the Dutch *Volkskrant* newspaper, “nowhere in Europe have Muslims been so terrorized as here in the Netherlands after the attacks on the United States. Mosques have been covered with graffiti or targeted by arsonists on an almost daily basis ... Muslim targets have been attacked in Apeldoorn, The Hague, Gorinchem, Heerlen, Rijssen, Uden, Venlo and Vlissingen”.¹³ According to a list published on 2 October 2001 by the Association of Anti-Discrimination Centres, more than 90 incidents aimed at Muslims in the Netherlands had been recorded: “Most cases (31 incidents) concerned insults in the street, threats and spitting”.¹⁴

29. Outside Europe, cases have been reported in Australia of racist and xenophobic acts against Muslims. Mosques are said to have been the targets of firebombs; one of them was completely destroyed by the fire. A Lebanese church is also reported to have been ransacked. It has also been pointed out that, since the attack of 12 October 2002 in Bali, Muslim associations have observed an increase in racist threats and abuse.¹⁵

30. While most of the acts of violence or discrimination reported in the United States and Europe appear to be isolated acts, we need to ask ourselves whether they have not been facilitated by the climate of suspicion and mistrust openly fostered not only by certain politicians and parts of the media, but also, and perhaps more so, by a school of thought through which certain intellectuals are not afraid to lend legitimacy to a form of intolerance thought to belong to a bygone age.

II. PROMOTION OF INTOLERANCE BY THE MEDIA AND INTELLECTUALS

31. The way in which the events of 11 September were treated by news providers did a good deal of harm to the image of Arabs and Muslims. Certain parts of the media played considerably on the supposed feelings of the general public, reawakening old fears based either on ignorance or on a repressed crusading mentality that still persists, or quite simply on anxieties about life in general or withdrawal into an identity. According to a report by the Canadian Human Rights Foundation, “the overall role played by the [North American] media in this situation is a negative one. The media consistently confuse ‘Arab’ with ‘Muslim’ and make outrageous categorizations and generalizations while neglecting differences. These almost comical errors are sometimes even committed by people presented as ‘experts’.”¹⁶ This coverage of events therefore contributed to a sharp increase in Islamophobia or its acceptance as normal in the West, not only among the common people, but also, and more openly, among certain elites, who at times seemed to adopt it as an ideological or even esthetic position.

32. The book by the American political scientist Samuel Huntington entitled *The Clash of Civilizations and the Remaking of World Order*¹⁷ attracted much comment from the American media in the immediate aftermath of the attacks. Its author envisages a confrontation between two culturally antagonistic blocs, the West and the Arab-Muslim world. The events of 11 September 2001 thus appeared to be one of the first manifestations of this “clash” of civilizations.

33. At the same time, errors in the media blitz of images and comments in the days following the attacks only made it more difficult for people in the West to make a distinction between Islam and terrorism. Some television stations, for example, broadcast non-stop pictures of the demonstrations of joy of Palestinian crowds after the attacks of 11 September. These pictures gave the general public in the West the impression that crowds of Arabs and Muslims all over the world welcomed the terrorist attacks and consequently that Islam encouraged terrorism. They added more weight to the theory of the clash of civilizations. In fact, the demonstration filmed in Gaza consisted only of youths and was an isolated incident in the Palestinian territories. However, the record was not set straight afterwards.

34. In this delicate situation, questions need to be asked about the pertinence and impact of the expressions used by political leaders that might exacerbate the climate of suspicion and fear and about statements based on ideas such as the fight between good and evil and the duty of civilized nations towards barbaric ones. It was in this spirit that many organizations condemned the statement made by the Italian prime minister, Mr. Silvio Berlusconi, at a press conference on Wednesday 26 November 2001, in which he said that “we must be aware of the superiority of our civilization, a system that has guaranteed well-being ... respect for religious and political rights, a system that has as its values understanding of diversity and tolerance. Western civilization is superior because it has at its core - as its greatest value - freedom, which is not the heritage of Islamic culture”. He was certain that “the West will continue to conquer peoples, like it conquered Communism”, even if that means “a confrontation with another civilization, Islam, firmly entrenched where it was 1400 years ago”.¹⁸

35. However, such an unfortunate choice of words by politicians is rare and contrasts with the repeated public statements by other leaders calling for a distinction to be made between Islam as a religion and a kind of Islamic terrorism. On the other hand, certain intellectuals have not been slow to proclaim their ontological hostility towards the culture and values of Islam, particularly in France, where “intellectuals” are known to play a role in political life that has no equivalent in any other country. Consequently, individual initiatives have been on the increase and, in a typical example of the way in which Islamophobia is becoming accepted as normal, there is a certain kind of writing that promotes the new crusade.

