

DEFAMATION OF RELIGIONS v. FREEDOM OF EXPRESSION: FINDING THE BALANCE IN A DEMOCRATIC SOCIETY

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Abstract: This Note criticizes the Resolution passed by the United Nations Commission on Human Rights entitled *Combating Defamation of Religions* which in part defines defamation of religion as a negative projection of Islam in the media and the association of Islam with terrorism and human rights violations. The Note argues that the Resolution restricts expression on issues of public importance and critical of public officials and insulates Muslim states from international scrutiny. These restrictions on speech are contrary to many important international instruments. The Note suggests that the Resolution should denounce the use of religion to justify or incite any form of violence or hatred, should promote an objective interpretation of the term “defamation of religions” to ascertain that states cannot rely on that term to justify suppression of legitimate opinions, and should emphasize that defamation of religion laws may not be used to infringe on other fundamental rights.

INTRODUCTION

Certain provisions in the resolution entitled *Combating Defamation of Religions* (the “Resolution”)¹ passed in 2002, 2003, 2004, and 2005 by the United Nations Commission on Human Rights² are inconsistent with international norms because they restrict speech critical of public officials and political expression on matters of public importance.

In the Resolution, the Commission “[n]otes with deep concern the intensification of the campaign of defamation of religions.”³ This Note criticizes the provision in the Resolution that defines “defamation of religions” as a “negative projection of Islam in the

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¹ U.N. C.H.R., 58th Sess., 39th mtg., U.N. Doc. E/CN.4/RES/2002/9 (2002); U.N. C.H.R., 59th Sess., 47th mtg., U.N. Doc. E/CN.4/RES/2003/4 (2003); U.N. C.H.R., 60th Sess., 45th mtg., U.N. Doc. E/CN.4/RES/2004/6 (2004); U.N. C.H.R., 61th Sess., 44th mtg., U.N. Doc. E/CN.4/RES/2005/3 (2005) [hereinafter Resolution].

² The Human Rights Council established in Geneva will formally replace the Commission on Human Rights on June 16, 2006. G.A. Res. 251, U.N. GAOR, 60th Sess. (2005).

³ Resolution *supra* note 1.

media,” and the association of Islam with human rights violations and terrorism in the aftermath of the attack on the United States on September 11, 2001.⁴

Algeria, Bahrain, Burkina-Faso, Cameroon, Gabon, Libyan Arab Jamahiriya, Malaysia, Pakistan, Saudi Arabia, Senegal, Sierra Leon, Sudan, the Syrian Arab Republic, Togo, and Uganda, all members of the Organization of Islamic Conference (“OIC”)⁵ who sit on the Commission on Human Rights, voted in favor of the Resolution.⁶ Countries that opposed the Resolution include Australia, Austria, Belgium, Canada, France, Germany, Ireland, Japan, Poland, Sweden, the United Kingdom and the United States.⁷

Part I of this Note explains the historical context in which the Commission on Human Rights passed the Resolution. Part II surveys international law concerning freedom of speech and defamation and synthesizes a test – whether the restriction on speech is necessary in a democratic society - to determine whether the Resolution’s restriction on expression is inconsistent with international norms. In order to expose the meaning of the term “defamation of religions” as used in the Resolution, Part III describes how some OIC members have used defamation of religion laws in their national jurisprudence. Finally, Part IV tests the Resolution against the international freedom of speech norms discussed in Part II and concludes that the Resolution restricts political expression on matters of public importance and critical of public officials. Such restrictions are inconsistent with international law because they are unnecessary in a democratic society.⁸

I. UN RESOLUTION COMBATING DEFAMATION OF RELIGIONS

⁴ *Id.*

⁵ An inter-governmental organization consisting of fifty-seven Muslim states with the goal of safeguarding interests and progress of Muslims all over the World. OIC Homepage, at <http://www.oic-oci.org> (last visited May 25, 2006).

⁶ *Commission on Human Rights Adopts Resolutions on Self-Determination, Defamation of Religion*, Press Release, U.N. Doc. HR/CN/1032 (2003), available at <http://www.un.org/News/Press/docs/2003/HRCN1032.doc.htm>.

⁷ *Id.*

⁸ Some have attempted to portray the reactions of the West to the September 11 terrorist attacks on the United States and subsequent terrorist attacks around the World as a “war on Islam” or “a clash of civilizations.” See Philip Caputo, *Why They Hate Us*, N.Y. TIMES, July 17, 2005; Defamation of Religions and Global Efforts to Combat Racism: Anti-Semitism, Christianophobia, and Islamophobia, U.N. C.H.R. 61st Sess., U.N. Doc. E/CN.4/2005/18/Add.4 (2004) [hereinafter Rapporteur Defamation Report]. This Note attempts to frame the debate in terms of human rights and freedom of expression and not in terms of superiority of religions or cultures.

Although anti-defamation and anti-blasphemy laws⁹ can serve an important function, a government should not to abuse such laws to unduly restrict freedom of expression. For example, in 1970, one Irving West was fined twenty-five dollars under the following Maryland statute: “[I]f any person . . . shall blaspheme or curse God . . . he shall on conviction be fined.”¹⁰ The highest court of Maryland overturned West’s blasphemy conviction on the ground that the statute violated the Establishment and Free Exercise Clauses of the First Amendment.¹¹ The court explained that “powerful sects or groups [could] bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal Government would be placed behind the tenets of one or of all orthodoxies.”¹²

A. *The 1999 Resolution*

Although the Resolution, which is the subject of this Note, refers to the September 11 attack on the United States as a catalyst for the rise of Islamaphobia in the West, the Commission on Human Rights passed a similar resolution condemning defamation of Islam before the events of September 11.¹³

In 1999, Pakistan introduced a draft resolution entitled “Defamation of Islam,” arguing that “Islam . . . [was] being slandered in different quarters, including human rights fora.”¹⁴ Western countries refused to accept such a resolution because it was “selective in nature.”¹⁵ Instead, the European Union proposed a different title, “Stereotyping of Religions”, which the OIC refused.¹⁶ Nevertheless, the OIC succeeded in passing a resolution entitled “Defamation of Religions” expressing “deep concern that

⁹ Defamation is loosely defined as “the act of harming the reputation of another by making a false statement to a third person.” BLACK’S LAW DICTIONARY POCKET EDITION 183 (2d ed. 2001). Blasphemy is “irreverence toward God, religion, a religious icon, or something else considered sacred.” *Id.* at 70.

