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Defamation of Religions

The Concept of (Combating) Defamations of Religions in the Context of the
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Abstract

Since 1999 the concept of 'Defamation of Religions' has consistently been introduced by the Organisation of the Islamic Conference as a Human Rights resolution in various fora of the United Nations. The resolution highlights concerns over what is perceived as the negative stereotyping of religions, primarily of Islam and through popular media. The approach is to declare the act of defaming religions a violation of human dignity, further frame it as a Human Rights violation and therefore recommend the outlawing of defamatory expressions against religions to counter such occurrences. Concerns have been raised with regard to the concepts' incompatibility to the pivotal ideas of Human Rights, particularly specific fundamental freedoms and rights such as the freedom of expression. Thus it has to be clarified to what extent the concept of (Combating) Defamation of Religion as it is proposed and foreseen in the resolution is consistent with the Human Rights framework.

To answer this main research question, a legal and political analysis of the Resolution within the UN system was conducted. The legal analysis assessed the implications of the concept for the enjoyment of Human Rights, above all in connection to the freedom of expression, freedom of religion and the rights of persons belonging to vulnerable groups. Additionally the question of women's rights, which has been neglected in relevant critical reviews so far, was considered. Political analysis was conducted to assess possibilities of further development of the resolution. This analysis included a review of the changing positions of Member States towards the initiative and an examination of voting patterns in a number of UN bodies.

The findings reveal that the concept articulated by the resolution is incompatible with existing Human Rights standards, and has severe implications for the enjoyment of a number of identified Human Rights. Moreover, a strong case can be made to hold defamation legislation equivalent to existing national blasphemy laws. It was further found that the political situation is characterised by a deadlock as negotiations take place in an atmosphere of mutual suspicion and distrust.

These results point to the need for a re-conceptualisation of the phenomenon of Defamation of Religions to the more legally appropriate 'incitement to religious hatred' in order to adequately address the legitimate issues raised in the resolution. Moreover, there is a critical need to incorporate a gender perspective and minority concerns into subsequent analysis and developments relating to this resolution and its concept.

Acronyms

1981	Declaration on the Elimination of all Forms of Intolerance and of Discrimination
Declaration	Based on Religion or Belief
CDHRI	Cairo Declaration of Human Rights in Islam
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHR	Commission on Human Rights
EE	Eastern European Group
EOV	Explanation of Vote
EU	European Union
GA	General Assembly
GRULAC	Latin American and Caribbean Group
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
NAM	Non Aligned Movement
NGO	Non Governmental Organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIC	Organisation of the Islamic Conference
UDHR	Universal Declaration of Human Rights
UIDHR	Universal Islamic Declaration of Human Rights
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
US	United States
VDPA	Vienna Declaration and Program of Action
WEOG	Western Europe and Other Group

1 Introduction

When Pakistan, on behalf of the Organisation of the Islamic Conference (OIC) first introduced a draft resolution entitled 'Defamation of Islam' in 1999 in the Commission for Human Rights, little critical attention was given to the potential implications for existing Human Rights instruments. While the resolution was at first adopted in consensus after minor amendments under the title 'Defamation of Religion', the perception of the concept and its discourse has changed significantly over time. The resolution grew in substance from a text highlighting qualms over what was perceived as the negative stereotyping of Islam in media, to a resolution with unusually strong language demanding legal measures to address the issue. As a consequence, apprehensions were formulated in regard to the concepts' incompatibility to the pivotal ideas of Human Rights, specific fundamental freedoms and rights such as the freedom of expression.

Criticism arose over time to the point that even state representatives were bluntly accusing proponents of the resolution of aiming rather at undermining Human Rights, than at protecting them as claimed in the resolution. And while the support for the initiative has been declining constantly ever since, the OIC is continuing its efforts to turn the idea of combating Defamation of Religions into legally binding state obligations.

However, surprisingly little concrete scientific research has been conducted up to date to clarify the question of the compatibility of the concept of 'Combating Defamation of Religions', as is proposed within the resolution, with the Human Rights system. To fill this gap, this paper aims at providing a comprehensive answer to the main research question:

How consistent is the concept of Defamation of Religions with the Human Rights framework?

To clarify this question, I will test the central claims raised by both its supporters and its critics.

