

CONSCIENCE AND LIBERTY

2010

*Defamation of Religions
and Freedom of Expression*



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The International Association for the Defence of Religious Liberty has been publishing *Conscience and Liberty* magazine in French (*Conscience et liberté*) since 1949, and since 1973 in German (*Gewissen und Freiheit*). For several years it was also published in English (1989 – 1994). We hope that this renewed initiative will contribute in a substantial way to the realization of the main goal of our association – that is – to promote and protect freedom of thought, conscience and religion for all people everywhere.

International Association for the Defence of Religious Liberty

A non-governmental organization in consultative status with the United Nations and the Council of Europe.

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We believe that religious liberty is a God-given right, and hold that it is best exercised where separation is maintained between church and state.

We believe that legislation and other governmental acts which unite church and state are opposed to the best interests of both institutions and are potentially prejudicial to human rights.

We believe that public authorities are divinely ordained to support and protect citizens in their enjoyment of natural rights, and to rule in civil affairs; in this realm public authorities warrant respectful obedience and willing support.

We believe in the natural and inalienable right of freedom of thought, conscience and religion; this right shall include freedom to have or to adopt a religion or belief of one's choice; to change religious belief according to conscience; to manifest one's religion or belief either individually or in community with others and in public or private, in worship, observance, practice and teaching- subject only to respect for the equivalent rights of others.

We believe that religious liberty also includes the freedom to establish and operate appropriate charitable, humanitarian or educational institutions, to solicit or receive voluntary financial contributions, to observe days of rest and celebrate holidays in accordance with the precepts of one's religion, and to maintain communication with those who share the same beliefs, individually or collectively in organized communities at national and international levels.

We believe that religious liberty and the elimination of intolerance and discrimination based on religion or belief are essential in the promotion of understanding and peace among peoples.

We believe that citizens should use lawful and honourable means to prevent the reduction of religious liberty, so that all may enjoy the recognition of their freedom of conscience.

We believe that fundamental freedom is epitomized in the Golden Rule, which teaches that every human being should do to others as he would have others do to him.

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EDITORIAL

Defamation of religions... freedom of expression ... freedom of thought, conscience and religion ... these are terms used repeatedly in current discussions concerning human rights. Are they exclusive? Are they compatible? Are they complimentary?

The notion of “defamation” was officially presented at the United Nations in 1999 by the Organization of Islamic Conference. At first, it was proposed as “defamation of Islam”. Only later was the more general term “defamation of religions” introduced and the discussion enlarged.

In this issue of *Conscience and Liberty*, we attempt to help this discussion by publishing diverse views representing different approaches and assumptions. The published opinions do not necessarily reflect the beliefs of the International Association for the Defense of Religious Liberty. We decided to publish them in order to help the reader form his or her own opinion based on a large amount of information, reasons and arguments forwarded by different parties involved in the discussion. We specifically asked several proponents and entities supporting the concept “defamation of religion” to explain their views and reasons. We are happy that some responded to our invitation.

We recognize the existence of real problems – for example, instances of unwise and irresponsible use of media that does not inform correctly and objectively; occurrences of misusing the freedom of expression by seeking to provoke or manipulate public opinion; and occurrences of abusing communication to create an ambience of distrust, suspicion and animosity.

We also need to recognize that there is a growing tension and unease in some parts of the world – especially in Europe – concerning immigrants, specifically Muslims. There are many elements that have shaped this climate such as the growing visibility of Muslims in Europe; the feeling of some Europeans that some Muslims despise the positive values that enabled the European, or Western culture, to reach its current achievements; a rather poor record of the human rights situation in some Moslem countries; fear that development will lead to “Islamisation” of Europe, which means that the problems, tensions and strife Europe has resolved at great cost during past centuries might be revisited.

On the other hand, we need to realize that this fear is sometimes purposely created and exploited by certain political entities to promote their “right” positions leaving little room for tolerance and peaceful coexistence in a multicultural society.

We can also add that certain vociferous and exaggerated claims made by some minorities are easily labeled by the majority as “tyranny of minorities.”

These are just a few examples of the complexity of the matter we address in this issue. These examples clearly reflect differences in basic assumptions and concepts of human rights. Unfortunately, the Universal Declaration of Human Rights does not mean the same to and is not accepted by all parties involved. For some, it is an expression and achievement of Western culture or even “a secular expression of Judeo-Christian tradition.” Other cultures have developed different concepts of human rights. The question is: Are these different concepts and assumptions compatible? Or are they mutually exclusive?

The question we ask ourselves is: How will the future look? The concept of “defamation of religions” apparently loses support in United Nations circles. What exactly does “defamation of religions” mean? Could the legitimate claims of this concept be dealt with by existing legal instruments that limit freedom of expression? Will not the continuing push for the “defamation of religions” legislation only deepen the gap between Western culture and the world of Islam? Could we not find better instruments that would more effectively promote and protect human rights?

For sure, the freedom of expression is not an absolute right. Even the right to freedom of thought, conscience and religion cannot be considered absolute if detached from other human rights. It is our belief that any further meaningful discussion is possible only if all parties involved accept the principle of the universality and indivisibility of human rights and do their best to promote and apply these principles.

Karel Nowak

INTERVIEW WITH H.E. AMBASSADOR ZAMIR AKRAM

Permanent Representative of Pakistan
to the United Nation in Geneva,

by *Conscience and Liberty*
magazine staff in August 2010.



Ambassador Zamir Akram

Photo: IADRL

Question: *The “defamation of religions” concept has been discussed at the UN for more than 10 years now. Nevertheless, many people in Europe do not understand the concept. Can you explain what the issue is? What are the reasons for the initiative? What goal or goals should be achieved by it?*

Answer: This concept is not new. We have been dealing with it for more than ten years. In 1999 and 2000, during the time of the Human Rights Commission, resolutions on combating defamation of religions were accepted by consensus. It was only after the September 2001 incidents that the concept was questioned by some Western countries. Since that time, we have had to put this issue to the vote.

What is the idea behind this resolution? What is the motivation behind our efforts? This is a consequence of the attacks that are being made on Islam and Muslims. Other religions have also been attacked and criticized, but concentrated attempts are being made in some parts of the Western world to launch attacks against Islam and its revered personalities such as the Prophet Mohammad (peace be upon him) and other members of his family. These attempts are used to create an environment that discriminates against Muslims and the practice of their religion, and more dangerously, to encourage acts of violence against them. We have seen such acts of violence in Germany, France, Italy and other Western countries.

Today, Islamophobia, or the negative stereotyping of Muslims, is a reality and seems to be accepted by liberal people in Europe. The manifestations of it are evident. One such manifestation is the case of Dutch politician Geert Wilders who uses a political platform to present Islam as a religion propagating violence. He compared our holy book, the *Koran*, to Hitler’s *Mein Kampf*. This is what we mean by defamation of Islam.

Another example of negatively portraying Islam is the cartoons published in Denmark. The cartoons present the Prophet Mohammad (peace be upon him) in a way that shows Muslims as violent people. In Switzerland, the People's Party campaigned against the construction of minarets. In this campaign, they used posters presenting minarets like missiles. Basically, the whole campaign attacked Muslims and their beliefs. In other instances, permission to construct mosques was refused and the purchase of property for Muslim cemeteries forbidden.

These are manifestations of the attitude that we want to combat. If we allow defamation of Islam, it will lead to discrimination against Muslims. That is our argument. We want to protect Muslims and their communities from attacks against them and their places of worship.

It is also in the interest of Western countries to understand that their societies are not homogeneous. There is a growing number of Muslims in several European countries. It is against the interest of these countries to create an environment in which Muslims as a minority group, feel discriminated against or deprived of their rights. This would create only tension and unrest. In view of these consequences, we think that it is in the interest of European countries to recognize that there is a problem. In the United States, there is also a considerable Muslim community; and Muslims there are profiled or suspected of being terrorists. If somebody has a typically Muslim name, he is immediately singled out for special scrutiny. All this makes it difficult for multi-ethnic, multi-religious and multi-cultural societies to live in peace and harmony.

Q: Problems and misunderstandings may be, first of all, on the level of language. Traditionally, "defamatory" statements are understood as false, untrue, misleading pronouncements. Even if somebody says something unpleasant about me but can prove that the statement is based on facts, it would not be considered as "defamatory". Who can determine if a statement about a religion, which is such a complex phenomenon, is true or not, especially when different religions make different pronouncements about basics facts?

A: We do not see this as a difficulty. One needs to read what the Koran says. The Koran is what we believe in. We believe that it is the Word of God. It is not so difficult to prove what the Koran says and what it does not say. If somebody claims that the Koran teaches violence, he has to prove where it is stated in the Koran. We can show numerous passages where the Koran teaches peace, brotherhood, tolerance and forgiveness. This is the message of the Koran. No religion - whether Islam, Christianity, Judaism or Hinduism - teaches violence or says to go and kill someone. So, if somebody wants to tell us that this is what Islam teaches, let him show it from the Book.

Of course, there can be different interpretations. In Islam there are two major schools, Shi'a and Sunni. There are different approaches – the Wahhabi approach and the Sufi approach to Islam. There are different schools of thought. There are different perceptions in Islam, but this is not the issue. If somebody presents Islam as an evil religion promoting violence, how did he come to such a conclusion? Let him show us where the Koran teaches it.

Q: Another problem emerges from the fact that the concept of “defamation of religions” tries to protect ideas and not people, especially not individuals. This fact sounds like direct opposition to the very core value and basic concept of human rights as stated in the Universal Declaration, which is protecting individual rights. The “defamation of religion” concept is perceived as a tool of majorities to oppress minorities.

A: Human rights are a dynamic concept. It is not something that cannot change or evolve. As humanity progresses, it recognizes problems that need to be dealt with. In the 18th Century, racial discrimination and slavery were not perceived as a human rights issue. Philosophers of the Enlightenment who presented the human rights ideals - namely that all people are born equal - did not perceive slavery in America as a problem. They allowed for racial discrimination. Even the Christian churches in general did not oppose slavery, despite the fact that the Bible teaches that all people were created by the same Maker. Christians generally accepted apartheid in South Africa for many years. Understanding of human rights evolved, and it is now universally accepted that racial discrimination is wrong. Currently, many people, even in Europe, recognize that discrimination on the basis of religion – namely discrimination of Muslims – is a new form of racial discrimination.

We cannot look at human rights concepts and laws as static. They naturally evolve as society evolves. We have several unanimously accepted resolutions on defamation of religions. We have other resolutions accepted by majority vote. We are ready to work with our partners in developing new standards to deal with these issues.

In human rights, we do not talk only about individuals but also about ideas and historical facts. In Europe today, it is considered a crime to deny the holocaust. Holocaust is not an “individual”; it is a historical fact. But it is a crime to deny it. Why do we not accept the insult of another person’s religion a crime as well?

We need to distinguish criticism, comments and deliberate insult and deliberate denigration with the intention of creating a negative impact on the followers of this religion. We must make this distinction. We do not oppose criticism. We Muslims, criticize ourselves. We have different sects, and we criticize ourselves for different reasons. That is not the issue. But I feel that my belief should not be the subject of a deliberate insult that is meant to hurt me, which is why international standards

such as ICCPR (International Covenant on Civil and Political Rights) in articles 19 and 20 recognize that there should be limits to freedom of expression.

Recently, during the Durban Review Conference, there was a controversy following the speech of Mr. Ahmadinejad, President of Iran, when he said that the Holocaust could not be proven. This is his view, and he has the right to say it. But we saw the reaction of many delegations – they walked out of the hall. In Europe you can say whatever you want against Islam, but you cannot say anything against the Holocaust. If you do, you can be taken to a court and put into jail. Why this double standard?

Q: The idea and ideal of “freedom of thoughts, conscience and religion” seems to be suppressed by the concept of “defamation of religion” as it does not protect this freedom but rather protects the “untouchability” of a religion or religions? Who will represent a religion? Who would be the injured party?

Under international law (ICCPR articles 19 &20) there are restrictions to the freedom of expression; and these restrictions are that if an exercise of the freedom of expression leads to violence and discrimination, it can be proscribed; and it should be proscribed. If defamation of Islam is allowed and it leads to violence or discrimination, then the international law should be applied. What was the result of publishing the caricatures of the Prophet Muhammad in Denmark? There were riots in many parts of the Muslim world, and Danish embassies were attacked. In Germany women wearing “hijab” were attacked. In Italy and other places, restaurants serving “halal” food were attacked. People asking for permission to open “halal” restaurants were refused permission. “Halal” means the same thing as “kosher”. Why were there no restrictions on “kosher” restaurants at the same time?

Freedom of expression cannot and does not mean freedom to create an environment in which people will be discriminated against and subjected to violence and attacks. That is how we interpret articles 19 and 20 of the Universal Declaration and ICCPR. As I said already, we are not against criticism but we oppose intentional insults, deliberate defamations and deliberate denigration of Islam and Muslims. If something represents a great value for a Muslim and he feels strongly about it and he or she is wilfully insulted without provocation – then there should be consequences. In an intellectual discussion, you can disagree with the Islamic teaching or Islamic history; you can have any kind of view on it, and it does not constitute an insult. A deliberate insult, misrepresentation or stigmatization is quite another thing.

For example, if in a campaign against minarets somebody uses posters that represent minarets as missiles, what is the message? The message is to create a certain impression that Islam is a religion of violence. It is done with a purpose.

The same political party used, in another campaign, symbols of black and white sheep. The message was clear as well – deliberate racism. The representation of minarets was also an expression of racism. Minarets symbolize Muslims, and Muslims are supposedly violent.

It is important for Europe as a whole, not only for the Muslims living there, that if we allow these political forces to use similar arguments and tactics, in the end we surrender to them and their agenda. It is already happening in the Netherlands. The political party of Mr. Wilders influences legislation against minorities. We observe a similar development in France with all the bans of veils and scarves. Similar things happened in Europe's past, and they went out of control. It is not in the interest of Europe to repeat the same mistakes. In the past, the targets were Jews and other minorities; now the target are Muslims. The European countries should work with us on these issues because it is in their own interests.

Q: Some people fear that the continuing push for the “defamation of religion” concept will only deepen the fissure between the traditionally “western” concept of human rights and the world of Islam. It can make the “clash of civilizations” more real and tangible. In the end, will not the concept of “defamation of religions” do more harm than good? Will it not create more difficulties than it solves?

Primarily, the concept of human rights is not a “western” concept at all. Islam and other “eastern” cultures have their own concepts of human rights. We do not need to learn from the “west” about human rights. In Islam there are laws and traditions that demonstrate how important human rights are. Similarly, in other “eastern” systems, there are also clear concepts of human rights. So, human rights are not the invention of the “western” world.

Secondly, the “clash of civilizations” is precisely what we are trying to avoid. We are trying to wake up our European partners to realize this menace. The “clash” is already taking place. Our initiative highlights our concerns about issues that need to be dealt with. We do not use it as a stick to beat the “west”. Anyone who reads carefully the proposed resolutions will find several paragraphs that talk about the need of dialogue among civilizations and about the need of respect for diversity – ethnic, cultural, linguistic and religious. We do not see this initiative as a vehicle of creating the “clash” but as a vehicle to bridge the gaps.

Q: In this context, the question of “universality” of human rights emerges. Are they universal? The Cairo Declaration on Human Rights in Islam does not mention the “freedom of thoughts, conscience and religion.” It seems that the “religious freedom” is understood and applied differently in some Islamic countries?



Fundamental human rights are universal and applicable everywhere. No doubt, there are double standards to be seen in some places but for that the blame is with the societies, governments or individuals. In fact, neither Islam, Christianity or Judaism speak about “universal human rights”. If Christians and Jews would read the Koran, they would discover that the message is the same, and we believe that the message comes from the same source. So we do not see ourselves to be different from them in this respect.

According to the Koran, there should be no compulsion in religion. You can choose any religion you want. But if you want to choose Islam as your religion, make your choice carefully. Because, once you have chosen it, there is no way back. In the past, while Islam spread, many people became Muslims just to get the benefits without truly believing in it.

There are some countries, some societies and some governments that do not recognize this right. But it does not change the position of Islam. Today, some countries are prepared to accept some aspects but are not ready to accept others – there are gaps. But the gaps are on both sides. The important fact is that countries, such as my own, are parties to the Universal Declaration as well as to the Cairo Declaration. We are committed to both. Many Muslim countries are in the same situation.

Q: “Islamophobia” is another term used in these times. Again, here the problem could just be a linguistic one, as the term “phobia” refers to a psychological disorder rather than to a question that can be solved legally. Nevertheless, it is understood as an unreasonable and groundless fear of Muslims or of Islam. Some people in Europe would say that they do not fear Muslims; what they fear is rather the “Islamic Revolution”.

For us “Islamophobia” is the same thing as “anti-Semitism”. There was, and probably still is, a bias against Jews; and there is a bias against Muslims. That is our understanding.

As for the “Islamic Revolution”, what is meant by this? What happened in Iran was a political revolution. Its ideological basis was the Islamic teaching because it was led by Ayatollah Khomeini, but in essence it was a political revolution. You can have revolutions of any kind. There were Communist revolutions in Russia and China and a Socialist revolution in Cuba. Revolutions take place because of social, political and economical conditions in a given society. The ideological bases for revolutions can vary, but at the heart of every revolution is a sense of injustice, denial of rights and discrimination – these are the reasons people rise against the unjust order of things. If there is injustice against Muslims, probably they will respond to it. We can see an example of the response in Palestine and Kashmir. If we do not help the moderate forces achieve success, sooner or later we will have to deal with extremists. We can see examples of this in many parts of the world.

The staff of Conscience and Liberty magazine thanks Ambassador Zamir Akram for taking the time to speak with us.

ABRAHAM AS A UNIFYING FIGURE?

The Figure of Abraham from a Muslim Perspective*

Abbas Poya

Assistant Professor in the Department of Middle Eastern Studies (Orientalisches Seminar) at the University of Freiburg in Br., Germany

Apart from many positive influences, the list of negative phenomena in religions is long and harrowing. “So much strife, so many bloody conflicts, even ‘religious wars’ can be ascribed to religion; so many economic-political-military conflicts were partially triggered, partly coloured, inspired and legitimized by religions - including both world wars. Many massacres and wars, not only in the near East but also between Iraq and Iran, India and Pakistan, Hindus and Sikhs, Sinhalese Buddhists and Tamil Hindus, in earlier times between Buddhist monks and the Catholic regime in Vietnam and now between Catholics and Protestants in Northern Ireland, were and are so “indescribably unbelievable, bloody and relentless because they were and are religiously based.” This matter-of-fact statement was made by Hans Küng who, jointly with his student Karl-Joseph Kuschel, published the programmatic book *Weltfrieden durch Religionsfrieden (World Peace Through Religious Peace)* in 1993.

Since Küng’s book was published, even more bloody and destructive wars and individual actions can be added to the list. Hans Küng correctly interprets the logic behind a legitimized bloody act: “If God is ‘with us’, with our religion, confession, nation or party, then anything is allowed against the opposing party, who logically must then be that of the devil. It is even permitted to injure, burn, destroy and murder without restraint.” Therefore, Küng and Kuschel, together with many others, feel themselves obliged to pursue the special project of “Abrahamic Ecumenism” for the three monotheistic religions, Judaism, Christianity and Islam, which all have Abraham as their common ancestor. Many Muslim intellectuals and writers are also active in this area of research.

This type of engagement is in harmony with the zeitgeist of modern times, which, in turn, is shaped by the idea of human rights and tolerance. Küng clearly shows from where the idea of the “Abrahamic Ecumenism” comes when he suggests that

* This article is a condensation of the original text, “The Figure of Abraham in the Koran and Islamic Tradition”, which appeared in: *Interreligiöser Dialog. Chancen abrahamischer Initiativen*. Berlin 2006, published by Reinhard Möller & Hans-Christoph Goßmann.

“...appealing to the common humanity of all people, to formulate a genuinely ethical, truly ecumenical basic criterion, rests upon the Humanum, the truly humanistic, particularly on human dignity and its ascribed basic values.”

As long as the project of “Abrahamic ecumenism”, with its underlying assumption that Abraham is the common spiritual father of all three monotheistic religions, has religious-political appeal and a public awareness campaign in the interest of world peace, it assuredly has legitimacy. An investigation of the sources, however, delivers little concrete evidence that Abraham can be seen as a unifying figure who is able to appeal to followers of the three religions for mutual acceptance and even less for communal prayers.

Within the framework of this contribution, the attempt is being made to draw a picture of Abraham as authentically as possible, using original sources based on the Koran, Islamic historical writings and modern ideological Islam. It is thus impossible to avoid some textual repetition as the same author looks at the characterization of the same person from different perspectives – Koranic, historiographic and ideological. This is being done, however, for the purpose of comparing the different “Islamic” depictions of Abraham with each other in order to answer the question as to which one would support a tolerant attitude.

As with many other questions, it is an onerous task to present a representative and authentic Islamic picture of Abraham (Arabic: Ibrāhīm). The name Abraham appears 69 times in the Koran. After Moses (136 times), he is the next most frequently mentioned biblical figure and is even statistically ahead of Jesus (26 times). However, these mentions were written at widely differing times and in verses dealing with different subjects, which does not allow for a cohesive account. Even when an entire Sura (14), or chapter 14 of the Koran, which consists of 52 verses, bears the name of Abraham, only a small section of this particular Sura deals with the figure of Abraham. In spite of this, attempts have been made in specialised literature to reconstruct the figure of Abraham based on the information available in the Koran. Particular emphasis is placed on the differing complexions of Abraham in the Koran during the Meccan and the Medinan times.

While in the Meccan phase, Abraham was closer to the Judeo-Christian understanding and stands out as the father of all three monotheistic religions and as a pioneer against polytheists. In the Medinan times, when the conflict with the Jews occurred, he is ideologized as the exclusive forefather of Islam. This most likely occurs to separate Islam from Judaism and Christianity and to justify the bloody wars against the Jews and the reorientation of prayers away from Jerusalem and towards Mecca. In this article, however, no distinction is made between the Meccan and Medinan Koranic verses. Muslims generally view the Koran and the verses about Abraham as a sacred whole. Accordingly, the Koran may not be viewed as an historical phenomenon and most definitely not as an ideological work.



An angel prevents Abraham from sacrificing his son Isaac. Painting by Rembrandt, 1635. The State Hermitage Museum, St. Petersburg, Russia.

Photo: Wikimedia Commons

For a complete portrayal of the figure of Abraham in Islam it is essential to draw on the Hadith works, the Koran exegeses, and particularly on historical works dealing with stories of the prophets. It must be noted that the various works each have a different emphasis when depicting Abraham and that, when it comes to definitive questions, diverging positions are taken.

One of these contentious questions that the Koran does not answer clearly is the question as to which son, Ishmael (Arabic: *Ismā'īl*) or Isaac (Arabic: *Ish.āq*), Abraham wanted to sacrifice as a sign of thankfulness and obedience to God. For example, after a detailed explanation of both positions, at-Ṭabarī (839-923) clearly takes the position that Isaac was to be sacrificed and thereby supports the Genesis account. A later historical writer Ibn Kathīr (1301-1373) is of the opinion that this viewpoint comes from Judaica (*isrā'īliyyāt*), which obviously does not agree with the Koranic information.

Within this framework, first a description of Abraham is deduced from the Koran. The second step is to construct the historical Islamic Abraham with the help of information taken from aṭ-Ṭabari. Finally, the portrait of Abraham is traced from the perspective of ideological Islam.

Abraham in the Koran

In the Sura Joseph (Arabic: Yūsuf), in the introduction to the story of Joseph and his brothers, the Koran characterises itself as a book which does relate “the most beautiful of stories” (aḥsan al-qīṣaṣ) (12/3). In further passages, it is also confirmed that the Koran contains stories, particularly stories of prophets. However, the Koran is not a history book. It contains divine messages.

In addition, the stories are of interest to the Koran insofar as they serve such a message. At the end of the Sura Joseph, it is emphasized: “There is, in their stories, instruction for men endowed with understanding” (12/111). With this understanding, we cannot expect to find any accurate historical details about Abraham in the Koran. Probably the most noted contemporary Iranian Koran exegete, Ṭabāṭabā’ī, is outraged by the efforts of some Koran commentators who vainly search the Koran for the origin and ancestry of Abraham.

The purpose of the Koran is not to relate history but to show people the way to God and to challenge them to follow Him. In this sense, the Koran reveals little about the origin of Abraham, his parentage or his childhood. Only the name of his father is mentioned: Āzar. As a “God-seeker” Abraham (Ḥanīf) very quickly descends into conflict with his social environment, primarily with his father.

Abraham is not satisfied merely to pronounce his message; he takes the initiative by mocking the beliefs of his people and smashing their graven images. Unseen by the idolaters, Abraham uses an opportune moment and destroys their images, leaving the largest one undamaged. After being asked suspiciously by the irritated and angry people whether he was responsible, he answers: “Nay, this was done by – this is their biggest one! Ask them, if they can speak intelligently!” (21/63).

According to the Koran, Abraham opposed not only idolaters but also star worshipers. The Koran does not concern itself with details, e.g. the question as to whether the idolaters and star worshipers opposed by Abraham were two different peoples or whether they were both from the same nation. Some Koran exegetes assume that these are two different nations, although the Koran, in virtually the same breath, speaks of the dispute between Abraham and his father and his father’s people, who in other places are described as idolaters – and records Abraham’s mocking remarks about the stars as gods.

The reaction to Abraham and his message is aggressive and brutal. It is ordered that he be thrown into a fire in order to preserve the honour of the gods. At this point, a miracle happens and the fire became “cool” and “harmless”.

At an advanced age, after Abraham had almost given up the hope of progeny, he fathers two sons: Ishmael and Isaac. Later, he built the holy House of Kaaba (Arabic: Ka'ba) and instituted the ritual of the Hajj (Arabic: Haġġ). Having received Divine instruction in a dream, he wanted to sacrifice his son; the son declared himself willing to follow God's command. Then, both prepared to enact possibly the most terrible tragedy in human literature. At the last minute, when both participants had shown their pious willingness to obey God's command, the story takes a different direction: "And We ransomed him with a momentous sacrifice" (37/107). Here the Koran also makes no clear indication as to whether it was Ishmael or Isaac who was the son designated for sacrifice, neither does it say who their mothers were. The question of what constituted the "momentous sacrifice" also remains unanswered in the Koran.

Based on these episodes in Abraham's biography, the Koran makes him a "good example" (*uswa ḥasana*) for the believers and a "leader" (*Imām*) of the people. He was "mild, sensitive and penitent." He had the "correct understanding," possessed the divine "writings" and was a "true Prophet." No other prophet is praised so often and so highly in the Koran as is Abraham. Sura 4 verse 125 shows how superlative the praise for Abraham is and what intention the Koran has by this portrayal of Abraham: "Who is better in religion than he who surrendereth his purpose to Allah while doing good (to men) and followeth the tradition of Abraham, the upright? Allah (Himself) chose Abraham for friend" (4/125).

The Koranic Abraham is also a prominent figure in the chain of prophets and is at the beginning of a tradition which reaches its climax in Muḥammad and Islam. The obvious cultic similarity between Islam and Judaism was the religious centrality of Jerusalem, the direction in which Muslims performed their prayers for many years. This similarity was abandoned in the second year of the Hijra with the departure of the prophet, together with some of his companions, from Mecca to Medina. On the other hand, it is Abraham who (with his son) laid the foundations of the Kaaba, which represents the direction for prayer for Muslims in all eternity and who purifies it "for those who go around and those who meditate therein and those who bow down and prostrate themselves (in worship)" (2/125,127). It is Abraham, as a Muslim (one who submits to God), who performs the "Ṣalāt" (prayer). And, it is the religion of Abraham to which Muḥammad requires conformity: "And afterward We inspired thee: Follow the religion of Abraham, as one by nature upright" (16/123).

All in all, one observes a surprising resemblance between Abraham and Muḥammad. Muḥammad is also described as a "good example" (33/21) and a "Ḥanif, as one by nature upright" (6/79). He opposes the idolaters just as relentlessly and destroys their graven images. His own verdict confirms this similarity. On Muḥammad's ascension, Gabriel takes him to various heavens to introduce him to all the important prophets, whom he describes in detail. In the last heaven he encounters Abraham: "And he brought me

into the seventh heaven; there I saw a man of mature age sitting on a chair at the gates to Paradise, through which seventy thousand angels enter daily, and only return on the day of resurrection. Never did I see a man more like myself, and Gabriel spoke: This is thy father Abraham!"

The Historical Abraham

As opposed to the Koran, a plethora of details about Abraham are given in other historical works. Although he is still viewed as one of the most important and holy of prophets, Abraham is also dealt with as a historical phenomena and attempts are made to fill in the gaps of his life omitted in the Koran. Without repeating the Koranic passages about Abraham, the portrayal of Abraham in Islamic historiography is summarized as follows, mainly on the basis of aṭ-Ṭabarī.

According to one version of the story, Abraham was born in Babylon on the Euphrates in the reign of King Nimrod. His birth and childhood were interwoven with miracles, as was his entire life. Astronomers predicted to Nimrod a time when a young male child would be born, one who would forsake idolatry and destroy the graven images. As a result, Nimrod decreed that all male children born within the predicted time were to be killed. The pregnancy of Abraham's mother remained undiscovered, despite the watchfulness of Nimrod's people. When her time came, Abraham's mother went into a cave and gave birth to Abraham. He lived undisturbed in the cave for some time.

Abraham left his hiding place while he was still a small child. Even at a young age, he possessed the prophetic "proper insight". During one meditation described in the Koran, he rejected the idea that any of the stars were representations of the gods. At his very first encounter with his own people, a dispute arose over common religious concepts. He even had an argument with his father, who had been under the impression that his son had died at birth and was extremely happy to find him alive and well. Abraham's father, however, was an unbeliever who earned his living by the manufacture and sale of graven images.

One day the town's inhabitants left to attend a celebration. With the excuse that he was ill, Abraham remained at home. He then used the opportunity to destroy all the graven images using an iron bar, except for the largest one; he hung a weapon of destruction around its neck.

His views, however, were public knowledge, and he was accused of being responsible for the deed. He denied it and ironically claimed that the perpetrator was the largest image. He did this with the intention of making the people understand that gods who are not able to speak or to defend themselves are not worth worshipping. Nimrod took this incident as an opportunity to order his subjects to prepare a huge fire and throw Abraham into it. Apparently Abraham's message was not accepted by the people, and he was without support.

