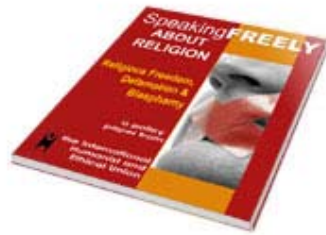


Speaking Freely About Religion: Religious Freedom, Defamation and Blasphemy



International Humanist and Ethical Union
policy paper



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Executive Summary

Since 1999 several resolutions entitled “Combating Defamation of Religions” have been adopted by several United Nations bodies, including the UN Commission on Human Rights, the new UN Human Rights Council and, in 2007 and 2008, by the UN General Assembly itself. The resolutions’ proponents argue they will enhance freedom of religion and prevent human rights violations, while critics have compared the resolutions to “blasphemy laws” that violate freedom of belief by criminalizing criticism of religion.

The authority of the UN Human Rights Council and the General Assembly are necessarily constrained by their charters and international law. This report therefore examines the concept of defamation of religion to see if it is consistent with international human rights law.

Many analyses of the resolutions “combating defamation of religion” have been framed in terms of “competing rights”: with the claim made that freedom of expression must be limited to protect religious rights. Without neglecting the right to freedom of expression, this report focuses on freedom of religion or belief, and examines whether this right supports restrictions on the “defamation of religions.” Within this context of freedom of religion, the report compares the new religious defamation proposals with laws against blasphemy

The report reaches a number of significant conclusions:

- The concept of “defamation of religion” and the resolutions lack validity in international law;
- Outlawing “defamation of religions,” as conceived in these resolutions, would violate the human right to freedom of religion or belief as well as the right to freedom of expression;
- Laws combating “defamation of religion” are analogous to laws against blasphemy, with the potential for similar human rights abuses; and
- The concerns the resolutions seek to address would be better addressed by more uniform application of the existing UN standards for countering intolerance and discrimination.

Recommendation

In light of the foregoing concerns, the International Humanist and Ethical Union recommends that Member States of the UN General Assembly and the Human Rights Council vote against any resolution against “defamation of religions.”

I. The resolutions on “Defamation of Religions”

In 1999 the United Nations Commission on Human Rights (UNCHR) received a draft resolution titled 'Defamation of Islam'. After some amendments this text was adopted by the UNCHR under the title 'Defamation of Religions.'¹ In 2002, the UNCHR adopted a resolution, drafted by the Organization of the Islamic Conference (OIC), representing 56 States, entitled “Combating Defamation of Religions.”² The Resolution expressed alarm at “the serious instances of intolerance, xenophobia, discrimination and acts of violence based on religion or belief in the aftermath of the September 11” attacks on the United States. The Resolution, in a variety of versions, was adopted by the UNCHR in 2002, 2003, 2004, and 2005³ and by the UNHRC in 2006, 2007, 2008 and 2009⁴. Similar resolutions were adopted by the UN General Assembly in 2005, 2007 and 2008.⁵

A. Meaning and Justifications for Resolutions

Within the resolutions, the term “defamation of religions” is defined as: “negative projection of Islam in the media,” “negative stereotyping of religions or belief,” and “the frequent and incorrect association of Islam with human rights violations and terrorism.”⁶

Stated justifications for the resolutions include a claim in the original draft of the 1999 Resolution entitled “Defamation of Islam” that “Islam was being slandered in different quarters, including human rights fora,” arguably referring to the UN and UNCHR. The final version of the same resolution, now entitled “Defamation of Religion,” also expressed “deep concern” that “Islam is frequently and wrongly associated with human rights violations and with terrorism.”

B. Why Do these Resolutions Matter?

None of the resolutions against “defamation of religion” have yet been given the force of international law. But UN resolutions create precedents that shape the creation of future laws. Indeed the OIC has stated that, ultimately, it seeks a “new instrument or convention” on the issue of religious defamation.⁷ The General Assembly was even asked to include this language in the founding charter of the Human Rights Council. Furthermore, UN resolutions tend to influence national laws and jurisprudence. Even non-binding UN resolutions may be cited as international sanction for new or existing national laws. In fact, the OIC lobbied national delegations to adopt the General Assembly Resolution, which stated that “defamation of religions and prophets is inconsistent with the right to freedom of expression.”⁸

Before universally binding language restricting established rights in the name of combating defamation of religions is placed in international instruments, it is imperative that the international community analyze this novel restriction on freedom of expression in the light of currently existing international law.