¹⁰ *Maryland v. West*, 263 A.2d 602, 602-03 (Md. 1970).

¹¹ *Id.* at 605.

¹² *Id.* at 604-5 (quoting *Sch. Dist. Of Abington v. Schempp*, 374 U.S. 203, 222 (1963)).

¹³ Resolution, *supra* note 1; David Littman, *Islamism Grows Stronger at the United Nations*, MIDDLE EAST QUARTERLY, Sep. 1999, at <http://www.meforum.org/pf.php?id=477> (last visited May 27, 2006).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

Islam [was] frequently and wrongly associated with human rights violations and with terrorism.”¹⁷

B. *The 2002 Resolution*

When the Commission on Human Rights passed the Resolution in 2002 entitled “Combating Defamation of Religions,” the United States did not participate in the annual meeting of the Commission on Human Rights for the first time since the Commission’s creation.¹⁸

In reaction to the post September 11 efforts to combat terrorism, the Commission adopted a resolution urging States involved in combating terrorism not to discriminate “on grounds of race, color, descent, or national or ethnic origin” and to “refrain from all forms of racial profiling.”¹⁹

Nevertheless, some Islamic countries did not consider such language sufficient and pushed through a more favorable resolution entitled, “Combating Defamation of Religions,” singling out Islam as a religion “frequently and wrongly associated with human rights violations and with terrorism.”²⁰ This accusation is not without merit and was corroborated by subsequent reports submitted by the Special Rapporteur expressing fear about the rise of “Islamaphobia among public opinion in the West.”²¹ According to these reports, Islam was frequently identified with religious extremism and terrorism, and the media frequently used the expressions “holy war,” “fundamentalism,” “terrorism,” and “Islam” interchangeably.²²

In justifying the vote for the Resolution, the representative of Sri Lanka explained that the vote was based on the concern for all religions, and a representative of Algeria stated that the Resolution did not “seek to defend any Muslim religion, but to produce momentum for united tolerance.”²³

¹⁷ *Id.*

¹⁸ Joshua Muravchik, *The UN on the Loose*, COMMENTARY, July 1, 2002.

¹⁹ *Id.*

²⁰ *Id.*

²¹ U.N. C.H.R., 59th Sess., U.N. Doc. E/CN.4/2003/66 (2003); *see also* Rapporteur Defamation Report *supra* note 8 (reporting that Council on American-Islamic Relations found that one in four Americans believe that “the Muslim religion teaches violence and hatred” or that “Muslims value life less than other people”; on a positive note, the report noted that “44% of those asked considered that those who used Islam as a pretext for violence misinterpreted the teachings of the religion”).

²² U.N. C.H.R., 59th Sess., U.N. Doc. E/CN.4/2003/66, *supra* note 21.

²³ *Supra* note 6.

A draft version of the Resolution recognized “with deep concern the increase in anti-Semitism and Islamophobia in various parts of the world, as well as the emergence of racial and violent movements based on racism and discriminatory ideas directed against Jewish, Muslim and Arab communities.”²⁴ This language was deleted from the final version under pressure from States that were radically opposed to the very mention of the term “anti-Semitism” in any U.N. resolution.²⁵

Countries that opposed the Resolution justified their objections on the grounds that the Resolution did not protect the rights of individuals to choose or change their religions, did not prohibit state-sponsored educational systems that taught prejudice against non-Islamic religions, and failed to criticize defamation of religions other than Islam.²⁶ India called the Resolution “obscurantist and self-serving.”²⁷

II. SURVEY OF THE INTERNATIONAL LAW ON THE FREEDOM OF EXPRESSION

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and the American Convention of Human Rights protect freedom of expression subject to some limitations to protect one’s reputation and freedom of religion.

A. *United Nations Universal Declaration of Human Rights*

According to the Universal Declaration of Human Rights, everyone has the fundamental right to “freedom of opinion and expression,” subject to limitations determined by law “for the purpose of securing due recognition and respect for the rights of freedom of others and of meeting the just requirements of morality, public order and the general welfare in democratic society.”²⁸

²⁴ See U.N. C.H.R. 60th Sess., 14th mtg. ¶ 2, U.N. Doc. E/CN.4/2004/NGO/255 (2004).

²⁵ *Id.*; see Rapporteur Defamation Report, *supra* note 8 at ¶¶ 1-2 (acknowledging the General Assembly’s recognition of the existence of anti-Semitism and “Christianophobia” separately from the discrimination toward “Muslim and Arab people” addressed by the Resolution); *but see* U.N. C.H.R. 60th Sess., 57th mtg. at ¶ 6, U.N. Doc. E/CN.4/RES/2005/40 (2005) (“recognizing the overall rise . . . of intolerance . . . motivated by . . . anti-Semitism”).

²⁶ *Supra* note 6.

²⁷ *Id.*

²⁸ Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3rd Sess., 183d plen. mtg. arts. 19, 29, U.N. Doc. A/810, at 71 (1948).

The Universal Declaration of Human Rights does not provide a clear rule on how to resolve a conflict between two competing rights such as freedom of speech and rights of freedom of others.²⁹ It is clear, however, that the Universal Declaration on Human Rights does not sanction incitement of violence.³⁰

B. *International Covenant on Civil and Political Rights*

The International Covenant on Civil and Political Rights (“ICCPR”) addresses the concept of group defamation specifically.³¹ Article 19(1-2) provides that “[e]veryone shall have the right to hold opinions without interference” and “the right to freedom of expression.”³² According to Article 19(3), a State *may* limit freedom of expression for “respect of the rights or reputation of others” and, according to Article 20, a State *must* limit freedom of expression to disallow advocacy of “religious hatred that constitutes incitement to discrimination, hostility or violence”³³

Speaking for the United States, Eleanor Roosevelt opposed Article 20 on the ground that it would allow governments to silence all criticism “under the guise of protecting against religious . . . hostility,” rendering other basic rights guaranteed by the ICCPR “null and void.”³⁴

According to Louis Henkin,³⁵ expressions of opinions, misstatements, or distortions of fact do not fall within the Article 20 “religious hatred” category.³⁶ Henkin

²⁹ Louis Henkin, *Group Defamation and International Law*, in GROUP DEFAMATION AND FREEDOM OF SPEECH 127 (Monroe H. Freedman & Eric M. Freedman eds., 1995).