After this disappointing experience with his nation, Abraham left the kingdom of Nimrod. He was accompanied by his nephew Lot and later married his cousin Sara. Together with Sara he moved to Egypt into the kingdom of the Pharaohs. The Pharaoh already knew about the beauty of Sara and was very impressed by her. He questioned Abraham about his relationship with Sara. Abraham apparently feared that Pharaoh would have him killed in order to steal his wife, Sara. For this reason, he lied and told Pharaoh that Sara was his sister. Abraham was somewhat shamefaced about this lie and tried to justify himself to her: "You are actually my sister according to the word of God." Despite this, Pharaoh did not pursue his interest in her. Miraculously, Sara remained untouched.

After Sara had given up hope of becoming pregnant, she sent Abraham her maidservant, Hagar (Arabic: Hājar), so that he could father an heir. Abraham not only had a son, Ishmael, by Hagar; he also had Isaac by Sara.

Finally, Abraham was commanded to build the "House" (the Kaaba) in Mecca, in which "God can be worshiped and as a reminder of Him." With his son Ishmael, he erected the Kaaba. However, in literature there is much debate as to the extent to which Abraham was involved in the building of the Kaaba.

Some traditions confirm that he built the House together with Ishmael. Others are of the opinion that the Kaaba was an ancient holy place with a history stretching back to Adam. Abraham merely completed the building on the existing foundations. It is also not clear how Abraham got to Mecca. According to one report, after he had received the command to build the House and not knowing where he should build it, God blew him to Mecca with the help of the wind. According to another report, he was already in Mecca when he received the command. After Sara insisted that he get rid of Ishmael and his mother, Abraham took them both into the desert of Mecca. Thereupon, he received the command to build the holy House.

One of the most important Hajj rituals is the sacrifice, which is associated with one of the most tragic moments in Abraham's biography, his intention to sacrifice his son as a sign of his total surrender to the will of God. The question that still remains unanswered is which son was chosen to be the sacrifice – Ishmael or Isaac. While it is an almost general consensus of present-day Muslims that it was Ishmael, the father of all Arabs and thus of Muḥammad, the older classic Islamic sources often support the opposing opinion. Aṭ-Ṭabarī debates in detail both sides of this question. He is of the opinion that there are proofs from the traditions of the prophets for both positions and each carry equal weight. However, the Koranic passages, according to aṭ-Ṭabarī, are mostly in favour of Isaac being the son chosen to become the sacrifice. As this was the son promised to Abraham and Sara in their old age, aṭ-Ṭabarī maintains it could only have been Isaac.



The interior court of the Grand Mosque (al-Masjid al-Haram) in Mecca, Saudi-Arabia. The Kaaba is the central sanctuary of Islam. The pilgrimage (Hajj) to Mecca is one of the five pillars of Islam and should be performed by every Muslim once in a lifetime, health and means permitting.

Photo: Wikipedia / Ali Mansuri

Referring to the verse “And when his Lord tried Abraham with (His) commands” (2/124), the question as to what the words were that tested Abraham are discussed at length. They were, according to one explanation, the crucial moments in Abraham’s life, namely, clarity that the stars do not represent gods, the verdict of death by fire, the emigration from his place of birth, the intention to sacrifice his son to God and the circumcision he later had to perform on himself and his sons. In further descriptions, the Hajj ritual, in all its details along with other Islamic rituals, are also cited in this connection. Thereby, it is confirmed that Abraham was

already familiar with the practice of Islamic rituals. Abraham survived his wife Sara and his handmaid Hagar. He married at least once more and had several more children. He died somewhere between the age of 200 and 257 and was buried in the sepulchre of his ancestors in Hebron.

The Ideologicalised Abraham

Various religious ideologies convey the belief that God is on their side (only) and that they have an exclusive claim to truth. It is no different in ideologicalised Islam. History, people, religions and everything else is divided into two categories; either they support their own ideas or they are distorted and reprehensible. In ideologicalised Islam, no attempt is made to critically consider either single elements or any contradictory information making up Abraham's history. A scientific debate about Abraham, either historical or religious, is neither important nor desirable.

The Islamic ideologists have the following goals: Islamic revolution, social change and "holy war". They make use of Abraham, reducing him to an unselfish fighter for what they consider to be the only correct and righteous cause. For them, only one historical truth exists - that of their own ideas. And when the historical facts do not support their ideas, the facts are declared false and constructed by enemies - an attitude which has lately dominated the picture of Islam both within Islamic societies as well as in Western societies.

One of the most important and eloquent Islamic ideologists in recent times is without doubt the Iranian Muslim intellectual Ali Shariati (1933-1977). Shariati's speeches and efforts have contributed substantially to the formation of the Islamic Revolution in Iran (1977), which still arouses sympathy and enthusiasm not only in Iran, but all over the Islamic world. By the use of Shariati examples, the following will show how Abraham is portrayed in ideologised Islam.

In discussions about Abraham, three principal themes are emphasized in Islamic ideology. The first theme is the Hajj ritual, which is an Abrahamic institution representing the biggest event in the Islamic world, the pilgrimage to Mecca. The second theme is Abraham's willingness to sacrifice his son Ishmael for God's cause.

Finally, the third theme is the call of Abraham to monotheism and his destruction of the graven images. These issues are not viewed solely as cultic religious phenomena. They are seen as symbolic acts behind which certain political messages can be discovered.

For Shariati, the pilgrimage ceremony (Hajj) is the most important phenomena in the Islamic cult. To Shariati, the Hajj represents something special in both religious and non-religious rituals. "It would seem as if God poured into the Hajj everything he wanted to tell the people." The pivotal point of the pilgrimage ceremony is -without doubt the holy "House", the Kaaba.

In addition, the Kaaba has a central role in indicating the direction for prayer. Shariati does not view the decision of the prophet to turn away from Jerusalem and

to re-orientate to Kaaba in the second year after the Hijra as an attempt to create his own Arabic-Islamic identity.

On the contrary, the Kaaba serves as a unifying place for the three monotheistic religions of Judaism, Christianity and Islam simply because the Kaaba belongs to neither the Arabs, the Jews nor the Christians. It was built by Abraham and therefore belongs to all three religions. Proceeding from the peculiarities of the pilgrimage ceremony which every Muslim, irrespective of name or position, skin colour, origin, status or gender may take part, Shariati actually understands Islam as a call to unify all people and all religions.

The aim of Shariati's exposition, however, is unity under the umbrella of (his own) Islamic beliefs. Islam should reinstate the true message of Abraham and thereby combat the other misleading religions.

For Shariati, the most important aspect of the Hajj is the ritual slaughter performed in memoriam of Abraham's huge sacrificial commitment. This act signifies the conviction to self-sacrifice and the sacrifice of everything one possesses. Shariati shows how important and enlightening Abraham's thoughts and actions are in contributing to social change in present times.

For Shariati, everything in history has its pivotal point in the fight against injustice. It is in this light that he sees Abraham's act of destroying the graven images and recognizes that it is not simply a declaration of war against polytheism. For Abraham, it was a matter of resisting the political system and religious ideology motivating the idol worship. "Fighting against polytheism means the destruction of the religious foundation laid for discrimination, oppression and enslavement within human society." Shariati forgets that the Prophet Abraham was a child of the times and was shaped by his tribal culture, that Ishmael was the son of a slave girl, Hagar, given by Sara to Abraham, that Abraham had to send them into desert at the wish of his wife and that according to Genesis he had several concubines.

Conclusion

The Islamic ideology offers no foundation for an attitude of mutual understanding, either for differing Islamic interpretations or for other religious and non-religious convictions. Their Abraham is an implacable figure who does not tolerate diversity, stands for only one truth - their own - and opposes everything else as being something foreign and reprehensible. The ideologised Islam represents a truly small minority. However, it is the most noticeable in European society.

The words used in the Koran, including those used in connection with Abraham, are more ethically construed. In spite of this, the Koran depicts exclusivity: "Abraham was not a Jew, nor yet a Christian; but he was an upright man who had surrendered (to Allah), and he was not of the idolaters" (3/67). Despite the fact that Kuschel wishes to use this verse as proof that Abraham belongs to all three monotheistic

religions and that none should claim exclusive rights to him, this verse basically attempts to bring to the fore that Jews and Christians have fallen away from the actual Abrahamic message and that Muhammad and his disciples are his true followers. This is clearly expressed in the following verse from the Koran: "Without doubt, among men, the nearest of kin to Abraham are those who follow him, as are also this Prophet and those who believe: And Allah is the Protector of those who have faith" (3/68).

The portrayal of Abraham in historical writings is more relaxed. Here, Abraham is depicted as a person who sometimes experiences fear, insecurity and weakness. He is not purely "a pious seeker after God" who spends all his time thinking about how he can implement Divine imperatives. He occasionally shows emotion and reacts to one or another situation in a "normal" human fashion. The most important aspect of the historiographic Abraham is that he presents no coherent picture. Repeatedly, differing and even contradictory statements are made. Quite a number of these statements correlate with Judo-Christian descriptions. By earnest engagement with Abraham in the historical writings, many of the barriers and blockages, as well as many of the dividing lines hitherto deemed indestructible between the Islamic and the Judo-Christian portrayal of Abraham could be overcome.

In spite of this, the picture of Abraham held by traditional Islam differs in many aspects from the Judo-Christian one. It is a current imperative to rise above this exclusive language and to campaign for mutual acceptance in the spirit of current times.

Muslim scholars recognized this problem a long time ago. The Egyptian Muslim intellectual Nasr Hamid Abu Zaid (1943-2010), was declared an apostate and also a free target in 1995 by influential scholars in Egypt because of his modern interpretation of the Koran.

Hamid Abu Zaid lived in European exile and admitted that he could find no definitive statement in the Koran as to whether democracy and human rights are compatible with Islam. There are statements in the Koran that support each of the two positions. In this instance, Hamid Abu Zaid alludes to a few contradictory verses in the Koran. On one hand, the Koran confirms that "there is no compulsion in religion" (2/256). On the other hand, the statements are made that "Surely the (true) religion of Allah is Islam" (3/19) and "If anyone desires a religion other than Islam (submission to Allah), never will it be accepted of him." (3/85).

In this respect, Iranian Muslim intellectuals go one step further. Abdolkarim Soroush, the most important contemporary Islamic scholar, does not even attempt to deduce such concepts as human rights, tolerance or democracy from the Koran. He says: "The era of making deductions is finally over in Iran. No reformer would use texts from the Koran as the basis for the institution of democracy." Soroush himself does not argue the case for human rights based on religious texts or tradition. He uses secular language in his defence of human rights and makes the assumption "that

people have basic rights aside from those of religion. Just because one is a human, one has these rights.”

Mutual recognition as an indispensable prerequisite for an “Abahamic Ecumenism” is a modern manifestation based on the ideas of human rights and tolerance. It is extremely difficult to make such a deduction from the biography of a person who lived a thousand years ago and becomes impossible when exclusivity to this person is claimed from various sides. The reminder that Abraham was one of the major prophets and was equally respected by all participants could possibly, however, lead to an atmosphere of trust, at least among the three monotheistic religions of Judaism, Christianity and Islam.

Literature Selection

- Abdullah, Muhammad Salim**, Islam für das Gespräch mit Christen, Altenberge 1990.
- Amirpur, Katajun**, Die Entpolitisierung des Islam. ‘Abdolkarim Sorüßs Denken und Wirkung in der Islamischen Republik Iran, Würzburg 2003.
- Bauer, Thomas/Schneiders, Thorsten Gerald (ed.), „Kinder Abrahams“. Religiöser Austausch im lebendigen Kontext. Festschrift zur Eröffnung des Centers für religiöse Studien, Münster 2005.
- Dabashi, Hamid**, Theology of Discontent. The Ideological Foundations of the Islamic Revolution in Iran, New York 1993.
- IBN KAṬĪR; ISMĀ’ĪL IBN ‘UMAR**, Qiṣaṣ al-anbiyā’, Beirut 1988.
- Küng, Hans** (ed.), Friedenspolitik. Ethische Grundlagen internationaler Beziehungen, Zürich 2003.
- Küng, Hans**, Er kämpfte Freiheit, München 2004.
- Küng, Hans**, Der Islam. Geschichte, Gegenwart, Zukunft, München 2004.
- Küng, Hans/Kuschel, Karl-Josef** (ed.), Weltfrieden durch Religionsfrieden. Antworten aus Weltreligionen, Hamburg 1993.
- Kuschel, Karl-Josef**, Streit um Abraham. Was Juden, Christen und Muslime trennt – und was sie eint, Düsseldorf 2002.
- Moussalli, Ahmad S.**, Radical Islamic Fundamentalism: The Ideological and Political Discourse of Sayyid Qutb, Beirut 1995.
- Moussalli, Ahmad S.**, Moderate and Radical Islamic Fundamentalism. The Quest for Modernity, Legitimacy and the Islamic State, Florida 1999.
- Nagel, Tilman**, Die Qiṣaṣ al-anbiyā’. Ein Beitrag zur arabischen Literaturgeschichte, Bonn 1967.
- AN-NAJJĀR, ‘ABD AL-WAHHĀB**, Qiṣaṣ al-anbiyā’, Kairo 1966.
- Paret, Rudi**, Muhammad und der Koran. Geschichte und Verkündung des arabischen Propheten, Stuttgart 2001.
- Peters, Francis E.**, Children of Abraham, Princeton 1984.
- Pratt, Douglas**, The Challenge of Islam. Encounters in Interfaith Dialogue, Aldershot 2005.
- Rotter, Gernot**, Ibn Iṣḥāq. Das Leben des Propheten, Spohr 1999.
- Schariati, Ali**, Mi’ād bā ibrahīm, Majmū’a-i āthār 29, Teheran 1994.
- Schariati, Ali**, Ḥajj, Majmū’a-i āthār 4, Teheran 1987.
- AṬ-ṬABARĪ; MUḤAMMAD IBN JĀIRR**, Tāriḫ ar-rusul wa l-mulūk, Kairo 1960.
- AṬ-ṬABĀ’Ī ABĀ’Ī, MUḤAMMAD ḤUSAYN**, al-Mizān fi tafsīr al-qur’ān, Beirut 1991.

RELIGIONS AND RELIGIOUS LIBERTY

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In numerous parts of our world today, we see tension and conflict, sometimes even massacres and persecution increase in intensity, duration, and occurrence. Such tension and conflict are often caused by differences of colour, ethnicity, caste or religion. Nations do not always have the means to prevent, halt or even censure tension and conflict. One might wonder if nations sometimes use these tensions or even encourage them in order to uphold their power or to discourage all opposition to their regimes by borrowing from the intolerance and exclusiveness of the majority and flirting with Communitarianism. The period in which we find ourselves, punctuated by the magnitude of various economic, political and social crises, favours the use of these populist practices. It is clearly much simpler to point the masses in the direction of a scapegoat, which can be held culpable, rather than to find an actual remedy to the crises.

Alas, this phenomenon is neither new nor isolated. Not too long ago such events led to the genocide in Rwanda and the massacres in Bosnia. In the middle of the last century, the Jews and Gypsies were exterminated by the Nazis. In the early 20th Century, Armenians experienced mass killing. In the 19th Century, Native American and Australian Aborigines were exterminated, events which were preceded by slavery and the widespread trafficking of Black Africans. It is worth reminding ourselves that the 16th Century was ravaged by religious wars and that the 13th and 14th Centuries were inflamed with the pyres of the Inquisition, the persecution of 'heretics' and the slaughters during the Crusades, etc. Throughout all these paroxysmic attacks, religions have very often played an instrumental role. Far from bringing about resolution, they have in fact stirred up this hatred and provoked intolerance, exclusion and barbarism.

With this history, it might seem futile or trivial to question the ideal of religious liberty, tolerance, respect and secularism. However, it is necessary to do so in order to attempt to understand without condoning and to draw out the principles which ought to guide mankind's conduct, at least those who, in reading this journal, are guided by a higher degree of thought rather than sectarian, intolerant or fanatical thinking.

Religion and Liberty – the Debate

One cannot help being stunned at the gaping void between the ideals and worthy principles ‘officially’ professed by the majority of religions or philosophies and the reality lived out by the peoples who claim them. Thus, we have Christianity, which proclaims itself as ‘the Religion of Love’, and Islam, which calls itself a ‘Religion of love, tolerance and peace’. The paradox is that in numerous countries, if not in all, both Christians and Muslims have clashed and still clash unceremoniously; they ignore and despise each other when not engaged in various forms of persecution, massacres and even mass exterminations all in the name of these religions. This contradiction merits further investigation.

As a historian of mediaeval religious psychology, and in particular of philosophies of violence, I will sketch out a study of this sorry phenomenon from a historical perspective. This mediaevalist approach is not as obsolete as it may seem to the study of contemporary facts in the field of religious behaviour. It seems very likely, in fact, that nowadays, most of the inhabitants of the earth once again share a form of feeling, thinking and of behaving similar to mediaeval mentality, although this is considered erroneous by the Western thinking, which is largely ignorant of the facts and regards mediaeval mentality as totally obsolete, outdated or defunct. The result is an entirely new void based on ignorance.

These very same sociologists, historians, professors, lawyers, high-ranking journalists and political analysts are mostly products of Western culture and steeped in its values, which they believe to be universal. Even if they are not products of Western culture, they generally support these ideas and this mentality. For our purposes here, these values are based on the notions of respect for human rights as an individual, in other words, individual liberty, and in particular, freedom of conscience and to worship. This expressly implies a freedom to believe - or not believe - and to freely choose one’s religion or to be able to change it. Similarly, the idea of a single party, i.e. a single way of thinking imposed on all inhabitants governed by the resident political power, is scarcely tolerated in the ‘enlightened’ circles of the political arena.

This attitude, which we might call ‘humanist’, is unfortunately not shared by the vast majority of the world’s population. Just as in the Middle Ages, people around the world live under exceedingly different conditions. Throughout the centuries, history has established institutions, which more often than not, we would consider as political or economic, but are also and above all social, religious and psychological – in short, institutions of an intellectual order. Despite the modern media, a rift remains and is actually widening between the West and the rest of the world. For more than a century, and in particular the last thirty years, individualism has become the norm in Western countries, at least in what could be considered ‘intellectual’ circles.

On the other hand, the rest of the world remains deeply restricted within its social structures, which are both more stringent and more composite; and these tend towards attitudes that we in the West would attribute to Communitarianism and a familial, clannish, tribal, ethnic and religious structure. The individual is merged within the collective and is compelled to conform. Apart from a small percentage of their respective populations, these two worlds have had precious little contact between them up until the present, for both geographical reasons (they were too remote) and cultural reasons (long-distance communication was exceptional and problematic). This separation is no longer the case today. The two worlds are linked through large waves of migration, exiled communities that recreate or consolidate their specific community-type, and the media revolution, which broadcasts information and misinformation, cultural images and advertising, ideas and rumours, science mixed with senselessness, pornography, debates, exhibitions and gossip through online blogs and chats, etc. These two modern phenomena artificially put in contact populations which, despite sharing numerous cultural traits imposed by a global consumer society (use of modern technology, taste in fashion, music and even food), remain nevertheless widely separate from each other by the mentality or the approach to and interpretation of events with which each perceive common events; mentalities that are quite often entirely opposite.

To a certain extent, recognizing these different mentalities sheds light on the new challenges now facing the inevitable and growing confrontation of people practising their different religions. However, in addition to the age-old reasons revealed through the study of history (in particular the history of the conflict between Christians and Muslims during the Middle Ages – this being the core of my own research these past thirty years), one can now include a new and modern-day dimension that is greatly increasing in magnitude. Intolerance is growing within the large religious bodies, which up until now tolerated each other whilst remaining ignorant of each other.

Long-Standing Historical Obstacles

In the light of the many manifestations of intolerance, persecution and even barbarism committed in the name of God by the monotheistic religions, who ultimately call on the same God no matter what name they choose to give him, certain historians nowadays are attempting to revive polytheism. They highlight examples such as the polytheistic Greco-Roman civilisation which was not traumatised by the appearance of a new deity but more often than not incorporated it painlessly into the plethora of former deities. Whilst being true, this overlooks the fact that the Roman Empire harshly persecuted Christians (amongst others), not because they worshipped a new god, but because they refused to worship the other gods and in particular, the deified personage of the emperor. To refuse in this



Baptism of Chlodwig I., King of the Franks, after victoriously defeating the Alemans, at Zülpich, Germany, in 496 AC. Maitre de Saint-Gilles, around 1500

Photo: Wikipedia

manner was incomprehensible to the pagan Romans and in particular the emperors and was considered an act of heresy – a negation of the sovereign protectors of Rome i.e. an act of incivility, atheism and treason. The polytheistic Roman state therefore practised a highly dubious form of tolerance towards the monotheistic religions and a radical intolerance towards any form of atheism, intolerance which was unthinkable to a bygone era, or at least as far as the majority population was concerned.

The danger of religious totalitarianism as far as liberty and even human life is concerned has not disappeared with the success of Christianity or rather, with the Christian Church. Sporadically persecuted during the preceding three centuries, Christian churches have proliferated after the conversion of Constantine (around 312 AD) thanks to imperial protection. One century earlier, Tertullian was able to write: that 'through the blood of Christians, the Christian seed has been sown'. The situation changed completely in a Roman empire which became Christian: a voluntary and

risky personal commitment now became a valuable association and the number of followers multiplied. It is not certain if, at least, their faith deepened accordingly.

One thing is certain in any case: the one-time persecuted Christian Church found a way to live harmoniously with the political power that she sought to employ and to whom she periodically appeals to silence her dissidents. This alliance between religion and politics is at the very heart of the problems with which we are concerned. It achieves its zenith within the regimes which, in order to guarantee the 'success of God's law', do not hesitate to use force. This fundamental end result, a major cause of violence, is obvious when we study the use of armed forces by the two major monotheistic religions – Christianity and Islam. The case is exemplary and illuminating.

In its original form, Christianity was evidently peaceful and peace-loving, as shown through the example of Jesus Christ. One can even acknowledge the case of certain early Christians, who having categorically refused the shedding of blood even when defending themselves against their persecutors, sometimes went so far as to give themselves up in search of the martyrdom through which they could achieve entry into paradise. A case of fanaticism perhaps, but one that endangered only their own lives and not the life of anyone else's.

This picture changed after Constantine's conversion. Now that the Empire had become 'Christian', the Roman Church no longer advocated the refusal to take up arms; this was just as well since the Western Empire was being threatened by Germanic invaders, mostly Arians. The conversion to Catholicism by the Frankish king, Clovis, around 500 AD, made him the champion of the Catholic Church. His victories over the entirely Arian Alemanni, Burgundians and Visigoths reinforced the alliance between the Papacy and the kingdoms created from the dismemberment of the Roman Empire.

Little by little the Church justified its use of arms and championed the warriors fighting for its cause and protecting its clergy and assets. This endorsement of violence led to an actual sanctification of certain wars fought to protect the Holy See, churches and monasteries and Christian populations that were threatened by various enemies, particularly the 'pagans' who were invading Western Europe (the Normans, Hungarians and Saracens).

These invasions and resulting pillages caused great anxiety throughout the Christian world, anxiety that was further heightened by the priests and monks who were the chief victims¹.

In the middle of the 9th Century, when Rome itself was subjected to raids by the Muslims, the Papacy enlisted the soldiers of the Carolingian Empire to come to its aid with the promise that any who perished during these particular battles would receive their reward in heaven from God Himself.

1 Cf. John V. Tolan, *Saracens: Islam in the Medieval European Imagination*, Columbia University Press, 2002 (French edition by Aubier-Flammarion, Paris, 2002).

Thus, a justified war transformed itself into a holy war. In the 11th Century, this idea spread and became widely acknowledged in the West. It was accepted that the soldiers who died sword in hand while fighting to defend Christianity against the 'enemies of God' would obtain a martyr's laurels and were thus admitted into paradise. Within one thousand years after the death of Jesus, the doctrinal about-face was accomplished. From then on it was possible, as before, to die as a martyr by the sword, but now one carried the sword to kill a demonised enemy. The crusades marked the zenith of this doctrine, since the liberation of the Church in Jerusalem from the Muslims who had captured the region was stipulated as a 'remission' of sins. The Holy War became a sanctifying war. The Papacy then generalised this doctrine to turn any armed conflict fought against its enemies: pagans, heretics, schismatics, dissidents and political rivals, thus these conflicts also became holy wars. The scourge of the Inquisition was all part of this same school of thought. Resulting from this, Christians accepted the use of violence to defend the faith and even to promulgate it.

This doctrinal revolution, occurring at the heart of Christianity in the West, took place slowly, over the course of a century². This was not the case for Islam. In contrast to Jesus, who distanced himself radically from the authorities and rejected any use of violence or weapons, Muhammad was from the beginning a religious prophet, a head of state and a warlord. Nowhere in Islam right from the start, is there to be found any reticence towards the use of weapons; the prophet himself, in accordance with authentic Muslim tradition, did not hesitate to preach and lead out in warfare, to fight, and to promise paradise to anyone martyred whilst fighting for his cause³.

This acceptance of the use of armed violence did not prevent Islam from being ultimately more tolerant in their conquered territories than the Christians generally were in the West⁴. By paying a 'protection' tax and by agreeing to submit to the laws of their invaders of their states, Jews and Christians retained the right to practise their religion on the condition that it did not involve ostentation or proselytism. One reason for this relative tolerance was no doubt the fact that the message of the Koran, as revealed to Muhammad, was presented as the continuation and the restoration of the message preached to the Jews by their prophets and to the Christians by Jesus. One can roughly compare the situation of the medieval Jews and

2 Cf. 'La guerre sainte. La formation de l'idée de croisade dans l'Occident chrétien' by Jean Flori. Paris, ed. Aubier-Flammarion, 2001.

3 Cf. 'Chronique, Muhammad, sceau des prophetes' by Muhammad Tabari (translation by H. Zotenberg), Paris 1980, pages 155-156; and 'L'authentique tradition musulmane' by el-Bokhari, 36-51 (translation by G.H. Bousquet), Paris 1980 pages 175-178.

4 Cf. 'Guerre sainte, jihad, croisade. Violence et religion dans le christianisme et l'islam' by Jean Flori, ed. Seuil, Paris 2002. Collection : Points d'histoire.



“Crac des Chevaliers”, a mighty Crusader stronghold in Syria, is one of the UNESCO World Heritage sites.

Photo: Wikipedia / Bernard Gagnon

Christians living in the Islamic world to that of the Jews living in Christendom: that of second class citizens. The fate of these ‘subdued’ and ‘protected’ peoples during mediaeval times remained, in spite of everything, less harsh within Islamic lands than within Christian lands. However, we should not exaggerate, as is the tendency to do nowadays, the tolerance of Muslims in the mediaeval period, particularly those in Spain⁵. Despite its shortcomings, this tolerance displayed during the medieval period seems much better than that which prevails today within many Muslim countries.

The New State of Affairs of Our Times

The relative tolerance during the mediaeval period, particularly within Islamic lands, remains nevertheless fairly distant to that which the defenders of religious liberty within the more advanced nations aspire to today. One could say that the instances of intolerance increasing over the past several years in many parts of the world are evidence of a veritable and serious regression in this arena. Is it possible to explain such a discrepancy between the noble ideals of the defenders of religious liberty and the actual lamentable behaviour of the populace in so many countries?

The Western media readily attributes this intolerance, this fanaticism, these acts of violence and these massacres to the manifestation of a world-wide religious revival,

5 More information, see Dominique Urvoay, ‘Pensers d’al-Andalus’ Toulouse ed, 1991.

due largely to the failure of recently dominant ideologies such as Marxism and capitalism. At the risk of not offending one religion or another and in an evident attempt to conform to the recurring theme of political correctness, the press in the West has a tendency to postulate that all religions are equal because all of them are (equally) intolerant; the media considers that the manifestation of violence is due to the extremists or the fundamentalists within each of the religions. This claim contains some element of truth. It is clear that moderate believers tend less towards intolerance than the faithful ones who take very seriously the decrees of their religions. Some go further and rightly accuse all religions of being unquestionably intolerant. This is often the viewpoint of those who have been victims of such intolerance (for example Taslima Nasreen), and one can understand their position. What this viewpoint claims however, is the equivalent of saying that all religions, without distinction, are fundamentally wrong in principle and should therefore be cast aside as evil which is neither correct nor sensible.

Another question is whether or not the very freedom of conscience, thought and worship that progressive societies have sought to achieve through the vigorous struggle over obscurantism and intolerance and at such a high price of suffering and loss of life is now jeopardised by too much indulgence towards intolerant religions.

The question is a sensitive one. In countries that are considered 'free', the followers of an intolerant religion can effectively be inspired by this well-known phrase: "When I am in a minority, I demand freedom for the sake of your principles; when I am in the majority, I refuse to offer you freedom on behalf of my principles." We see many examples of this today. This is a matter of reciprocity, and it is far from being realised. Such reciprocity is a duty that advanced and democratic societies, in trying to stay faithful to their own principles, will abandon because of the poor rewards.

The question of reciprocity also existed during mediaeval times. In 1219, during the 5th Crusade, Francis of Assisi requested a meeting with the Sultan Malik al-Kamil in the hope of converting him. Since preaching was outlawed within Muslim territory, his deliverance was only secured at the indulgence (remarkable for that period) of the Muslim sultan⁶. Three years later, Thomas of Chobham explained why preaching Christianity was banned in Muslim lands. He wrote that a number of princes and scholars at war with the Saracens had negotiated truces with them and had visited them to request that Christians be allowed to preach within their lands without risking death. The Muslims replied that they would willingly allow this if in return the Christians allowed Muslims to preach freely within Christian lands. According to Thomas of Chobham, the Christians decided that in no way would they allow the Saracens to preach within their lands. And it was from this time on that Christians

6 For more information about this extremely interesting episode, see *Saint Francis and the Sultan: The Curious History of a Christian-Muslim Encounter* by John Tolan. (Oxford: Oxford University Press, 2009; French edition published in Paris: Seuil, 2007).

were not allowed to preach within the lands of the Saracens⁷. This refusal to allow Christians to preach their faith within Islamic territories partly justified, in the eyes of the Christians, an armed intervention: freedom to preach could only be achieved through the crusades. These dark days have thankfully now passed and the preaching of Islam is now permitted in most of the countries in which the majority population is Christian or the culture is predominantly Christian. Alas, it should be noted that the converse is not reciprocated – Christians are not allowed to preach in predominantly Islamic countries. This confirms the regression mentioned above and is an acute indicator of the problem of reciprocity. In the absence of full reciprocity, it is likely that the intolerance towards Muslims thus far contained within the West, could increase as a result of the exasperated feelings towards such an unbalanced situation.