To date, these areas of dispute regarding the Defamation Resolution and its concept include:

- The erosion of freedom of expression as a fundamental freedom for the benefit of protecting mainstream religious opinion;
- The tendency of aiming at the protection of religious ideas rather than individual adherents of the respective religion, which would expand the scope of human rights from the level of the individual to group rights and beyond.
- The tendency of the resolutions' language to blur and conflate boundaries between defamation of religion and incitement of religious hatred, effectively putting both phenomena on an equal footing.
- A narrow focus on the protection of Islam, leaving out the concerns of adherents of other religions and implying a certain understanding of the term 'religion' itself.

Taking into account these major concerns which determine the status quo, I subsequently conduct my research with consideration to the following four assumptions, that are to be verified in the process of the research and will be taken up again in the last chapter of this thesis:

- There is no significant difference between legislation to 'Combat Defamation of Religions' and traditional 'Anti-Blasphemy' laws.
- The proclaimed means of combating Defamation of Religions as proposed in the resolution, are incompatible with international Human Rights law, in particular with respect to the right of freedom of expression and the enjoyment of freedom of religion by persons belonging to vulnerable groups.
- The strong language in the resolution recommending means to address the issue in combination with the lack of a clear definition of Defamation of Religions, opens the concept to misuse, particularly because it puts the State firmly in charge of deciding which ideas may be expressed in the public square and which may not.
- The terminology of the concept is inherently flawed in proclaiming the protection of religious ideas rather than human beings, and as such is misplaced for the Human Rights discourse.

1.1 Theoretical Framework

The topic at hand is clearly complex as it deals with Human Rights, international politics and religion, 3 spheres that are vast and comprehensive in themselves. Hence, it is not surprising that there is no 'grand theory' that incorporates, connects and explains all those elements sufficiently. To adequately tackle the topic, it is necessary to work with 2 highly interlinked disciplines: public international law and international relations. This chapter will discuss the relevance of public international law in the realm of international relations and argue that both disciplines must be considered in conjunction, with respect to the Defamation of Religions resolution.

1.1.1 Public International Law and Human Rights

The theoretical framework of public international law finds its root in the term *jus gentium*, dating back to the Roman Empire. This *jus gentium* was not referring to an 'international code of conduct' per se, but described a set of rules and norms for the interference with non-Romans within the borders of the Roman Empire. Only later those roots were translated into what came to know as *jus inter gentes* in the 18th century, a first outline of universal norms for the interaction between the dominant powers of their time. With the crystallisation of the concept of the Nation-State in the 19th century the modern terminology of *public international law* came into use¹ and is today understood applicable not only to nations, but to international organisations, non-governmental organisations (NGOs) and even transnational cooperations.² In this thesis, international law essentially refers to *public*, not private international law, which deals predominantly with matters of corporate regulations.

More important for the topic of Defamation of Religions is a relatively new inclusion into international law: the *cross-cutting* thematic issue of Human Rights.³

While previously the role of international law was limited to regulate the interaction of nations, the theoretical shift that followed the second World War came with a new understanding of international law: Human Rights were conceptualised as legal norms that States had to comply with, to be part of the new international community.⁴ Human Rights were given the special

1 Stephan Hobe, *Einführung in das Völkerrecht*, 8th ed. (Tübingen [u.a.]: Francke [u.a.], 2004), 7.

2 Ibid., 8.

3 Ibid., 392.

4 Hobe, *Einführung in das Völkerrecht*, 393; Janet Madigan, *Truth, politics, and universal human rights*, 1st ed. (New York: Palgrave Macmillan, 2007), XIII.

characteristic of being defined as ante- and supra-state rights and hence, inevitable conflict with the concept of national sovereignty. With these developments in Human Rights, public international law and indeed the very sovereignty of nations has become subordinate to these rights. In the end, States became increasingly involved in upholding Human Rights through international law in other States as well. Hence, these processes of modernisation necessarily affect international relations. I will elaborate upon this nature of Human Rights in more detail in Chapter 3.

1.1.2 International Relations – Neo-Institutionalism and Neo-Gramscianism

To explain the dynamics and positions of States towards the concept of Defamation of Religions within the international community, theories of international relations are essential components of the analysis. Against this foundation, it becomes clear that the subject of this paper is a matter of international politics, not simply of legal affairs.