¹ UNHCR Resolution 1999/82 of 30 April 1999

² UNHCR, 58th Sess., 39th mtg., UN Doc. E/CN.4/RES/2002/9 (2002)

³ UNHCR, 58th Sess., 39th mtg., UN Doc. E/CN.4/RES/2002/9 (2002); UNHCR, 59th Sess., 47th mtg., UN Doc. E/CN.4/RES/2003/4 (2003); UNHCR, 60th Sess., 45th mtg., UN Doc. E/CN.4/RES/2004/6 (2004); UNHCR, 61th Sess., 44th mtg., UN Doc. E/CN.4/RES/2005/3 (2005)

⁴ G.A. Res. 60/150; UN Doc. A/Res/60/150; G.A. Res. 61/164; UN Doc. A/Res/61/164. U. N. doc. A/HRC/RES/4/9 (30 April 2007).

⁵ G.A. Res. 60/150; UN Doc. A/Res/60/150., G.A. Res. 61/164; UN Doc. A/Res/61/164,

⁶ <http://www.undemocracy.com/A-RES-62-154.pdf>

⁷ <http://www.canada.com/topics/news/world/story.html?id=9b8e3a6d-795d-440f-a5de-6ff6e78c78d5>

⁸ ‘OIC Wants Religious Tolerance Bedrock of UN Rights Body’, Islam Online, 14 February 2006, <http://www.islamonline.net/English/News/2006-02/14/article07.shtml>.

II. The Right to Freedom of Belief and Expression

Freedom of belief and freedom of speech were first declared by the global community in the Universal Declaration of Human Rights (UDHR) in 1948. They were given the force of international law by the International Covenant on Civil and Political Rights (ICCPR), agreed in 1966. Freedom of thought, conscience and religion is guaranteed by Article 18 of the ICCPR. Freedom of expression is protected by Article 19 of the ICCPR.

The UN resolutions have stated that "[d]efamation of religions is a serious affront to human dignity leading to a restriction on the freedom of their adherents."⁹ The proponents of the resolutions have therefore argued that restrictions on freedom of expressions are necessary to ensure respect for religions; or that, in the words of Pakistan, proposing the 2009 resolution to the HRC, a "delicate balance" has to be struck between freedom of expression and respect for religions.¹⁰ This report will examine both these rights: first to see if "defamation of religion" must be outlawed to protect freedom of religion or belief, and then to explore whether "defamation of religion" is protected or forbidden by freedom of expression.

A. Freedom of Religion or Belief

Article 18 of the International Covenant on Civil and Political Rights states that:

*Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*¹¹

Analogous guarantees of the right to freedom of conscience can be found in the Universal Declaration of Human Rights (the *UDHR*), the African Charter on Human and Peoples' Rights (the *African Charter*), the American Convention on Human Rights (the *American Convention*), and the European Convention on Human Rights (the *European Convention*). In 1981, the United Nations agreed a more detailed statement on the right to freedom of conscience, the "Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief."

1. All Beliefs: Theistic, non-theistic and atheistic

The UN Human Rights Committee, in its General Comment on Article 18, states that this right is:

*far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. ... The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4.2 of the Covenant.*¹²

The UN Human Rights Committee is very clear that freedom of religion or belief applies equally to all beliefs, including atheist and non-religious beliefs:

*Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed.*¹³

⁹ <http://www.reuters.com/article/worldNews/idUSTRE52P60220090326?sp=true>

¹⁰ *ibid*

¹¹ <http://www2.ohchr.org/english/law/ccpr.htm>

¹² Paragraph 1 of "General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)" at <http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15>

¹³ Paragraph 2 of "General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)" at <http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15>

2. The right to choose or criticize a religion or belief

Furthermore, the right to freedom of religion or belief is grounded in the right of an individual to choose their own religion or beliefs. Emphasizing the importance of choice in the exercise of freedom of religion, the Human Rights Committee states that:

*the freedom to “have or to adopt” a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief.*¹⁴

Exercising one’s right to choose, or replace, a religion or belief, as guaranteed by Article 18 of the ICCPR, must include the right to full and free discourse as to the truth, benefits and disadvantages of any religion or belief. The right to discuss and criticize any or all religions or beliefs is a necessary component of the freedom of religion.