The final question, in a list that is far from exhaustive, is whether or not the freedoms accorded to religions within democratic societies should be unlimited. We know that nowadays, in order to guarantee to religious groups and to appease those disgruntled by certain cartoons or types of humour, some will advocate the prohibition of 'blasphemy'. This is born of well-meaning motives, but as the saying goes, the way to hell is paved with good intentions! For who is to decide what constitutes blasphemy? The legislation will emanate at best from the majority (in democratic countries) and at worst would result from the power seized by the minority or even a dictator surrounded by his henchmen. Would the Jewish believer who denies that Christ is the Messiah be thus accused of blasphemy? And the Christian who does not recognize Muhammad as a prophet, would he be punished? And even agnostics or atheists who reject any form of messianism or consider prophets as liars or pathological – would they be incarcerated or treated in a psychiatric hospital in order to guide them back onto the straight and narrow? Such legislation would lead straight to the dictatorship of the most intolerant religions.

Democratic countries are the inheritors of the Age of Enlightenment. They have to battle to preserve this heritage and to continue to say as Voltaire did: 'I do not agree with what you say, but I will fight for your right to say it'.

Is such an attitude viable except in a secular democracy?

7 Thomas of Chobham, *Summa de arte praedicandi*, ed. Franco Morenzoni. (Corpus Christianorum, Continuatio Mediaevalis, 82.) Turnhout: Brepols, 1988, p.86.

FREEDOM OF EXPRESSION AND RELIGION

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In the same manner as male-female equality, freedom of expression is a highly cherished triumph of democracy that has the possibility of being utilised as a cover-up for far less noble purposes.

During its establishment in France, public freedom of expression was essentially realised in the 1880s through liberal legislation (freedom of the press, freedom to form public gatherings, etc.) at the same time that secularism was establishing itself. The idea of these freedoms was formulated during the 17th Century and developed during the Enlightenment.

Two issues deserve our attention. First, should religion claim immunity in the face of freedom of expression? And second, can the matter of freedom of expression be considered on the same terms today as it was in the 18th and 19th Centuries?

Let's begin with the second question. A Canadian colleague, the philosopher Daniel Weinstock, having been approached to participate in a televised debate on the subject of the cartoons of the Prophet Muhammad, was required to clarify his position before coming to the table. His response to the question of whether we have the right to publish such cartoons was in essence the following: "Yes and no. Yes, because it forms part of our freedom of expression; and no, because it is an irresponsible means of exercising this freedom." His response was judged too complex so Daniel Weinstock was excluded from the panel, which eventually was only comprised of those who were entirely for or completely against the issue.

This form of exclusion has often taken place around other subjects, notably that of 'the' headscarf. It is evident that a true form of media-savvy clericalism has been created that (all in the name of pseudo-simplification) prevents those with certain viewpoints from participating in public debates.

Inasmuch as formal equality may hide discrimination, a formal freedom of expression may be invoked in order to hide exclusions from this liberty. The power struggles, controlling influence of money, pressure of all types and the so-called



“Veil banned, prophet insulted – when will Islam be banned?” Muslims protesting against the Muhammed caricatures in Paris, 2006.

Photo: Wikimedia Commons / David Monniaux

‘media constraints’ account for as great a threat to genuine freedom of expression as do differing currents of opinion.

Now let us turn to the first question regarding whether religions ought not to claim any special consideration where the freedom of expression is concerned, since whatever is sacred to them need not be so to those who do not share the same beliefs. Criticising religion forms part of public debate. We have the freedom to believe and to convince others to believe through proselytising. By the same token, people have the freedom not to believe and to persuade others not to believe.

Religion ought to be part of the general legal system (this is meaning of “laïcité”). Resulting from this, we can make three observations. First, the freedom of expression is not an absolute. Laws limit the way it is implemented. In addition, these limits are subject to debate and can vary from country to country and between national

and international authorities. Thus, in two instances, France has been convicted by the European Court of Human Rights for infringements of freedom of expression for matters specifically concerning religion (these highly controversial instances that were considered defamatory in France but not by the European Court of Human Rights were about the anti-cult association ADFI and an encyclical by Pope John Paul II). All this was taking place during the same period as the Muhammadan cartoon affair! Yet, in both of these cases, not a single newspaper reproduced the texts in question. Highly variable benchmarks are used in the defence of the freedom of expression!

Second, Daniel Weinstock has rightly raised the problem of the responsible application of freedom of expression. We are not obligated to fully use the freedom of expression that we should legitimately be able to have (and claim to have). Thus, as far as the cartoons are concerned, it is necessary to consider other equally excessive cartoons about non-religious personalities such as cartoons picturing Jaures as a traitor to his homeland or representing de Gaulle and Pétain as though they had collaborated and shared tasks during the Second World War. Would not such cartoons arouse certain emotions amongst the Socialists or Gaullists? And in a religious context, would not prominent defenders of freedom of expression be equally motivated to jump to the defence in this particular case? It is an interesting exercise to consider the matter in this way and to ponder the responsible application of freedom of expression over and beyond its legal implications.

Finally, freedom of expression should not be a mask to render one's own intentions absolute and beyond criticism. Everyone must keep a critical mind and not abandon it under the pretext of defending freedom of expression. The validity of the argument in each case should be considered. For example, the fact that Robert Redeker, a French writer and philosopher who in 2006 published an article describing Islam and the prophet Mohammad in negative terms, received death threats from an individual, did not change the fact that he had completely misquoted Maxime Rodinson, which needed to be exposed. Freedom of expression is all-encompassing and must focus on the values of authenticity, relevance and intelligence. Refusal to judge the intelligence or the ridiculousness of an idea under the context of freedom of expression only further endorses the wide-spread folly, which because of the simplicity favoured by the various means of mass communication, is as great a threat to modern society as is any breach of freedom of expression.

DEFAMATION OF RELIGIONS IN UN DOCUMENTS: SOME CRITICAL OBSERVATIONS⁸

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1. The juridical system of protection against defamation of religions: A new limit to freedom of expression?

International institutions dealing with human rights have recently become increasingly concerned about discrimination and acts of incitement to ethnic, racial and religious hatred, which are arousing widespread social alarm and undermining the guarantees of social harmony in areas that are more and more multi-cultural and multi-religious. The United Nations, as well as other international and regional institutions, have multiplied their appeals to governments, mass media, Non-Governmental Organizations (NGOs) and religious institutions to fight against any forms of xenophobia and the dissemination of racist and anti-religious ideas and to promote education toward tolerance and respect for (and among) cultures, traditions and religious beliefs⁹.

In an attempt to curtail the spread of messages that could offend, vilify or diminish specific religious or ethnic communities, the various United Nations bodies have gone beyond the application of the traditional so-called *hate speech* by introducing a new term describing the violation of the freedom of thought, conscience and religion: *defamation of religions*.

An analysis of the hate speech provisions set forth at both regional and international levels shows that current human rights protection standards are able

8 This paper is a summary of a wider work entitled "Defamation of religion in the ultra-national protection of human rights" (in press), available in Italian on line at: www.statoechiese.it.

9 UN document A/RES/62/154, 18th December 2007, par. 12: the General Assembly "urges States to (...) take all possible measures to promote tolerance and respect for all religions and beliefs and the understanding of their value systems with intellectual and moral strategies to combat religious hatred and intolerance"; on the same topic also UN document A/RES/61/166, 19th December 2006. On the same subject, Boyle K., *Religious Intolerance and the Incitement of Hatred*, in Coliver S. (ed.), *Striking a Balance: Hate Speech, Freedom of Expression and Non-Discrimination*, Colchester, University of Essex, 1992.

to provide adequate responses to cases of conflict between freedom of expression and religious freedom. On one hand, almost every international norm sanctioning the freedoms of opinion and expression provides a series of legitimate limits to exercising these rights in order to guarantee other people's rights. On the other hand, these documents forbid acts of religious intolerance, contempt and discrimination by generically referring to the category of *hate speech*¹⁰.

It is, therefore, legitimate to wonder why some UN bodies have envisaged a "new" type of damage to religious belief in what is called the defamation of religions. Defamation of religions is defined as a form of infringement different from incitement to hatred and discrimination because it is a *cause* rather than a *direct* violation of the right and is punishable by sanctions based on new types of offences (e.g. blasphemy).

An analysis of the UN documents dealing with this issue shows two main factors supporting the introduction of this new typology. The first one is considered to be an attempt to guarantee effective protection not only to the individual exercising his/her right to freedom of religion but also to the religion itself, safeguarding the religious feeling of the believer and confessions, or other systems of values, in order to assure a higher degree of social cohesion and a more stable religious peace.

The second factor rests upon the persuasion that defamatory behaviour engenders an atmosphere of general intolerance and contempt, facilitating offences against freedom of religion; therefore, by punishing the defamation of religions, more serious violations of human rights should be prevented.

The concerns underlying the UN decisions are understandable; however, it must be stated that the commitment they showed in the fight against defamation of religions seems not to take into due consideration the dangers menacing

10 See, among others, Marks S., Clapham A., *International Human Rights Lexicon*, Oxford, 2005; Nowak M., *U.N. Covenant on Civil and Political Rights. CCPR Commentary*, Strasbourg, N.P. Engel Publisher, 1993; Zanghì C., *La libertà di espressione nella Convenzione Europea dei diritti dell'uomo e nel Patto delle Nazioni Unite sui diritti civili e politici*, in *Rivista di diritto internazionale*, 1969, pp. 295 – 308; Gomes E. X., *La tutela della libertà religiosa nel sistema interamericano di protezione dei diritti umani*, in *Il Diritto Ecclesiastico*, 3 – 4, 2007, pp. 123 – 147. It has been pointed out that recent American Supreme Court jurisprudence shows great hostility towards national legislation censoring *hate speech* expressions, Cram I., *Contested Words. Legal Restrictions on Freedom of Speech in Liberal Democracies*, Ashgate, Aldershot, 2006; Nieuwenhuis A., *Freedom of Speech: USA vs. Germany and Europe*, in *Netherlands Quarterly of Human Rights*, 2000, 18/2, p. 195 – 214; Jones T. D., *Human Rights: Group Defamation, Freedom of Expression and the Law of Nations*, The Hague, London, Boston, M. Nijhoff Publishers, 1998, pp. 40 – 46; Heinze E., *Viewpoint Absolutism and Hate Speech*, in *The Modern Law Review*, 69 (4), 2006, pp. 543 – 582.

freedom of expression, which risks being stifled by a censorious attitude to any form of criticism, satire or opposition concerning sensitive religious issues, motivated by the desire to ensure social peace.

The vagueness of the objective and the generic formula adopted has prevented both national and ultra-national institutions from identifying its contents, limits or standard applications. The latest, but not last, reason for uncertainty is the close relationship between religious defamation and racial discrimination. While it is true that discriminatory behaviours are often worsened because of their impact on ethnic and religious belonging, it is also true that the elements of the offending behaviour are extremely different and require different treatment under the law.

All in all, the offence of defamation of religions risks producing negative repercussions. We believe it will provoke at least two notable consequences.

One consequence is a change regarding the subjects to whom the international provisions safeguarding freedom of religions are addressed. Assuming that defamation offends religion itself, protection will no longer be provided to believers. The protected ones will rather be the institutions, doctrines or systems of values, thus engendering serious consequences both from a theoretical (lacking a universal definition; what is the definition of a “religion”?)¹¹, and practical (think of the difficulty in identifying actual, let alone potential, victims and in distinguishing a lawful critical or satirical attitude from the new type of offence) point of view.

A second consequence, closely connected to the first, concerns the degree of compression to which free expression is exposed, in a context where potential defamation of religion is considered (by the UN General Assembly) as any statement provoking *social disunity and human rights violation*¹², without exactly specifying to what extent, and on the basis of what criteria, the expression of a certain opinion produces such effects and what subjects are entitled to invoke the violation (who can claim the right to represent a religion)¹³.

11 See Webber J., *Understanding the religion in freedom of religion*, in Cane P., Evans C., Robinson Z., *Law and Religion in Theoretical and Historical Context*, Cambridge, 2008, pp. 26 – 43. The UN special Rapporteur on religious freedom stated that one of the main reasons why international provisions do not protect religions but single believers is that they do not represent a homogeneous entity, UN document A/HRC/2/3, 20th September 2006.

12 UN document A/RES/61/164, 19th December 2006.

13 See *The meaning of freedom*, in The Economist, 2nd April 2009; Temperman J., *The Emerging Counter – Defamation of Religion Discourse: A Critical Analysis*, in *Annuaire Droit et Religions*, 4, 2009 – 2010, pp. 553 – 559; Pisillo Mazzeschi R., *Situazione della libertà religiosa nel Consiglio dei diritti umani dell’ONU*, report presented during the Congress “*Diritti umani e religioni: il ruolo della libertà religiosa*”, Venice, 2008 (in press).



The Hebrew Bible, Tanach, consists of 3 main parts: the Torah (instruction), the Nevi'im (prophets) and the Ketuvim (writings). The picture shows the former synagogue at Glockengasse, Cologne, Germany, which has been reconstructed.

Photo: Wikipedia / Willy Horsch

From the tone and content of their documents, the UN approach to this problem seems to be a vision that tends to classify humanity within strict limits marked by civilisations, religions and cultures. As a result, current tensions on a global scale are traced to the difficulty in maintaining balanced relations and to clashes among civilisations¹⁴.

This perspective, which tends to emphasise the European Union's point of view, proves unable to completely explain the political matrix often hidden behind apparent ethnic or religious tensions¹⁵ or the complex configuration of the current social reality and the multiple identities, which characterise the individual and explain his personal loyalties¹⁶.

14 According to the well-known definition used by S. Huntington in his *Lo scontro delle civiltà e il nuovo ordine mondiale* (Italian translation), Milano, Garzanti, 1st ed. 1997.

15 On the same subject, Ferrari S., *Libertà religiosa e sicurezza nazionale in Europa dopo l'11 settembre*, in *Quaderni di Diritto e Politica Ecclesiastica*, 1, 2005, pp. 161 - 184; Varnier G.B., *Libertà, sicurezza e dialogo culturale come coordinate del rapporto tra Islam e Occidente*, in Varnier G. B. (ed.), *La coesistenza religiosa: nuova sfida per lo Stato laico*, Soveria Mannelli, Il Rubbettino, 2008; Dammacco G., *Le politiche delle religioni e le esigenze della sicurezza*, in Talamanca A., Ventura M. (ed.), *Scritti in onore di Giovanni Barberini*, Torino, Giappichelli, 2009, pp. 251 - 273.

16 On the same subject see Sen A., *Identità e violenza*, Roma - Bari, Laterza, 1st ed.

A perspective that is focused on the individual might prove more suitable for reaching the objective of social peace than does the anxious search for a harmonious coexistence of different entities perceived as distant, monolithic and (above all) generically identifiable, like religions or civilisations.

Considering the conceptual framework of the UN documents, it must not be overlooked that the notion of religious defamation comes from petitions, presented mostly by Islamic countries, for measures safeguarding religions, and in particular Islam, against any forms of defamatory expression. When approving the documents granting these requests, the degree of representative force of every single national component becomes relevant, especially in relation to the political nature of the bodies entitled to formulate and vote on the acts. The fluctuating internal balances are probably at the origin of the discontinuity and even the contradiction that is found in the various texts. The UN Special Rapporteurs, for instance, have recently taken up clear positions on the defamation of religions, claiming – as we shall see – that the current initiative is more controversial than successful in solving problems.

The issue is evolving, and its developments are not easily predictable¹⁷. It is thus necessary to bear this introduction in mind when reviewing some initial evaluations based on an analysis of the UN documents.

2. The first objective: The defence of religions and convictions.

The UN started talking about religious defamation in 1999, when the Human Rights Commission published a series of Resolutions of identical content¹⁸ in which it showed serious concern about the increasing number of acts of violence,

2006 (trad. it.); Bauman Z., *Modernità liquida*, Roma – Bari, Laterza, 2000 (Italian translation); Colaianni N., *Eguaglianza e diversità culturali e religiose. Un percorso costituzionale*, Bologna, Il Mulino, 2006; Pino G., *Identità personale, identità religiosa e libertà individuali*, in *Quaderni di Diritto e Politica Ecclesiastica*, 1, 2008, pp. 119 – 151 (particularly concerning Italian legislation).

17 The General Assembly has recently approved a new Resolution in which it condemns religious defamation (A/RES/64/156, 18th–December 2009). The adoption of this Resolution was promoted by some Islamic countries, obtaining 80 ayes, 62 nays and 42 abstentions (the lowest margin among all Resolutions on the same subject, www.nytimes.com/reuters/2009/12/18/world/international-us-un-religion.html). The Resolution had been proposed by Belarus, Syria and Venezuela (A/C. 3/64/L. 27, 29 October 2009). The approval of this document, despite the special Rapporteurs' opposition, seems to confirm the evident complexity of this issue and the impression that the possible results are still unpredictable.

18 Commission on Human Rights, Resolutions: 1999 / 82 , 20th April 1999; 2000 / 84, 26th April 2000; 2001 / 4 18 April 2001; 2002 / 9, 15th April 2002; 2003 / 4, 14th April 2003; 2004 / 6, 13th April 2004; 2005 / 3, 12th April 2005.

intolerance, discrimination, coercion and intimidation caused by religion and religious extremism (although reference to religious violence is absent in the latest Resolutions).

The Commission was worried about the relationship between acts of religious intolerance and the spread of negative stereotypes; the phenomenon seemed to become even more significant because of the erroneous association of Islam with terrorism after the attack in 2001, which had a negative impact on the image of Islam and the life of Muslim communities¹⁹. The reference to the media was clear given their activeness towards inciting intolerance and their xenophobia *towards Islam or other religions*.

The subsequent Resolutions of the Human Rights Council reiterate and confirm the same observations and establish the same objectives²⁰.

To fight this situation, member states were called upon to cooperate in different ways. First, they were asked not to support and to prevent the propagation of materials inciting violence and discrimination against religious faiths and extremist organisations.

Secondly, all people in public services must not discriminate against citizens because of their religious faith; non-discriminatory access to education is particularly important. Moreover, governments are called upon (though not very clearly) to create proper judicial mechanisms against the coercion, intimidation and discrimination produced by defaming religions, which must be accompanied by *“intellectual and moral strategies to combat religious hatred and intolerance”*²¹.

In 2007, the Human Rights Council²² made a step forward. It repeated the formula already used by the General Assembly²³ and added to the traditional list of limitations applicable to freedom of expression a further restriction identified

19 The Commission complains about an instance of *religious and ethnic profiling* of Muslims.

20 UN document A/HRC/RES/7/19, 27th March 2008, *Combating defamation of religions*; UN document A/HRC/ 10/22, 26th March 2009, *Combating defamation of religions*; see also UN document A/HRC/RES/6/37, 14th December, 2007, *Elimination of all forms of intolerance and of discrimination based on religion or belief*.

21 Commission on Human Rights, Resolution 2005 / 3, cit.

22 UN document A/HRC/RES/4/9, 30th March 2007, *Combating defamation of religions*.

23 The Assembly talks about *respect for religions and beliefs* among the lawful limits opposable to freedom of expression, UN document A/RES/61/164, 19th December 2006; UN document A/RES/62/154, 18th December 2007, *Combating defamation of religions*; this expression is not used in the Resolution of the following year, UN document A/RES/63/171, 18th December 2008. Elsewhere, the Assembly states instead that freedom of expression can be subject only to restrictions provided by International provisions, UN document 62/90, 17th December 2007.

with respect to religions and convictions: "... everyone has the right to freedom of expression, which should be exercised with responsibility and may therefore be subject to limitations as provided by law and necessary for respect of the rights and reputations of others, protection of national security or of public order, public health or morals *and respect for religions and beliefs*"²⁴.

In a subsequent document, the number of limits laid down by international provisions (notably Articles 19 and 20 of the International Covenant on Civil and Political Rights) was extended by including a generic reference to *general welfare*²⁵. However, with the Resolution of 2009, the Council seemed to reverse its position by mentioning the limits to freedom of expression. The Council omitted the above-mentioned added reasons²⁶, which do not belong in the international standards currently in force.

The Commission's concerns and proposed solutions come from the conviction that religious and cultural diversity, differences in values and the richness and contributions offered by religions to modern civilisation must be acknowledged and appreciated. Hence, the necessity that each State and the entire international community ensure respect and tolerance to all religions by promoting dialogue and a culture based on human rights and respect for the diversity of all faiths²⁷.

The latest Resolutions of the General Assembly, all of which are significantly entitled "Combating defamation of religions"²⁸, seem strongly anchored to an idea of tolerance and dialogue that should, hopefully, be primarily applied in relations between religions and civilisations, which are assumed to have different and potentially conflicting principles.

Following the same guidelines chosen by the Commission, the Assembly is concerned about religiously-driven violence, intolerance and intimidation and expression of religious extremism²⁹ as well as concerned about the strengthening of the defamation campaign

24 UN document A/HRC/RES/4/9, cit.

25 UN document A/HRC/ 10/22, 26 March 2009, *Combating defamation of religions*.

26 The Council restates the importance of respect for freedom of expression in the strengthening of democracy and the fight against terrorism, indicating that States must not add further restrictions to the ones already laid down by art. 19 par. 3 ICCPR, UN document A/HRC/RES/12/16, 12th October 2009.

27 Commission on Human Rights, Resolutions: 1999 / 82; 2000 / 84; 2001 / 4; 2002 / 9; 2003 / 4; 2004 / 6; 2005 / 3, cit.

28 UN document A/RES/60/150, 16th December 2005, *Combating defamation of religions*; UN document A/RES/61/164, 19th December 2006, *Combating defamation of religions*; UN document A/RES/61/161, 19th December 2006; UN document A/RES/62/154, 18th December 2007, *Combating defamation of religions*; UN document A/RES/63/171, 18th December 2008, *Combating defamation of religions*.

29 UN document A/RES/62/154, 18th December 2007; in particular, there is reference to

concerning religions, in particular the negative and stereotyped image of Islam spread by the media. This campaign is accompanied in some areas of the world by policies and national laws that have discriminatory effects on certain religious groups (mostly Muslim) as well as by behaviours that are influenced by security problems and illegal immigration and exacerbated by the media³⁰, which results in varyingly explicit forms of *ethnic and religious profiling*³¹ towards Islamic minorities.

The Assembly invites governments to fight religious defamation (notably of Islam³²), to prohibit the dissemination of racist and xenophobic material, to not

Islamophobia, anti-Semitism and Christianophobia: UN document A/RES/62/157, 18th December 2007; UN document A/RES/61/161, 19th December 2006.

- 30 The recently growing campaign of ethnic and religious defamation, according to the Assembly, mostly concerns Muslims after the 11th of September and is nourished by the common but mistaken association between Islam and terrorism and Islam and human rights violations, UN document A/RES/61/164, 19th December 2006.
- 31 On the subject of *ethnic profiling*, see De Schutter O., Ringelheim J., *Ethnic Profiling: a Rising Challenge for European Human Rights Law*, in *The Modern Law Review*, vol. 71, 3, pp. 358 – 384. On aggravated discrimination, see UN document A/RES/63/242, 24th December 2008; UN document A/RES/61/149, 19th December 2006.
- 32 The Resolution approved in 2008 confirms concerns about Islam being often and wrongly associated with human rights violations and terrorism and reiterates that religious defamation is a factor aggravating the social and economic situation of some communities' followers. The Resolution, promoted by Uganda in name of the Organisation of the Islamic Conference, Belarus and Venezuela, obtained 80 ayes, 62 nays and 42 abstentions, thus confirming how different views are on this issue, UN document A/RES/63/171, cit.; see Ventura M., *L'ONU difende le fedeli ma non i singoli credenti*, in *Corriere della Sera*, 20th December 2008. The countries voting against stated that they disapproved of such an unbalanced formulation in favour of a single religion (Islam), able to create a real conflict between freedom of religion and freedom of expression, UN document A/64/209, 31st July 2009, *Report of the Secretary General*. The alarm caused by the attacks of the 11th September and its negative impact on the image of Islam in international public opinion are important issues for the Council of Europe as well. Facing the question of Islamic terrorism, the parliamentary Assembly points out the clear distinction between Islam as a religion and Islamic fundamentalism and invites governments to participate in the fight against terrorism and to create a culture respectful of human rights and freedom of religion, censoring in the meantime any forms of *hate speech* against religions and any expression of Islamophobia, Council of Europe, Resolution 1605 (2008), *European Muslim Communities confronted with extremism*. The European Commission against racism and intolerance intervened as well, on one hand rejecting any forms of determinism and stereotyped pictures, and on the other by restating the equality of religions in a democratic country and the clear distinction between State laws and religious precepts, ECRI General Policy, Recommendation no. 5 on *Combating Intolerance and Discrimination against Muslims*, 16th March 2000; ECRI General Policy, Recommendation no. 9 on *The Fight against Anti-Semitism*, 25th June 2004; see also ECRI General Policy, Recommendation no. 7 on *National Legislation to Combat Racism and Racial Discrimination*, 13th December, 2002. On EU policies on racial discrimination, Flauss J.

support extremist organisation programmes defaming religions, to provide proper protection against acts of discrimination and coercion *resulting from defamation of religions* and lastly, to ensure that public officials and educators respect different religions while doing their jobs by avoiding discrimination and granting free access to school education without any measure of racial segregation³³.

The Assembly's starting point in legitimising the protection of religions, the same as that of the Commission and the Council, seems to be its contribution to modern civilisation and the centrality of cultural, religious and ethnic respect in the pursuit of peace; whereas, cultural prejudice, intolerance and xenophobia only engender hatred and violence³⁴.

F., *L'action de l'Union Européenne dans le domaine de la lutte contre le racisme et la xénophobie*, in *Revue Trimestrielle des Droits de l'Homme*, 2001, p. 487. On the problem of Islamophobia in Western countries, particularly regarding the power of self-regulation of the media, see the OSCE Chairman's observation (*Chairman-in-Office on Combating Intolerance and Discrimination against Muslims*) at the OSCE Meeting in 2006. The Chairman censures the lack of respect the media showed towards Muslims on the occasion of the Danish "Muhammad" cartoons, *OSCE Supplementary Human Dimension Meeting on Freedom of the Media: Protection of Journalists and Access to Information*, Working Session 2, Vienna, 2006, PC.SHDM.GAL/6/06/Rev. 1. In the same Session, the delegate of the Papal Council for Social Communication and the Holy See said that media should self-regulate and show due respect to the religious sensibilities, institutions and symbols of believers; moreover, governments should adopt a juridical discipline able efficiently to sanction *hate speech* phenomena, particularly when related to religion, *Ibidem*, PC.SHDM.DEL/16/06, 2006. Similar – but particularly referred to religious minorities – was the intervention of the Representative of the International Church of *Scientology* (European Human Rights Office), *Ibidem*, PC.SHDM.NGO/25/06, 2006.

33 UN document A/RES/61/161, cit.; A/RES/63/171, cit.

34 UN document A/RES/61/164, quotation. Of identical content is the draft Resolution proposed one year later by the UN member states belonging to the Organisation of the Islamic Conference., UN document A/C. 3/62/L. 35, 2007. A clear example of the attempt to move safeguards from the level of the individual to the level of religion also comes from the joint Declaration signed in 2006 by the UN Secretary General, the Secretary General of the Organisation of the Islamic Conference and the EU High Representative for Foreign Affairs and Joint Security, immediately after the publication in Denmark of some satirical cartoons. The Declaration states that society must show sensitivity and responsibility when dealing with topics that have particular value for the believers of a certain religious faith. The document confirms total respect for freedom of expression but adds that press freedom needs responsibility and discretion and should respect *all religious convictions and principles* (italics supplied), Joint Statement, 7th February 2006. On that occasion the UN Rapporteur against racial discrimination firmly criticised the Danish government, which he said was guilty of not taking a decisive position against the cartoons, which are considered a sign of political "trivialisation" of the problem of religious defamation, UN document E/CN. 4/2006/17, 13th February 2006, *Situation des populations musulmanes et arabes dans diverses régions du monde*. In other reports, the same

This subject is also present in another resolution dedicated to the global strategy against terrorism³⁵, in which the relationship between terrorism and religious defamation plays a crucial role.

To fight the phenomenon of terrorism effectively, the Assembly points out the need to fulfil a series of initiatives to eradicate poverty; to promote good government, human rights and the rule of law and to *ensure respect for all religions, religious values, convictions and cultures* by promoting dialogue, tolerance and understanding among civilisations, populations and religions, thus preventing religious and cultural defamation.

The speech given by the special Rapporteur on freedom of religion or belief³⁶ reflects the hope for peaceful relations among religions. He recalls that opinions and ideas must be respected while the use of stereotypes and statements offending religious feelings should not be used because *they do not contribute to creating an environment conducive for constructive dialogues among communities*³⁷.

The Rapporteur also introduces another subject. He points out the importance of distinguishing religious communities from racial groups. Many minorities tend to identify themselves in both categories, thus provoking aggravated episodes of violence against them because of their multiple identities³⁸.

The condition of religious freedom becomes even more difficult when considering the racial factor, which may influence and increase the scope and degree of discrimination. The identification of a close relationship between racial discrimination and xenophobia along with poor knowledge of other people's cultures and religions

Rapporteur stated that direct or indirect forms of religious defamation ideologically and intellectually legitimise discriminatory speeches and acts, UN document A/HRC/6/6, 21st August 2007. UN Rapporteurs' interest in discrimination against the three big monotheistic religions started in the 1990s, when Reports showed great concern over anti-Semitism in Europe and America (UN document E/CN. 4/1996/72, 15th February 1996; UN document E/CN. 4/2000/16, 10th February 2000) and the association of episodes of xenophobia, anti-Arabism and Islamophobia, which made it difficult to separate acts of racial discrimination from acts of religious intolerance because they strengthened and encouraged each other, UN document E/CN. 4/1998/79, 14th January 1998; UN document E/CN. 4/1997/71, 16th January 1997; UN document E/CN. 4/1999/15, 15th January 1999.