International relations is not a stagnant field and no theory or school of international relations may be referred to as being commonly accepted or wholly authoritative.⁵

Since the 1980's and especially since the 1990's, a whole variety of approaches, concepts, theories and schools have coexisted, cooperated, or competed with each other for validity. Most prominent among these theories are Neo-Realism, Neo-Institutionalism, World Systems Analysis and Neo-Gramscianism to name only a few.

The theoretical developments are above all attributable to the changing geopolitical circumstances: from the cold war logic of the superpowers, towards a gradual, globalisation-driven albeit partial erosion of the relevance of the Nation-State. Essentially, theory construction in the field of international relations reflect the historical realities of their time, and strongly influence political decision making.⁶ Crucially, theoretical concepts of international relations must adequately project the political realities and developments to be of value for the scientific and political debate. Consequently, the failure of Neo-Realism to predict the significant historical

5 More on the theoretical debate on international relations: Woyke, *Handwörterbuch Internationale Politik*, 473-487; For modi of the epistemological dimension: Schieder, *Theorien der internationalen Beziehungen*, 16-24.

6 Siegfried Schieder, *Theorien der internationalen Beziehungen*, 2nd ed. (Opladen [u.a.]: Budrich, 2006), 26.

event of the end of the east-west conflict, led to a social-constructive re-interpretation of the existing models and a further differentiation of the theories in the field of international relations.⁷ Those new approaches were meant to better reflect and explain the mechanisms that determines the political decisions on the international stage.

While the field of international relations has differentiated into a pluralism of theories and approaches, most of them share some elements and commonalities. The lowest remaining common denominator is an understanding of international relations as an integrated transnational interaction of state and non-state actors on a global scale.⁸ Another common expression shared in different theories on international relations is the term 'anarchy', understood as the state of a lack of supra-state authority, which would have the monopoly and means to enforce and oversee compliance with international regulations and agreements.⁹ Traditional schools of (Neo-)Realism reject claims of any autonomy or influence of international organisations¹⁰, and hence see 'anarchy' as being dominant and remaining unregulated in the international arena. This perspective is of little relevance for this research as this thesis' topic, or more precisely the concept and the resolution that is analysed, is directly build upon the structures of the United Nations and in its meaning and effect dependent on its bodies, such as the UN General Assembly or the Human Rights Council. This paper further grants international law and specifically its Human Rights instruments as developed and agreed upon under the umbrella of the United Nations a certain independent role in regulating international relations. Under these considerations, Neo-Institutionalism theories appear to be better suited to explain the political dynamics and emerging conflicts surrounding the concept of Defamation of Religions.

Neo-Institutionalism in all its variants predicts a 'civilising of conflict' by the containment of conflicts and the juridification of its management and resolution. Hence, in practice, anarchy is 'tamed' by establishing international institutions and regimes.¹¹ Indeed, considering the approach of a 'codification of conflict management' through regulation by international institutions, one could be tempted to claim that public international law is subject to international relations¹², but as I will argue in the following sub-chapter elaborating on the intersection of international relations and international law, there are valid reasons to reject this view.

7 Wichard Woyke, *Handwörterbuch Internationale Politik*, 5th ed. (Opladen: Leske Budrich, 1993), 474.

8 Schieder, *Theorien der internationalen Beziehungen*, 15,16.

9 Ibid., 16.

10 Ibid., 339.

11 Peter Filzmair et al., *Internationale Politik : eine Einführung* (Wien: WUV Universitätsverlag, 2006), 81-83, 90.

12 Ibid., 90.

The *actor*-centered approach of Neo-Institutionalism, provides much of the basis for the analysis in this paper. It aims at understanding the behaviour of players against the backdrop of those institutions they manoeuvre in.¹³

But in Institutional perspective, not only are formal institutions valid structures for the behaviour of actors, but 'regimes' understood as informal networks of entities aiming at consensus-building, can be considered determining elements of international relations as well.¹⁴ This 'Regime Theory' claims the natural establishment of informal networks and cooperations of actors, which reflect the regulative interests of these actors in specific fields of policies.¹⁵ This can be one explanation for the dynamics of group consistency of regional groups such as WEOG, GRULAC or ideological defined interest groups such as the OIC. Those regimes may overlap and complement, but also undermine each other and super-ordinate institutions. This perspective is particularly helpful when trying to understand the dynamics and voting behaviour of groups in connection to their integration within the OIC.