Finally, it must be noted that freedom of religion or belief applies only to individuals and does not give rights to religions or beliefs *per se*. This right does not protect the content of religious beliefs from criticism, nor protect the feelings of believers who may take offense at criticism of their beliefs.

B. Freedom of Expression

Article 19, ICCPR, states that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”¹⁵

Analogous guarantees of the right to freedom of conscience can be found in the Universal Declaration of Human Rights (the *UDHR*), the African Charter on Human and Peoples’ Rights (the *African Charter*), the American Convention on Human Rights (the *American Convention*), and the European Convention on Human Rights (the *European Convention*). All of these instruments recognize a broad right to freedom of expression, applying:

*not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”.*¹⁶

Again, it must be noted that Articles 18 and 19 particularly protect *expression* of thought, conscience, and religion, but do not shield the content of any religion or belief from debate or criticism.

So our initial survey shows that outlawing defamation of religion is not required by the right to freedom of religion or belief. In fact, laws against defamation of religion seem to infringe freedom of religion or belief as well as freedom of expression.

¹⁴ Paragraph 5 of “General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)” at <http://www.unhcr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15>

¹⁵ <http://www2.ohchr.org/english/law/ccpr.htm>

¹⁶ *Handyside v. United Kingdom*, ECHR No. 5493/72, December 7, 1976, § 49.

III. The Limits to Freedom of Belief and Expression

International law does allow some limitations to freedom of expression, including expressions of religion or beliefs. We will therefore examine these to see whether “defamation of religion” is one of the legitimate grounds for restricting freedom of religion and free speech.

A. Limits to Freedom of Religion or Belief

The International Covenant on Civil and Political Rights permits *no* limitation whatsoever to the freedom of thought, as distinct from the right to manifest religion or belief. The UN Human Rights Committee, in its General Comment, notes that:

*Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19.1.*¹⁷

Article 18 of the ICCPR states that that “[f]reedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”¹⁸ This is explained in more detail by the UNHRC General Comment: “paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security.”¹⁹

It must be noted that “defamation of religions” is not one of the grounds specified. Proposed limitations on “negative projection of Islam” or “the association of Islam with terrorism and human rights violations” are also outside the grounds allowed for restricting the right to manifest one’s religion or belief. And therefore, under existing human rights law, they are *not* permitted as justifications for limiting the manifestation of religion or belief.

The UNHRC General Comment goes on to comment specifically on the possibility of limiting the expression or practise of religion or belief on the grounds of “morals”:

*The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition*²⁰.

As we shall see later, this would seem to rule out laws prohibiting “blasphemy” or other criticisms of religion defined as immoral by a single religious tradition.

B. Limits to Freedom of Expression

Article 19 (3) specifies when States *may* place limits on freedom of expression:

19 (3). The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these

¹⁷ Paragraph 3 of “General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)” at <http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15>

¹⁸ <http://www2.ohchr.org/english/law/ccpr.htm>

¹⁹ Paragraph 8 of “General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)” at <http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15>

²⁰ *Ibid.*

shall only be such as are provided by law and are necessary:

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

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

The Human Rights Committee, in its General Comment on Article 19, makes it clear that “it is only subject to these conditions that restrictions may be imposed.”²¹ Just as with Article 18, Article 19 prohibits restrictions on grounds not specified within the article. And “defamation of religions” is not among the specified grounds allowing restrictions on the freedom of speech. Thus, States may place restrictions on expression, but only when they are provided by law and are necessary for respect of the rights or reputations of others.