35 UN document A/RES/60/288, 20th September 2006, *The United Nations Global Counter - Terrorism Strategy*.

36 On the identification of Islam with terrorism, UN document E/CN. 4/2003/66, 15th January 2003, UN document E/CN. 4/2000/65, 15th February 2000, pointed out that defamation often appears in inter-religious and intra-religious contexts and mostly concerns minorities.

37 UN document A/HRC/10/8, 6th January 2009.

38 "Discrimination is often aggravated where multiple identities are involved", UN document E/CN. 4/2003/66, cit.; see also UN document E/CN. 4/2004/63, 16th January 2004.



The Koran, the Holy Book of the Muslims, contains the teachings that Muhammed pronounced as Godly revelations to his Arabic fellow countrymen. The Koran is dated from the beginning of the 7th century.

Photo: Wikipedia

seems to characterise some recent Reports written by the Special Rapporteur against racial discrimination. According to the Rapporteur³⁹, public policies should be based on a dual strategy characterised by an effective application of international instruments and by a better and deeper understanding the real roots which engender racism⁴⁰.

39 UN document E/CN. 4/2004/18, 21st January 2004; UN document E/CN. 4/2005/18, 13th December 2004; UN document E/CN. 4/2003/24, 30th January 2003; UN document E/CN. 4/2002/24, 13th February 2002.

40 "It is a question of establishing a close link, through reflection and action, between efforts to combat racism, discrimination, xenophobia and intolerance and the urgent promotion of dialogue between cultures, civilizations and religions", UN document E/

According to the Rapporteur, the lack of acknowledgement of ethnic, religious and cultural pluralism favours the development of new forms of racism. For this reason, it is necessary that State interventions concentrate on the protection of the diversity of religious and cultural expression⁴¹. The Rapporteur suggests that dialogue among civilisations, cultures and religions along with the promotion of education linked to the understanding of the history, ethics and values shared by all religions and spiritual traditions⁴² should have a crucial role.

The problem of Islamophobia, which has recently worsened because of the equation between Muslims and terrorists, requires particular attention. The Rapporteur⁴³ believes that the political and ideological component underlying racism and discrimination against Muslims is stronger than the religious component and is related to the increasing xenophobia in Western countries. The episode with the cartoons is an example of the resurgence of Islamophobia and racism⁴⁴.

The importance of the relationship between the ethnic and religious components in the fight against discrimination is becoming a fixed point in the international debate. The first Durban Declaration⁴⁵ contained a series of proposals concerning the fight against racial discrimination. The delegates were concerned about manifestations of intolerance that limited some religious communities' freedom as well as concerned about the hostile and violent acts often caused by other racial or ethnic factors that the communities experienced because of their convictions. Measures and policies carried out by governments to fight racism and xenophobia should take into account the ethnic and religious factors that make the life of cultural minorities more difficult. The same concepts were reaffirmed in the second Durban Declaration (2009)⁴⁶, which

CN. 4/2003/24, quotation.

41 UN document E/CN. 4/2004/18, quotation. On the same subject, Margiotta Broglio F., *Discriminazione razziale e discriminazione religiosa*, in *Quaderni di Diritto e Politica Ecclesiastica*, 1, 2000, pp. 269 - 279.

42 UN document E/CN. 4/2003/24, quotation.

43 UN document E/CN. 4/2006/17, 13th February 2006, *Situation des populations musulmanes et arabes dans diverses régions du monde*.

44 *Ibid.* It must be noted that the report does not refer to the violent reactions and threats the authors of the cartoons experienced, while violence against innocent people and the outrage provoked by the publication are strongly regretted.

45 UN document A/CONF. 189/12, 2001, *Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban*. Particularly, the emergence of racist movements against Jews, Muslims and Arab communities is pointed out together with the contribution that religion and spirituality can give to the promotion of human dignity.

46 Durban Review Conference, *Outcome Document*, 2009.

explicitly stated the link between the fight against racism and the enhancement of integration, respect and tolerance between ethnic, cultural, religious and linguistic communities.

The UN interpretation of the proximity between racial and religious discrimination risks having a perverse impact in terms of religious defamation, which is considered to be the result of political exploitation of religion⁴⁷, the fight against terrorism⁴⁸ and racist rhetoric – both socially tolerated and politically used – which creates new forms of discrimination⁴⁹ to the extent that *the incitement to racial and religious hatred* becomes the feature characterising demonstrations of religious defamation and discrimination⁵⁰.

The solution suggested by the Rapporteur against racial discrimination is the passage, from a sociological notion of defamation as opposed to the juridical concept of “incitement to racial and religious hatred,” which is alleged to be legally based on Articles 18 and 20 of the International Covenant on Civil and Political Rights (ICCPR) and in Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The Rapporteur suggests that incitement to racial discrimination, xenophobia and other forms of intolerance are often considered “as two interconnected issues”⁵¹ in relation to religious defamation and contempt.

However, there is a conceptual and practical difference separating religious defamation from incitement to racial hatred that needs to be remembered in order to avoid the unlimited and arbitrary extension of the protection of religious feelings. The UN Rapporteur on freedom of religion or belief⁵² called for caution on the confusion existing between racist statements and religious defamation. He pointed out that their constituent elements are not the same and that national legislation against racism is not applicable to religious defamation.

47 UN document A/HRC/7/19, 20th February 2008; UN document A/HRC/2/3, 20th September 2006.

48 UN document A/HRC/2/3, quotation.

49 *Ibid.*

50 UN document A/HRC/9/12, 2nd September 2008.

51 UN document A/HRC/2/3, quotation. In the Report, intolerance towards any forms of religious expression is considered as a negative consequence of particular forms of “radical secularism”.

52 UN document A/HRC/2/3, 2006, quotation. The Committee of Ministers of the Council of Europe also believes that the fight against racism and intolerance must be related to respect for freedom of expression, in order to avoid the paradox of harming democracy in the attempt to safeguard it, Council of Europe, Committee of Ministers, Recommendation n. R (97) 20, on “Hate speech”, 30th October 1997.

3. The second objective: To prevent an *indirect* cause of human rights violations.

The second set of reasons that should legitimise recourse to religious defamation is related to the necessity of adopting all possible measures to prevent the increase, in various areas of the world, of incitement to national, racial and religious hatred mostly determined by defamatory behaviours. The suggested solution is based on the premise of limiting the freedom of expression – according to international standards – when such freedom may be in conflict with other people’s rights and create tensions among ethnic, racial or religious groups⁵³.

Journalism is increasingly characterised by discriminatory language and tones towards particular communities. For this reason, journalists are called upon to carry out their work with “good judgement, rationality and a sense of responsibility”⁵⁴ and to avoid stereotypes that insult believers’ sensibilities and prevent the creation of constructive dialogue. Journalists must also be careful to avoid inciting ethnic and religious hatred, threatening delicate social and cultural balances and menacing a “harmonious multicultural society”⁵⁵.

This is the context in which defamation of religions is considered. The General Assembly⁵⁶ defines it as the *cause of a disharmonious society and human rights violations* of all faiths⁵⁷.

The Commission and the Council agree with the General Assembly by considering defamation of religions as a serious insult to human dignity, a cause of social disharmony and human rights violations, an aggravating element of social and economic exclusion of its victims and an impediment to the objective of safeguarding a peaceful globalised world⁵⁸.

53 UN document E/CN. 4/2002/75, 30th January 2002; UN document E/CN. 4/2005/64, 17th December 2004; UN document E/CN. 4/2006/55, 30th December 2005.

54 UN document A/HRC/4/27, 2nd January 2007. The same attention to preserve peaceful coexistence, considered as a sufficient reason to limit freedom of expression, is present in the speech of the UN special Rapporteur on religious freedom, UN document A/HRC/10/8, 6th January 2009.

55 UN document A/HRC/4/27, quotation.

56 UN document A/RES/61/164, quotation. Of identical content is the draft Resolution proposed by the UN countries belonging to the Organisation of the Islamic Conference, UN document A/C. 3/62/L. 35, 62nd session, 2007 and the 2009 draft Resolution proposed by Belarus, Syria and Venezuela, A/C. 3/64/L. 27, 29th October 2009.

57 UN document A/RES/61/164, cit.; A/RES/63/171, quotation.

58 Commission on Human Rights, Resolutions: 1999/82; 2000/84; 2001/4; 2002/9; 2003/4; 2004/6; 2005/3 cit.; UN document A/HRC/RES/7/19, 27th March 2008, *Combating defamation of religions*; Human Rights Council Resolution 10/22, 26th March 2009, *Combating defamation of religions*, This Council Resolution was proposed by

The arguments of the General Assembly and the Council seem to be acceptable in principle because it is evident that an environment of widespread suspicion, prejudice and xenophobia favours acts of violence and discrimination. However, it should be noted that limiting legitimate expressions of opinions, criticism or satire in order to avoid social tensions is a distortion and a danger. The passage from the protection of public order that justifies, according to international standards, a limitation on freedom of expression, to the defence of social cohesion – which is definitely a more intangible and discretionary criteria – risks restricting any manifestation of opinions.

The current limits are designed to preserve pluralism in the public arena which is characterised by dialogue, social harmony, and the acceptance of conflicting ideas. This environment is possible only by limiting or cancelling the conditions necessary for critical freedom of thought, which would result in censorship of public criticism in order to protect communities that are not clearly identifiable. In this regard, it must be said that defamation of religions is considered in the above-mentioned documents as merely an indirect cause of offence (not a form of *hate speech*); thus, it is necessary, but also very difficult, to reconstruct the causal relation between the alleged author of the defamation and its effects in terms of violation of the law.

4. Conclusions.

From the Resolutions of the General Assembly and the Human Rights Council, an important fact emerges: These documents introduce the concept of defamation of religions without giving a definition to distinguish the new term from the already known and sanctioned incitement to religious hatred and contempt. On the other hand, the consequences that UN bodies ascribe to demonstrations of religious defamation should compel us to specify its limits in order to avert the main risk of the operation, which is thwarting freedom of expression according to the pretence of considering as defamatory all potentially offensive statements with the possibility of creating social tension.

Bearing in mind that legal constraints on the freedom of expression inevitably contain weaknesses and controversial points, it should not be forgotten that incitement to hatred, violence and discrimination is an ancient and well-known phenomenon. In order to prevent it, international documents allow some reasons

Pakistan, in the name of the Organisation of the Islamic Conference, together with Belarus and Venezuela (UN document A/HRC/10/L. 2/Rev. 1, 26th March 2009). More than 200 organisations coming from different social sectors and from 46 different countries opposed this Resolution, asking for its withdrawal, www.iheu.org/human-rights-council-resolution-combating-defamation-religion.

to restrict freedom of expression and offer further tools, even though they are not always contained in specific provisions, from which it is possible to assure adequate protection from any demonstrations of *hate speech*⁵⁹.

In the UN context, there is a group of norms, most of them legally binding, which forbids *hate speech*. For example, Article 20 of the ICCPR, Article 3 of the Convention against genocide and Article 4 of the Convention against racial discrimination, together with Articles 1, 2, 7 and 29 of the Universal Declaration of Human Rights of 1948⁶⁰ all protect against hate speech. Certain diversity has been noticed⁶¹ in the objectives set forth by these provisions as well as some uncertainties about the key notions. However, this criticism of vagueness does not concern Article 20 of ICCPR, whose formula clearly forbids any appeals to national, racial or religious hatred or inciting discrimination, hostility or violence.

This provision has a strong symbolic weight and an equally great potential for application, as testified by the Committee for human rights, the special Rapporteurs and other UN bodies wide use of the provision. All contracting States can find in Article 20 a valid tool to limit or prevent expressions inciting acts of violence or discrimination against particular groups or individuals. Such wide use of the provision is possible because it is constructed as a general prohibition applicable to all rights, not just to the freedom of expression⁶² (for instance, it also applies to the abuse of freedom of religion).

All of the above-mentioned provisions are designed to safeguard individuals. In his Report to the 2009 General Assembly, the UN Secretary General recalled that Article 20 of ICCPR was written to offer protection to individuals and groups identifying themselves as part of a certain religion from acts of incitement to hatred,

59 In the European Congress it is sufficient to recall Articles 9, 10 e 11. For further information and for a judgement of the different approaches by the UN Committee for Human Rights and by the European Court in Strasbourg, consult Taylor P. M., *Freedom of Religion. UN and European Human Rights Law and Practice*, Cambridge, 2005, p. 77 ss.

60 Referring to Art. 4 ICERD, the Committee clarified that the norm needs to be read in harmony with Art. 19 UDHR, thus not in contrast with freedom of expression, UN. document A/48/18, 1994, *General Recommendation* n. 15; see also UN document A/64/209, 31st July 2009, *Report of the Secretary General*. In the 2008 and 2009 Resolutions by the Human Rights Council (UN document A/HRC/RES/7/19, 27 March 2008; UN document A/HRC/10/ 22, 26 March 2009), the content established in the Recommendation of the CERD Committee about the compatibility between the prohibition on spreading ideas based on racial superiority and the right to freedom of expression is for the first time considered applicable also to incitement to religious hatred.

61 UN document A/HRC/2/6, 2006, 20th September 2006.

62 UN document A/HRC/2/3, 2006, quotation.

not to protect “religions, belief systems, opinions or institutions from scrutiny, criticism or defamation”⁶³. The victim of the offence must, in other words, be a person or a clearly determined group (a bulwark against a potentially arbitrary use of this tool of protection), not the belief or conviction itself, not the doctrinal heritage or the system of values. It is evident that this approach differs from the new type of defamation of religions initiatives⁶⁴.

The application of this new type of offence becomes even more complicated because of the vagueness of the notion. The Resolutions of the General Assembly, the Commission for human rights and then the Council use the term to refer to different phenomena: hostile statements, stigmatization, insults, derision, Islamophobic attacks, mistaken association between Islam and terrorism, etc. Consequently, a standard to define religious defamation⁶⁵ remains elusive.

63 UN document A/64/209, Report of the Secretary General, *Combating defamation of religions*, 31st July 2009.

64 Consult Colaïanni N., *Diritto di satira e libertà religiosa*, in Talamanca A., Ventura M. (ed.), *Scritti in onore di Giovanni Barberini*, Torino, Giappichelli, 2009, pp. 193 - 222; Floris P., *Libertà religiosa e libertà di espressione artistica*, in *Quaderni di Diritto e Politica Ecclesiastica*, 1, 2008, pp. 175 - 196. The UN Rapporteur on religious freedom doubted that defamation of religions is a useful tool to protect religions, convictions or any single believer. He warned against some risks of discrimination, observing that not only the bigger religious communities worldwide are offended and outraged, but also numerically smaller groups; the problem is that while injurious criticism addressed to the former arouses attention and social alarm, there are several cases instead of incitement to violence against minor religious confessions which pass unnoticed, UN document A/64/159, 17th July 2009, *Interim Report*. See also UN document A/62/280, 20th August 2007, *Interim Report*. According to the Rapporteur, the decision to strengthen the system of protection against incitement to racial hatred offered by Art. 20 ICCPR could be more effective than laws on blasphemy.

65 UN document A/HRC/9/25, 5th September 2008. A defamatory statement is knowingly false and causes offence to other subjects, UN document E/CN.4/2006/55, 30th December 2005; to be considered in this way, it must be public, UN document A/HRC/4/27, 2nd January 2007, and the same applies to acts of incitement to hatred, violence and discrimination. UN document A/HRC/10/31/Add.3, 16th January 2009. According to the High Commissioner for Human Rights, in individual legal systems the term “religious defamation” expresses different meanings: to deride, to outrage, not to respect and to despise religion seem to be the most common contents but actually it is not easy to get a concise and efficient interpretation, UN document A/HRC/9/7, 12th September 2008. According to the Parliamentary Assembly of the Council of Europe, religious *hate speech* becomes a criminal offence only when it is addressed to a person or a specific group of people, is intentionally addressed to religious feeling and able to offend public order, while blasphemy (which is an insult to religion) cannot be considered as a criminal offence, Council of Europe, Recommendation 1805 (2007); consult UN document A/HRC/9/7, 12th September 2008. See also the definition of *hate speech* by the Committee

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) has stepped into this debate⁶⁶ as well, confirming not only the vagueness of the formula but also of the very word “religion” and the difficulty in setting out common legislation on blasphemy.

According to UNESCO in terms of international law, we are not faced with deficient legislation (on the contrary, new rules would be counter-productive), but persisting uncertainty regarding the relationship between freedom of opinion and freedom of religion, the right to information and respect for religious faiths and values, a question which current sources are unable to resolve⁶⁷. The UNESCO documents rightly point out the importance of education and dialogue as a response to these problems and recall the usual ambiguous reference to mutual respect. Respect must characterise freedom of expression and “religious beliefs and religious symbols”⁶⁸, thus increasing a conceptual difficulty related to the fact that freedom of expression, as a right of the individual, and religious values and symbols are placed on different levels.

There is another indication of this conceptual relationship in a note published by UNESCO after the publication of the Danish cartoons⁶⁹. Its statements clearly confirm a clear conceptual passage from safeguarding the religious freedom of the individual to protecting sensibilities for religious faiths and symbols: “Respect

of Ministers of the Council of Europe: any kind of expression which spreads, incites, promotes or justifies racial hatred, xenophobia, anti-Semitism, intolerance deriving from aggressive nationalism, ethnocentrism or discrimination against minorities or immigrants, Council of Europe, Committee of Ministers, Recommendation n. R (97) 20, on “Hate speech”, 30th October 1997. *Hate speech* and blasphemy, according to the Assembly, are not covered by the European Convention, Resolution 1510 (2006) point 3; it is up to single States to identify to what extent these phenomena are considerable as criminal offences and it will be the Court in Strasbourg which judges national jurisdictions. See some oscillations on this subject in the jurisprudence of the Court of Strasbourg, Taylor P.M., *Freedom of Religion...* quotation, p. 84 ss.

66 Executive Board, UNESCO Report, 176 EX/23, 28th March 2007.

67 The UNESCO suggestions are based on a serious commitment to inter-cultural and inter-religious debate, education and the involvement of and religious leaders and media exponents, *Idem*.

68 “(Upholding) the exercise of freedom of expression in a spirit of mutual respect and mutual understanding, urges mutual respect for cultural diversity, religious beliefs and religious symbols”, UNESCO, 174/EX/Decisions, 46, *Respect for freedom of expression and respect for sacred beliefs and values and religious symbols*, 2006. See also UNESCO Resolution n. 49, 2005, in which the Organisation reiterates the importance of dialogue among populations, cultures and religions for the respect of cultural diversity and as a factor of peace and social cohesion.

69 UNESCO Executive Board, 174 EX/42.

for freedom of expression and respect for religious beliefs and symbols are two inseparable principles.”

Once again, the essential nature of respect for different religious convictions in order to achieve peace, international security and the progress of civilisation becomes the premise to legitimise a less strict limitation on the freedom of expression, which should be exerted with a deep sense of responsibility and respect for religions and convictions.

The vagueness of the notion of religious defamation; the implicit risks in safeguarding systems of thought, religions, convictions, even the stricter and controversial ones; and the danger of limiting freedom of expression for generic reasons – which is likely to become a tool of abuse for institutions – represent alarming issues for non-governmental organisations (NGOs) and associations protecting freedom of expression and religion⁷⁰.

NGOs have often expressed their firm aversion towards national laws punishing blasphemy and religious defamation⁷¹, and the adoption of international tools going beyond Article 20 of ICCPR and provisions safeguarding freedom of religion. They point out that the concept of religious defamation, originated by the Organization of the Islamic Conference, is too ambiguous and generic to be considered a valid factor for limiting freedom of expression⁷².

Moreover, the fact that policies contrasting defamation of religions are totally at governments' discretions strengthens the power of the majority over dissidents and of the State (becoming the conflict regulator) over the individual⁷³, thus, censoring the public debate and exacerbating tensions derived from restricting

70 According to many associations, the vagueness of the concept of religious defamation hides the intent to protect religion “from critical evaluation and aims to stifle religious dissent”, in UN document A/62/280, 20th August 2007, *Elimination of all forms of religious intolerance, Interim Report*; see, among others, the observations of the Board of Experts of the International Religious Liberty Association, *Statement of Concern about Proposals Regarding Defamation of Religions*, 3rd September 2009.

71 That is what the Secretary General said to the UN Assembly, UN document A/63/365, 21st October 2008, *Combating defamation of religions*.

72 According to some NGOs, the International law of treaties and customary law have long established that the basis of human rights protection is in the individual and not in ideas: in international law, there is no room for the protection of religious convictions. The notion of religious defamation is incompatible with principles concerning human rights to the extent to which it is aimed at safeguarding systems of values and symbols instead of believers, Becket Fund for Religious Liberty, International Pen, International Humanist and Ethical Union, in UN document A/HRC/9/7, 12th September 2008.

73 UN document A/HRC/9/7, 12th September 2008.



Vendors selling delicacies for “Iftar”. Fasting during Ramadan (the 9th month of the Islamic calendar) is a must for every Muslim who enjoys good health. From dawn to dusk eating and drinking is forbidden. Fast breaking (Iftar) in the evening is a time for socializing and enjoying delicious food.

Photo: Wikimedia Commons / Md. Saiful Aziz Shamseer

freedom of criticism⁷⁴. The concerns of NGOs and many other commentators have not gone totally unheard. In the context of international institutions, important signs of discontinuity are beginning to be seen, and several serious reservations have been stated.

The Joint Declarations of the UN, OECD, OAS and ACHPR special Rapporteurs on the freedom of expression are worth mentioning because of their symbolic value, increased by the confluence of experiences linked to non-homogeneous cultural contexts and traditions. On many recent occasions, these declarations have dealt with the relationship between freedom of expression and religious defamation.

74 *Idem.*

The Joint Declaration of 2008⁷⁵ acknowledges the importance of an open public debate, of access to the media for all communities (including religious ones), of dialogue as a way to wipe out prejudices and stereotypes⁷⁶ and of the underlying difference separating criticism of any convictions and individual attacks on a person's beliefs in a system of values⁷⁷. The Declaration of 2007 expressed its concern about evidence that the usual tools used to restrict or forbid expressions of incitement to hatred are "undermined" "in favour of vague and potentially overbroad terms"⁷⁸.

The Rapporteurs are mostly concerned with the statements made in the Resolutions of the UN Commission, the Human Rights Council and the General Assembly. The general impression, according to these three experts, is that freedom of expression is subject to limits going beyond the prohibition of incitement to racial and religious hatred and violence.

The Rapporteurs warn the Council and the General Assembly to take care when giving impetus and support to the idea of defamation of religions by stating: "desist from the further adoption of statements supporting the idea of 'defamation of religions'"⁷⁹.

Single governments are also involved. The Joint Statement, *Freedom of expression and incitement to racial or religious hatred* from 2009 expresses doubts mostly about the decision to extend the application of penal laws concerning racial hatred incitement to also include religious defamation, especially considering the fact that a racial statement has contents and connotations extremely different from religious defamation⁸⁰.

Indeed, the many countries abolition of blasphemy laws, which not only are often discriminatory but also hide the intent of repressing disagreement and criticism

75 *Joint Declaration on Defamation of Religions, Anti-Terrorism and Anti-Extremism Legislation*, Athens, 9th December 2008.

76 The American conception of *more speech against hate speech* is clear also in the other OAS documents: see the 2001 Report of the OAS special Rapporteur for freedom of expression about the ethical responsibility of the media, Annual Report of the Special Rapporteur for Freedom of Expression, *Media Ethics*, 2001.

77 *Joint Declaration on Defamation of Religions, Anti-Terrorism and Anti-Extremism Legislation*, quotation. A confirmation comes from the OSCE as well: *Libel and insult laws: what more can be done to decriminalise libel and repeal insult laws?* Conference, Paris, 2003.

78 *Joint Declaration*, UN document A/HRC/4/27 Annex, 2nd January 2007. The Venice Commission reached similar conclusions, European Commission for Democracy through Law (Venice Commission), *Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred*, CDL-AD (2008)026.

79 *Joint Declaration on Defamation of Religions, Anti-Terrorism and Anti-Extremism Legislation*, quotation.

80 Joint Statement, *Freedom of expression and incitement to racial or religious hatred*, Durban Review Conference, 2009.

expressed by non-believers or the followers of minority religions⁸¹, is considered a positive sign. In some cases, the people who support the concepts of defamation and blasphemy represent religious extremism; use it to censure critical views within their own faith or that of religious minority oppositions⁸².

Consequently, a legitimate attempt to fight defamation and blasphemy is being manipulated to the detriment of other rights of equal importance, and believers become the first victims. The risk that a law against *hate speech* may be abused becomes higher in a national context where respect for human rights and the rule of law⁸³ is already weak.

Starting from the assumption that such a new, indefinable and almost discriminatory legal provision is improper, UN bodies have intervened by offering possible solutions to the source of the conflict among the religions and pointing out the appropriate juridical tools to respond to lawful petitions for protection in the current legislative system. In our view, a proper approach to the problem should start with clearly identifying the limits that separate a critical or censorious statement about religious subjects (belonging to freedom of expression) from incitement to religious or racial hatred.

This point is confirmed by the UN Rapporteur against racial discrimination who states that it is necessary to distinguish between a behaviour simply deriving from an intolerant mentality yet not violating human rights and a real act of incitement to hatred (like the ones covered by Articles 20 of ICCPR and 4 of ICERD).

81 Joint Statement, *Freedom of expression and incitement to racial or religious hatred*, Durban Review Conference, 2009. See also the call on governments to avoid the adoption of laws restricting “merely offensive speech” in *Joint Declaration*, 19th December 2006. On the same point, see UN document A/HRC/9/25, 5th September 2008. UN Rapporteurs for freedom of expression and religious freedom expressed the same observations. They stated that laws against blasphemy appeared to be counter-productive because they were applied in an indiscriminate way – safeguarding only certain religions – and because they were used as a tool to silence various atheistic and intra-religious positions, Joint Statement, *Freedom of expression and incitement to racial or religious hatred*, Durban Review Conference, 2009; consult UN document A/HRC/10/8, 6th January 2009.

82 UN document E/CN. 4/2001/63, 13th February 2001. It points out the inadequacy of a perspective linking the full recognition and enjoyment of the individual’s fundamental rights in religious matter to the fact that he belongs to a particular faith, Colaianni N., *Tutela della personalità e diritti della coscienza*, Bari, Cacucci, 2000, p. 45 ss.

83 UN document E/CN. 4/2002/75, 30th January 2002. The risk that the legislation adopted to fight *hate speech* may hide attempts to silence opponents and minorities is also pointed out by the High Commissioner for human rights, UN document A/HRC/2/6, 20th September 2006, *Report of the High Commissioner for Human Rights*. About the effects of the model of social and liberal States on protection against *hate speech*, Heinze E., *Viewpoint Absolutism and Hate Speech*, quotation.

The Rapporteur sums up that the best way to face the problem of *hate speech* is to apply the ICERD, ICCPR and the two Durban Declarations. According to the Rapporteur's report, these documents offer an exhaustive platform to fight racism on a national and ultra-national scale⁸⁴.

The UN Rapporteurs on freedom of expression, freedom of religion or belief and the fight against racism each came to the same conclusions. In a recent Joint Statement⁸⁵, they recall the importance of the difference between expressions of opinion, those that are considered by international law as an offence; those that are sanctioned only on a civil level and those that are not subject to any repression or censorship even though they may arouse legitimate concerns for their consequences in terms of intolerance towards the beliefs of others⁸⁶.

The central problem discussed by the Rapporteurs is the counter-productive effect that the penalisation of religious defamation can have in terms of creating an intolerant and fearful environment to the detriment of the free expressions of criticism. The UN Rapporteur on freedom of religion or belief⁸⁷ states: "Specific legislation should be introduced in a cautious manner since compulsory overregulation may be counterproductive"⁸⁸.

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- 84 UN document A/HRC/12/38, 1st July 2009, *On the manifestations of defamation of religions, and in particular on the serious implications of Islamophobia, on the enjoyment of all rights by their followers*.
- 85 Joint Statement, *Freedom of expression and incitement to racial or religious hatred*, Durban Review Conference, 2009.
- 86 The three experts note that public debate, which has focused on the concept of religious defamation – vague and easily subjected to abuse – for the last ten years, is now again concentrating on the punishable nature of incitement to racial and religious hatred, *Ibid*. Consult UN document A/HRC/2/3, 20th September 2006; see also UN document E/CN. 4/2006/55, 30th December 2005; UN document E/CN. 4/2001/64, 13th February 2001; similarly, Venice Commission, quotation UN document A/HRC/4/27, 2nd January 2007. On this point, UN document A/HRC/2/6, 20th September 2006.
- 87 UN document A/62/280, *Elimination of all forms of religious intolerance*; UN document A/HRC/2/3, quotation; UN document A/HRC/2/6, 2006, quotation; UN document A/HRC/4/27, 2nd January 2007.
- 88 UN document A/62/280, quotation. In the Doha Declaration, governments are invited to adopt measures and laws respecting and safeguarding both religious freedom and freedom of expression, and to remove statutes on defamation from penal codes, Doha Declaration, *World Press Freedom Day, Media, Dialogue and Mutual Understanding*, 3rd May 2009. The problem has also been tackled on a European scale: in the 2007 Recommendation, Council of Europe, Parliamentary Assembly, Recommendation 1814 (2007), *Towards decriminalisation of defamation*, the Parliamentary Assembly of the Council of Europe invites member states to adapt their laws on defamation to the jurisprudence of the Court of Strasbourg and to avoid any abuses and unjustified persecutions, Recommendation 1805 (2007) point 10. The Committee of Ministers of the Council of Europe definitely

The search for more efficient sanctioning mechanisms must not be separated from recognizing the fundamental principle of the positive consideration of freedom of expression, which offers a contribution to safeguarding democracy⁸⁹, pluralism and, last but not least, the manifestation of religious freedom, thus, safeguarding dissident and minor positions and intra/inter-religious confrontation.