36. A scandal therefore erupted around the publication of one of the latest books by a fashionable novelist, Michel Houellebecq, in which he says that “Islam is the most stupid religion”. An attack like this on Islam as such, rather than on some excess committed by one group or another, lends credibility and legitimacy to a prevailing Islamophobia when it is widely circulated by the press because of the author’s high media profile.

37. This is the “trial of Islam”, as it has been so well described by Daniel Lindenberg,¹⁹ in which the prosecution’s case is being made not only by certain authors, but also, sometimes, directly by newspapers: the headline in *L’Express* on the first anniversary of the attacks of 11 September was “Islam: ce que l’on n’ose pas dire” (“Islam: what no one dares to say”).²⁰ In looking for the real key to this “demonization of Islam and Arabs”, Lindenberg shows that there is a whole body of opinion in Europe representing the views of those who feel “dispossessed three times over” by, in descending order of grievance, Muslim immigration, the construction of a technocratic Europe and the process of globalization. This apparently reflects a new search for identity which is rooted in the Judaic-Christian tradition and which rejects a

pluralism that would mean the end of Western civilization. New political arrangements may also be taking shape in which the State, far from being based on the equality of all, would imply acceptance of common values derived from a well-defined religious source, which would become the basis for new forms of exclusion.

38. Another writer who can be mentioned here is Pierre Manent, who is against any dialogue between Christians and Muslims and who goes so far as to say he wants no Muslims on Christian soil.²¹ However, the most full-frontal attack on Arabs and Muslims can be found in a book by Oriana Fallaci published a few months after the attacks of 11 September 2001, *La rabbia e l'orgoglio* ("The rage and the pride").²²

39. According to one of the most high-profile intellectuals in France, Alain Finkielkraut, this "anti-Muslim tract" is not at all racist. By insulting "the sons of Allah" who are "multiplying like rats", the author forces us "to look reality in the face". A breaker of taboos, "she has the notable merit of not allowing herself to be intimidated" and she liberates speech.²³

40. We may thus be witnessing an ideological, political and religious polarization. It is in this context that the significance of the debate on the Christian identity in Europe in the drafting of a European constitution should be judged.²⁴

41. The United States has not been spared from this phenomenon, even though that country's tradition - and the extraordinary variety of peoples from all countries in the world who have made it "the first universal State in history" - should be an insurmountable barrier to any intolerance. For example, in February 2002, about 60 American intellectuals published an open letter entitled "What we're fighting for".²⁵ The letter, which claims to draw inspiration from the United States Declaration of Independence, maintains that the war against terrorism launched in the aftermath of the attacks of 11 September 2001 is a just war. Its authors, who include Samuel Huntington, declare themselves defenders of American values and ideals, which are presented as following from the "laws of Nature and of Nature's God". They are universal principles from which all peoples should derive inspiration.

42. There is, however, a whole body of opinion which challenges not just a particular interpretation of the Koran or the particular attitude of some Muslims, but Islam as a whole, and whose followers are called on to abandon their faith if they want to enter the "modern" age.

43. One may wonder if, in the debate on Islam in Europe, Islam is not suffering from an overdetermination of its political and ideological interpretation. As a religion, Islam is presented as incompatible with secularism; as a tradition, Islam is considered incapable of opening up to modernity; and, as a civilization, Islam is supposed to be intolerant in principle and to pay only lip service to democracy and human rights. Actually, these ideas and practices are paradoxical, as they would scarcely be acceptable if they allowed Muslims to play a prominent political role in non-Muslim countries or if they brought to power parties claiming to represent the Koran in Islamic countries. The ongoing debate on Turkey's entry into the European Union illustrates the current climate, particularly in the importance it attaches to the dominance of the Muslim religion when raising questions about Turkey's European identity.

III. THE IMPACT OF SECURITY AND ANTI-TERRORIST MEASURES ON ARABS AND MUSLIMS

44. In a crisis, history shows that measures dictated by public security considerations are often adopted at the expense of individual freedoms. In a number of countries, the months following the attacks of 11 September 2001 were marked by a legitimate and understandable strengthening of anti-terrorist legislation and regulations. However, these measures, which were hastily adopted in a climate of indignation and fear, may jeopardize the fundamental rights of citizens and, a fortiori, foreigners living in the country. There is no escaping the fact that they systematically single out persons of Arab or Muslim origin and that the use of racial profiling for operational purposes is everyday practice.