But Neo-Institutionalist theories have their limitations when it comes to aspects of identity and ideology as elements of (irrational) decision making and behaviour of actors. In their dominant variants Neo-Institutionalism assumes that decision making processes are in general determined by rational-choice considerations¹⁶ and economic cost-benefit calculations, where an *absolute* 'win' is more important than a *relative* one.¹⁷

But under this premise, the positions and pursued strategies of the actors involved in the topic of Defamation of Religions could not be accurately explained. This is because of the optimistic emphasis of Neo-Institutionalism on absolute benefit, which would lead quasi naturally to cooperation and stability¹⁸, and behaviour of the players would be determined (and explainable) as "a function of rules and incentives"¹⁹. Such an assumption ignores (at least partially) those elements, which are not explainable through a common understanding of the relevance of rational-choice in decision making: States may stick to their policies due to their ideologies *although* these policies do not prove to be beneficial on a rational level. Essentially, Neo-

13Georg Simonis, *Studium und Arbeitstechniken der Politikwissenschaft* (Opladen: Leske Budrich, 2003), 114.

14Woyke, *Handwörterbuch Internationale Politik*, 288.

15Filzmair et al., *Internationale Politik : eine Einführung*, 290-293.

16Simonis, *Studium und Arbeitstechniken der Politikwissenschaft*, 114.

17Woyke, *Handwörterbuch Internationale Politik*, 287.

18Ibid.

19B Peters, *Research methods in politics*, 2nd ed. (Basingstoke Hampshire; New York: Palgrave Macmillan, 2008), 24.

Institutionalism is criticised as being focused too greatly on *economic* power, leaving aside (elements of) *ideological* power and interests²⁰, which play a crucial role in the positions of States towards the matter of Defamation of Religions.

In its traditional rational variants, Institutionalism to a great extent, ignores the relevance of ideology per se and questions of collective (religious) identity that have proven to play an essential role in the dynamics surrounding the concept of Defamation of Religions. Objectives concerning ethical values are not perceived by this theory as the real interests of players in decision-making processes. Crucially, Neo-Institutionalism sees the main interest of (rationally behaving) States to be to *regulate* interests, not *change* them.²¹

This is particularly problematic as my research indicates that actors in the process relating to the concept of Defamation of Religion, are in fact not aiming at the regulation of their own interests but the implementation of the concept as a commonly accepted idea. Neo-Institutionalism has its limitations for explaining the State's objectives of creating ideological hegemonies that support their own ideological identities.

Considering the importance of cultural and religious ideas and ideologies, Neo-Gramscian theory provides valuable understanding of the specifics of the political dynamics that have evolved around the concept of Defamation of Religions. In particular, the Neo-Gramscian understanding of hegemony as being constructed and maintained by a combination of ideological consensus and political force²² provides an explanation for the internal state of consistency within regional groups and 'regimes', such as WEOG or the OIC.

The social-constructive perspective of Neo-Gramscianism provides a valuable addition to Neo-Institutionalist theory by overcoming the object-subject distinction regarding hegemony²³ in terms of a consideration of 'historic materialism' as the roots for consensual secured hegemony²⁴. Moreover, it provides supplementary explanations for the struggle for ideological consensus *within and among* different actors on the international institutional level. The results of this paper reflect this relevance of 'consensus' in the struggle for ideological hegemony, as the concept and resolution have proven to essentially remain effect-less, if consensus-building for ideological

20 Andreas Boeckh, *Internationale Beziehungen* : hrsg. von Andreas Boeckh. (München: Beck, 1994), 229.

21 Woyke, *Handwörterbuch Internationale Politik*, 287.

22 Sonja Buckel, *Hegemonie gepanzert mit Zwang : Zivilgesellschaft und Politik im Staatsverständnis Antonio Gramscis*, 1st ed. (Baden-Baden: Nomos, 2007), 24-27.