³⁰ Stephanie Fariior, *The Historical and Theoretical Foundations of International Law Concerning Hate Speech*, 14 BERKELEY J. INT’L L. 3, 14 (1996).

³¹ Henkin, *supra* note 29, at 127.

³² International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., 1498th plen. mtg., art. 19, U.N. Doc. A/6316 (1966) [hereinafter ICCPR].

³³ *Id.* arts 19(3), 20.

³⁴ Fariior, *supra* note 30 at 27.

³⁵ Columbia Law School Professor Emeritus; former president of the American Society of International Law; chief reporter of the American Law Institute’s Restatement of the Foreign Relations Law of the United States; member of the Human Rights Committee pursuant to the International Covenant on Civil and Political Rights. Columbia Law School, Emeriti Biography Page, *at* <http://www.law.columbia.edu/faculty/emeriti?&main.find=H>, (last visited May 24, 2006).

³⁶ Henkin, *supra* 29 at 128.

argues that even promulgating the fantasies of the *Protocols of Elders of Zion*³⁷ or insisting that the Holocaust was a fabrication is not religious hatred under Article 20.³⁸

Nevertheless, governments *may* prohibit some group defamation under Article 19(3) that does not qualify under Article 20.³⁹ According to Henkin, a State has overstepped its authority in limiting freedom of expression under Article 19(3) if such limitation is not “necessary” to maintain public order in a “democratic society.”⁴⁰ Although the State initially determines whether the law is necessary, its ultimate legitimacy is determined by international law.⁴¹ Because Article 19 is a limitation on a human right, Henkin advocates requiring a high degree of necessity.⁴²

C. *International Convention on the Elimination of All Forms of Racial Discrimination*

Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”) goes further than Article 20 of the ICCPR, because it requires States to forbid not only the advocacy of hatred, but also “all dissemination of ideas based on racial superiority or hatred, and the provision of any assistance to racist activities.”⁴³

Similar to the Universal Declaration of Human Rights, the right of freedom of expression is not given greater protection than other fundamental rights.⁴⁴ The Committee on Elimination of Racial Discrimination indicated that a balance must be

³⁷ A book containing fabricated account of a Jewish plot to take over the World, first published in 1903. BINJAMIN W. SEGEL, *A LIE AND A LIBEL: THE HISTORY OF THE PROTOCOLS OF THE ELDERS OF ZION* 4, 55-56 (Richard S. Levy ed. & trans., 1995); Hitler’s regime incorporated the book in its official ideology and distributed the book in many countries. *Id.* at 30. In 1935, a Swiss court declared the book “nothing more but ridiculous nonsense.” *Id.* at 30-31. Many justified their lack of aid to Jewish people during the Holocaust by this negative portrayal of Jews. *Id.* at 32.

³⁸ Henkin, *supra* 29 at 128.

³⁹ *Id.* at 129.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Farrior, *supra* note 30, at 48; International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), U.N. GAOR, 20th Sess., 1406 plen. mtg., Supp. No. 14, at 47, U.N. Doc. A/6014 (1965).

⁴⁴ Farrior, *supra* note 30, at 48.

struck between the obligations under Article 4 and the freedom of expression, with “due regard” given to the principles embodied in the Universal Declaration of Human Rights.⁴⁵

Subsequent reports of the United Nations Special Rapporteurs point out a link between encroachment on freedom of expression and violations of other basic human rights, suggesting that violations of freedom of expression should be evaluated with a heightened scrutiny.⁴⁶ They proposed to place the right to freedom of expression in the center of all other rights.⁴⁷

D. *European Convention on Human Rights*

According to Article 10 of the European Convention on Human Rights, the right to freedom of expression “carries with it duties and responsibilities [and] may be subject to such . . . restrictions as are . . . necessary in democratic society . . . for the protection of the reputation and the rights of others.”⁴⁸ According to the European Court of Human Rights, a State’s interference with the freedom of expression is legitimate if (1) it is prescribed by law; (2) is in pursuit of a legitimate aim set out in Article 10(2); and (3) is necessary in a democratic society.⁴⁹ This Note addresses the third prong of the test: when is a restriction on speech necessary in a democratic society?

The European Court of Human Rights used Article 10 of the Convention to strike down limitations on political expression on matters of public importance.⁵⁰ In *Ek v. Turkey*, the European Court of Human Rights overruled Turkish courts that convicted and sentenced a lawyer to jail for publishing a book and an article criticizing Turkish policy towards Kurds.⁵¹ According to Turkey, the publications contained the words “Kurds” and “Kurdistan” which constituted separatist propaganda.⁵²

⁴⁵ *Id.* at 50; but see Michael J. Polelle, *Racial and Ethnic Group Defamation: A Speech-Friendly Proposal*, B.C. Third World L.J. 213, 221 (2003) (arguing that under Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, group defamation is a categorical exception to the right of freedom of speech).

⁴⁶ Farrior, *supra* note 30, at 89.

⁴⁷ *Id.*

⁴⁸ European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, art. 10(2), available at <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm> [hereinafter EHRC].

⁴⁹ See *Aksoy v. Turkey*, App. No. 28635/95 34 Eur. H.R. Rep. 1388, 1401 (2002).

⁵⁰ *Id.*; *Ek v. Turkey*, App. No. 28496/95, 35 Eur. H.R. Rep. 1344 (2002).

⁵¹ 35 Eur. H.R. Rep. at 1355-58.