45. In the United States, for example, civil rights organizations have drawn attention to legislative and regulatory measures that could restrict individual freedoms. This is especially true of the anti-terrorist law known as the USA Patriot Act,²⁶ which was signed into law by President Bush on 26 October 2001 after its adoption by the House of Representatives and the Senate.

46. The scope of the Act is extremely broad; it ranges from a definition of terrorism to border protection and the employment of Arabic translators by the FBI. Its most controversial provisions are the extension from 48 hours to seven days of the period during which foreigners can be held in police custody if suspected of links with a terrorist network. The definition of terrorism is vague enough to be broadly interpreted and could in fact be applied to foreigners guilty of minor offences or even to political dissidents. The implementation of the Act led to the arrest of over 1,200 individuals, the vast majority of whom were foreigners fitting the Arab-Muslim profile. Over 500 of them were allegedly detained for an unlimited period and, although most of them were released or deported for breaches of the immigration laws, the United States Government refused to publish their names and the administration excluded the public from the legal hearings that led to their deportation.²⁷

47. The USA Patriot Act was accompanied by orders issued by the President and the Attorney-General. On 13 November 2001, the Attorney-General, Mr. John Ashcroft, asked the intelligence agencies to interrogate 5,000 persons who had entered the United States legally, but who were mostly from Arab countries or the Middle East. On the same day, emergency "military commissions", which would apply the rules used for courts martial and try suspects not having United States citizenship, were set up by presidential order, sparking off a debate on the discriminatory nature of the decision.²⁸ The creation of a new category, that of "enemy combatant", would henceforth allow anyone suspected of undermining the country's security to be held in prison indefinitely, without access to a lawyer and without any of the guarantees of the United States justice system.

48. Massive changes were also made in the intelligence and security agencies, including with regard to the infiltration of public meetings by agents to gather information. The FBI confirmed that it might send agents into mosques. On 5 June 2002, Mr. Ashcroft announced that the system was expected to track 100,000 "high-risk" foreign visitors a year.²⁹ Their photographs and fingerprints will be checked against those of wanted terrorists.

49. These measures, which were unanimously condemned by non-governmental human rights organizations, are said to have been widely used to justify discrimination within the population. According to Laura Murphy, a director of the American Civil Liberties Union, “Included in the bill [the USA Patriot Act] are provisions that would allow for the mistreatment of immigrants, the suppression of dissent and the investigation and surveillance of wholly innocent Americans. The bill would give enormous, unwarranted power to the executive branch unchecked by meaningful judicial review. Most of the new powers could be used against American citizens in routine criminal investigations completely unrelated to terrorism”.³⁰

50. Canada’s anti-terrorism law, Bill C-36, which entered into force on 24 December 2001, provides for a person to be placed in preventive detention for up to 72 hours if suspected of preparing terrorist acts. Mere suspicion is grounds enough for the police to act. Immigration procedures and border controls have also been tightened. Representatives of Arab and Muslim communities have expressed concern that certain ethnic or religious minorities could be particularly targeted by these provisions, which would encourage discrimination.

51. In the United Kingdom of Great Britain and Northern Ireland, the anti-terrorist law adopted by parliament on 14 December 2001 despite the opposition of the House of Lords includes the following two measures: the power to imprison foreigners without a warrant, on grounds of mere suspicion, and greater powers for the police to monitor the Internet, electronic mail and telephone calls. The first of these provisions of the anti-terrorist law contravenes article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits detention for long periods without a judicial investigation. The British Government has also sought a derogation under article 15 of the Convention, which provides for this possibility in times of public emergency. All the same, this law reinforces the confusion between illegal immigration and terrorism.³¹

52. In France, the National Assembly adopted a law on “daily security” on 15 November 2001. One of the so-called “anti-terrorist” amendments to this law concerns taking the genetic fingerprint of anyone who has a brush with the law.

53. In Germany, an anti-terrorist law submitted by the federal Minister of the Interior, Mr. Otto Schily, was adopted by the Bundestag. Under this law, a residence permit can be refused or not extended if the applicant is suspected of “jeopardizing the fundamental democratic and liberal order”. Foreigners living in Germany could therefore be deported if they are suspected of terrorist activities or supporting terrorists. The fingerprints of all asylum-seekers will be kept for 10 years and systematically compared with evidence found by the police at crime scenes. Associations of foreigners whose objectives or activities might harm or jeopardize the fundamental interests of the country are prohibited by this law.³²

54. According to a report by Amnesty International in Singapore, after the attacks of 11 September, Afghan asylum-seekers in open reception centres were transferred to special high-security detention centres.³³ Meanwhile, in the Republic of Korea, as suspicion of the Muslim minority increased, the Government adopted an anti-terrorist law that could be used to restrict the rights to freedom of expression and assembly.³⁴