The special Rapporteur on freedom of expression recalls that an open and free discussion is a requirement for, not an obstacle to, tolerance: “Resolutions to tensions based on genuine cultural or religious differences cannot be achieved by suppressing the expression of differences but rather by debating them openly. Free speech is therefore a requirement for, and not an impediment to, tolerance”⁹⁰.

From this perspective, one finds an acceptable compromise suggested in the Durban Declaration, a compromise relying on the possibility of fighting *hate speech* with nothing other than *more speech*: “More speech can be the best strategy to reach out to individuals’ ‘hearts and minds’, changing what they think and not merely what they do”⁹¹.

prefers a civil sanctioning mechanism, which is able to guarantee a form of compensation or the right of reply or a civil action to victims, Council of Europe, Committee of Ministers, Recommendation no. R (97) 20, on “Hate speech”, 30th October 1997. In the EU context, the Council Framework Decision 2008 /913/GAI of 28th November 2008 on *The fight against certain forms and expressions of racism and xenophobia through penal law* is worthy of mention; in art. 1 the Decision defines “racist and xenophobic offences” and requests the adoption of proper measures to punish public instigation to violence or hatred towards a group of people, or one of its members, defined in relation with his race, skin colour, religion, ancestry or national or ethnic origin, the text of the Decision can be found in *I diritti dell'uomo, cronache e battaglie*, 1, 2009, p. 86 – 88.

89 UN document E/CN.4/RES/2005/38, 19th April 2005, UN document A/HRC/RES/7/36, 28th March 2008, Durban Review Conference, *Outcome document*, Geneva, April 2009 (par. 58), UN document A/HRC/11/4, 30th April 2009, UN document E/CN.4/2003/67, 30th December 2002, UN document A/RES/61/221, 20th December 2006.

90 UN document A/HRC/11/4 30th April 2009. The Human Rights Council adds: “The open public debate of ideas, as well as interfaith and intercultural dialogue (...) can be among the best protections against racism, racial or religious hatred”, UN document A/HRC/RES/12/16, 12th October 2009.

91 Joint Statement, *Freedom of expression and incitement to racial or religious hatred*, Durban Review Conference, 2009.

FREEDOM OF EXPRESSION AND ADVOCACY OF GROUP HATRED

Incitement to hate crimes and religious hatred

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Introduction

The subject of this meeting is “Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.” This paper will concentrate on the analogies and parallels to be drawn from situations where the State or the international community limit freedom of expression to provide protection against incitement to, or advocacy of, some hate crimes and the applicability of such limitations to advocacy of religious hatred. The links between, and balancing of, articles 19 and 20 of the *International Covenant on Civil and Political Rights* (ICCPR) in general will not be discussed here. For the purposes of this paper, the notions of religion and freedom of religion have the reach and meaning established in article 18 of the *Universal Declaration of Human Rights*, article 18 of the ICCPR and relevant articles of the 1981 *Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief*.

Freedom of expression is not an absolute right, and does not belong to the list of rights that cannot be derogated according to article 4 of the ICCPR. States may legitimately limit that freedom when it is abused by the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The victims of that incitement are national, ethnic or religious groups, or their members. The nature of the group exposed to incitement – national, ethnic, or religious- should not justify differences in the treatment of those groups. This is particularly valid with regard to racial and religion-related groups. Racial and religious hatred involve similar motivations and produce similar consequences. Parallels can thus be drawn from limitations imposed upon freedom of expression in documents referring to one of those evils.

This approach is supported by the historical context, as well as by the developing notion that there exists an international public order encompassing treaty law and norms described as “soft law”, emanating from non-mandatory instruments. Originally, when the United Nations’ attention was drawn to a series of anti-Semitic outbursts in 1959-1960, the General Assembly, following resolutions of the relevant bodies, condemned “all manifestations and practices of racial, religious and national hatred...” (Resolution 1510, (XV)). In the discussion as to how to implement the resolution there were different opinions. Some States proposed to prepare a convention on racial discrimination; other States preferred to adopt only a declaration, while some favoured an instrument dealing with racial as well as religious discrimination. Finally, the General Assembly adopted similar Resolutions 1780 (XVII) and 1781 (XVII), asking to prepare declarations and draft conventions dealing separately with race and with religion. Concerning race, a Declaration was adopted in 1963 and the Convention was completed in 1965. As to religion, only a Declaration was adopted, in 1981. A draft convention is pending, *sine die*.

For obvious methodological reasons, the Convention on Race does not refer to religion, but it seems reasonable to apply, by analogy, relevant provisions to religion-related discrimination or intolerance. The Convention was concluded with large support in December 1965. A year later, the two Covenants on Human Rights were adopted, and article 20 of the ICCPR deals with advocacy to both racial or religious (or national) hatred. The preparation of a draft declaration and a draft convention on religion or belief made very slow progress, and in 1972 the General Assembly decided to give priority to the draft declaration. This meant in practice postponing indefinitely the work on a mandatory treaty. It took nine more years to reach agreement on the Declaration.

Several articles of the Declaration show the clear influence of the instruments on racial discrimination. The definition of the terms *intolerance* and *discrimination* also follows the model of the definition in the Racial Convention. This should be kept in mind when considering its applicability, by analogy, to advocacy of religious hatred. The relevance of other developments in international law should also be considered to that effect. Such are the instruments dealing with genocide, its denial, defamation of collectivities, and, in general, legislation restricting freedom of expression when it affects fundamental liberties.

Striking a balance between rights

The possibility of clashes between different human rights has been frequently discussed in several contexts. The matter is thus not new. However, in recent years, it has become acute with regard to religious groups. In principle, no difference should be made between religious groups and other groups defined by race, nationality, language, culture, colour or any other characteristic pertaining to groups that deserve



Coptic Orthodox Christians rally against Muslim revenge killings and demand religious freedom for Egypt. The demonstration took place in the capital city of Bern, Switzerland, on January 23, 2010. Being a Christian minority, Coptic Orthodox Christians are systematically discriminated against.

Photo: CSI Schweiz (www.csi-schweiz.ch)

the protection of international and human rights law. Still, the emotions usually accompanying religious convictions increase sensitivity in the case of incitement to religious hatred, and this may cause, as has already occurred, acts of violence at the national and international levels. Therefore it was argued that advocacy of religious hatred may justify a more severe limitation of freedom of expression. This would mean however underestimating the impact of that hate speech which affects ethnic or cultural communities, and their members. Freedom of expression also protects speech that may offend, hurt or shock, and can equally harm racial, religious or national groups and their members. The fact that its abuse can produce different reactions does not justify differences as to the limits of freedom of speech. Hate speech violates equally the rights and freedoms of the mentioned groups and individuals. Equality of social or psychological damage requires equality in the limitation on speech causing that result.

Until World War II, classic international law paid little attention to the right of collectivities to be protected from incitement to hostility. After World War II, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which aimed at protecting the physical existence of *religious, racial and cultural* groups, was a major exception to this trend. A decade later, the already mentioned Resolution 1510 (XV), on Manifestations of Racial Prejudice and National and Religious Intolerance, started international legislative work to protect racial, religious and national groups. Major results of that work were the Declaration and the Convention on Racial Discrimination and the Declaration on Religious Intolerance, but the change in the tendency also influenced other human rights issues such as those concerning minorities, indigenous populations, migrations, group defamation, anti-Semitism, and related phenomena. Despite the traditional reluctance of international law to deal with non-State entities and the resistance of human rights law to transcend the area of individual liberties, the necessity of curbing prejudice, incitement, persecution and violence against certain groups, and their members because of membership, became essential.

A distinction must be made here between the clear-cut prohibition of *discrimination* on racial or religious grounds and the less precise approach to *hatred* and *intolerance*, notions involving difficulties as to their strict legal meaning. The definition of discrimination contained in Article 1 of the Convention on Racial Discrimination has been followed by similar definitions referring to other protected rights. It is with regard to hatred and intolerance that a clash may more easily evolve between basic rights such as freedom of expression or association, on the one hand, and, on the other, the right of collective entities and their members to be protected from defamation, hostility, hatred, intolerance, and incitement to such evils.

Articles 19 and 20 of the ICCPR are the basis for any discussion of this matter. The major instruments concerning race and religion, particularly the Conventions on Genocide and on the Elimination of Racial Discrimination and specially its Article 4, are equally relevant. So are other international instruments, such as the 1981 Declaration on Religious Intolerance and the 1978 UNESCO Declaration on Race and Racial Prejudice, as well as various regional treaties. The European Convention on Human Rights deals with the matter in Articles 9 and 10, and the European Court of Human Rights produced important and well known pertinent decisions. To mention one case, in *Otto-Preminger-Institut v. Austria* (1994 ECHR 26) the Court stated that “as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent improper attacks on objects of religious veneration.”

It should be noted that three Special Rapporteurs of the United Nations, on freedom of religion or belief, on freedom of opinion and expression, and on racial discrimination, felt the need to issue, in 2006, a joint statement urging all parties “to refrain from any form of violence and to avoid fuelling hatred” and stressing

the need of respect for freedom of expression, while avoiding “the use of stereotypes and labelling that insult deep-rooted religious feelings...”

The issue is, of course, how to strike the balance between the two aims. Article 19 of the ICCPR permits limitations on freedom of expression to protect the rights and reputation of “others”. Article 20 forbids advocacy of national, racial, or religious hatred when it constitutes incitement to *discrimination*, hostility, or violence. Article III of the Genocide Convention declares punishable “direct and public incitement to commit genocide.” The European Convention on Human Rights restricts freedom of expression, assembly and association “when necessary in a democratic society in the interests of the ‘prevention of disorder’ and ‘protection of the reputation or rights of others’.” The American Convention on Human Rights affirms everyone’s right to his honour and dignity, aims at ensuring the protection of the “reputation of others”, and penalizes advocacy of national, racial or religious hatred that constitute incitement to lawless violence... on any grounds including those of race, colour, religion, language, or national origin.” The 1981 Declaration on Intolerance and Discrimination Based on Religion or Belief refers to “appropriate measures to combat intolerance on grounds of religion or other belief.” The 1978 UNESCO Declaration on Race and Racial Prejudice urges taking steps “to prohibit and eradicate racism [and] racist propaganda” and to “combat racial prejudice.” The 1990 Paris Charter for a New Europe, adopted by the Conference on Security and Cooperation in Europe, stresses the need “to combat all forms of racial and ethnic hatred, anti-Semitism, xenophobia, and discrimination against anyone, as well as persecution on religious and ideological grounds.” Statements of international organizations and conferences in recent years used similar language.

Relevance of Article 4 of the Convention on Race

Far-reaching positive provisions related to incitement against groups, communities or collective entities have been incorporated into the Convention on the Elimination of all Forms of Racial Discrimination, especially its Article 4. This article, as the whole issue of freedom of expression versus other basic rights, engendered controversy and was subjected to criticism. Formal reservations or declarations were submitted. Notwithstanding, it became a clear guideline for the international community, and several States enacted domestic legislation in its spirit.

As already indicated, for methodological reasons, the Convention on Racial Discrimination avoided references to religion. It is however also reasonable to interpret Article 4 as applicable, by analogy, to manifestations of incitement on grounds of religion or belief. This approach is supported by the historical link between the instruments on race and those on religion, as well as by the view expressed by the judiciaries of several countries that. More important than the



In Iraq, attacks on Christian churches happen again and again.

Photo: Kirche in Not (info@kirche-in-not.de)

specific nature of a group, or the identifiable elements that define that group, is the basic fact of the undisputed existence of the group, its self-perception and its perception by the surrounding world. In some cases, race, religion and culture overlap, and those who wish to hurt the group or incite against it are not overly worried by the character of the object of their hostility or hatred. Moreover, the argument that members of a group defined by the offenders as a religious group cannot invoke an anti-racist act was rejected in several occasions.

Article 4 of the Racial Convention is far-reaching. It imposes upon State parties to the Convention the duty to adopt immediate and positive measures designed to eradicate incitement to, or acts of, discrimination. States shall declare an “offence punishable by law” all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any “race or group of persons of another colour or ethnic origin”. If only one instrument on both race and religion would have been adopted,

there is little room to doubt that “a group of persons of another religion or belief” would also have been listed. The same assumption would be valid if identical, separate instruments would have been adopted. To leave out groups based on religion or belief from the protection that international law provides to groups based on race, ethnic origin or colour seems unfair and illogical.

Article 4 was the result of a compromise between those who saw it as the “key article” of the Convention and those who considered it a threat to freedom of speech and association. As every compromise, the text may be not entirely satisfactory. But, as argued elsewhere by this writer, it may be seen “as a guideline to interpret in a similar spirit the provisions on incitement in the instruments on religious rights.” Regretfully, no mandatory treaty was adopted in the area of religion or belief, and the reasons for that absence may be weighty enough and reflect political realities. Analogical interpretation of instruments with different degrees of obligatory force may be difficult. The issue of a hierarchy of norms in the field of international law, as well as the fascinating but inconclusive discussion on the existence of an international public order containing norms included in non-binding instruments, cannot be discussed here. Neither is this short comment the place to examine the crucial subject of *jus cogens* and provisions *erga omnes*. But, in the case of race and religion as grounds of hostility or hatred, the parallelism seems reasonable.

The difficulties of some States in ratifying the Convention because they consider that there is a clash between rights should not be underestimated. The “due regard” clause was not seen as sufficient by some States and several submitted reservations or interpretations in order to make sure that Article 4 would not jeopardize freedom of opinion and expression. But the UN *Committee on the Elimination of Racial Discrimination* (CERD), following recommendations of Special Rapporteur Jose D. Ingles in his *Study on the Implementation of Article 4*, stated in its General Recommendation 1, of 1972, that implementation by States of the provisions of Article 4 is obligatory and, since the article is not self-executing, if domestic legislation is not sufficient, it should be supplemented by adequate additional measures. The rights of free expression and association are not absolute, and are subject to the limitations of Article 29 of the Universal Declaration and Articles 19 and 20 of the ICCPR. The mandatory character of Article 4 was reiterated by CERD in its General Recommendation VII. It may also be pertinent to mention the decision of the International Court of Justice in *Dem. Rep. Congo v. Rwanda* and its approach to the prohibition of racial discrimination.

In 1993, in General Recommendation XV (42), CERD referred to “evidence of organized violence based on ethnic origin” and stated that the prohibition of the dissemination of ideas based upon racial superiority or hatred is compatible with freedom of opinion and expression. In the same paragraph of its Recommendation, the Committee draws the attention of States parties to Article 20 of the ICCPR, which refers, of course, explicitly to “religious hatred.”

In the same spirit, the Human Rights Committee, in its General Comment 22 (48), adopted in 1993, declared that Article 20 of the ICCPR, applicable to racial and religious hatred, was fully compatible with freedom of expression. In a former General Comment, 11(19), the Committee declared that State parties are obliged to enact laws prohibiting advocacy of national, racial or religious hatred. The Committee emphasized that the prohibition of incitement to religious hatred is fully compatible with other basic freedoms.

Other parallelisms

It seems thus reasonable, for historical as well as for reasons of legal hermeneutics, to see analogies and parallelism between the prohibition of incitement in the racial sphere and the approach with regard to advocacy of hatred based on religion or belief, in accordance with Article 20 of the ICCPR. It may be more complicated to find a similar parallelism in other situations in which the State limits freedom of expression. In the case of laws against blasphemy, there are difficulties with regard to the definition of blasphemy, and these laws deal in general with expressions against one dominant church or religion. Denial of the existence of God would be blasphemy in some countries, but not in others where it would be seen as a manifestation of freedom of thought and expression. Apostasy and obscenity laws are in a similar situation. They are the product of certain legal systems but unacceptable to others, and are not regulated in international texts. The margin of appreciation that decisions of the European Court of Human Rights reserve to each State in those and similar issues underscores the differences between them and cases in which fundamental rights are involved.

As to defamation, the European and the American Conventions on Human Rights refer to the “reputation” of others. National legislation in this respect differs with regard to substance as well as procedure, including the issue of *locus standi* demanding that a plaintiff be *personally* included in the defamation statement. The borderline between defamation and incitement is difficult to determine. Article 20 of the ICCPR refers to incitement as the outcome of advocacy of national, racial or religious hatred. The incitement should lead to discrimination, hostility or violence. Defamation that does not involve *advocacy* and *incitement* may thus not be covered by Article 20, although it may be sanctioned by domestic legislation.

Particularly difficult are the areas related to religion. The difference between permissible criticism of a given religion by describing its dogmas as wrong, absurd or false, on the one hand, and incitement against the same religion as stated in Article 20 of the ICCPR, on the other, is not merely an issue of degree or a quantitative one. A basic issue is when does criticism become defamation and when does defamation become incitement to discrimination, hostility or violence. This may lead to the question of intent or intention.

Protesting against
the persecution
of Christians in the
Muslim world.
Berne, Switzerland,
September 25, 2010.

Photo: IADRL



In the case of incitement to genocide, there is no doubt that it means incitement to violence, in the most extreme meaning of that term. But since genocide is such a massive crime that generally it can only be committed by States or by non-State collective actors, the issue of the proof of intention is crucial. The controversial decision of the ICJ in February 2007 (*Bosnia v. Serbia*) reflects the difficulties involved. Even when the Court concluded that there was genocide, as in Srebrenica, it could not reach consensus regarding intention on the part of Serbia, namely its government or authorities.

The question is to what extent can ridiculing a religious dogma, or portraying an entire religious group in terms that imply contempt, become incitement in the sense of Article 20. Believers in a given religion may be profoundly offended by shocking critical statements, but when do such expressions become contrary to public order and when do they become incitement in the terms of Article 20?

The problems created by some utterances and the reaction of religious groups that feel themselves hurt, offended and even threatened cannot be ignored, and the General Assembly expressed its concern and alarm with regard to such developments. The three major religions were involved in such incidents. Even at the time of drafting this paper such clashes have been occurring: a major American publishing house announced, on the day when it was supposed to appear in print, the withdrawal of a novel concerning the prophet Muhammad because it was

likely to engender acts of violence; the French press was occupied with the firing of a satirical caricaturist because of a provocative article seen by many as offending an ethnic-religious community. These recent cases did not acquire the public impact of former ones such as the Danish cartoons concerning Islam or certain movies offending Christians or Jews. They show however the extent to which the issue repeats itself, threatening in different degrees public peace and inter-group coexistence.

The laws that exist in some countries incriminating denial of genocides, such as those committed against the European Jews or the Armenians, as well as international decisions urging the outlaw of such denials, are related to this problem. The issue is if denying a case of genocide, or its magnitude, can be construed as implying incitement against the victim group. A positive reply is the basis of the philosophy behind the legislation penalizing those denials. It is relevant in this connection to point out the distinction between denying established facts, recognized in judicial pronouncements, on the one hand and, on the other, disputing the validity or veracity of dogmas, or value judgments, considered absolute truth by some and mythical, unreal or impossible by others.

Merely offensive or insulting expressions against religious dogmas do not necessarily involve incitement. When offensive words may be seen as *fighting words* in the sense used in some countries to exclude them from the protection of freedom of expression is not easy to determine. But developments in this sphere have caused and are causing conflictive situations. The analysis of the analogies and parallels that can be drawn from remedies already provided in international life may be useful to confront the severe dangers resulting from advocacy of religious-related hatred, without losing sight of the need to respect freedom of speech.

Conclusions

1. Freedom of expression is a fundamental right that may be subject to the limitations determined by law. It is not an absolute right.
2. Article 19 of the ICCPR that permits certain restrictions, should be read in conjunction with Article 20 of the Covenant, prohibiting advocacy of hatred that constitutes incitement to discrimination, hostility or violence.
3. In principle, there should not be a difference in the treatment of incitement to national, racial or religious hatred. International realities, as well as eventual consequences of incitement to hatred against religious groups or symbols, may however require a particularly cautious approach, fully respecting freedom of speech as a fundamental human right that can be restricted only according to law.
4. Limitations on freedom of expression regarding other liberties may in some cases be useful to draw analogies. This is particularly possible with regard

to Article 4 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) because of the legislative history of the UN approach to racial and religious incitement, as well as because of the broad interpretation of Article 4 by CERD and Special Rapporteurs. Equally relevant is Article III of the Convention on Genocide. The discussion on the hierarchy of norms in international law and the existence of an international public order incorporating rules of soft law has to be considered as well.

5. In the case of genocide, the 1948 Convention deals equally with incitement against racial and religious groups. Existent denial legislation was applied to groups in which ethnicity and religion overlap, but nothing precludes their application to groups strictly defined by religion if they were victims of genocide.
6. It seems reasonable, because of the historical context and trends prevailing in human rights law, to apply to incitement to religious hatred analogies drawn from Article 4 of ICERD and Article III of the Genocide Convention,. This is compatible with respect for freedom of expression, a fundamental freedom that may be restricted only in accordance with human rights law.

INTERNATIONAL TUG OF WAR OVER THE DEFAMATION OF RELIGION (1999 – 2009)

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Within the framework of democracies in which freedom of speech is on an equal footing with freedom of religion and conscience, it is difficult to circumscribe the right of respect for religious convictions. At the same time pluralism demands that ways and means are found for the peaceful and tolerant co-existence between believing and non-believing people living in one and the same democratic society. In several European States there are laws involving penalties which (to a greater or lesser extent) protect religions from blasphemy and insult. However, little recourse has been made to these laws in past years and the European States have confined themselves to “tangible” questions, such as the denial of the murder of Jews in the Third Reich, racism and discrimination on the grounds of religious convictions. The European Court of Justice has also made rulings in various countries whereby freedom of speech is to be curtailed when unbridled remarks are particularly wounding to people’s feelings.

It would appear that these regulations were not sufficient to ensure the appropriate “treatment” by the democracies and the media of questions regarding respect for religious feelings. When the shock of the London terrorist attacks in July was closely followed by the Muhammad cartoons published in the autumn of 2005, originally in a Danish newspaper and subsequently by other European publications - amongst which was the French satirical weekly publication *Charlie Hebdo* - there was a predictable uproar. From the viewpoint of some militant human rights organisations, such as the International Human Rights Federation of Helsinki⁹² or the Muslim States united under the banner of the Organisation of the Islamic Conference (OIC),⁹³ this affair clearly confirmed what these organisations had

92 The March 2005 report can be accessed on <http://www.bladi.net/forum/37563-lintolerance-envers-musulmans-europe-rapport-accablant>

93 The OIC was founded in 1969 at the initiative of Saudi Arabia, the Secretariat for which has been based in Jeddah since 1971. Its membership comprises 57 Member States, representing more than a billion Muslims (the total number in the world is 1.6 billion). The goal, as formulated in the founding Charter, is: “to speak with one voice

long been criticizing, namely the open discrimination of the Muslim population group in Europe and the distorted picture drawn of them and their religion by the media⁹⁴. For the commentators and public opinion, however, this affair had an air of inevitability and was a sure indication of the lively activity of Muslim fundamentalists against democracy and the holy grail of freedom of opinion.

The Organisation of the Islamic Conference (OIC), a group of States in the Human Rights Commission of the United Nations - which was changed to the Human Rights Council in March 2006 - has been waging a campaign against the "Defamation of Religions and in particular of Islam". This juristically not quite conclusive formulation encompasses blasphemy, violation of religious sensibilities, the inciting of racist and religious hatred and social and legal discrimination on religious grounds. The OIC has achieved that not only the Human Rights Commission (otherwise Human Rights Council) but, subsequently, the General Assembly of the United Nations have also passed resolutions condemning the so-called defamation of Islam, all this before the cartoon incident. Thereafter the United Nations, again under pressure from the OIC, decided on stronger action. They proposed that the "defamation of religion" becomes a criminal offence on the basis of Article 20 (paragraph 2) of the International Covenant on Civil and Political Rights: *"Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."*

to safeguard the interest and ensure the progress and well-being of their peoples and those of other Muslims the world over". In other words: economic, political, social and cultural cooperation among Member States is to be strengthened. The unanimous decisions of the Organisation of Islamic Conference taken at the Summit and Meeting of (Foreign) Ministers of the Organisation of Islamic Conference are morally binding upon Member States. The ten-year action plan adopted at an extraordinary summit meeting in December 2005 was intended to "restructure the organisation, to give it a new name and to revise its charter and activities." It proposes a method for compliance with the resolutions. Secretary-General of the Organisation, Ekmeleddin Işhanoglu, is Turkish. The official website of the organisation can be found at: <http://www.oic-oci.org/home.asp>. In Mecca in 2005, the OIC founded an institute to monitor Islamophobia, which published its first report at the IX. Summit of the Organisation in March 2008 in Dakkar. (<http://www.oic-oci.org/is11/French>) (<http://www.oic-oci.org/is11/french/IsLamophobie-Fr.pdf>). The second report was submitted in May 2009 at the Extraordinary Meeting of the Council of Foreign Ministers of the OIC in Syria. It is only available in English and Arabic. (http://www.oic-un.org/document_report/Islamophobia_rep_May_23_25_2009.pdf).

- 94 The French Association Collectif contre l'Islamophobia en France was founded in 2003, when the wearing the Islamic headscarf in schools was being vigorously contested. It presented its first report on the subject in 2004. See: http://www.islamophobie.net/user-res/fichiers/bilan_ccif_2003_2005.pdf. A further report from 2008 may be found on their website [islamophobie.net](http://www.islamophobie.net).

This demand for a statutory prohibition in 2008 led to the quickly discarded suggestion that an international convention on the subject be called.

We want to examine more closely the vehement actions of the OIC, together with the Resolutions and Procedures which this group of States were able to push through at the United Nations, particularly after the cartoon incident of 2005. Thereby we will discover that these have led to exactly the opposite reactions and opinions on the part of the Western States.⁹⁵ The media had painted the spectre of blasphemy on the walls and demanded its abolition in those States in which it still exists. This is exactly the opposite of what the OIC demanded, which was its reinstatement. The same media warned against a return of religious censorship and, together with public opinion, defended freedom of conscience as an endangered foundational principle of democracy. The European and North American governments jointly refused to pass the resolutions resulting from the campaigning of the OIC and were not prepared to give in to their demands in any shape or form. After an intense examination of the legal interpretation of the terms defamation, discrimination and racism, they came to the conclusion that there can be no such a thing as “defamation of religion” in the normative logic of human rights.⁹⁶

In its parliamentary sessions the Council of Europe has formulated a very comprehensive reply to the theme “Defamation of Religions”. This also deals with any attempts to repress opinions which are contrary to that of a religion, so long as they do not constitute a direct insult or are a deliberate incitement to discrimination, hatred, violence or worse. The French media, for instance, have defended freedom of expression, secularism and the freedom of conscience even more heatedly, including the freedom to express opinions in the form of satire or caricature which may shock, annoy or offend. The right to this freedom was subsequently granted following the proceedings by the Paris Mosque versus the magazine *Charlie Hebdo*.

95 Teyssier, J.-P.: „Médias et religions: jusqu’où le respect?“, in : *Gaz. Pal.*, 31 May 2006 ; Larcher, L. : « Heurs et malheurs de l’islam cathodique », in : *La Croix*, 15/16 November 2008, p. 17-18.

96 Fellous, G./Prasquier, R.: „Droits humains fragilisés. L’extension de la notion ‘diffamation des religions’ ... », in : *Le Monde*, 19 December 2008 ; Flauss, J.-F. : « La diffamation religieuse en droit international », in : *Petites affiches*, 23.Juli 2002, p. 5-17 ; Flauss, J.-F. : « La diffamation religieuse », in : *La protection internationale de la liberté religieuse*, Bruylant 2003 ; Harscher, Guy : « La liberté d’expression, blasphème, racisme : Essai d’analyse philosophique et comparée », Part 1 in: *Panotica*, Vitoria, 1. Jg., No. 9 July – August 2007, p. 22-53; Evenhuis, Angela: *Blasphemous Matter. Blasphemy, Defamation of Religion and Human Rights*, Magenta Foundation 2008, p. 8; Temperman, Jeroen: “The Emerging Counter-Diffamation of Religion Discourse: A Critical Analysis”, in: *Annuaire Droit et Religion 2009-2010*, PUAM, Vol. 4, p. 553-559.

In the final analysis, Western governments and prevailing public opinion rejected the idea that a religion and its devotees needed to be protected from critical, satirical or antagonistic opinion, and for this reason no change to legislation was required.

The positions in this unfinished debate could not be more opposite. On the one hand people in Europe are outraged over Islamic fundamentalism and energetically defend the freedom of speech. The OIC and other groups, however, see this and other freedoms as contempt of Islam and a discrimination against Muslims. Although the repercussions of this argument are fierce, the debate has made developments. It would appear that somehow during this dispute the irreconcilable positions, although they continue to clash, have progressed somewhat.

I. History of the term “Defamation of Religions”

A. An Initiative by the Organisation of Islamic Conference

The term “Defamation of Religions” first appeared in 1999 in the first Resolution of the United Nations Human Rights Commission. This was passed in April without a vote. It was initiated by Pakistan, the representative of the Organisation of Islamic Conference.⁹⁷ Initially the title was “Defamation of Islam”. After a debate, the revised wording was given the generalised title of “Defamation of Religions”. In this Resolution discrimination on the grounds of religion or conviction was denounced, which was acceptable to all. In addition, the Resolution expressed the concern of the Commission that ever more frequently negative stereotypes were being promulgated against religions, particularly Islam, and that they are “frequently and wrongly associated with human rights violations and terrorism”. Thereupon the Commission requested the United Nations General Assembly to also pass a resolution and requested governments to take the necessary steps to counteract “intolerance and religious hatred”, which lead to insults, violence, intimidation and duress in addition to discrimination – in particular discrimination against women and to the desecration of religious sites. The content of the Resolution, therefore, did not pose any problems and the title “Defamation of Religions”, which did not distinguish between religions, had as its aim the awakening of sensibility. Up until 2005 the Commission passed further similar resolutions under the heading “Counteracting the Defamation of Religions”.⁹⁸

97 Human Rights Commission *Resolution on the Defamation of Religions*, 55th Session, E/CN.4/1999.L.40.Rev 1, initiated by Pakistan on behalf of the OIC, Geneva, 30 April 1999. The report is available at:

[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.1999.SR.62.Fr?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.1999.SR.62.Fr?OpenDocument)

98 2000/84 dated 26 April 2000; 2001/4 dated 18 April 2001; 2002/9 dated 15 April

In the meantime the attacks of September 11, the resumption of the Intifada in Israel and the matter of Palestinian territory (one of the goals of the OIC is to create a Palestinian state), as well as the invasion by the Americans of Afghanistan and later of Iraq, had deeply split opinions. The OIC then went about ever more vehemently denouncing the discrimination of Muslims in society and in the media, and accused them of “spreading negative stereotyping” of Muslims and their religion which, for them, represented an indivisible unit. At the end of 2001 the first serious conflict arose with the drafting of the final document at the Conference in Durban. This Conference was about racism, racial discrimination, xenophobia and the related intolerance. This meeting was held in South Africa from 31st August to 7th September in an atmosphere openly hostile to Israel. The occupation of Palestine was sharply criticized. The grounds for the criticism, however, were not clearly defined. The document was only finalised in December and was not signed by all participants. The text contained several references to the Holocaust and connected them to the growing discrimination against Muslims. The opinion was expressed that Muslims see themselves as being exposed to the same danger or threat, i.e. being subjected to similar treatment as hat of the Jews under National Socialism, because ever more frequently attitudes are being exhibited which incite hatred and violence.⁹⁹ In the same section, the position is also taken that the terrible situation of the Palestinian people is the result of racism, xenophobia and intolerance on the part of Israel towards Muslim Arabs.