C. Incitement to Discrimination, Hostility or Violence

The high threshold for restrictions on freedom of expression is demonstrated by Article 20 of the ICCPR, which explains when States *must* limit freedom of expression:

20.1. Any propaganda for war shall be prohibited by law.

*20.2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*²²

The UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir has noted:

*Article 20 was drafted against the historical background of the horrors committed by the Nazi regime during the Second World War. The threshold of the acts that are referred to in Article 20 is relatively high.*²³

She has gone on to recommend against lowering this threshold for limiting free expression, noting that it would weaken freedom of religion as well as free speech:

*At the global level, any attempt to lower the threshold of Article 20 of the Covenant would not only shrink the frontiers of free expression, but also limit freedom of religion or belief itself. Such an attempt could be counterproductive and may promote an atmosphere of religious intolerance.*²⁴

The Special Rapporteur has therefore told the UN that in monitoring this right:

*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.*²⁵

D. The Genocide Convention and Group Defamation

The Genocide Convention requires states to prohibit any act committed “with intent to destroy, in whole or in part, a national, ethnic, racial or religious group.”²⁶

The International Criminal Tribunal on Rwanda relied in part on the Genocide Convention to prosecute Hutu-run media. They noted that Hutu media described the Tutsis as “hypocrites, thieves,

²¹ Paragraph 3 of “General Comment No. 10: Freedom of expression (Art. 19)” at <http://www.unhcr.ch/tbs/doc.nsf/0/2bb2f14bf558182ac12563ed0048df17?Opendocument>

²² <http://www2.ohchr.org/english/law/ccpr.htm>

²³ Report of Special Rapporteur on freedom of religion or belief, UN Doc. A/HRC/2/3 (Sep 20, 2006)

²⁴ Report of Special Rapporteur on freedom of religion or belief, UN Doc. A/HRC/6/5 (July 20, 2007)

²⁵ *Ibid*

²⁶ <http://www.un.org/millennium/law/iv-1.htm>

and killers,” “marked by malice and dishonesty,” and “inherently evil.”²⁷ Many Tutsis singled out by the media were immediately killed.

In applying the Genocide Convention, the Rwanda Tribunal described this type of expression 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.”²⁸

To prevent such incitement to genocidal violence, states may pass group defamation laws without violating international law. Indeed such laws may be necessary to fulfil the obligations contained in Article 20 of the ICCPR. But group defamation laws are very different from defamation of religion laws, because group defamation laws protect the reputation of people, not ideas.

It is clear that defamation of a group must be restricted if and only if it amounts to incitement to hatred or violence as specified in Article 20 of the ICCPR. The activities of the Hutu media in the Rwandan genocide provide an example of such defamation.

E. “Defamation of Religion” Fails to Meet Threshold

“Defamation of religion”, however understood, includes expressions which are well below the threshold for constituting incitement to discrimination, hostility or violence. Furthermore, the UN resolutions “combating defamation of religions” have used a variety of other terms which also fall short of that standard, such as “negative” or “deliberate” stereotyping and the “frequent and wrongful association of Islam with human rights violations and terrorism”.²⁹

After examining all of the legitimate criteria for restricting free expression and freedom of belief, we must conclude that “defamation of religion” fails to meet the carefully prescribed standards for restricting these fundamental freedoms.

²⁷ Catharine MacKinnon, International Criminal Tribunal for Rwanda, 98 Am. J. Int'l. L. 325-26 (2004).

²⁸ Ibid at 328.

²⁹ <http://www.undemocracy.com/A-RES-62-154.pdf>

IV. Arguments against Religious Defamation Laws

As we have seen, Articles 18 and 19 of the ICCPR particularly protect *expression* of thought, conscience, and religion; they do not shield the content of any religion or belief from discussion or criticism. Indeed, as the European Court of Human Rights stated, freedom of expression protects speech, ideas and information that may “offend, shock or disturb the State or any sector of the population.”³⁰

It seems clear that prohibiting “defamation of religions” would violate the right to freedom of expression. However, proponents of the measures have suggested there is an intrinsic tension between freedom of expression and freedom of religion, and that the resolutions strike a “delicate balance” between these ‘competing’ rights.³¹ We believe that a study of international law and precedent suggests the opposite: free expression does not conflict with freedom of belief, but is a fundamental component of it.

A. Defamation Laws Would Violate Religious Freedom

Indeed, since the right to freedom of religion or belief is grounded in the right of an individual to choose their own religion or beliefs, free inquiry about religion is guaranteed. Thus criticism of other religions or beliefs is protected by Article 18 as well as by Article 19 of the ICCPR. Furthermore, religions, and other worldviews, often include views about the truth and morality of other religions and beliefs. They may even include fundamental doctrines that flatly condemn the doctrines of other religions, and injunctions to adherents to “bear witness” to those beliefs in public. If the beliefs of one religion are seen as “defamatory” by the followers of another, laws against “defamation” could produce a vicious spiral of increasing limits to freedom of expression.