⁵² *Id.*

The Court acknowledged Turkey's right to discourage terrorism.⁵³ Nevertheless, the Court recognized that the Article 10 limitations on freedom of expression did not apply to political expression or debate on matters of public interest.⁵⁴ The Court explained that freedom of expression constituted one of the essential foundations of a democratic society.⁵⁵ Even expressions that offend, shock, or disturb are protected.⁵⁶

Turkish authorities failed to have sufficient regard for the public's interest to be informed of a different perspective on the policies of Turkey towards the Kurdish people.⁵⁷ It was irrelevant that such perspectives were not in accord with Turkey's policies.⁵⁸ Consequently, the Court held that such a restriction on speech was not necessary in a democratic society.⁵⁹

The European Court of Human Rights deferred to domestic laws in the context of restriction on religious satire.⁶⁰ In *Otto-Preminger Institute v. Austria*, the Austrian government seized a satirical film that allegedly investigated "the relationship between religious beliefs and worldly mechanisms of oppression."⁶¹ The film portrayed God as a senile old man "prostrating himself before the devil" and the Virgin Mary as manifesting "a degree of erotic tension" with the devil.⁶²

An Austrian court ruled that because the expression intended to be provocative, aimed at the Church, and constituted "wholesale derision of religious feelings," the feelings of those offended outweighed the filmmaker's right to freedom of expression.⁶³

In sustaining the judgment, the European Court of Human Rights reasoned that the film did not contribute to any form of public debate and was not capable of "furthering

⁵³ *Id.* at 1372.

⁵⁴ *Id.* at 1369.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 1374.

⁵⁸ *Id.*

⁵⁹ *Id.*; see also 34 Eur. H.R. Rep. At 1388, 1406 (stating that the purpose of democracy was to permit a proposal and discussion of diverse political ideas, even those that questioned the current organization of a State).

⁶⁰ *Otto-Preminger Inst. v. Austria*, App. No. 13470/87, 19 Eur. H.R. Rep. (ser. A) 34, (1994); see also *Wingrove v. U.K.*, App. No. 17419/90, 24 Eur. H.R. Rep. 1 (1997).

⁶¹ 19 Eur. H.R. Rep. (ser. A) at 37.

⁶² *Id.* at 41.

⁶³ *Id.* at 39.

progress in human affairs.”⁶⁴ It declined to define what restriction on anti-religious speech was permissible, arguing that such line drawing was better left to domestic laws.⁶⁵

The dissenting judges argued that it should not be left to States to decide whether a particular statement was “capable of contributing to any form of public debate capable of furthering progress in human affairs,” because States would have too much leeway in protecting interests of a powerful group.⁶⁶ Furthermore, freedom of religion did not include protection of religious feelings, because freedom of religion included the right to express views critical of the religious opinions of others.⁶⁷

E. *American Convention on Human Rights*

Article 13(1) of the American Convention of Human Rights provides that “[e]veryone has the right to freedom of thought and expression.”⁶⁸ Article 13(2) limits that right “to the extent necessary to ensure . . . respect for the rights and reputation of others.”⁶⁹ The requirement of necessity is similar to that in the European Convention of Human Rights.⁷⁰

In 1994, the Inter-American Commission on Human Rights decided that “desacato” laws – laws that punish offensive speech aimed at public officials – did not qualify for the Article 13(2) exception.⁷¹

The Commission observed that even laws that provided for the defense of truth were not suitable, because a rule requiring that one who made a defamatory political statement prove its truth could suppress good-faith criticism of a government.⁷² A government’s restriction on freedom of speech was necessary only if the government could demonstrate that it could not achieve a lawful goal through any other legitimate

⁶⁴ *Id.* at 57.

⁶⁵ *Id.* at 58.

⁶⁶ *Id.* at 61.

⁶⁷ *Id.*

⁶⁸ American Convention on Human Rights, art. 13, 25, Nov. 22, 1969, 1144 U.N.T.S. 123, [hereinafter ACHR].

⁶⁹ *Id.*

⁷⁰ Report on the Compatibility of “Desacato” Laws with The American Convention on Human Rights, Inter-Am. C.H.R. 199, OAS/ser. L/V/II.88, doc. 9 rev. (1994)[hereinafter Desacato Laws] *available at* <http://www.cidh.org/annualrep/94eng/chap.5.htm>.

⁷¹ *Id.*

⁷² *Id.*

means.⁷³ Necessity implies the existence of a “pressing social need.”⁷⁴ The “desacato” laws were not necessary because political and public figures must be more, and not less, open to scrutiny and criticism in democratic societies.⁷⁵

F. *Incitement of Genocide and Crimes Against Humanity*

The International Criminal Tribunal of Rwanda proceedings were unique in that in addition to finding certain media editors and executives guilty for the content of their broadcasts, the Tribunal found them guilty for the consequences of their hate propaganda, as though the media leaders had “personally wielded machetes.”⁷⁶ The prosecution of the Rwandan media on the charges of genocide for publishing and broadcasting words and pictures that produced and promoted ethnic atrocities, incitement of genocide, and crimes against humanity, is perhaps the most clear demonstration of a situation where restriction on speech was not only desired, but necessary.⁷⁷

The Hutu run media in Rwanda described the Tutsi people as “hypocrites, thieves, and killers,” “marked by malice and dishonesty,” and “inherently evil.”⁷⁸ It accused Tutsi women of intentionally using their sexuality to lure Hutu men into “liaisons” in order to promote the ethnic dominance of the Tutsis over Hutus.⁷⁹ The media encouraged killing the Tutsi people.⁸⁰ Indeed, many Tutsis singled out by the media were immediately killed.⁸¹

The Rwanda Tribunal described this speech as a “discriminatory form of aggression that destroy[ed] the dignity of those in the group under attack . . . and treat[ed] them as less than human.”⁸²

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Catharine MacKinnon, *International Criminal Tribunal for Rwanda*, 98 Am. J. Int'l. L. 325, 329-30 (2004).

⁷⁷ *See id.*

⁷⁸ *Id.* at 325-26.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 326.

⁸² *Id.* at 328.

III. EXTRAPOLATING THE MEANING OF THE TERM “DEFAMATION OF RELIGIONS” AS IT IS USED IN THE RESOLUTION

In order to extrapolate the subjective and proper meaning of the term “defamation of religions,” as that term is used in the Resolution, this section briefly examines how some prominent OIC members have relied on “defamation of religions” laws to suppress political dissent and freedom of expression while tolerating religious hatred and defamation of non-Muslim religions.