After Durban, several States - amongst others the United States (who at the time were still members of the Commission), Canada and the countries of the European Union - refused to sign any further resolutions of the Human Rights Commission in connection with the defamation of religions.

B. September 2005 – September 2006: Debate on the Defamation of Religions becomes “explosive”

1. Activities and Resolutions of the United Nations immediately after the publication of the cartoons (September 2005)

The cartoon argument came about in late summer 2005. The first General Resolution on “Discrimination of Religions” by the United Nations basically

2002; 2003/4 dated 14 April 2003; 2004/6 dated 13 April 2004 (containing a decision to prepare a report on the situation of discrimination against Muslims and Arabs in various parts of the world);

2005/3 dated 12 April 2005 and 2005/40 dated 19 April 2005 on the elimination of all forms of intolerance and discrimination based on religion of beliefs.

99 Explanation and Action Plan, Paragraph 57 to 63, http://www.un.org/french/WCAR/durban_fr.pdf

asked for a report on the position of discrimination against Arabs and Muslims worldwide. This was to be compiled by the Rapporteurs of the United Nations on the abolishment of racism and every form of discrimination. This Resolution was put to the vote on 15th August 2005.¹⁰⁰ The General Assembly was uneasy with “*the continuing negative consequences of September 11 on Muslim minorities and societies in non-Muslim countries, the negative image of Islam in the media, as well as the introduction and tightening of laws which particularly discriminate against Muslims*”. Here the negative image of Islam in the media is coupled with the concept of defamation of Islam, and the concept of the defamation of Islam (censure of Islam) are confused with incitement to hatred, violence and “discrimination against Islam”.¹⁰¹

This Resolution was passed with 101 in favour, 53 against and 20 abstentions. A further General Assembly Resolution was passed without a vote at the end of 2005. This concerned itself with the worldwide efforts to completely eradicate racism and racial discrimination, and to find a workable manner of implementing the Declaration and action program from Durban.¹⁰² The Resolution confined itself completely to religious intolerance and denounced, without giving examples, the increase in intolerance, hatred and discrimination on the grounds of religion or conscience and thereby remained within realistically justifiable boundaries. In particular it referred to judicial measures whereby religious groups are institutionally discriminated against, and drew attention to the spreading of hate speeches by the media, especially via the internet. In the text, the words used for this term of hatred were anti-Semitism, Islamophobia and Christianophobia.¹⁰³

100 A/RES/60/150 on the report of the Third Committee of the Human Rights Commission (A/60/509/Add.2 (Part II) 60/150).

101 Introduction, Sections 1 to 10: see the information on the web on the 60th Session, produced by the Department of Publicity and Documentation of the United Nations. <http://www.un.org/Depts/dhl/resguide/r60fr.htm>

102 A/RES/60/166 on the report of the Third Committee (Document A/60/507-II). See also the website mentioned in the previous note: <http://www.un.org/Depts/dhl/resguide/r60fr.htm>

103 5. “... notes with deep concern the rise in the number of cases of intolerance and violence against members of many religious and other communities in different parts of the world. This includes cases of Islamophobia, anti-Semitism and hostility towards Christians;

6. *Expressed their concern* at the continuing social intolerance and discrimination which many people encounter from Institutions in the name of religion or belief;

7. *Condemns* any call to religious hatred that constitutes incitement to discrimination, hostility or violence, whether by the press, audiovisual or electronic media or by other means.”

In this Resolution, the General Assembly decided to request the Human Rights Commission on Religion and Freedom of Conscience to submit a special report on religious intolerance.

2. The Founding of the Human Rights Council and the Report of the Special Rapporteurs Regarding the Eradication of all Forms of Racism in Year 2006

a) The End of the Human Rights Commission

At precisely the same time as the question arose regarding the defamation of Islam and the rise of religious intolerance in general, the Human Rights Commission was transformed into the Human Rights Council. This was decided on 15th March 2006.¹⁰⁴ The first elections for the new Council took place on 9th May 2006 and convened on 19th June 2006 for the first time. The 47 new members were elected according to geographical location and 36% of the member States belonged to the OIC (i.e. 17 members in the Council and 57 in the United Nations General Assembly). The following political calculation can be made: when the members of OIC unite with those of the Arab League and the non-aligned States, they represent the majority in the Council. In one of the first Resolutions regarding the defamation of religion the new Human Rights Council requested - again at the behest of the OIC - that a report be prepared on incitement to racism and religious hatred and on the promotion of tolerance.¹⁰⁵ Not all voted in favour of this Resolution. Twelve countries rejected it because the content of the text did not provide exact definitions for the terms defamation of religion and incitement to racism, and religious hatred,¹⁰⁶ but gave both equal importance. As a result the Resolution requested that Article 20, Paragraph 2, of the International Covenant on Civil and Political Rights must also be applied to the defamation of religions.

b) Chronology of the Reports

Doudou Diene, the Special Rapporteur on the eradication of all forms of racism, received a mandate from the United Nations General Assembly, as decided in December 2005, to report (a Special Report) on the situation of the Arab and

104 Resolution 69/251 dated 15 March 2006.

105 29 June, implemented on 30 June 2006. Resolution 1107 on *Incitement to Racial and Religious Hatred and the Promotion of Tolerance*, introduced by Algeria, Jordan, Pakistan, Morocco and Tunisia. Although not themselves members of the Human Rights Council, Iran, Qatar, Sudan, Oman, Lebanon and Malaysia as observers also supported the proposal.

106 Canada, the Czech Republic, Finland, France, Germany, Japan, the Netherlands, Poland, Romania, Switzerland, Ukraine and the United Kingdom.

Muslim population groups in different parts of the world. The report was drawn up in February 2006 and was publicly introduced on the second anniversary of the Human Rights Council.¹⁰⁷ It was also Diene's task to compile the normal report on the eradication of all forms of racism, which was presented in January 2007 (A/RES/60/251).¹⁰⁸ He should also submit a report requested by the new Human Rights Council on incitement to racist and religious hatred and the promotion of tolerance. To avoid parallel versions, the latter was included in the Report which the Special Rapporteur on Religious Freedom was to provide along the same lines, as had been requested in another General Assembly Resolution in December 2005 (A RES/60/166). This report, to which both Rapporteurs contributed, was presented in September 2006 on the second anniversary of the Human Rights Council.¹⁰⁹

c) Content of the Reports

The reports are quite comprehensive, but nevertheless we will attempt to summarise the main theme, which is the defamation of Islam. What exactly is to be understood by the term defamation of Islam is not clearly formulated in the reports; instead defamation is confused with incitement to religious and racial hatred and seen as a new form of racism, which must be forbidden in the same fashion as anti-Semitic comments.

1. One of the most important consequences of the fight against terrorism was the marginalisation of the anti-racist processes of Durban.
2. Racism is not taken seriously in Western countries; this is particularly clear from the official agendas of many political parties. Nowadays racism hides behind "Criticism of Islam".
3. Islamophobia is a particular form of racism, which has something to do with the cultural feeling of superiority of the West, which reaches as far back as its history. One example for this attitude, but assuredly not the last, is the Danish cartoons.

107 In March 2004, Doudou Diene had already submitted a report on this subject (E/CN.4/2004/18 and Add.1 to 4), in which he had found that "red warning lights were flashing". The 2006 Report on the situation of discrimination against Muslims (E/CN.4/2006/17) is available at:

<http://daccessdds.un.org/doc/UNDOC/GEN/G06/107/33/PDF/G0610733.pdf?OpenElement>

108 HRC/4/19, 12 Januar 2007. http://www.cran.ch/04_PageCentrale/01_Documents/References/Rapport%20general%20Doudou%20Diene%20A%20HRC-4-19_Fr.pdf

109 *Diffamation des religions et incitation à la haine religieuse et raciale comme manifestations contemporaines de racisme, de discrimination raciale, de xénophobie et d'intolérance relative*, A/HRC/2/3. <http://www2.ohchr.org/english/bodies/chr/special/docs/statements/hrc6thsession/A-HRC-6-6Dieneracism.pdf>

“No Mosques on Trento Ground”
North League Party
Poster, Trento, Italy,
August.

Photo: Wikipedia
Commons/Paolo Masso



4. Muslims suffer under this discrimination, which is being progressively legalised.
5. The defamation of Islam, as is currently manifested in the discrimination against Muslim societies, the association of Islam with terrorism and the dissemination of Islamophobic opinion via the media, must be prohibited as a particularly serious form of incitement to religious hatred, completely in accordance with Article 20 of the International Covenant on civil and political rights of 1966:

“1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

This statement is expanded upon in the joint Report of September 2006 and in the Annual Report of January 2007.

In her section, the Rapporteur on Religious Freedom views this problem from a different angle, and this is the view to which Western countries subscribe. Asma Jahangir reminds us that it is often the States themselves which malign and discriminate against their minorities. She cites, in particular, information on the defamation of particular groups by member nations, which has been brought to her attention. This aggression is often directed at groups which are numerically insignificant and therefore more vulnerable. The nations must ensure their Civil Servants (particularly those in Education) show respect to the different religions, because religious animosity practiced by Civil Servants leads to the possibility of serious consequences.

Defamation of religion by non-governmental sources creates an even more serious situation. One must differentiate between pure theological analysis of religious content and the extreme forms of incitement to violence against a religion, which can provoke the most serious forms of religious aggression. Between these two extremes lies a vast array of possibilities of expression on religious themes, which include satire or negative comments. The right to freedom of religion and conscience is first and foremost to protect the individual and, to a certain extent, the collective rights of communities with religious or other convictions. The point of Human Rights Legislation is not religion per se, but it gives men and women the right to enjoy religious freedom. However, this right does not mean anyone has the privilege of a religion immune from all or any analysis, criticism or satire.

Asma Jahangir admits, however, that although critical attitudes may be admissible, they are not always justifiable. Objectionable comments are not a direct contravention of human rights, but can lead to stigmatization of followers of the targeted religion and promote a climate of intolerance. The answer cannot be the promulgation of more laws which curtail the right of freedom of speech. Preferably, measures should be taken to create an atmosphere of tolerance where religions can be practiced without discrimination or stigmatization.

In conclusion, both Rapporteurs suggested that the Human Rights Council should consider whether additional standards need to be created to govern the relationship between freedom of expression, religious freedom and non-discrimination. In particular there should be a general commentary on Article 20 of the International Covenant on Civil and Political Rights. To our knowledge, this commentary has not been written.

3. Resolution of the Human Rights Council of 30th March 2007 (submitted by Pakistan in the name of the Organisation of Islamic Conference)

In view of the differing positions taken in the jointly presented report - one party was in favour of introducing new legislation condemning the "defamation

of Islam” (an amplification of Defamation of Religions) as a form of incitement to religious hatred or discrimination, whereas the other party highlighted the distinctly counter-productive aspects of such an action and gave preference to prevention and to education towards mutual respect within the framework of stringent laws against discrimination and incitement to hatred. The Human Rights Council decided on a new Resolution to combat the Defamation of Religions in March 2007. The Resolution once more takes up the above mentioned topics.¹¹⁰

The Defamation of Religions - as before, the term continues to remain nonspecific - is one of the main reasons for social unrest and leads to human rights violations. According to this Resolution there is an increase in the number of “declarations”, particularly in forums, in which religions, in particular Islam and Muslims, are attacked. Ever more frequently there are instances of negative stereotypes, religious intolerance and discrimination on religious grounds. Subsequent to September 11, the “defamation campaign against religions and the ethnic profiling of religious minorities” has become increasingly fierce. An extremely serious consequence is that the fight against terrorism contributes to the fact that the basic rights and freedoms of target groups are called into question, and they are being excluded both economically and socially. The control exercised over Arab and Muslim population groups by the authorities exacerbates the discrimination.¹¹¹

C. Resistance by Western Countries against “Defamation of Religions”

1. Reaction of Western Nations to the Human Rights Council Resolution A/HRC/4/L.12 of 2007¹¹²

In general, the grounds for the draft Resolution brought by the Pakistani representative on behalf of the OIC appeared to be sensible, despite confusing

110 A/HRC/4/L.12, verbal augmentation. <http://daccessdds.un.org/doc/UNDOC/LTD/G07/121/33/PDF/G0712133.pdf?OpenElement>. This resolution was followed by Resolution A/HRC/4/L.13 (2007) on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. This second resolution was adopted without a vote.

111 The resolution was adopted with 24 votes in favour, 14 against and 9 abstentions. Votes in favour were (24): South Africa, Algeria, Saudi Arabia, Azerbaijan, Bahrain, Bangladesh, Cameroon, China, Cuba, Djibouti, the Russian Federation, Gabon, Indonesia, Jordan, Malaysia, Mali, Mauritius, Morocco, Mexico, Pakistan, the Philippines, Senegal, Sri Lanka and Tunisia. Votes against (14): Germany, Canada, Finland, France, Guatemala, Japan, the Netherlands, Poland, the Republic of Korea, the Czech Republic, Romania, the United Kingdom, Switzerland and Ukraine. Abstentions were (9): Argentina, Brazil, Ecuador, Ghana, India, Nigeria, Peru, Uruguay and Zambia.

112 http://www.aidh.org/ONU_GE/conseilddh/07/resol-religion.htm

the term “defamation of Islam” with anti-Islamic remarks. Tehima Janjua explained that the draft Resolution was nothing new and she would like to have it accepted without a vote. She emphasized that advance consultations and bilateral discussions had been held with the Delegations, requesting their comments. She pointed out that this Resolution concerned the Defamation of Religions, and in particular that of Islam. That this phenomenon exists was unequivocally demonstrated and proved by the Special Rapporteurs. She condemned the fact that in non-Muslim countries Muslims are subject to face recognition controls and denounced this practice as racist and therefore a violation of human rights.

Amongst the delegates who requested permission to speak against the Resolution was the representative from Germany, Maria Siefker-Eberle. She spoke on behalf of the European Union. She reinforced the position of the Union and the determination of its member States to combat the phenomenon of discrimination on religious grounds. She pointed out that religious discrimination is not limited to Islam, but also affects Jews, Christians and Asian religions, as well as people with no religion at all. Doudou Diene had also made this conclusion in his report. She stressed that it is problematical to separate discrimination on religious grounds from other forms of discrimination. Furthermore, she brought to mind the fact that promotion of religious tolerance was already incorporated in the Human Rights Charter and the Universal Declaration of Human Rights. For this reason the term defamation is counter-productive, and it would be better to use wording which kept strictly to the protection of freedom of religion and of conscience. She assured the OIC that the European Union was prepared for dialogue and requested that a vote be taken on the Resolution. The European Union would be voting against it.

Paul Meyer, the Canadian Representative, agreed with the position of Ms Siefker-Eberle. He wanted the Council to start a new initiative to look at the problem of religious intolerance, but in a totally different fashion. This initiative must be transparent and be based on dialogue. He voiced his concern that the Resolution did not mention the right to join a religion. In addition, it must not be reserved for one particular religion only. Finally, Meyer was of the opinion that the link made in the Resolution between discrimination on religious grounds and racism was not clear.

2. Reactions to Report 21/08/2007 by Doudou Diene on “Incidents of defamation of religions and in particular regarding the serious results of Islamophobia on the enjoyment of all rights”

From 2007 onwards it may be seen that the States who rejected the term “Defamation of Religions” stood by their decision. When Doudou Diene tabled his report in August 2007¹¹³, which was followed by the Report of the High Commissioner

113 “Report of the Special Rapporteur on contemporary forms of racism, racial discrimination,

on the same topic on 25th September, the reactions of this group remained the same. Gonçbalvo Sillvestre, the Portuguese representative, on behalf of the European Union declared that the Union found it problematical to place the term defamation on the same level as that of discrimination. He was not prepared to regard criticism of a religion as being on the same level as racism. There was no necessity for specific protection against criticism of any religion within the framework of Human Rights Legislation.¹¹⁴

D. The European Parliament rejects the term “Defamation of Religions” and advocates support for the protection and defence of freedom of opinion

This attitude is also expressed in the resolutions and recommendations of the European Parliamentary Assembly during the same year. In October 2005, immediately after the outbreak of the media arguments regarding the Muhammad cartoons, the European Council commissioned their first report. This report, entitled “Blasphemy, Religious Insults and Incitement to Religious Hatred”, was finally and belatedly tabled in June 2007¹¹⁵ and was supplemented by a (provisional) report of the Venice Commission. The final report was presented in 2008.¹¹⁶ In the meantime the Culture Committee asked the same Rapporteur, the Finn Sinikka Hursainen, to prepare a further report on Freedom of Expression and Respect for Religious Beliefs.

1. Authorised text of the European Parliamentary Assembly

a) Resolution 1510 (June 2006) Freedom of Expression and Respect for Religious Beliefs¹¹⁷

On 28th June 2006 the Parliamentary Assembly passed Resolution 1510 (2006) entitled “Freedom of Expression and Respect for Religious Beliefs”. The text

xenophobia and related intolerance on the manifestation of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights”. A/HRC/6/6 dated 21 August 2007, presented on 14 September 2007 at the 6th Anniversary of the Human Rights Council.

114 “Members of the council who belong to the European Union and other countries have warned against placing the criticism of religion and racism on the same level. In our view, these are two completely different things. Religions require no special protection under the International Human Rights law”.

115 Doc.11296 dated 8 June 2007, “Blasphemy, Religious Insults and Incitement to Religious Hatred”. Report of the Committee on Culture, Science and Education. Rapporteur: Hursainen Sinikka, Finland, Socialist Group.

116 [http://www.venice.coe.int/docs/2008/CDL-AD\(2008\)026-f.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)026-f.pdf)

117 <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/FRes1510.htm>

emphasized that freedom of speech, as well as freedom of opinion, conscience and religion constitute crucial elements of a democratic society. He also emphasized that there is cultural and religious diversity within the member States and added that this diversity should be “a source of mutual enrichment and not of tension”, and should form the basis for open intercultural dialogue, as well as mutual understanding and respect (Paragraph 5).

In view of these and other associated considerations, the Resolution states that an “open discussion on questions of religion and beliefs forms part” of freedom of both conscience and expression in a democratic society. This freedom also applies to opinions that may shock, offend or disturb the State or any other sector of society (subject to Article 10 of the European Human Rights Convention, paragraph 1). The Resolution also states that “attacks on individuals on the grounds of religion or race are to be prosecuted, but blasphemy laws are not to be applied as in this manner the freedom of opinion and conscience are curtailed. The freedom to express thoughts and opinions must be permitted in a democratic society in order to exchange religious and ideological views” (Paragraph 3). It is to be remembered that historically, laws which punish criticism of religious practices and dogmas have often had negative consequences on scientific and social progress (Paragraph 7), whereas “critical dispute” and artistic licence have a long tradition in Europe and are viewed as being positive, even necessary, for individual and collective progress (Paragraph 9). *“Critical dispute, satire, humour and artistic expression should, therefore, enjoy a wider degree of freedom of expression and recourse to exaggeration should not be seen as provocation.”* (Paragraph 9)

Paragraph 11 deals with some of the important principles of justice in the relevant decisions by the European Court of Human Rights. It states “In this regard ... there is little scope for restrictions on political speech or on the debate of questions of public interest; a wider margin of appreciation is generally available when regulating freedom of expression in relation to matters liable to offend intimate personal moral convictions or religion.” It states further “What is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place.”

Paragraph 12 of the Resolution picks up the main theme of the text once again. The freedom of expression protected in Article 10 of the European Human Rights Convention *“should not be further restricted to meet increasing sensitivities of certain religious groups. At the same time the Assembly emphasises that hate speech against any religious group is not compatible with the fundamental rights and freedoms guaranteed by the European Convention on Human Rights and the case law of the European Court of Human Rights”.*

In this Resolution the Parliamentary Assembly of the Council of Europe calls upon member States and players in civil society to “develop a common understanding and

a code of conduct for religious tolerance” (Paragraph 14). It recommends that media professionals and their occupational organisations discuss media ethics with regard to religious beliefs and sensitivities. In addition, it encourages the creation of “press complaints bodies, media ombudspersons or other self-regulatory bodies where such bodies do not yet exist, which should discuss possible remedies for offences to religious persuasions” (Paragraph 15). In addition, the Parliamentary Assembly encourages intercultural and inter-religious dialogue based on universal human rights, involving - on the basis of equality and mutual respect - civil society, as well as the media, with a view to promoting tolerance, trust and mutual understanding (Paragraph 16). The Assembly encourages the various bodies of the Council of Europe to “work actively on the prevention of hate speech directed to different religious and ethnic groups” (Paragraph 17). The Resolution closes with the declaration that the Assembly has resolved to return to this issue (Paragraph 18).

b. Recommendation 1805 on blasphemy, religious insult and hate speech against individuals on the grounds of their religion (29th June 2007)¹¹⁸

Apart from Resolution 1535 on 25th January 2007 regarding the threats to the life and freedom of opinion of journalists, particularly by religious fundamentalism,¹¹⁹ the Parliamentary Assembly passed a new resolution in June 2008 regarding the problem of blasphemy, religious insult and hate speeches on religious grounds. This resolution is oriented

- ▶ on the position taken by the Venice Commission of the Council of Europe in their provisional report of March 2007 on blasphemy and religious insults in the legislation of the individual States. The Report was adopted on 16-17 March 2007.¹²⁰
- ▶ on the Report presented by the Committee on Culture, Science and Education tabled on 8th June 2007 on the same theme.¹²¹

118 <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/FRES1805.htm>

119 <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/FRES1535.htm>

120 [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)006_f.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)006_f.asp) The report is very balanced, in that in paragraph 40 he arrives at the following conclusion: “The Commission recalls at the outset that in a democratic society religious groups must tolerate, as other groups must, critical public statements and debate about their activities, teachings and beliefs, provided that such criticism does not amount to intentional and gratuitous insult and does not constitute incitement to disturb the public peace or to discriminate against adherents of a particular religion.”

121 <http://www.droitdesreligions.net/rddr/europe/conseildeleurope.htm> Rapporteur: Hursainen Sinikka, Finland, Socialist Group, Doc. 11296: 65. At the level of the United Nations, the concept of “defamation of religions” was recently used in a report of the UN High Commissioner for Human Rights (A/HRC/4/50 of 1 March 2007) and a Resolution by the UN Human Rights Council (Resolution 4/9 of 30 March 2007 on combating

Muslim
believers
at “salāt”
(prayer)
towards Mecca
Umayyad
Mosque,
Damascus,
Syria.

Photo: Wikipedia/
Antonio Melina



- ▶ on the Declaration of the Human Rights Commissioner of the Council of Europe on 11th June 2007 on the subject “Do not criminalise critical remarks against religions”.¹²²

The recommendation links these positions together. In her report, Sinikka Hursainen reached the conclusion that in terms of Article 4 of the International Convention on the Elimination of all Forms of Racial Discrimination, participating States were required to eliminate the dissemination of ideas based on racial superiority or racial hatred, and that any incitement to racial discrimination and any violent acts or incitement to violence against any race or group of persons of different skin colour or ethnicity was an offence. However, *religious insult or the defamation of religions according to the norms of the United Nations does not constitute*

defamations of religions). This resolution was appropriately criticised by many human rights and media organisations. Such a concept clearly violates freedom of expression (...). 68. Arguing in favour of freedom of expression, this report should not be understood in any sense as condoning insulting expressions in a religious context. We wish to defend the principle of freedom of expression. We should also wish to uphold such notions as decency and respect for the holding of religious beliefs, and underline the importance of the religious dimension in intercultural dialogue.”

122 Available on the website of the High Commissioner: <http://www.commissioner.coe.int>

*a criminal act (...). In this statement, the Assembly takes the view that in a democratic society only such comments of religious content are punishable which intentionally and seriously disturb public order and incite public violence.*¹²³

To reconfirm this statement, in its Resolution in paragraph 17.2.4 the Parliamentary Assembly calls for the revision of European legislation in order not to “treat blasphemy as an insult to a religion and a criminal act” any longer. They thus responded immediately to the statements of the Secretary General and on the report presented some days earlier by the Legal Committee on the issue of non-criminalization of defamation in general.¹²⁴

II. The Climax of the Debate and the Return to Peace since 2008

A. September 2007 to November 2008: The positions in frontal collision

As if in answer to the attitude of the Council of Europe, as well as the media and Courts in Europe, the initiatives of the OIC at the United Nations against defamation of religions, and the violent reactions thereto, appear to virtually “explode”. The following is a condensed compilation of the events:

- ▶ In September 2007, after Doudou Diene had submitted his report on all forms of defamation of religions, in particular on the serious implications of Islamophobia and the enjoyment of all rights (A/HRC/6/6), on 25th September 2007, the same day on which the High Commissioner presented his report on defamation of religions, the Ambassador for Pakistan, Masood Khan, on behalf of the OIC, proposed an international convention on the defamation of religions.¹²⁵

123 On the same day the Parliamentary Assembly also decided on a recommendation on “State, Religion, Secularity and Human Rights”, calling attention to the underlying principles of “Separation of Church and State” and of neutrality under democracy and the rule of law.
<http://assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc07/FDOC11452.htm>

124 Doc. 11305, 25 June 2007, “Towards Decriminalisation of Defamation”, Report of the Committee on Legal Affairs and Human Rights. Rapporteur: Mr Jaume Bartumeu Cassany, Andorra, Socialist Group.
<http://assembly.coe.int/Mainf.asp?link=/Documents/workingDocs/Doc07/FDOC11305.htm>

125 The OIC eventually dropped this idea when the Majlis al-Sura, the Consultative Assembly of Saudi Arabia and the largest funder of the OIC, pointed out that such a convention would basically mean that non-Islamic religions would enjoy identical protection in Saudi territory.

- ▶ Three days later, the Human Rights Council called for a resolution to amend the International Agreement on the Elimination of all Forms of Racial Discrimination to international norms, so that Islamophobia is classed on a par with anti-Semitism as a special form of incitement to religious hatred.
- ▶ On 10th December 2007, the Secretary General of the OIC, Ekmeleddin Işhanoglu, Professor of History and Islamic culture in Ankara, in his speech at the opening ceremony of the first international conference on Islamophobia, organised by the Union of NGOs of the Islamic World and held in Istanbul¹²⁶, declared that they were willing to prepare a Human Rights Charter especially for the OIC.¹²⁷
- ▶ In February 2008, Doudou Diene, the Special Rapporteur on the elimination of all forms of racism, presented a new report.¹²⁸ The report is fairly balanced, but the concept of defamation of religions is largely identical to the long description of Islamophobia. Resolution A/HRC.7/L.14 of the Human Rights Council of 27 March 2008 on “combating defamation of religions” is by far the longest and sharpest resolution on this subject ever decided upon.¹²⁹ Once again the European Union countries denied their approval because, as stated by their spokesman, the Slovenian Andrej Logar, the concept of defamation of religions is not compatible with human rights and that there was a risk that some governments might deny their minorities freedom, citing this concept.
- ▶ Another point of contention is the surprise adoption of an amendment in March 2008 (29 in favour, 15 against, 3 abstentions) in respect to the mandate of the Rapporteur on Freedom of Expression.¹³⁰ This request was supported by Egypt (on behalf of African countries), Pakistan (on behalf of the OIC) and Palestine (observer on behalf of the Group of Arab States). The aim was to summarize, under Article 20 of the International Covenant on Civil and Political Rights, those cases of abuse of freedom of expression which are to be considered

http://www.gulfnews.com/news/gulf/saudi_arabia/10198648.htm

126 http://www.oic-oci.org/topic_detail.asp?t_id=707

127 “For this reason the General Secretariat of the OIC considered establishing a permanent body to promote human rights in the Member States in accordance with the Cairo Declaration of Human Rights in Islam and to formulate an OIC Human Rights Charter. The OIC also committed itself to encourage their Member States to strengthen their national legislation and regulations to ensure strict respect for human rights.”

128 A/HRC/7/19, <http://daccessdds.un.org/doc/UNDOC/GEN/G08/107/32/PDF/G0810732.pdf?OpenElement>

129 http://ap.ohchr.org/documents/F/HRC/resolutions/A_HRC_RES_7_19.pdf

130 28 March 2008, A/HRC/7/L.24, <http://daccessdds.un.org/doc/UNDOC/LTD/G08/120/37/PDF/G0812037.pdf?OpenElement>

as racial and religious discrimination. The reaction by the *Reporters Without Borders*, the *World Association of Newspapers* and *World Editors Forum* to these changes were extremely critical.¹³¹ Forty press and human rights organisations filed a petition.¹³²

- ▶ Twelve States opposed the amendment, including Canada, which had initiated the resolution when the mandate was established. On behalf of the European Union, Slovenia accused the OIC of distorting the mandate on freedom of expression and introducing provisions that run contrary to its goal. The Rapporteur on Freedom of Expression had, in fact, just submitted a report in which he criticized the dangerous consequences of the media-led denunciation campaign to certain religions, but had also stated that the existing restrictions on incitement to hatred should not be strengthened and that critical views, even where they are questionable or politically incorrect, should not be banned.¹³³

B. The Relative Calm as from February 2008

The “defamation saga”, as it was called by Jeroen Temperman, appears to have reached its heights in March. Since then a number of measures have been taken in Europe, which indicate that the mobilization of the OIC against the discrimination of Muslims and the negative portrayal of the Muslim religion in the media, including cultural disregard by Europe, can no longer be seen as being totally without foundation.