Defamation laws are likely to be inconsistent with such a full and free discourse and, therefore, are unlikely to fall within the narrow exception set forth in Article 18(3). This point was well expressed by the UN Special Rapporteur for Freedom of Religion or Belief, Ms. Asma Jahangir, in her report (A/62/280) on 26 October 2007 to the Third Committee of the Sixty-second General Assembly Session. Referring to the report on incitement to religious hatred that she had prepared for the Human Rights Council with Doudou Diene, the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, she said,

*[i]f it was defamation to say that one religion was better than another, the result would be the religious prosecution of those who embarked on intellectual analysis of religions or those who were within their rights to say that their religion was superior.*³²

B. Defamation Laws Cannot Apply to Religions

International law allows States to enact defamation laws to protect the reputation of others under the necessity requirement of Article 19 of the ICCPR. But under existing law, the term “defamation” has no meaning with regard to objects, ideas or beliefs. Nor is “defamation” concerned with “hurt feelings.”

Defamation laws exist to protect the reputation of persons from being harmed by false statements. The person seeking vindication of their reputation must be identified, must have suffered measurable damage, and must prove the “defamatory” statements are false.

³⁰ *Handyside v. United Kingdom*, ECHR No. 5493/72, December 7, 1976, § 49.

³¹ <http://www.reuters.com/article/worldNews/idUSTRE52P60220090326?sp=true>

³² <http://www.un.org/News/Press/docs/2007/gashc3895.doc.htm>

Religions—like other opinions and ideologies—do not have such a personal reputation and are not protected by international human rights law. Attempting to apply the concept of “defamation” to religions would be extremely problematic. For example, proving the truth of a statement is always an absolute defence to a defamation charge. Yet, judicial standards of truth are notoriously difficult to apply to questions of faith. Opinions on religion, or artistic interpretations or even satire of religion, are often not susceptible to being proven true or false. Thus, the “truth defence” would not be readily available to anyone accused of defamation of religion.

The Special Rapporteur for Freedom of Religion or Belief has pointed out that:

*[t]he right to freedom of religion or belief protects primarily the individual and, to some extent, the collective rights of the community concerned but it does not protect religions or beliefs per se.*³³

She concludes that the “defamation of religion” concept does not exist in international law, because human rights law protects the rights of people and not religions. Furthermore, it is wrong to think of any religion as a homogenous collection of believers, because even adherents of the majority religion should be free to deviate from or reinterpret that religion.

³³ Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, Second Session of the HRC, A/HRC/2/3, 20 September 2006, paragraph 38.

V. Blasphemy and “Defamation of Religion”

As we have shown, defamation laws protect people not religions or beliefs. Yet many religions have in fact received legal protection from perceived insults and criticism. If these laws are not part of the traditional concept of “anti-defamation” laws, then what are they? The answer is, “Blasphemy Laws.”

Blasphemy laws, under a variety of names, have been traditional in many countries in Europe, the Muslim World, and across many parts of the former British Empire. Indeed, Britain only repealed its blasphemy law in 2008, and Ireland introduced a new blasphemy law in 2009. Blasphemy laws protect religion—almost always a single, state-endorsed religion—from criticism and insult. In some cases, including Pakistan and Saudi Arabia, blasphemy is still punishable by death.

A. Pakistan’s use of Blasphemy Laws

Pakistan’s so-called “blasphemy laws” outlaw “derogatory remarks” against Islam, the Quran and the Prophet Mohammed. Since Pakistan has taken the lead in promoting the UN resolutions “Combating Defamation of Religions,” it’s important to note that its concept of “defamation of religions” seems to be derived from its domestic blasphemy laws. These laws have been used to prosecute hundreds of Pakistanis over the last two decades. As the US Commission on International Religious Freedom has noted, “[t]hese laws are often used to intimidate reform-minded Muslims, sectarian opponents, and religious minorities, or to settle personal scores.”³⁴ M. Younus Shaikh, founder of the International Humanist and Ethical Union’s (IHEU) member organization in Pakistan, learned this firsthand when he was arrested on trumped-up charges of blasphemy in October 2000.