A. *Restrictions on Expression by OIC Members Under the Guise of Combating Defamation of Religions*

The Pakistani⁸³ “Defamation Bill 2004” suppresses dissenting views under the guise of combating defamation.⁸⁴ The Bill’s section entitled “Statement of Objects and Reasons” states:

Defaming a person is a crime no less heinous than murder, Prophet Mohammad . . . equates it to eating the flesh of one’s own brother. . . It is observed that there is a general tendency to scandalize and defame others including public figures whereby perceptible injury or their reputation is caused, either for ulterior motive or through irresponsible conduct. Therefore, it is necessary . . . [to curb] this menace.⁸⁵

Pakistani journalists have objected to this bill, threatening a nationwide protest.⁸⁶ They claimed that the government uses defamation laws to terrorize the press and to curb the anti-government voice.⁸⁷

The International Humanist and Ethical Union (“IHEU”)⁸⁸ reports that in May 2005, Pakistani police clubbed and arrested a group of women, among them Asma

⁸³ Pakistan drafted the “Defamation of Islam” resolution in 1999, and sponsored the subsequent “Combating Defamation of Religion” resolutions . Littman, *supra* note 13.

⁸⁴ UN Office for the Coordination of Humanitarian Affairs, *Pakistan: Journalists Concerned Over Proposed Defamation Bill*, IRINNEWS.ORG, Aug. 9, 2004.

⁸⁵ *Text of Defamation Bill 2004*, PAK. PRESS INT’L. INFO. SERV., Aug. 19, 2004.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ International Humanist and Ethical Union (“IHEU”) is an “international NGO with Special Consultative Status with the UN . . . General Consultative Status at UNICEF . . . and the Council of Europe . . . and maintains operational relations with UNESCO.” IHEU Homepage, at <http://www.iheu.org/about> (last visited May 25, 2006).

Jahangir who is a UN Special Rapporteur on Freedom of Religion or Belief and head of the Pakistan Human Rights Commission, for demonstrating for equal rights.⁸⁹

The U.S. Department of State reports that Pakistan punishes expressions opposing Islam with heavy fines and imprisonment.⁹⁰ Judges, seeking to avoid confrontation with extremists, often continue defamation trials indefinitely.⁹¹ In 2002, there were approximately eighty blasphemy cases pending in Pakistani courts.⁹²

Amnesty International reports that Iran arbitrarily arrests students, academics, and journalists who face “politically motivated criminal charges based on defamation.”⁹³ Many arrests are carried out in the manner of abductions.⁹⁴ The judiciary uses the death penalty and flogging as punishment in cases relating to freedom of expression.⁹⁵ For example, an academic and a member of the pro-Reform Mojahedin of the Islamic Revolution (OMIR) was sentenced to death and seventy-four lashes for stating that the faithful should not “blindly follow” religious leaders.⁹⁶ One of his alleged offences was “defamation of religion.”⁹⁷

The religious supreme leader Khamenei threatened to charge two prominent theologians with treason when they questioned his constitutional legitimacy.⁹⁸ The election of Muhammed Khatami as President, an advocate for social and political

⁸⁹ U.N. C.H.R. SUBCOM, 57th Sess., ¶ 9, U.N. Doc. E/CN.4.Sub.2/2005/NGO/5 (2005).

⁹⁰ THE U.S. DEPARTMENT OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2002: PAKISTAN (2002), at <http://www.state.gov/g/drl/rls/irf/2002/14026.htm> (last visited May 25, 2006); see also Dr. Younus Shaikh, *Pakistan's Infamous Islamic Blasphemy Laws*, INTERNATIONAL HUMANIST AND ETHICAL UNION, Feb 1, 2004, at <http://www.iheu.org/modules/note/1006> (last visited May 25, 2006) (Dr. Shaikh was sentenced to death for blasphemy for reportedly stating in front of his students that the Prophet Mohammed's first marriage was not conducted according to Islamic law and custom).

⁹¹ *Supra* note 90.

⁹² THE U.S. DEPARTMENT OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2002, *supra* note 90.

⁹³ Amnesty International Annual Report 2003, at <http://web.amnesty.org/report2003/irn-summary-eng> (last visited May 27, 2006).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *The Red Line*, ECONOMIST, Nov. 27, 1997.

reforms, does not signal you can say anything you like, stated the head of Iran's judiciary.⁹⁹

In 1999, one of the ayatollahs warned the press not to publish "fictional news": "Questioning the proven principles of the religion will lead to defamation and will provoke people who may one day rise up and say these are against Islam."¹⁰⁰

A Egyptian professor in the department of Arabic literature at Cairo University paid a hefty price for teaching his students that certain Koranic references were not to be taken literally but as metaphors.¹⁰¹ A Egyptian court held the professor as an "apostate"¹⁰² and ruled that he had to divorce his wife, who like him, was a Muslim.¹⁰³ Yet, given the interpretation of the term "defamation of religions" by the OIC members, even expressing reservations about the treatment of apostates is suppressed under the guise of protecting Islam from defamation.¹⁰⁴

In Jordan, publishing accounts of the Prophet's sex life will get one hauled, chained, caged and tried for defaming the messenger of God.¹⁰⁵ This is what happened to journalists of a local newspaper who published selected quotes from books already licensed by a Cairo-based front of Islamic orthodoxy, and on sale all over Jordan.¹⁰⁶

B. *The Flip Side of the OIC Members' Defamation of Religion Laws*

⁹⁹ *Id.*

¹⁰⁰ *Iran: Senior Cleric Tells Press to Avoid "Ballyhoo"*, BBC WORLD MONITORING, Dec. 6, 1999.

¹⁰¹ *See Writer's Block: Islam and Toleration*, ECONOMIST, Jan. 27, 1996.

¹⁰² Muslims who do not share the strict Sunni interpretation of Islam or who convert to non-Muslim faiths can be forced to divorce their Muslims wives and put to death. *See id.*; CENTER FOR RELIGIOUS FREEDOM, FREEDOM HOUSE, SAUDI PUBLICATIONS ON HATE IDEOLOGY FILL AMERICAN MOSQUES 2 (2005).

¹⁰³ *See Writer's Block: Islam and Toleration*, *supra* note 101.