1. The Birth of the Alliance of Civilizations

The Alliance of Civilizations, one of the organisations brought to life by the United Nations, is the first and most direct answer.¹³⁴ In the first instance its effect is of a symbolic nature and is directed at the media. It is commendable that it exists and that it already radiates a certain appealing aura. It serves to provide institutional networks, educational programs for the peaceful coexistence of religions and creates space for dialogue. It was preceded in 2001 by the project “Dialogue of Civilizations”, proposed by the then Iranian President, Mohammad Khatami, which was not carried forward. The Alliance of Civilizations is a European initiative, proceeding from the Council of Europe at the end of 2004. The proposal at the United Nations was

131 <http://www.wan-press.org/article16875.html>

132 <http://www.article19.org/pdfs/press/petition-hrc-french.pdf>

133 Special Report of the Special Rapporteur on Freedom of Expression, Ambeyi Ligabo, 28 February 2008 A/HRC/7/14.

134 <http://www.unaoc.org/>

symbolically introduced by Spain (J. Zapatero), the country with three monotheistic cultures, and Turkey (R. Erdogan) - a secular state that has emerged from a multi-religious empire, governed by a moderate Islamic party and hoping for membership in the European Union.

The formation of the Alliance is due to the desire to improve the relationship “between the West and the Islamic World”, more precisely the situation of Muslim communities in Europe and the fear that their massive rejection in society could drive them to radicalisation. The London bombings and the cartoon controversy have thus somewhat delayed its formation. In April 2007, Ban Ki-Moon appointed none other than Jorge Sampaio, former President of Portugal, as the first Secretary of the Alliance.

A group of eighteen high-ranking personalities have been selected by the Secretariat of the United Nations for the development of an action plan, together with principles on which the Alliance is to be based¹³⁵. The members of the group come from different cultures and three professional categories. In the first category are former well-known political representatives who have made names for themselves through their intellectual abilities and their contribution to cultural development. For instance, Mohammad Khatami, former Director General of UNESCO, Federico Mayor, former French Foreign Minister, Hubert Védrine, former Prime Minister of Senegal, Mustafa Niasse and others.

The second category includes freelance intellectuals or persons who hold no high administrative office: Karen Armstrong, an English writer who writes about religion (to whom we owe several works on this topic, particularly on Islam); the American Islamic expert John Esposito, who leads the centre for Muslim-Christian Understanding at Georgetown University and also publishes the Oxford Encyclopedia of the Islamic World; the Russian Vitaly Naumkin, a professor at the University of Moscow, Chairman of the Center for Strategic and Political Studies and Director of the Centre for Arab Studies at the Institute of Oriental Studies of the Russian Academy of Sciences.

In the third category, authoritative figures in the field of religion are represented, such as Archbishop Desmond Tutu of South Africa and the American Rabbi Arthur Shneier. This group will meet regularly and determine the philosophy of the Alliance. The first major forum of the Alliance of Civilizations took place in January 2008 in Madrid, and the second in April 2009 in Istanbul. The work of the Alliance is still in its infancy and it remains to be seen what kind of reception it will have in Europe and the Islamic countries.

2. European Union Concessions

On the whole, in the years under discussion, the European Union played a major role in the struggle against discrimination, with the subject enjoying political

¹³⁵ <http://www.unaoc.org/content/view/160/197/lang.english/>

priority. In the spring of 2007, Member States had already agreed to the adoption of a Framework Decision on combating racism and xenophobia¹³⁶, which had been under negotiation since 2001. This Framework Decision provides for a very basic harmonization of provisions in criminal law to combat racism and xenophobia within the European Union.

This Framework Decision makes no mention of critical or hostile “statements” about a religion, but it does give particular emphasis to the respect for freedom of expression and to a precise definition of the prohibition to the incitement of hatred. The first report of the European Union Agency for Fundamental Rights (FRA - Fundamental Rights Agency), which has its headquarters in Vienna and was founded on 15th February 2007¹³⁷, also places special emphasis on the fight against racism and various forms of religious intolerance, particularly against Muslims.

The Agency report evaluates the statistical data collected in each member State under the RAXEN National Focus Points (European Information Network on Racism and Xenophobia) and introduces “best practices”. From the report it is clear that racial violence and discriminatory practices are to be found all over the Continent. In the report, the States are urged to abide by legal requirements. In many States neither their own laws nor those framed by the Union are observed.

In the report, States are urged to abide by these laws. Meanwhile, on 28th February 2008, the Council of Europe set the Agency nine priorities for action in the next five years, but primarily: 1. Combating racism and xenophobia; 2. Discrimination on the basis of gender, race or ethnicity, religion or philosophy, a disability, age or sexual orientation and the discrimination of dependents of minorities, as well as all or any combinations of these grounds (multiple discrimination).

In January 2008 there was a second meeting between the Secretary General of the OIC and the European Commissioner for Foreign Affairs, where it was agreed to have a permanent representative of the OIC in Brussels. The Secretary General of the OIC met with the Chairman of the Foreign Affairs Committee of the European Parliament and participated in a parliamentary discussion on the topic of discrimination and intolerance against Muslims in Europe.¹³⁸

136 http://www.eu2007.de/fr/News/Press_Releases/April/0420BMJRassismus.html

137 This agency replaced the European Monitoring Centre on Racism and Xenophobia (EUMC), and its main role since 1998 has been to collect objective, reliable and comparable information on the phenomena of racism, xenophobia and anti-Semitism in Europe. In 2006, the EUMC produced its first, very comprehensive, report on discrimination against Muslims. *Muslims in the European Union: Discrimination and Islamophobia, 2006*. http://1001nights.free.fr/textes/Manifestations_FR.pdf

138 Source: Website of the OIC. http://www.oic-oci.org/topic_detail.asp?t_id=776&x_key=

The 1849 cartoon
“The Naughty
Children”.

The inscriptions read:
“Freedom of the
press”, “freedom
of petition”, “freedom
of assembly”,
“freedom of speech”
and “freedom
of association”.

The map
in the background
bears the headline
“Prussia”.

Photo: Wikipedia Commons



On another level, from 2006 to 2009, the European Commission funded a large-scale research project called REDCo (Religion in Education: A Contribution to Dialogue or a Factor of Conflict in Transforming Societies of European Countries). This comparative European research project examined the perceptions of young people about religion and religious diversity, and what opportunities for dialogue arise from them. The interaction in the classroom and the corresponding reactions of the teacher were also investigated. REDCo is the first scientific educational project on religious diversity financed by the European Commission, for several years stretching from 2006 to 2009. In particular, the project examined in what way and how strongly religion influenced the general and everyday school life of pupils aged 14 to 16. The studies were conducted in eight countries (Germany, England, Spain, Estonia, France, Norway, Netherlands and Russia). The report by REDCo was released in March 2009 and was sent to all institutions of the European Union, the Council of Europe, the United Nations, the Education Ministers of the countries of the European Union, NGOs, religious organisations and universities.¹³⁹

3. Council of Europe Concessions

Although the Parliamentary Assembly of the Council of Europe had taken up a clear position in their resolutions and recommendations on the topic

¹³⁹ http://www.iesr.ephe.sorbonne.fr/docannexe/file/5699/redco_recommandations_politique_publique.pdf

of defamation of religions, they continued to deal with the question of cultural diversity in society throughout the “defamation saga”, for instance at the Third Summit of Heads of State and Government (Warsaw, May 2005) and at the conference for Ministers of Education at Faro (Portugal, October 2005). These were followed by further conferences, such as those on “Dialogue, Tolerance and Education” (Kazan, 22nd to 23rd February 2006) and “Dialogue of Cultures and Intercultural Cooperation” (Nizhny Novgorod, 7th to 8th September 2006). The “Declaration of the Volga Forum”, which was adopted at the last-mentioned meeting, greatly influenced the discussions at the follow-up conference of San Marino (April 2007).

At this meeting, where the Ministers of Education of member States of the Council of Europe came together, the closing session on the project regarding intercultural and interreligious dialogue, which began in 2002, took place. A joint declaration by the Ministers of Education in the countries of the Council of Europe was formulated.¹⁴⁰ Article 8 of the San Marino declaration reads: *“In this perspective, the religious dimension of our cultures should be reflected in an appropriate manner in education systems and public debates, including in the media, in societies respecting freedom of expression as guaranteed by Article 10 of the European Convention for Human Rights”*.

In addition, the Council of Europe and its Directorate General for Culture and Education have commissioned an expert group to develop a cross-cultural manual for use in schools. In this manual, published in 2007, the question of religious diversity is dealt with in detail.¹⁴¹ In addition, the Directorate General for Culture and Education of the Council of Europe held a meeting in April 2008 on the topic of religious education in schools.¹⁴² In total, this has led to the publication of a White Paper on Intercultural Dialogue by the Council of Europe (July 2008). This was actuated in May 2008 by the Foreign Affairs Ministers of the member States of the Council of Europe.¹⁴³

The Venice Commission was the last to present its final report on the relationship between freedom of expression and freedom of religion: Legal Regulations and the

140 *San Marino Final Declaration of the European Conference on “The Religious Dimension of Intercultural Dialogue”*, 23. und 24. April 2007. http://www.coe.int/t/dg4/intercultural/Source/sanmarinofinal_EN.doc

141 *Religious Diversity in Intercultural Education*, A reference Book for Schools, pub. by John Keast, Straßburg, Published for the Council of Europe, 224 p.

142 The Expert Group on Religious Freedom of the OSCE-ODIHR has also published a guide on the subject: *Toledo Guiding Principles on Teaching About Religions and Beliefs in Public Schools*, 2007, 127 p.

143 http://www.coe.int/t/dg4/intercultural/Source/White%20Paper_final_revised_Ef.pdf

Prohibition of Blasphemy, Religious Insults and Incitement to Religious Hatred.¹⁴⁴ States are advised to base their policies on the rules of morality and “good behaviour” when balancing religious sensibilities against freedom of expression.

The Parliamentary Assembly of the Council adopted a recommendation on 15th April 2008, entitled “*European Muslim Communities Confronted with Extremism*”. It deals in more detail about the specific situation of Muslim communities on the continent.¹⁴⁵

This recommendation was prepared by a Preparatory Commission setting out its specific objectives.¹⁴⁶ It was intended to help Muslims in Europe to condemn and stay away from radicalism. Muslim migrants should be supported so that they do not slide into poverty with its resultant discrimination. It should be acknowledged that the phenomenon of Islamophobia exists. The proposal is interesting: the report insists that European countries, in cooperation with the media, should “create a climate in which all religions, without any distinction, as well as no religion at all are respected” and to develop “ethical guidelines” which make it possible to combat Islamophobia in the media. In its recommendation, the Parliamentary Assembly picks up from the report the idea that a “positive image” of Islam and Muslims needs to be drawn and that intercultural dialogue, as well as the concept of pluralism, should be promoted through mutual recognition. In paragraph 5 of the recommendation, the Parliamentary Assembly, based on this report, acknowledges the phenomenon of Islamophobia and emphasizes the need to end it.

4. Adjournment of the proceedings at the United Nations

Apparently, by 2009 the situation had settled down to some degree because the OIC was prepared to remove the topic of Defamation of Religions and of Islam from the draft of its final declaration for the subsequent Conference on Racism (Geneva, April 2009). This was one of the conditions for the participation of the European Union in the Conference. Canada had already announced on 23rd June 2008 that it would not attend the Conference for the same reason.

In a special communication in July 2008 entitled “Elimination of all Forms of Religious Intolerance”, the Secretary General of the United Nations had already introduced the report on religious freedom by Special Rapporteur, Asma Jahangir, at the 63rd Session of the General Assembly. In this report, commissioned

144 17 - 18 October 2008, 20 p. [http://www.venice.coe.int/docs/2008/CDL-AD\(2008\)026_EN.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)026_EN.pdf)

145 <http://assembly.coe.int/mainf.asp?/Link=/documents/adoptedtext/ta08/fres1605.htm>

146 Doc. 11540. 27 March 2008: *Report of the Political Affairs Committee*, Rapporteur João Bosco Mota Amaral, Portugal, Group of European People’s Party (Christian Democrats).

by Resolution A/62/157, the terms “defamation of religions” and “defamation of Islam” are carefully avoided (A/63/161).

In Autumn 2008 the Human Rights organisations dealt extensively with the issue of “defamation of religions” before the last two Resolutions were put to the vote (in the General Assembly and the Human Rights Council) in December 2008 and March 2009. *UN Watch*, the *Becket Fund for Religious Liberty* and 180 other NGOs urgently called on the States to postpone the vote on the resolutions. They warned the United Nations against legitimizing laws against blasphemy through which freedom of religion, opinion and the press would be curtailed and dissidents and religious minorities condemned to silence. The petition of these NGOs was also signed by the American Republican Congressman Trent Franks, one of the Chairmen of the *International Religious Freedom Caucus* in Congress:

“The concept of defamation of religions was represented as a protection for religious practice and tolerance, but in reality it paves the way to intolerance. It gives religious extremists and repressive governments the right to suppress any criticism of the prevailing religion. In many countries that support this concept, defamation, slander and defamation of Islam and blasphemy are punishable offences.

In the end, the penultimate and very long General Assembly resolution on “defamation of religions” was a rather positive surprise: the title under which it was published was both moderate and legally more tangible: “Combating Defamation of Religions”.¹⁴⁷ This resolution contains many extremely conciliatory paragraphs, in contrast to the previously acrimonious statements dealing with this subject, and at the same time calls to mind the protective framework of freedom of expression.

It reads: *“Taking note of the reports of the Special Rapporteur on contemporary forms ostracism, racial discrimination, xenophobia and related intolerance submitted to the Human Rights Council at its fourth and sixth sessions,⁸ which draw attention to the serious nature of the defamation of all religions, and reiterating the call of the*

Special Rapporteur to all States to wage a systematic campaign against incitement to racial and religious hatred by maintaining a careful balance between the defence of secularism and respect for freedom of religion and by acknowledging and respecting the complementarity of all the freedoms embodied in internationally agreed human rights instruments, including the International Covenant on Civil and Political Rights”.

The resolution following on after the above resolution of the Human Rights Council, however, still bears the title “Defamation of Religions”,¹⁴⁸ but was not

147 General Assembly Resolution, adopted on the basis of the Report of the Third Committee (A/63/430/Add.2), A/63/171, 21 December 2008. <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?reldoc=v&docid=49d60a322>

148 A/HRC/10/L.2/Rev.1; a press release on the subject can be found at: http://www.aidh.org/ONU_GE/conseilddh/09/10-resol-diff_relig.htm

adopted with such consensus as was the former. The resolution was adopted by the Council, but for the first time traditional voting blocks began to crumble: there were 23 votes in favour: the Muslim countries, China, Russia, Cuba, South Africa, Bolivia and Nicaragua, 11 against: the countries of the European Union, Switzerland, Canada and Chile, and significantly there were 13 abstentions, including India, Japan, Korea and Argentina.

Conclusion

The mobilisation of the OIC to the phenomenon of Islamophobia continues, despite the official signals of reassurance. The Islamophobic incidents in Europe do not seem to be abating. The Institute for Monitoring Islamophobia, sponsored by the OIC, presented its second report in 2009,¹⁴⁹ and following the murder of a young, veiled Egyptian woman in Dresden by the man she had sued for libel, the Union of Islamic Organisations formed a brand new organisation in July 2009 called the “Euro-Islamic Centre on Islamophobia” and also set up a new website.

And finally, on 4th April the former Danish Prime Minister Rasmussen was called to serve as the head of NATO, based on a statement by the new American President, Obama. In this statement, he personally “guaranteed” that a number of obligations to the Muslim world would be kept. The Turkish Prime Minister, Tayyip Erdogan Regip, protested against the appointment of Rasmussen because he had supported the Danish journal which had published the Muhammad cartoons in 2005. On the eve of the opening of the second Forum of the Alliance of Civilizations in Istanbul on 6th April 2009, the Turkish press and journalists around the world waited tensely to see how Rasmussen would react. Although he offered no appropriate apology, he did state that as the Secretary General of NATO “I will pay close attention to the religious and cultural sensibilities of the different communities (...) our dialogue with the Muslim world and our relations will progress further.”

As we can see, the tensions are still far from settled. However, after this long overview of the history of “defamation of Islam”, a topic which has caused mobilisation and reaction amongst international and European institutions in recent years, we can conclude that this initially conflict-prone back and forth has produced positive results. It clarified the legal understanding of the terms defamation, discrimination and racism. The concept of defamation of religions has been found to be inappropriate and incompatible with the philosophy of human rights, but the uneasiness this expresses has been noted.

149 http://www.oic-un.org/document_report/Islamophobia_rep_May_23_25_2009.pdf

This conflict made clear that attacks on religious beliefs in democratic systems are of necessity relatively significant, but it has also been sought to clarify precisely when these attacks turn into incitement to hatred and thereby become liable to prosecution. A balance has been sought and States have been urged to give priority to a policy of non-discrimination, the combating of racism and the creation of pluralistic societies. To this end, a positive portrayal of the different religions in Europe is necessary, together with making understood the value of a multi-cultural society at school level.

RELIGIOUS DEFAMATION, STIGMATIZATION AND SOCIAL NORMS

When the complexity of society increasingly draws it into the sights of European law

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To a greater or lesser degree, religious groups of all types are victims of defamation. This aspect of law in relation to society is seldom discussed. As soon as a religious organisation is suspected of practices incompatible with either the law, morality or an existing tradition, it becomes a target for defamation. Despite several rulings by the European Court of Human Rights, insults to religious groups continue. France has distinguished itself in this respect. Now, European case law has established a new framework within which the laws of the States must operate. In this article we want to show that this is a development which is better suited to social evolution. To this end, we will call to mind recent case law to clarify the impact this has had on the legal understanding of defamation. Thereafter we will point out how the position of the European Court of Human Rights on stigmatization can also be understood from a sociological aspect. This leads on to the conclusion that the European Court of Human Rights opposes the simplistic notion of "normality", which subjects religious groups to stigmatization, with defamation being one of its manifestations.

French law and more recent rulings of the European Court of Human Rights

The peculiarities of French law

Under French law, defamation is considered a criminal offence, as defined in Article 29, Paragraph 1, of the law on the Freedom of the Press from 29th July 1881. Defamation is defined as "any allegation or imputation of fact striking a blow at the honour or the consideration of a person or a body to which that fact

is imputed. The immediate publication or further dissemination of such allegations or accusations is punishable, even if only expressed in the form of presumption, or they are directed at persons or entities not explicitly named, but whose identity can easily be deducted from the written or printed statements, opinion and threats used on the posters or placards". Culpability of intent was adopted (law of 29th July 1881, Article 35, *bis*).

Responsibility lies with the author or disseminator of allegedly defamatory statements to prove that he acted in good faith. It must be proved (a) that the publisher is in possession of tangible evidence supporting his statements, which caused him to believe in the facts published; (b) that he did not wish to harm, but to inform; (c) that any harm, i.e. any impairment of the reputation of the defamed group, was not unreasonable; and (d) that the publisher has taken steps to prevent any defamation. In view of these legal criteria, it is dealing here with the type of defamation that deliberately and negatively influences the reputation of a religious group or practice.

Recent rulings by the European Court of Human Rights

This long-standing legal framework was amended by the decision of the European Court of Human Rights in the case of *Paturel* on 22nd December 2005. In his book *Sectes, religions et libertés publiques*, Christian Paturel sharply questions the UNADFI (Union Nationale des Associations de Défense des Familles et de l'Individu Victimes de Sectes), a French association which is dedicated to the fight of combating sects. The French judges had relied upon the conventional criteria of defamation. The European Court of Human Rights, however, did not concur with the conclusions drawn by the French courts. It pointed out that the French judges had failed to take into account documents submitted by the author to justify the statements made in the book in question.

The French courts held that the plaintiff was a member of an organisation classified by the UNADFI as a sect and, as such, was not impartial but cherished a personal animosity towards the UNADFI. As far as the European Court of Human Rights is concerned, Paturel's book forms part of a public debate which is based purely on evaluation. According to the courts, in such a case there is no compelling need for facts to be scrupulously verified. "The Court therefore refutes the argument that certain defamatory criteria in certain contexts are inappropriate."¹⁵⁰ In other words, the Court restored the balance of power in the debate on sects, where

150 „Sectes, liberté de religion et liberté d'expression: l'arrêt Paturel du 22 décembre 2005 », in : Paul Tavernier (Pub.) : *La France et la Cour européenne des droits de l'homme. La jurisprudence en 2005*, Brussels, p. 131-140. See also : Patrice Rolland : *La critique, l'outrage et le blasphème*, Dalloz 2005, No. 20, p. 1326.

Man wearing
Yellow Star:
According to a police
regulation of 1941,
all Jews living in
Nazi Germany and
the areas occupied
by the Nazis, were
compelled to wear
the „Star of David“,
for immediate
identification.

*Photo: Wikipedia /
German Federal Archives*



different values stand in opposition to each other and once again do battle, and where the primary concern is not the objective presentation of facts.

This decision by the European Court of Human Rights has a direct impact on the legal understanding of the concept of defamation and its long history. In France, the concept of defamation in the context of freedom of the press is defined by law, but the new rulings have brought about uncertainty in this

context. For example, Patrice Rolland asks whether citizens discussing a public issue may be required to adhere to the same requirements as do people who deal professionally with the dissemination of information. In the case of Paturel, the courts highlighted the fact that the investigations of the author are not “based on existing facts” and therefore belong in the context of a public debate which is open to all.

The European Court of Human Rights attaches particular importance to the concept of public debate because it finds that this is the correct framework within which to determine whether any defamation exists. According to the decision of the Court, this constitutes a case of public debate: firstly, because it is about an issue already in the “public arena” and secondly, because the physical or juristic entity is active in the public area. It may also concern associations that are active in areas of public interest, or a politician who, as opposed to a private individual, must be conscious of the fact that his actions and gestures are inevitably subject to public scrutiny by both journalists and the public at large.¹⁵¹

However, an appeal to the concept of public debate may not lead to excesses. In its decision of 31st January 2006 in the case of *Giniewski versus France*, which concerned statements denying the murder of the Jews, the Court points out that the “gravity of the facts” creates the limits. For this reason the European Court reiterates that there are certain “clearly proven historical facts” which may not be called into question. In its ruling in the case of *Garaudy* of 24th June 2003, the Court had already found that “the denial of crimes against humanity is one of the harshest forms of racial defamation against the Jews and is to be viewed as incitement of hatred towards them”. The Court also acknowledges that tensions can arise because of insults and the right to exaggeration, particularly when it concerns religious cartoons coming from journalists. The Court is also extremely concerned to preserve the diversity of opinion in a democratic society, including that in the religious sphere. This was the gist of the decision of the European Court of Human Rights in the case of *Aydin Tatlav versus Turkey*.

This brief, but not comprehensive, overview of the judgments made by the European Court of Human Rights on the concept of defamation shows that further development has taken place. It no longer concerns the simple verification of well-known criteria. Public debate, common interest, freedom of expression, pluralism or making qualitative judgments make the definition of defamation ever more difficult. This is particularly true in the religious sphere, where the concept of defamation encounters the right of exaggeration. However, the increasing complexity of European law should not result in the observer losing sight of the dark blot of stigmatization. Current case law shows that judges are considerably

¹⁵¹ Patrice Rolland: *op. cit.*, 2006, S. 133, 134.

more sensitive to finding out whether one person who defames another also combines it with the intention of stigmatizing them socially. It is thus of particular importance to define precisely what is meant by stigmatization. Is it possible that the conclusions reached by sociology on deviant behaviour could provide an explanation as to why the field of religion has become the subject of defamation, despite the marked vigilance shown by the judges?

Social stigmatization and defamation

For the sociologist it is important that first of all the social mechanism of defamation is understood, before turning to the legal definition. In other words, one cannot evaluate the new judgments made by the European Court of Human Rights in isolation from the social constraints which determine when there has been defamation in a legal sense.

Before defamation was recognised as a legal act, it was primarily a social phenomenon. It is a form of compulsion that is applied to a group. It consists of an individual or group being socially stigmatized with the purpose or aim of exclusion. In his classic work *Stigma. Notes on the Management of Spoiled Identity*,¹⁵² Irving Goffman divides stigma into the following three categories: (a) In the first is physical infirmity (deformation). (b) In the second are character flaws (lack of willpower, obsession, harshness, dishonesty, etc. in a person known to belong to a particular group in society who, on the basis of stereotyping such as drug abuse, homosexuality, unemployment, occupies a very weak position). (c) The last category, which has direct bearing on our theme, includes tribal stigma. Here it concerns membership of a race, nationality or religion that can be passed down from one generation to the next and affects all family members equally¹⁵³. But one should not be fooled. Although there are different forms of stigma, the objective of stigmatization is always to distinguish the normal from the abnormal.

In the preface to his work, Goffman had already stated that stigma characterizes the *situation of an individual* and, over and above this, also that of a group *which has been disqualified for some reason or has not been accepted fully by society*. For Goffman

152 Erving Goffman: *Stigma. Notes on the Management of Spoiled Identity*, Chicago 1963; Erving Goffman: *Stigma. Notes on the Management of Spoiled Identity*, Chicago 1963; the pages given in this article refer to the French translation: *Stigmaté. Les usages des handicapés*, Paris 1963, (the work was published in German under the title *Über Techniken der Bewältigung beschädigter Identität*, Frankfurt a.M.).

153 Erving Goffman, op. cit., p. 14.

this disqualification has a moral effect because, in his view, it goes without saying that we, those who are by definition “normal”, believe that a person with a stigma is not necessarily to be counted as being part of the people. In addition, the social groups that are most vulnerable to defamation are inevitably those who intentionally withdraw from social norms. For this reason the *normal* stigmatize all those who appear to have collectively decided to refuse to submit to the social order. They are the ones who seem to despise the possibilities of treading the paths that will open up society to them; they are completely blatant in their lack of respect towards their superiors; they are without shame; they are the shipwrecked in a society whose overtures they reject.¹⁵⁴

With his observation, Goffman advocates a position which is the exact opposite of French legal logic. Traditionally, the term defamation which was in effect prior to recent rulings of the European Court of Human Rights applied to those who had the express intention of damaging the reputation of a group or individual. Paradoxically, those who are accused of consciously withdrawing from the established social framework are the ones affected by stigmatization. Stigmatization in society is based on the assumption that those who are defamed deliberately intend to upset the social balance. This is the exact opposite of the legal logic, according to which the negative intentions originate with the instigators of the defamation. If, on the other hand, intentional deviation is ascribed to the one being stigmatized, this would be sufficient to justify defamation in a social context.

With the verdict in the case of *Paturel*, the European Court of Human Rights rejects the interpretation that we must solely seek for and respond to the conscious negative intention. Most particularly, when someone commits to a debate on the issue of values, they have the right to express themselves fully. What blame is being laid at the door of the defamed? It is his conscious choice to break away from social norms, often showing very little restraint. This very deliberate decision, which questions the standards of society, is the problem. One should not view a group or an individual as being disparaging just because he or she takes a different view of the social norms and defends this position during a debate. In this sense, the European Court of Human Rights does not see itself as an arbitrator in disputes, but as a guarantor that these debates are properly carried out.

However, not all groups which deviate from the norm become victims of defamation. Here Goffman makes a distinction. On the one side there are the “quietly marginal” who may live atypically, but who do not call into question the norms and safeguards of society. However, defamed groups and practices are, by their very existence, a reproof to the behaviour and beliefs of the majority. It is easier to stigmatize such an organisation than to investigate the questions they

154 *Ibid.*, p. 167.

raise and to check these for validity. The identity of the defamed group represents a challenge, especially when these groups take their distinctiveness seriously, are vocal about it, and resist the accepted norms of the dominant majority, even when this normally represents no danger of disturbing the peace.¹⁵⁵

Goffman's approach is that stigmatization and one of its consequences, namely that of defamation, is based on a comprehensive understanding of the concept of *normality*. The stigmatization is intended to indicate that those defamed are not normal. In this respect Goffman's analysis, as the author himself admits, is very similar to studies on deviant behaviour. The stigma would then be nothing other than the negative labelling of groups or individuals who are regarded as deviants. But first of all there must be consensus on what is understood as *normality*.¹⁵⁶

Stigmatization, defamation and normality

In 1963, which was also the year of publication of Goodman's work, his colleague Howard S. Becker published a study on deviance and normality. This book, *Outsiders. Studies in the Sociology of Deviance*, has also become a classic. Becker, like Goffman, emerged from the famous Chicago school and shares with him the view that one must examine the groups and individuals with deviant behaviour in order to indirectly understand normality. One approaches the concept of normality via a detour, a mirror image, so to speak. Becker employs the methods of ethnography. He concerns himself with the experiences of the marginal groups he examined in the *Outsiders*. This perspective allows him to view the concept of normality from three sides.

At the most basic level, deviation is essentially a matter of statistics: a deviation is something too far removed from the norm.¹⁵⁷ The norm would therefore be those practices found most often in society. For Becker this definition does not stand up to scrutiny, because not all practices are stigmatized or defamed, just because they are practiced by minorities.

There is a second, more common view, which is an analogy of deviation from the norm in medical terms. In this view, the deviant behaviour is something

155 This is dealt with in depth in: Régis Dericquebourg: „Stigmates, préjugés, discrimination dans une perspective psychosociale“, in: *Bulletin du CESERE*, No. 9, 1988-1989, published in 1990.

156 In this regard, see also Régis Dericquebourg, op. cit.

157 Howard S. Becker: *Outsiders. Studies in the Sociology of Deviance*, London 1963: the sections quoted are from the French translation *Outsiders. Etudes de sociologie de la déviance*, Paris 1985, p. 28, (German: *Außenseiter. Zur Soziologie abweichenden Verhaltens*).

A Jewish boy is considered to be an adult when he reaches his 13th birthday. The occasion is marked by him becoming a Bar mitzvah (son of the commandments).

From now he is allowed to exercise certain functions in the synagogue, such as, e.g., reading from the Torah.

Bar Mitzvah Celebration in Jerusalem, Israel.