55. If similar changes to legislation and regulations were to be made around the world, there would be a considerable decline in the rule of law at the international level. Of course, very serious threats may lead States to take emergency measures, as humanitarian organizations have all recognized, but a sustained challenge to the basic principles of the universal legal order, particularly if it is discriminatory in that it deliberately targets certain populations identified above all by their appearance, would undermine the foundations of society. For example, administrative detention for long periods is a clear violation of article 9 of the International Covenant on Civil and Political Rights - which, it should be remembered, is binding on 148 States³⁵ - which stipulates that “anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release” (para. 3) and that “anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful” (para. 4). This is the principle of habeas corpus, which is, to say the least, under pressure from the emergency measures in a number of countries that nevertheless claim to be governed by the rule of law. In addition, article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, which is binding on 162 States,³⁶ provides, among other things, for “the right to equal treatment before the tribunals and all other organs administering justice”.

IV. CONCLUSIONS AND RECOMMENDATIONS

56. **There is a serious risk that the situation of Muslims and Arabs following the events of 11 September 2001, because of the background to the events and their symbolism, might lead to long-term and far-reaching disruption of the international order if it is not dealt with urgently in accordance with international law, the ethics governing relations between peoples and the promotion of a genuine dialogue between civilizations. This situation has arisen in the context of an ideological overdetermination of the issue of terrorism, the central importance and legitimacy of the issue of the human and ethical aims of globalization, and the emergence of new and particularly bloody cultural or religious conflicts. The setting is the sensitive, deep and crucial link between culture, religion and politics. The situation ultimately symbolizes the logic and dynamics of conflict.**

57. **The Special Rapporteur would like to contribute, within the framework of his mandate, to the search for the solutions required by the current situation of Muslims and Arabs as described in this preliminary report, by making the following recommendations:**

The Commission on Human Rights should henceforth give high priority to the question of how to deal with terrorism while fully and scrupulously abiding by the instruments and principles of international law, human rights and humanitarian law;

In this context, the Commission should pursue a dual strategy: a legal strategy to implement strictly the relevant international instruments and an intellectual strategy to root out the culture and ideology of discrimination, xenophobia and intolerance;

For this purpose, the Commission should promote the idea that combating racism, discrimination, xenophobia and intolerance - in the spirit of, and by implementing, the Declaration and Programme of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance - is linked to and complementary to the urgently needed promotion of a dialogue between cultures, civilizations and religions;

The dialogue between cultures, civilizations and religions should focus on three main objectives: to promote both mutual awareness of cultures, civilizations and religions and recognition of the interaction and cross-fertilization between them; to encourage cultural, religious and ethnic pluralism in the sense of recognizing, protecting, respecting and promoting diversity; and to create conditions that will lead the followers of religions and spiritual traditions to reflect on their shared values and also to act together to promote peace, development, human rights, social justice and democracy;

Special attention should be paid in the pursuit of this dialogue to the way in which history is written and taught, intercultural education, the ethics of communication and information, and the purpose and priorities of science and technology;

In particular, the Commission should, as a matter of urgency, encourage all States - especially those directly concerned by the situation of Muslims and Arabs as described in this preliminary report - to take preventive measures to guarantee the full and unfettered exercise of their religious and cultural rights and the protection of their cultural sites and places of worship, in order to protect detainees from arbitrariness and prolonged imprisonment and to guarantee the protection of fundamental rights such as the rights to equality before the law, personal integrity and a fair trial;

Given that the situation of Muslims and Arabs shows that there is cause for concern about respect for human rights and international relations and also brings with it risks of conflict between cultures, civilizations and religions, the Commission should keep the matter under review and, for that purpose, should request the Special Rapporteur to prepare, for its next session, a more complete report based on information collected from States, international, governmental and non-governmental organizations, the communities concerned and relevant factual documents, as well as from Governments' responses to the various allegations concerning them.