¹⁰⁴ U.N. C.H.R. SUBCOM, 57th Sess., ¶ 9, U.N. Doc. E/CN.4.Sub.2/2005/NGO/5 *supra* 89 ¶¶ 13-17 (in 2005, a Pakistani delegate on the sub-Commission on Human Rights called the IHEU representative's concern with the treatment of apostates by the OIC members an "attack [on] my religion, a religion of peace," without addressing the merits of the IHEU representative's argument, thus further demonstrating an attempt to stifle the discussion of human rights abuses in Islamic States in the guise of protecting religion).

¹⁰⁵ *The Prophet and his Libido*, ECONOMIST, Jan. 30, 2003.

¹⁰⁶ *Id.*

This section contrasts the OIC members' use of defamation laws to curtail dissent with their tolerance for religious hatred and defamation of non-Islamic religions.

One infamous falsity perpetuated by many is known as "blood libel" – an accusation that Jews kill people, specifically children, as a form of sacrifice and use their blood in various rituals.¹⁰⁷ Nazis, Arabs and Europeans have used "blood libel" to justify anti-Semitism and the extermination of the Jewish people.¹⁰⁸

Some members of the OIC revived the "blood libel" on the floor of the Commission on Human Rights.¹⁰⁹ In 1991, the Syrian delegate stated: "[w]e should like to urge all members of the Commission to read this very important book that demonstrates unequivocally the historical reality of Zionist racism."¹¹⁰ He held the book, entitled *The Matzah of Zion*, which contained the following preface by Syria's current Minister of Defense: "The Jew . . . can kill you and take your blood in order to make his Zionist bread . . . I hope that I have done my duty in presenting the practices of the enemy . . . the religious beliefs of the Jews and the destructive perversions they contain, which draw their orientation from a dark hate toward all humankind and all religions."¹¹¹

In 2000, the Mufti of the Palestinian Army stated on the cable news channel of Al-Jazeera, without being challenged: "[t]here can be no peace with Jews because they use and suck the blood of Arabs on the holidays of Passover and Purim."¹¹²

In 2002, government newspaper in Saudi Arabia described Jews as "vampires who bake cookies with the blood of Arabs," claiming that "the Torah, the Jewish holy book, requires Jews to demonstrate their joy by eating pastries mixed with human blood."¹¹³

A report by the Freedom House Center for Religious Freedom found that Saudi Arabia has been involved in propagating internationally, and specifically within the borders of the United States, a "religious ideology that explicitly promotes hate, intolerance . . . and violence toward members of other religious groups."¹¹⁴ The report was prepared in part by surveying materials from a dozen prominent and well-established

¹⁰⁷ DAVID LITTMAN, URGENT APPEAL: DEFAMATION OF RELIGION (DAMASCUS LIBEL 1840-2002), *at* http://www.dhimmitude.org/archive/assn_world_education_5aug2002.html (last visited May 23, 2006); Polelle, *supra* note 45, at 218-19.

¹⁰⁸ *Supra* note 107.

¹⁰⁹ LITTMAN, *supra* note 107.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *See id.*

¹¹⁴ *See* CENTER FOR RELIGIOUS FREEDOM, *supra* note 102, at 2.

mosques and Islamic centers in Los Angeles, Oakland, Dallas, Houston, Chicago, New York, and other cities.¹¹⁵

The Saudi textbooks spread throughout American mosques preach a “Nazi-like” hatred for Jews, treat the forged *Protocols of the Elders of Zion* as a historical fact, and proclaim that it is a Muslim duty to eliminate Israel.¹¹⁶ Muslims who advocate tolerance or convert out of Islam are condemned as infidels who should be killed.¹¹⁷

In 2001, Syrian President Assad told visiting Pope John-Paul II that Israelis were “trying to kill Christians in the same way (the Jews) betrayed Jesus Christ, in the same way they tried to kill the prophet Mohammad.”¹¹⁸ A Syrian ministry official said that Assad’s statement was not defamation of religion and was not aimed at the Jews.¹¹⁹ The U.S. State Department called the comments “unacceptable,” adding that “there [was] no place from anyone or from any side for statements that inflame religious passions and hatred.”¹²⁰

IV. THE RESOLUTION IS NOT COMPATIBLE WITH INTERNATIONAL NORMS

As explained in the previous sections, some prominent OIC members have used defamation of religion laws not to punish acts of hate speech and religious hatred, but to curtail civil dissent and criticism of their political structures. Now, with a clearer understanding of how the OIC members have interpreted the term “defamation of religions,” it becomes more difficult to distinguish the Resolution from the aforementioned abusive laws.

A. *Constructive Criticism of Religion is Essential in a Democratic Society*

Pakistan reinforces its restriction on “defamation of public officials” with the Prophet Mohammad’s warning that defamation is like “eating the flesh of one’s own brother.”¹²¹ Iran sentences a professor to death under the defamation of religion banner

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 12.

¹¹⁷ *Id.* at 13.

¹¹⁸ *Syria Summons US, French Ambassadors After Criticism of Assad*, AGENCE FRANCE-PRESSE, May 8, 2001.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Supra* Part III.

for advising students not to “blindly follow” religious leaders.¹²² According to Iranian ayatollahs, questioning “the proven principles of religion” is defamation of Islam.¹²³ Egypt forces a professor to divorce his Muslim wife for teaching his students that certain Koranic references are not to be taken literally.¹²⁴

The aforementioned expressions do not carry a malicious intent to hurt anyone’s sentiments.¹²⁵ They merely represent attempts to criticize religious and social norms.¹²⁶ Such criticism is consistent with international law, especially when it is critical of norms that are contrary to civilized norms of behavior.¹²⁷ It would be difficult to introduce social reforms if any honest discussion critical of religion was stifled in the name of respect to religion or peoples’ religious sensitivities.¹²⁸

These expressions are clearly distinguishable from broadcasts by Rwandan media inciting genocide.¹²⁹ They do not constitute a “discriminatory form of aggression that destroys the dignity of those in the group under attack . . . and treats them less than human.”¹³⁰ Nor can it be said that they “do not contribute to any form of public debate” or do not further “progress in human affairs.”¹³¹ On the other hand, these expressions constitute political speech of public concern resembling publications in *Ek v. Turkey* that criticized Turkey’s treatment of the Kurdish people.¹³² The OIC members failed to have sufficient regard for the public’s interest to be informed of different views on matters of religion and government policies.¹³³ A government’s discomfort with unpleasant

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ See Roy Brown, *Defamation of Religion*, INTERNATIONAL HUMANIST AND ETHICAL UNION, May 4, 2005, at <http://www.iheu.org/node/1303> (last visited May 25, 2006) (speech delivered by Mr. Roy Brown to the Commission on Human Rights on April 15, 2004).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ See *id.*; *Otto-Preminger Inst. v. Austria*, App. No. 13470/87, 19 Eur. H.R. Rep. (ser. A) 34, 61 (1994).