Dr. Shaikh was sentenced to death in August 2001. He suffered horrific conditions on death row as numerous appeals were filed and the IHEU lead an international campaign to free him. He was finally acquitted and released in November 2003. Upon his release Dr. Shaikh faced a *fatwa* calling for his death and was forced to leave his homeland. He now lives in exile. In a statement to the UN Human Rights Council in 2004, Dr. Shaikh described Pakistan’s blasphemy laws as “nothing less than religious terrorism through the abuse of the state apparatus and the civil law.”³⁵

B. Comparing Blasphemy and “Defamation of Religion”

Many observers have equated the UN resolutions “Combating Defamation of Religions” with blasphemy laws.³⁶ In the Sixty Second Session of the United Nations general assembly, the Special Rapporteur for Freedom of Religion or Belief herself made the connection between laws against “defamation of religion” and “blasphemy laws” that existed in some states, saying that,

*she and her predecessor had looked at several blasphemy laws that had been used initially against vulnerable religious minorities and those who had been dispassionate about religion. It would be counterproductive if defamation at any level became a human rights violation, unless it led to violence.*³⁷

The concept of “defamation of religion” shares many characteristics with the concept of “blasphemy” found in anti-blasphemy laws: both concepts favour the ideas and institutions of religion over the conscience and expressions of the individual; both favour politically powerful forms of religion over dissenting and minority forms of religions; and both favour religious beliefs over non-religious beliefs. As a result, both prohibit critical evaluation and debate about religions and religious institutions in a position of power. And both restrict free inquiry and freedom to compare and choose between beliefs.

³⁴ International Religious Freedom Report 2006, at <http://www.state.gov/g/drl/rls/irf/2006/71443.htm>

³⁵ <http://www.iheu.org/node/1056>

³⁶ For examples, see: <http://www.canada.com/topics/news/world/story.html?id=9b8e3a6d-795d-440f-a5de-6ff6e78c78d5>, and <http://www.foxnews.com/story/0,2933,432502,00.html>

³⁷ <http://www.un.org/News/Press/docs/2007/gashc3895.doc.htm>

C. Violating Freedom of Belief

The parallels between “defamation of religion” and “blasphemy” also reveal why outlawing “defamation of religion” would violate freedom of religion or belief. For example, Article 18 protects non-religious and atheistic beliefs equally with religious and theistic beliefs. Yet the UN statements on “defamation” protect only religious and theistic beliefs, with special mention given to one religion, Islam, over all other religions. Yet it does not seem possible to extend concepts of blasphemy or defamation to cover all religions or beliefs equally. Many religions include doctrines that contradict other religions: to give one basic example, the fundamental Christian claim that “Jesus is the son of God” may be blasphemous to Muslims, while the Muslim claim that Jesus was a prophet but not the son of God may be blasphemous to Christians.

Nor is it licit to claim that the dominant religion in a state can limit the expression of critical beliefs, as with blasphemy laws, on the grounds of public “morals.” As earlier noted, the UNHRC has made it clear that “limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.”³⁸

Legal privileges for one religion over another—or even the legal privileging of all religions over the rejection of religion—goes against existing international human rights law. It violates freedom of religion or belief by introducing a form of discrimination against religious minorities, religious dissenters, and those who reject religion. As the United Nations Human Rights Committee noted in its General Comment 22 on Article 18 of the ICCPR, “Restrictions [on freedom of religion or belief] may not be imposed for discriminatory purposes or applied in a discriminatory manner.”³⁹

D. The Danger of Religious Abuse

There is a clear danger that states may use the UN resolutions against defamation to justify existing or new domestic blasphemy laws. Blasphemy laws continue to be used to protect politically dominant religions from dissent, to prosecute objections to human rights abuses in the name of religion, and to exempt powerful religious institutions from scrutiny and criticism.