Photo: churchphoto.de
A. D. Gungadoo



inherently pathological; it is due to a “disease”.¹⁵⁸ Those people labelled as deviant are, just as in pathology, carriers of disease-causing pathogens, or practices, which must be combated. These are ostensibly the cause of disturbances in the functioning of society. In this case, the objective of the stigmatization of religious groups and practices is to push that which is religious into the area of the abnormal, the undesirable and the pathological; in short, into the area of deviation. The treatment of religious groups as well as French political practices can be traced back to this point of view.

This is clearly illustrated by the fight against sectarian behaviour. Jean Baubérot reminds us that the State has the right to guide religious expression. He points out that the democratic rules of play require that there are advocates

158 Ibid., p. 29.

both for and against religion. For Jean Baubérot the anomaly in France, however, has resulted in the State taking sides and supporting anti-religious behaviour. This upsets the associated secular balance and removes the right of expectation that the State maintains the equilibrium. This decision is most certainly due to the fact that the State considers religious devotion, and in particular the current predominant religious fervour of minorities, as pathological.¹⁵⁹ The machinations of the French MP Brard, who was condemned for his comments in connection with sects, is clear proof of this view. In France the general understanding is that the fight against sectarian non-conformity is a social cleansing campaign against certain groups and religious organisations.

And, finally, one understands failure to observe social norms as deviant behaviour. In this instance defamation is a social sanction against a group that has been classified as non-conforming. This approach forces one to view the deviant, stigmatized and defamed group as an area in which rationally behaving actors have come together. They have chosen a way of life and decided on a set of beliefs and practices which they consider as being better than that of the global society. It is therefore a rejection of the statistical norms. It should be noted that this decision, contrary to the idea of pathology described by Becker, is not seen as a threat to the rest of society. In this sense, deviation *does not* consist of the manner in which a single individual acts. Instead, it arises in that *outsiders* apply certain norms and sanctions to “rule-breakers”.¹⁶⁰ If we subscribe to Becker’s further consideration, then religious defamation would merely be the penalty placed upon a tradition, religious practice or group, which is considered to be too far removed from “normal” expectations.

The stigmatization and defamation which might possibly follow, are the result of an understanding of normality in which the three aspects mentioned by Becker all come together. Religious groups, traditions and practices are sometimes particularly vulnerable in this respect. This is pointed out by Jean Paul Willaime in his *Debate on Cults*, only expressed differently.¹⁶¹ He clarifies that according to the conventional notion of society, the term “sect” serves to attach a derogatory label to the religions of others as well as to those who think differently. He adds that a religious group could be labelled a cult if it is unknown or little is known about it, when only a small minority belong to the group, when they make demands on their members, when they follow a charismatic personality of their own and they isolate themselves from

159 Jean Baubérot: *L'intégrisme républicain contre la laïcité*, l'Aube 2006. See also : Ders. : *Laïcité 1905-2005, entre passion et raison*, Paris, Le Seuil 2004.

160 Erving Goffman: op. cit., p. 32, 33.

161 Jean Paul Willaime: « Les définitions sociologiques de la secte », in : Francis Messner : *Les sectes et le droit en France*, Paris 1999, PUF, p. 21-46.

the surrounding community and/or they proselytize. When one or more of these criteria apply, it often justifies the label “cult”. Accordingly, religious practices that are considered “abnormal” are easier to defame because they are not in accordance with the expectations of the majority. This is one of the delusive results of social norms.

Let us not forget that social norms are always linked to a social environment. We rely on them in all our social relations and they provide us with our code of conduct. However, these rules mean that predetermined notions must measure up to reality. And there is a gap between the fixed grid and the action being ridiculed. The result is a virtual reality, created by the observer, which he then imputes to the observed. It is a virtual reality that is, to a greater or lesser degree, far removed from any measurable attributes, and thus also from the real identity.

As far as Goffman is concerned, stigma is a state of tension, an incongruity in the social identity as well as between the virtual and real identities. Viewed in this light, defamation can be understood as a mediatised change in the image of a group, practice, tradition or individual on the basis of their religious beliefs and based solely on a virtual identity. The true identity of the defamed is suppressed by the virtual reality, which has been blindly cobbled together by those who consider themselves as being normal. This, therefore, deals with a particularly brutal act on the part of society. For Becker there is the additional problem that those groups who are affected by defamation have consciously taken on a real identity, which is contrary to the expectations of society. There can be absolutely no doubt as to the identity of the group; it is quite simply not accepted.

Conclusion

From rulings made by the courts it can be seen that the judges, even when they do not deal with the meaning of normality in their argumentation, do not want to consign that which is religious, but does not conform faithfully to the social norm, into the category of obsession.

If the Court goes beyond the classical criteria used up to the present for the concept of defamation, if it includes the concept of public debate and grants the defamed the right to participate in debates on his set of values, it will still ultimately be found that a concept of normality based on statistics or pathology does not exist. Without explicitly engaging with it, the European Court of Human Rights takes up the sociological analysis and appears to be aware that defamation is an extension of stigmatization. To express this in the terms of social psychology, the European Court of Human Rights has taken up the fight against psycho-oncogenesis. Psycho-oncogenesis is understood as a tendency to brand vulnerable groups as being the cause of social ills. It is for this reason that time and time again marginalized groups, e.g. foreigners, religious minorities or otherwise the Jews, are

stigmatized as being the cause of evil whenever there are wide-spread epidemics, in times of crisis or at the occurrence of unexplained phenomena. On the basis of undifferentiated delusions, psycho-oncogenesis identifies a common enemy and in doing so often finds general acceptance. By keeping watch to prevent religious groups from becoming victims of defamation, and by refusing to condone social norms which promote stigmatization, the European Court of Human Rights becomes an instrument to counteract defamation on a juristic level.

One should never forget that Court rulings are not generally made public. One usually only hears about a case of defamation and takes note of it. Even when there is an occasional verdict in favour of a religious group, it only happens sporadically and far from the media circus which prevailed at the time when the defamation or stigmatization took place. Public opinion continues to give credence to the old saying "Where there's smoke, there's fire", and this ensures that religious groups are defamed in spite of Court rulings. This will continue to be the case in the future and it is this long-standing state of affairs that makes the defamation of religious groups into something "normal" in the eyes of many people. This causes us to emphasize how important the Court rulings in favour of religious groups are, including their publication in the media, in maintaining balance in the playing fields of democracy. As far as France is concerned, the dominant public understanding of secularism as a space free from religion contributes nothing at all to the fight against religious defamation, quite apart from the fact that this concept is not in keeping with historical or legal reality.

NEW UN SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF



In June 2010, the 14th regular session of the Human Rights Council extended the mandate of the United Nations Special Rapporteur for Freedom of Religion or Belief for another period of three years and appointed a new Rapporteur – Heiner Bielefeldt.

The new Special Rapporteur on Freedom of Religion or Belief, Professor Dr. Heiner Bielefeldt, met for the first time with representatives of non-governmental organizations (NGOs) accredited at the United Nations in Geneva on Thursday, September 23, 2010. Dr. Bielefeldt presented his vision and plans for supporting the extended mandate, commented on issues and concerns raised by the NGOs and answered several questions. His broad knowledge, intellectual brilliancy, realistic approach and previous experience give excellent prospect for the success of the mandate.

The 52-year-old German Catholic theologian, philosopher and historian also actively serves as the chair on the human rights committee at Friedrich-Alexander University in Erlangen-Nuremberg. From 2003 to 2009, Bielefeldt served as director of the German Institute for Human Rights in Berlin. Heavily involved in interfaith dialogue, he is currently a trustee of both the Muslim Academy in Germany and the Christian-Islamic society. Dr. Bielefeldt's research interests include various interdisciplinary facets of human rights theory and practice with a focus on freedom of religion or belief.

The UN Special Rapporteur for Freedom of Religion or Belief is mandated:

- to promote the adoption of measures at the national, regional and international levels to ensure the promotion and protection of the right to freedom of religion or belief;
- to identify existing and emerging obstacles to the enjoyment of the right to freedom of religion or belief and present recommendations on ways and means to overcome such obstacles;

- to continue her/his efforts to examine incidents and governmental actions that are incompatible with the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and to recommend remedial measures as appropriate;
- to continue to apply a gender perspective, inter alia, through the identification of gender-specific abuses, in the reporting process, in collecting information and in making recommendations.

In the discharge of the mandate, the Special Rapporteur:

- transmits urgent appeals and letters of allegation to States with regard to cases that represent infringements of or impediments to the exercise of the right to freedom of religion and belief.
- undertakes fact-finding visits to various countries.
- submits annual reports to the Human Rights Council and the General Assembly on the activities, trends and methods of his/her work.

Bielefeldt replaced the previous Special Rapporteur in August 2010. The previous Special Rapporteur was Mrs. Asma Jahangir, a Pakistani lawyer, who had served in this capacity since 2004.

STATEMENT OF CONCERN ABOUT PROPOSALS REGARDING DEFAMATION OF RELIGIONS

*Board of Experts of the International Religious Liberty Association
Silver Spring, MD/Washington, DC, September 3, 2009*

Introduction

The issue of defamation of religions¹ has been of great concern to those involved with the protection of human rights and especially religious freedom. Religious individuals and groups around the world find themselves the subject of hostile accusations and insults, which at times precede intimidation and violent attacks.

Recognizing the link between certain forms of hateful expression and harmful actions, international, regional and national institutions, as well as non-governmental organizations, have sought to address the real concerns that such expression can cause. These have been addressed in a number of ways, from increased prosecution of those that target religious individuals and groups, to the passage of special laws increasing the penalties for crimes motivated by religious animus.

Another suggested approach is the regulation and prohibition of what is often called “defamation of religions.” The experts recognize that situations exist when expression constitutes incitement to discrimination or violence. Such speech may be limited according to existing international human rights law.² But the experts are concerned that some proposals addressing this issue will not solve the underlying problem of crimes against person or property motivated by religious hatred, but will instead increase religious intolerance and infringe the equally fundamental human rights of freedom of expression and religion, which allow for the critique of religious beliefs and practices.

Examples of Problematic Proposals

Particularly problematic have been resolutions and other documents approved or being considered in the United Nations settings that call upon States to take resolute action to prohibit the dissemination of ideas and material aimed at any religion or its followers that constitute incitement to racial and religious hatred, hostility, or violence.³

Reasons for Concern

The experts find themselves in agreement with certain *goals* of many of these proposals, to prevent religiously based discrimination and violence. However,

the proposed *methods* are troubling for several reasons, and will likely exacerbate rather than resolve tensions between religions in society and the world.

The experts are concerned that the proposed restrictions on the defamation of religions:

will interfere with the core religious right of evaluating, comparing, and exchanging religious beliefs and practices. This right is fundamental for developing a free and informed conscientious choice regarding matters of religion and belief. This would not only limit media coverage and advocacy, but also scholarship concerning religious issues and the teaching or honest debate of competing religious philosophies.

will interfere with the freedom of speech and expression. Regulating speech beyond existing international human rights law is a troubling enterprise at best, and often produces results opposite from those intended. Defamation of religions initiatives may even threaten the use of their own scriptures or other sacred texts by some religious traditions. The experts believe that the right to religion and belief, and the right to free expression, are mutually interconnected. We agree that “the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or belief that is free from criticism or ridicule.”⁴

can be used by dominant groups to repress the rights of vulnerable individuals and groups. Dominant groups in society will generally have greater access to and influence with the courts and state agencies that enforce these laws. It will often be the dominant groups’ interests that are best represented, while the less powerful may lack effective access to justice, and may even fear to assert their rights. Such laws may be especially inhospitable to local or indigenous religions or to newly introduced faiths or beliefs.

may also impair the rights of all religious groups by strengthening the power of the State to interfere in religious matters. All too often defamation of religions initiatives can be used by States to control, manage, or marginalize any or all religious groups. They can open a door for governments to exploit religious groups for political purposes.

will suffer from vagueness and a lack of enforceable standards. The experts note the lack of any universally acceptable definition of defamation of religions. Further, we fear that any definition will be vague, unduly subjective, and susceptible to varying interpretations and applications. This will all too often result in arbitrary state enforcement and preference for dominant religions.

Recommendations:

The IRLA Group of Experts makes the following recommendations:

Proposals for laws relating to the defamation of religions or analogous concepts should be rejected. The experts believe that current national, regional,

and international laws and standards are sufficient to protect against speech that results in discrimination or violence.

Where laws pertaining to defamation of religions have already been passed, their implementation should be closely monitored to gain a better understanding of their impact, problems in their application, their effectiveness in deterring violence and discrimination, and any counterproductive consequences.

Laws pertaining to incitement to violence or discrimination against religions and beliefs should contain concrete and measurable standards. Further, they should assure that all religious groups are protected, and be neutral among religions and beliefs, both in their drafting and in their application.

The United Nations should continue to support dialogue on this issue with as wide a group of interested parties as possible, including representatives from States, religious bodies, non-governmental organizations and other interested parties. Specific methodologies should be developed to bridge differing cultural approaches to religious disagreements and insensitivities.

Government, educational, civic, media, religious and other leaders should promote and encourage via education and other means, understanding, tolerance, respect, and friendship. They should communicate a message of ethical responsibility, reminding all people that not everything that can lawfully be said should be said. We endorse the view of the Special Rapporteur on Freedom of Religion or Belief, that we should “focus on creating a tolerant and inclusive environment in which all religions and beliefs may be exercised free of discrimination or stigmatization, within reasonable limits. The situation will not be remedied by preventing ideas about religions from being expressed.”⁵

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- 1 In this document, “defamation of religions” is used to describe proposals, such as those supported by UN resolutions in recent years, to protect religious beliefs, scriptures, symbols, and leaders, living or dead, from adverse comment or critique, that could offend the religious feelings and sensibilities of believers. The phrase does not include standard defamation laws that protect the reputational interests of persons or institutions, religious or otherwise, from factually erroneous and demonstrably damaging statements.
 - 2 See International Covenant on Civil and Political Rights (ICCPR) Sections 18, 19, and 20.
 - 3 The issue of defamation of religions was first presented to the U.N. Human Rights Commission in a draft resolution submitted by Pakistan in 1999 on behalf of the Organization of the Islamic Conference. U.N. Econ. & Soc. Council [ESOSOC], Comm’n on Human Rights, Draft Res.: Racism, Racial Discrimination, Xenophobia and all Forms of Discrimination, U.N. Doc. E/CN.4/1999/L.40 (April 20, 1999). Similar resolutions were adopted every year by the Human Rights Commission from 1999-2005. Comm’n on Human Rights Res. 2000/84 of 26 April 2000; 2001/4 of 18 April 2001; 2002/9 of 15

April 2002; 2003/4 of 14 April 2003; 2004/6 of 13 April 2004; 2005/3 of 12 April 2005. Thereafter, resolutions on this topic have been adopted by the Human Rights Council. HRC Res. 4/9 of 30 March 2007; HRC Res. 7/19 of 27 March 2008. Commencing in 2005, the U.N. General Assembly began adopting similar resolutions. G.A. Res. 60/150 of 16 December 2005; G.A. Res. 61/164 of 19 December 2006; G.A. Res. 62/154 of 18 December 2007; G.A. Res. 63/171 of 18 December 2008.

4 Asma Jahangir, the Special Rapporteur on Freedom of Religion or Belief, and Doudou Diene, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Joint Report, U.N. Doc. A/HRC/2/3 (20 September 2006), para. 36.

5 *Id.*, para. 66.

COMBATING DEFAMATION OF RELIGIONS

*Submission to the UN Office of the High Commissioner of Human Rights
by the European Centre for Law and Justice in 2008*

Introduction

The European Centre for Law and Justice (ECLJ) submits the following brief in response to the invitation of the Office of the High Commissioner of Human Rights (OHCHR), based on UN General Assembly Resolution 62/154, which called on the OHCHR to report on the implementation of the resolution entitled “Combating Defamation of Religion.”

The position of the ECLJ in regards to the issue of “defamation of religion” resolutions that have been introduced by the UN Human Rights Council and General Assembly is that they are in direct violation of international law concerning the rights to freedom of religion and expression.

As the ECLJ stated in its June 12, 2008, oral declaration on the Universal Periodic Review (UPR) concerning Pakistan, by its very nature, “legislation punishing blasphemy” is not compatible with the underlying logic of human rights.” The philosophy behind “defamation of religion” establishes that the primary concern is the protection of ideas and religions generally, rather than the protection of the rights of individuals to practice their religion, which is the chief purpose of international religious freedom laws. Furthermore, “defamation of religion” replaces the objective criterion of limitations on speech, where there are limitations only with an intent to incite hatred or violence against religious believers, with a subjective criterion that considers whether the religion or its believers feel offended by the speech.

The architects and chief promoters of the “defamation of religion” resolutions are the Organization of Islamic Conference (OIC) and specifically the countries of Pakistan, Egypt and Iran. The OIC countries all signed the Cairo Declaration of Human Rights in Islam in 1990. The Cairo Declaration states that all rights are subject to Shariah law and makes Shariah law the only source of reference for human rights. Most OIC countries have ambiguous and repressive blasphemy, defamation and apostasy laws based on Shariah law.

These laws are chiefly targeted toward religious minorities and prescribe sentences for violations that usually include the death penalty or life imprisonment. As will be demonstrated, these laws, which serve as the model for the “defamation of religion” resolutions at the UN, are actually a major cause of violence between

believers of different religions and restrict rather than promote religious freedom, particularly for religious minorities.

The ECLJ recognizes that the religious believer usually holds certain objects of belief to be of a sacred nature and that a proper respect for one's religion allows all persons to exercise their right to practice their religion freely. For this reason, there have historically been anti-blasphemy laws on the books in most countries of the world. Article 20 of the International Covenant on Civil and Political Rights (ICCPR) provides the proper framework to develop clear guidelines on laws that would set the least restrictive limitations on freedom of speech and would help to respect and protect the religious beliefs of individuals. A clear line should be drawn between valid criticism of religion or religious practices and speech that does not serve any purpose except to offend the sacred beliefs of individuals or religions.

The OHCHR and the UN must not allow the narrow model of "defamation of religion" to become the international standard but should look instead to Article 20 of the ICCPR as the proper framework to consider the issue and develop guidelines for the clear application of laws that seek to protect religious beliefs.

"Defamation of religions may offend people and hurt their religious feelings; but it does not necessarily, or at least directly, result in a violation of their rights, including their right to freedom of religion. Freedom of religion primarily confers a right to act in accordance with one's religion but does not bestow a right for believers to have their religion itself protected from all adverse comment." – UN Special Rapporteur Asma Jahangir¹⁶²

Procedural Background

UN General Assembly Resolution 62/154 is the latest in a series of similar resolutions involving the concept of "defamation of religion." The first of these resolutions was introduced by the OIC at the UN Commission of Human Rights in 1999 under the title "Defamation of Islam", and new resolutions have been introduced at the Human Rights Council ever since its inception in 2006 as well as in the General Assembly every year since 2005.¹⁶³

Legal Analysis

Definition of "Defamation of Religion"

¹⁶² A/HRC/2/3, para. 38

¹⁶³ Because GA Resolution 62/154 only mentions one religion, Islam, by name, and was introduced by Muslim countries, this submission and its appendix will focus its attention on "defamation of religion" in the context of Islam. For a detailed history of the "Defamation of Religion" resolutions at the UN, see the Issue Brief on "Combating Defamation of Religions" prepared by the Becket Fund for Religious Liberty, dated June 2, 2008, and submitted to the OHCHR, available at <http://www.becketfund.org/files/a9e5b.pdf>.

Black's Law Dictionary loosely defines defamation as "the act of harming the reputation of another by making a false statement to a third person."¹⁶⁴ However, there is no existing definition of "defamation of religion." A simple definition of "defamation of religion" might be the dissemination of expressions by any type of media that negatively portrays a whole religion, such as Islam. It is not the attack of a religious follower or religious-political group but an expression that negatively "harms" the reputation of an entire religion.

This is a tremendous break from the historical understanding of defamation, a break that could lead to several negative legal implications. American Muslim scholar Liaquat Ali Khan succinctly describes these concerns:

Traditionally, defamation applies to reputational injury to individuals. Group defamation is a problematic concept as it can stifle free speech and furnish undeserved protection to decadent customs and practices. The defamation of religions falls even beyond the concept of group defamation, since it may even prohibit the defamation of religious ideas and doctrines.¹⁶⁵

International Law on Religious Freedom

The core international legal norms regarding religious freedom were first established in the Universal Declaration of Human Rights (UDHR) in 1948 and codified and reaffirmed in various subsequent covenants and instruments – including the International Covenant on Civil and Political Rights (ICCPR) in 1966 and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief in 1981. These norms are best expressed by Article 18 of the UDHR, which is the model for international religious freedom laws:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.¹⁶⁶

The chief purposes of the norms that protect religious freedom are to ensure the freedom of religious practice or belief for individuals and to protect individuals from being subject to hatred or violence from others on the basis of their beliefs.

164 Black's Law Dictionary Pocket Edition 183 (2d ed. 2001).

165 Liaquat Ali Khan, "Combating Defamation of Religion", *The American Muslim*, January 1, 2007, available at http://www.theamericanmuslim.org/tam.php/features/articles/combating_defamation_of_religions/

166 The UDHR is available at <http://www.unhchr.ch/udhr/>.

International Law on Freedom of Speech

International law clearly establishes the right to freedom of expression and opinion in the UDHR, ICCPR, and other covenants and declarations. Article 19 of the UDHR serves as the model language for this right:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

All rights have corresponding duties and obligations, and the right to freedom of expression and opinion has some limitations. Article 19, Paragraph 3 of the ICCPR stipulates two areas where restrictions can be imposed:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.¹⁶⁷

Note that the limitations on free speech in Article 19, Paragraph 3(a) deal solely with the rights or reputations of persons. The only positive duty that international law places on States in regards to limiting freedom of speech is found in Article 20 of the ICCPR:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 20 is at the heart of the debate involving the legal justification of the “defamation of religion” resolutions. The current UN Special Rapporteur for Freedom of Religion or Belief, Asma Jahangir, has stressed the burden required to implicate Article 20:

The threshold of the acts that are referred to in article 20 is relatively high because they have to constitute advocacy of national, racial or religious hatred. Accordingly, the Special Rapporteur is of the opinion that expressions should only be prohibited under article 20 if they constitute incitement to imminent acts of violence or discrimination against a specific individual or group.¹⁶⁸

The current UN Special Rapporteur for Freedom of Expression, Ambeyi Ligabo, agrees that the bar for limitations on free speech is high and does not include the protection of ideas or religions: Limitations are not intended to suppress the expression of critical views, controversial opinions or politically incorrect statements.... They are not designed to protect belief systems from external or internal criticism.¹⁶⁹

167 The ICCPR is available at <http://www2.ohchr.org/english/law/ccpr.htm>.

168 Report to the Human Rights Council, U.N. Doc. A/HRC/2/3 (September 20, 2006), Paragraph 47, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G06/139/90/PDF/G0613990.pdf?OpenElement>.

169 A/HRC/7/14

The new OIC Conception of Human Rights

All of the Islamic countries in existence in 1948 signed onto the UDHR with the exception of Saudi Arabia which abstained. Currently, 46 of the 56 members of the OIC are signatories to the ICCPR.¹⁷⁰ However, in recent years, there has been a concerted attempt by the OIC countries to challenge the universality of the ICCPR and human rights in general. The OIC countries all signed the Cairo Declaration of Human Rights in Islam (CDHRI) in 1990, which states that all rights are subject to Shariah law and makes Shariah law the only source of reference for human rights.¹⁷¹ The CDHRI was such an obvious attack on the universality of the UDHR and international norms of human rights that in 1992, a prominent Muslim jurist and representative of the International Commission of Jurists addressed the UN Commission of Human Rights to warn of this threat.¹⁷²

The False Equating of Defamation of Islam with Racism

The OIC has tried to equate any act of defamation of Islam with an act of racism against Muslims. This can be seen in its efforts to introduce the defamation of religion resolutions under the mandate of the Special Rapporteur on Racism, as well as in the outcome of the Durban Conferences on Racism. The European Union (EU), in voicing its opposition to the 2007 General Assembly resolution on “Combating

170 See Status of Ratification of the Principal International Human Rights Treaties, available at <http://www.unhchr.ch/pdf/report.pdf>.

171 The CDHRI is available at <http://www.oicun.org/articles/54/1/Cairo-Declaration-on-Human-Rights-in-Islam/1.html>. Article 24 states, “All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari’ah.” Article 25 states, “The Islamic Shari’ah is the only source of reference for the explanation or clarification to any of the articles of this Declaration.”

172 Adama Dieng, joint statement to the UNCHR for the ICJ and for the Paris-based International Federation for Human Rights (Feb. 1992). See David Littman, “Human Rights and Human Wrongs”, National Review, available at <http://www.nationalreview.com/comment/comment-littman011903.asp>. Dieng’s four main points concerning the CDHRI:

1. It gravely threatens the inter-cultural consensus on which the international human rights instruments are based;
2. It introduces, in the name of the defence of human rights an intolerable discrimination against both non-Muslims and women;
3. It reveals a deliberately restrictive character in regard to certain fundamental rights and freedoms, to the point that certain essential provisions are below the legal standards in effect in a number of Muslim countries;
4. It confirms, under cover of the “Islamic Shari’a (Law)”, the legitimacy of practices, such as corporal punishment, which attack the integrity and dignity of the human being.

Defamation of Religion”, pointed out the error in confusing the issue with race:

The European Union does not see the concept of “defamation of religions” as a valid one in a human rights discourse. From a human rights perspective, members of religious or belief communities should not be viewed as parts of homogenous entities. International human rights laws primarily protect individuals in the exercise of their freedoms of religion or belief rather than the religions as such.¹⁷³

Special Rapporteur Asma Jahangir has issued similar warnings of equating defamation of religion with racism and why this is legally problematic.

The Special Rapporteur cautions against confusion between a racist statement and an act of defamation of religion. The elements that constitute a racist statement are not the same as those that constitute a statement defaming a religion. To this extent, the legal measures, and in particular the criminal measures, adopted by national legal systems to fight racism may not necessarily be applicable to defamation of religion.¹⁷⁴

Application of Defamation of Religion Laws

The clever thrust of the OIC position uses the concepts of “defamation of religion” and blasphemy as both sword and shield. In Western countries, defamation of religion is used as a sword against the media, academics, and artists by claiming that any negative depictions, or criticism of, Islam and its followers must be outlawed because it is defamatory or blasphemous. Here, defamation of religion, or blasphemy, trumps freedom of speech and the press—especially when there is the possibility of negative or violent reactions to the speech. In its oral statement to the UN Human Rights Council in September 2007, the ECLJ examined how the OIC’s conception of defamation of religion is contrary to international law:

Many supporters of the concept of defamation of religion have presented a much different conception of this issue, and whereby it is the religion and not the individual believer that merits the greatest attention and protection. The standard of incitement becomes purely subjective; the listener or object of the speech determines whether they are offended and whether incitement has occurred. At times, this has even led to the dubious claim that speech has violated religious freedom not because it has incited violence *towards* a targeted group, but because violence has resulted *from* the targeted group.¹⁷⁵

173 Statement by Portugal on behalf of the European Union to the December 18, 2007 session of the GA, as quoted in a February 24, 2008 statement by the International Humanist and Ethical Union to the Human Rights Council, available at <http://www.ihcu.org/node/2949>

174 A/HRC/2/3, *supra* note 6, paragraph 49

175 The full text of the ECLJ statement is available at http://www.eclj.org/PDF/070925_

In Muslim countries, blasphemy laws are used as a shield to protect the dominant religion (Islam); but even more erroneously and dangerously, they are used to silence minority religious believers and prevent Muslims from converting to other faiths, which is still a capital crime in many Muslim countries.

The ECLJ has compiled a sample of recent incidents involving allegations of “defamation of religion” in various countries, both Muslim and Western, which is attached to this submission as Appendix 1. While the incidents implicate different civil and criminal infractions, including blasphemy, defamation, apostasy, libel, vilification and hate speech, they all share a common denominator: the persons were all charged with an offense based on their speech or opinion towards a religion or its tenets. No incident involves the defamation against persons or incitement to hatred or violence against an individual or group, which has historically been the basis for limitations on freedom of speech. What should be most disconcerting to the international community is that laws based on the concept of “defamation of religion” actually help to create a climate of violence. Violators of these laws, as applied in most Muslim countries, are subject to the death penalty, which frequently encourages people to take matters into their own hands.

To give just one example from Pakistan, 22 year-old Jagdeesh Kumar, a Hindu, was beaten to death by co-workers at a factory for allegedly committing the crime of blasphemy, which is a crime punishable by death in that country. The three workers who carried out the beating were arrested, charged not with murder but with “failure to inform the police that blasphemy was underway.” A human rights activist based in Islamabad has said: “Not a single murderer who killed anyone for blasphemy has been punished for murder. In fact, such murderers get hero’s treatment in police stations. And those police officials who openly honour such murderers have never been tried for their illegal and reprehensible action.”

Recommendations

The OHCHR, the UN and its member States have a responsibility to promote and defend international law in the area of religious freedom and expression, as prescribed by, inter alia, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Both State and non-State actors must closely examine the legal, social and cultural framework in their societies and ensure that they do not create a climate of restricted freedom of speech and expression. In evaluating this issue, distinctions must be drawn between sincere yet critical assessments of religions or beliefs and shallow speech or art that lacks any significant discussion or assessment of the religion or belief in question. States should take particular care that they do not

endorse or subsidize speech or art that lacks the requisite critical assessment and has no real value other than offending a religion or belief or its followers.

The OHCHR, as the highest representative of the UN charged with upholding human rights, has a special duty to enforce the provisions of the international human rights covenants and to point out actions or resolutions by the Human Rights Council or other bodies that conflict with these provisions.

The OHCHR and the UN must not allow the current model of “Defamation of Religion” to become the international standard. Article 20 of the ICCPR provides the proper framework on this issue. We call upon the OHCHR and the UN to develop clear guidelines within the context of Article 20 with regard to laws that would set the least restrictive limitations to freedom of speech and that would help to respect and protect the religious beliefs of individuals.

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We are glad to inform you that the Association's web site (www.aidlr.org) is available in English, French and German. In the section Conscience and Liberty you can find a Supplement containing the following articles that we were not able – due to the limited number of pages of this magazine – to include in the printed version.

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