¹²⁹ *But cf.* MacKinnon, *supra* note 76 (discussing conviction of media in Rwanda for inciting genocide).

¹³⁰ *But cf. id.* at 328.

¹³¹ *But cf.* 19 Eur. H.R. Rep. (ser. A) at 39, 57.

¹³² App. No. 28496/95, 35 Eur. H.R. Rep. 1344, 1355-58 (2002).

¹³³ *Id.* at 1374.

criticism is not sufficient to legitimize its restriction on expression.¹³⁴ Many of the aforementioned expressions are critical of public officials, deserving more protection, not less.¹³⁵ Furthermore, they are based on value judgments not susceptible to being proven false, and hence not capable of being defamatory.¹³⁶

The Resolution, however, supports the aforementioned restrictions on speech by equating expressions that “negatively project[] Islam” with defamation of religion.¹³⁷ The restrictions on speech by OIC members and the Resolution confirm suspicions of Eleanor Roosevelt that totalitarian states would punish “all criticism under guise of protecting against religious . . . hostility,” consequently rendering other human rights “null and void.”¹³⁸

B. *A Debate as to Whether Islam is in Any Way Associated With Terrorism is a Matter of Public Concern and Should not be Condemned*

“All Americans must recognize that the force of terror is not . . . the face of Islam. In order for us to reject the evil done to America on September the 11th, we must reject bigotry in all its forms,” proclaimed President Bush.¹³⁹

However, not all association of Islam with terrorism necessarily constitutes bigotry or defamation of religion.¹⁴⁰ The *9/11 Commission Report* makes it clear that the increasing threat of Islamic terrorism during the decade leading to the September 11 attacks was not a myth but a reality.¹⁴¹

Unfortunately, it is too easy to recite some obvious connection between Islam and terrorism. In 1993, Ramzi Yousef attempted to blow up the World Trade Center, killing

¹³⁴ *See id.*

¹³⁵ *See* Desacato Laws, *supra* note 70.

¹³⁶ *Id.*; BLACK’S LAW DICTIONARY POCKET EDITION, *supra* note 9, at 183.

¹³⁷ *See* Resolution, *supra* note 1.

¹³⁸ *See* Farrior, *supra* note 30, at 27.

¹³⁹ Remarks of President Bush at roundtable with Arab- and Muslim-American Leaders (Sept. 10, 2002), at www.whitehouse.gov/news/releases/2002/09/20020910-7.html (last visited May 25, 2006). The author wholeheartedly agrees with this remark and condemns all manifestations of bigotry on the basis of religion, culture, and ethnicity.

¹⁴⁰ *See* U.S. 9/11 COMMISSION, THE 9/11 COMMISSION REPORT (2004) [hereinafter 9/11 REPORT].

¹⁴¹ U.S. 9/11 COMMISSION, FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, EXECUTIVE SUMMARY 2 (2004) [hereinafter 9/11 SUMMARY REPORT].

six and wounding a thousand people.¹⁴² Plans by Omar Abdel Rahman to blow up the Holland and Lincoln tunnels in New York were frustrated.¹⁴³ Somali tribesmen shot down a U.S. helicopter in Somalia with help from al Qaeda.¹⁴⁴ In 1995, a plot in Manila was uncovered to blow up U.S. planes as they flew over the Pacific.¹⁴⁵ In 1996, a car bomb killed nineteen servicemen in Saudi Arabia.¹⁴⁶ In 1998, al Qaeda attacked U.S. embassies in Kenya, killing two hundred and twenty-four people.¹⁴⁷ In 1999, Jordanian police foiled a plot to bomb hotels and sites frequently visited by U.S. tourists.¹⁴⁸ In 2000, al Qaeda attacked the USS Cole stationed in Yemen.¹⁴⁹ And, in 2001, attacks on New York's World Trade Center towers killed thousands.¹⁵⁰

Fifteen of the nineteen hijackers involved in the September 11 attacks were Saudis.¹⁵¹ The New York Times cited a poll conducted by Saudi Intelligence showing that over 95% of Saudis between the ages of twenty-five and forty-one had sympathy for Osama bin Laden.¹⁵² Even Saudi commentators have drawn a link between terrorism and the culture of religious rage and violence that is part of Saudi religious education.¹⁵³

The Economist has devoted an entire series of articles addressing the connection between Islam and terrorism.¹⁵⁴ It is not only appropriate to talk about the link between Islam and terrorism, given the tragic events of September 11 and the availability of

¹⁴² 9/11 SUMMARY REPORT, *supra* note 141 at 2.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 3.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 1. Numerous terrorist attacks followed, like the bombings in Madrid and London.

¹⁵¹ CENTER FOR RELIGIOUS FREEDOM, *supra* note 102, at 8.

¹⁵² *Id.*

¹⁵³ *Id.* at 16.

¹⁵⁴ See *In the Name of Islam*, ECONOMIST, Sep. 11, 2003 (stating that it is not possible to discuss terrorism without discussing Islam); *The Gods that Failed*, ECONOMIST, Sep. 11, 2003 (Muslims turning to Islam to solve political problems).