Notes

- ¹ See, for example, Patrick Jarreau, “Menaces, injures contre les Arabes américains et cocktails Molotov sur les mosquées”, *Le Monde*, 18 September 2001.
- ² Vol. 14, No. 4 (G), pp. 3 ff.
- ³ Stanley Mark, Suzette Brooks and Cyrus D. Mehta, “Have we learned the lessons of history? World War II Japanese internment and today’s secret detentions”, *Immigration Policy Focus*, vol. 1, No. 3.
- ⁴ See the report by the Special Rapporteur, Mr. Maurice Glèlè-Ahanhanzo, submitted at the fifty-eighth session of the Commission on Human Rights (E/CN.4/2002/24, para. 19).
- ⁵ See Karen Mock, “Les crimes haineux au Canada: aperçu de la situation et intervention”, Canadian Race Relations Foundation, October 2002.
- ⁶ Ibid.
- ⁷ Yvonne Bemelmans and Maria José Freitas, “Situation of Islamic communities in five European cities”, November 2001 (report commissioned by EUMC).
- ⁸ Christopher Allen and Jorgen Nielsen, “Islamophobia in the EU after 11 September 2001”, EUMC, Vienna, May 2002.
- ⁹ E/CN.4/2002/24.
- ¹⁰ In London, three individuals are reported to have beaten up an Afghan taxi-driver after pulling him from his car. The man is now a tetraplegic. In the town of Team, a 20-year-old Bangladeshi is said to have had his jaw broken by a gang of youths. And in Swindon, a woman of Asian origin was allegedly beaten with a baseball bat by two men.
- ¹¹ See the report of the Community Action Programme to Combat Discrimination (European Commission, 17 October 2001).
- ¹² E/CN.4/2002/24, para. 25.
- ¹³ *De Volkskrant*, 25 September 2001.
- ¹⁴ This document appeared in full in the *Trouw* daily newspaper on 3 October 2001.
- ¹⁵ *Le Monde*, 13 November 2002.
- ¹⁶ See “Terrorism and resisting war: does human rights education matter?”, summary of a forum organized by the Canadian Human Rights Foundation, held on 6 November 2001.

¹⁷ In 1993, Samuel P. Huntington, a counter-insurgency expert in Viet Nam under the Johnson administration and later director of the Olin Institute for Strategic Studies at Harvard, published an article that was the forerunner to his now famous book *The Clash of Civilizations and the Remaking of World Order* (Simon and Schuster, New York, 1996; published in French as *Le choc des civilisations*, Odile Jacob, 1997). The article was a riposte to a rival theorist from the Department of State, Francis Fukuyama, the proponent of the “end of history” theory, for whom the fall of the Soviet Union had put an end, if not to history, to ideological disputes, with democracy emerging as the unsurpassable horizon of our age.

¹⁸ See Christian Balmer and Gareth Jones, Reuters news agency, Rome, 27 September 2001 (<http://www.chrétiens-et-juifs.org/géopolitique/berlusconi.htm>).

¹⁹ Daniel Lindenberg, *Le rappel à l'ordre: enquête sur les nouveaux réactionnaires*, Éditions du Seuil, Paris, 2002.

²⁰ *L'Express*, 12-18 September 2002.

²¹ See, for example, *Le Figaro* of 23 May 2002.

²² *La rabbia e l'orgoglio*, Rizzoli, October 2001 (published in French as *La rage et l'orgueil*, Plon, Paris, 2001).

²³ *Le Point*, 21 May 2002. See also Maurice T. Maschino, “Intellectuels médiatiques: les nouveaux réactionnaires”, *Le Monde diplomatique*, October 2002.

²⁴ *Le Monde*, 16 November 2002.

²⁵ Published in French, under the title “Lettre d'Amérique”, in Quebec (*Le devoir*, 15 February 2002) and in France (*Le Monde*, 17 February 2002).

²⁶ “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act”.

²⁷ “Attorney-General Ashcroft provides total number of federal criminal charges and INS detainees”, Department of Justice press release, 27 November 2001.

²⁸ “US: use courts-martial rules for military commissions”, Human Rights Watch press release, 18 December 2001.

²⁹ “Attorney-General prepared remarks on the national security entry-exit registration system”, Department of Justice press release, 6 June 2002. See also Pascal Riche, “Crispation sécuritaire aux États-Unis: Washington veut fichier les visiteurs étrangers ‘à risque’”, *Libération*, 7 June 2002.

³⁰ See www.aclu.org/safeandfree.

³¹ See Mikaël Franssens, “Sécurité et libertés: tentations dangereuses dans l’Union Européenne”, Amnesty International press release, 10 April 2002.

³² See “Les droits humains subissent dans le monde entier le contrecoup des attentats”, Amnesty International, October 2001.

³³ See “Les conséquences négatives des attentats du 11 septembre 2001”, Amnesty International information sheet 156/02.

³⁴ See Irene Khan, “Countering the backlash”, *Amnesty International Annual Report 2002*. See also Thomas Hofnung, “L’élán sécuritaire’ inquiète Amnesty”, *Libération*, 29 May 2002.

³⁵ As at 20 August 2002.

³⁶ As at 20 August 2002.