Some states are already using the concept of the defamation of religions to silence dissenting voices. This trend has recently been condemned by the UN Working Group on Arbitrary Detention in the case of the Egyptian writer Kareem Amer. Amer was convicted of insulting the religious Al Azhar Institute and the Head of State. The UN Working Group on Arbitrary Detention stated:

*[d]efamation of religions may offend people and hurt their feelings but it does not directly result in a violation of their rights to freedom of religion. International law does not permit restrictions on the expression of opinions or beliefs which diverge from the religious beliefs of the majority of the population or from the State prescribed one.*⁴⁰

The Working Group declared Amer’s detention to be in contravention of Article 19 of the ICCPR.⁴¹

In addition to national abuse of blasphemy laws, the danger of internationalising concepts of defamation or blasphemy was highlighted by a 2008 case in Jordan. A Jordanian court issued a summons, on charges of “blasphemy”, to eleven citizens of Denmark for drawing and reprinting cartoons depicting the Prophet Mohammed. According to Danish reports, Jordanian lawyers are hoping the case “will help establish an international law against slandering religion.”⁴²

³⁸ Paragraph 8 of “General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)” at <http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15>

³⁹ *ibid.*

⁴⁰ Opinion No 35/2008 (Egypt), Communication addressed to the Government on 6 December 2007, paragraph 38.

⁴¹ *Ibid.*

⁴² <http://www.foxnews.com/story/0,2933,363182,00.html>

CONCLUSION

The International Humanist and Ethical Union (IHEU) supports initiatives to combat discrimination, hostility and violence based on religions or belief. An essential step towards the goals agreed by the United Nations in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the UN Declaration on The Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief must be the universal implementation of the standards outlined in those historic agreements.

The UN Resolutions on “Combating Religious Defamation” also state their concern at recent instances of “intolerance, xenophobia, discrimination and acts of violence based on religion or belief.” We believe that these problems are already adequately covered by international law in the form of articles 18, 19 and 20 of the ICCPR. What is needed is a more uniform application of those fundamental rights.

We therefore believe that the new proposal to combat “defamation of religions” is unnecessary. Furthermore, as the above analysis has shown, outlawing “defamation of religion” would contradict numerous existing principles of international law, including the right to freedom of religion or belief. The use and abuse of blasphemy laws serves as a stark warning of how our most cherished rights can be violated when religious criticism is criminalized. There is no freedom of conscience when we cannot speak freely about religion.

In summary:

- The concept of “defamation of religion” and the resolutions lack validity in international law;
- Outlawing “defamation of religions,” as conceived in these resolutions, would violate the human right to freedom of religion or belief as well as the right to freedom of expression;
- Laws combating “defamation of religion” are analogous to laws against blasphemy, with the potential for similar human rights abuses; and
- The concerns the resolutions seek to address would be better addressed by more uniform application of the existing UN standards for countering intolerance and discrimination.

Our firm recommendation is that resolutions “Combating Defamation of Religions” be rejected by the Human Rights Council and the UN General Assembly.

About the International Humanist and Ethical Union

The International Humanist and Ethical Union is the global union for Humanist, Ethical Culture, Rationalist, Atheist and other secularist and freethinking groups. Founded in 1952, IHEU works to represent and support the global Humanist movement, with the ultimate goal of building a Humanist world in which human rights are respected and all can live a life of dignity.

With more than one hundred member organizations in 40 countries, IHEU has Special Consultative Status with the United Nations (New York, Geneva, Vienna), General Consultative Status at UNICEF (New York) and the Council of Europe (Strasbourg), and Observer Status with the African Commission on Human and Peoples' Rights. IHEU also maintains operational relations with UNESCO (Paris).

The policy paper *Speaking Freely About Religion: Religious Freedom, Defamation and Blasphemy* is an official policy paper of the IHEU, adopted by the IHEU executive committee on October 21, 2009. It was drafted by Matt Cherry, head of the IHEU delegation to the United Nations Headquarters, with the assistance of Roy Brown, head of the IHEU delegation to the United Nations in Geneva, Switzerland. The paper benefited greatly from the research of Maxim Grinberg (in particular his paper *Defamation of Religions v. Freedom of Expression: finding the balance in a democratic society*, published in the July 2006 issue of the Sri Lankan Journal on International Law) and the input of Keith Porteous Wood.

For more information about the International Humanist and Ethical Union, please visit www.iheu.org



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