Islamic hate literature in U.S. mosques, but such discussion is necessary to prevent Islam from being used as a recruiting tool for terrorism around the World.¹⁵⁵

Although Europeans have been deterred from discussing threats of militant Islam by “stifling political correctness,” the 2004 murder of Mr. Van Gough in the Netherlands is changing the debate.¹⁵⁶ It is more common now for European politicians to call for tougher measures against Islamic radicals.¹⁵⁷ Some politicians still think the solution is to strengthen blasphemy laws to prevent Van-Gough-like films from offending Islam.¹⁵⁸ Others urge for a more aggressive insistence on liberal values.¹⁵⁹ As one commentator pointed out, “[t]here is no way you can appease Muslim radicalism . . . [i]f you go down that road, you will end up banning the sale of alcohol in the supermarkets.”¹⁶⁰

C. *The Resolution Does not Prohibit Defamation of non-Muslim Religions*

More importantly, given the subjective meaning of the term “defamation of religions,” one could argue that the Resolution sanctions some forms of religious hatred, making the Resolution clearly inconsistent with international norms.¹⁶¹ This is clear from the history of the Resolution and the anti-Semitic and other defamatory statements made against non-Muslims by the OIC members’ high-ranking officials and their state-sponsored literature and media.¹⁶²

Radical statements declaring that Jews drink blood of Arab children and calling for the murder of those who convert out of Islam should be prohibited under defamation of religion laws.¹⁶³ Such statements are not satirical or political in nature and cannot be said to constitute a matter of public interest or to further “progress in human affairs.”¹⁶⁴ On the other hand, they are analogous to statements made by the media in Rwanda

¹⁵⁵ See *supra* Part III (discussing hate Islamic hate literature in the United States); *In the Name of Islam*, *supra* note 154.

¹⁵⁶ *A Civil War on Terrorism*, *ECONOMIST*, Nov. 25, 2004.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Resolution, *supra* note 1.

¹⁶² See *supra* Part III.

¹⁶³ See *Otto-Preminger Inst. v. Austria*, App. No. 13470/87, 19 Eur. H.R. Rep. (ser. A) 34, (1994); MacKinnon, *supra* note 76.

¹⁶⁴ 19 Eur. H.R. Rep. (ser. A) 34, at 57 (media inciting genocide found guilty of genocide).

because they “destroy the dignity of those in the group under attack . . . and treat[] them less than human.”¹⁶⁵ This is especially true given that governments and private individuals do in fact kill Jews and “apostates” in response to such incitements.¹⁶⁶

D. *Suggested Changes to the Resolution*

For this Resolution to be consistent with international law, its meaning must be separated from the conduct of its proponents.¹⁶⁷ One way to accomplish this is to add express language denouncing any interpretation of the Resolution that would be contrary to the international law.¹⁶⁸

First, the Resolution should include language that deplors the use of religion in order to justify or incite any form of violence and hatred.¹⁶⁹

Second, the Resolution should make it clear that the judgment of whether a particular expression constitutes defamation of religion should be objective to ascertain that States cannot rely on the Resolution to justify suppression of legitimate opinions they do not like.¹⁷⁰ Freedom of religion does not protect religious feelings, because freedom of religion includes the right to express views critical of religious opinions of others.¹⁷¹ This will assure that States cannot isolate themselves from legitimate criticism by restricting academic research concerning religious history and custom as well as expressions that criticize religious practices and introduce social reforms.¹⁷² To this end, the provisions in the Resolution that define “defamation of religions” as association of Islam with terrorism and human rights violations and “negative stereotyping” of Islam

¹⁶⁵ MacKinnon, *supra* note 76 at 328.

¹⁶⁶ *See supra* Part III.

¹⁶⁷ *See* U.N. C.H.R. SUBCOM, 56th Sess., 2nd mtg. ¶ 16, U.N. Doc. E/CN.4.Sub.2/SR.2 (2004) (Mr. David Littman suggesting that the Resolution should “deplore[] all reference to God in order to justify any form of violence, hatred and the use of religious motive to kill civilians,” and condemn “all who blaspheme and defame religion by claiming to kill in the name of God”).

¹⁶⁸ *See id.*

¹⁶⁹ *See id.*

¹⁷⁰ *Otto-Preminger Inst. v. Austria*, App. No. 13470/87, 19 Eur. H.R. Rep. (ser. A) 34, 61 (1994) (dissent arguing that it should not be left to States to decide whether a particular statement was “capable of contributing to any form of public discussion,” because states would have too much leeway in protecting interests of the majority).

¹⁷¹ *Id.*

¹⁷² *See Brown, supra* note 125; *Ek v. Turkey*, App. No. 28496/95, 35 Eur. H.R. Rep. 1344 (2002).

should be deleted because they restrict speech on matters of public importance and critical of public officials.¹⁷³

Finally, the Resolution should require States to comply with international law.¹⁷⁴ As this Note discussed, violations of freedom of speech often occur simultaneously with violations of other fundamental rights. This provision will assure that States will not try to use restrictions on the freedom of speech to “null and void” other fundamental rights.¹⁷⁵

CONCLUSION

As this Note was being finalized, the controversy and hysteria erupted over the unflattering satirical Danish cartoons depicting Prophet Muhammad as a terrorist. Subsequently, dozens of people have been killed, scores of Western embassies have been attacked, Iran has banned imports from Denmark, and newspaper editors who republished the cartoons have been sacked.¹⁷⁶

This incident and the forthcoming movie *The Da Vinci Code* are likely to provoke an intense debate about balancing the right to freedom of expression with the right to be free from expression critical of religion. Although the Note does not directly address the cartoon and *The Da Vinci Code* controversies, the author believes that the same test – whether a particular restriction on freedom of speech is necessary in a democratic society – is useful in evaluating whether a drastic step of restricting freedom of expression is justifiable.

Certainly, one should be sensitive to labeling any faith as “violent and criminal.”¹⁷⁷ But it is also understandable why some might see violent reactions to, or the muzzling of, religious satire as excessive. As the headmaster of a Cairo school pointed out, “if we were confident about our faith we wouldn’t have to react so hysterically.”¹⁷⁸

¹⁷³ See *supra* Parts II-III.

¹⁷⁴ See Brown, *supra* note 125.

¹⁷⁵ See Fariior, *supra* note 30 at 27.

¹⁷⁶ *Islam and Free Speech: Mutual Incomprehension, Mutual Outrage*, ECONOMIST, Feb. 11, 2006.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*