23 Henk Overbeek, "Transnational historical materialism," in *Global Political Economy: Contemporary Theories* [e.d. Ronen Palan], n.d., 168.

24 Schieder, *Theorien der internationalen Beziehungen*, 338.

(counter-)hegemony cannot be accomplished. Essentially, this critical approach also better reflects matters of north-south conflicts and as a 'class-theory' connects economic and ideological interest and hegemony.²⁵

Therefore, a combination of Neo-Institutionalism and Neo-Gramscian perspectives seem most suitable for research on the subject of Defamation of Religions. Both greatly support the approach of international law, regarding its role in international relations. The interconnectedness of international relations and public international law will be elaborated upon in the following section.

25 Filzmair et al., *Internationale Politik : eine Einführung*, 90; Buckel, *Hegemonie gepanzert mit Zwang : Zivilgesellschaft und Politik im Staatsverständnis Antonio Gramscis*, 145.

1.1.3 The Intersection of Public International Law and International Relations

The at times ambiguous relationship between international law and international relations has been extensively discussed in academic discourse. Some of the practical intersections and commonalities have been mentioned above. As discussed before, the codification and juridification of conflict in international institutions and regimes, might tempt an understanding of public international law as part of international relations rather than distinct discipline on its own. This understanding must be rejected as although both disciplines elaborate upon the same subject, their approaches to tackle the subject matter differ significantly:²⁶

Political science tends to understand international law as a product of the reciprocity of political powers, articulated mainly through international institutions. Experts in international law however, concede to international law, a political power of its own.²⁷ Institutionalisation of international affairs in fact provides a corridor or space for actors to manoeuvre and pursue their objectives,²⁸ with the structure of this corridor arguably being determined by international law.

While on the one hand international relations are concerned with understanding why actors behave in certain ways and aims at explaining underlying power-relations, experts in international law tend to disregard essential questions of political science contributing to the creation of public international law itself.²⁹ However, for the purpose of this thesis a deeper understanding of public international law seems barely possible without incorporating explanatory models of political science.³⁰ This is even more so the case as international law must be understood as *political law*. For its effectiveness, it is to a high degree dependent on its recognition as legally binding by its subjects themselves – the States. The lack of a global government or in other words, the existence of 'anarchy' and the necessary containment of conflicts into codified norms, therefore demands a political-science approach to international law.

The regime theory provides added value from a legal perspective, and further connects both approaches, international relations and international law. Norms and standards of public

26 Woyke, *Handwörterbuch Internationale Politik*, 545.

27 Hobe, *Einführung in das Völkerrecht*, 5.

28 Roland Czada, "Theorie politischer Institutionen," n.d., <http://www.politik.uni-osnabrueck.de/POLSYS/Archive/institut14.htm>.

29 Hobe, *Einführung in das Völkerrecht*, 5.

30 Ibid., 6.

international law which have not been universally accepted as valid on a global scale, are nonetheless often implemented on a regional scale, even under the roof of such 'universal organisations' as the United Nations.³¹ This is often seen as a necessary step towards the complete realisation of concepts that have not (yet) been commonly accepted.³² This again, is closely interlinked with questions of the struggle for hegemony of ideas, as advanced by Neo-Gramscian theory. Such a regionalisation can in fact impair the search for a common canon of values, and lead to a deepening of the rift between competing ideological perspectives and their regimes, as for instance between WEOG and the OIC, in case of the idea of Human Rights and the relevance of the concept of Defamation of Religions therein.

An essential tenet of public international law is the 'cultivation of conflict' as a principle of conflict resolution. Here an intersection is found with social constructivist and Institutionalist theories of international relations. The maxim advocates the peaceful settlement of conflicts by outlawing the use of force though formally revoking the 'right to war' (*liberum jus ad bellum*) from States,³³ and in essence thereby stipulating a general prohibition of the use of force for the realisation of political goals.³⁴

This intersection of international law governing peaceful settlement of conflicts between States finds its ultimate practical implementation in form of the umbrella of the international community of States – the United Nations. The UN Charter ultimately governs international relations between States by stipulating the principle of prohibition of force as well as its possible exceptions.³⁵ Although those rules have been violated constantly, due to divergence in interest and power on the one hand, and law and reason on the other, the legal provisions stipulated in the Charter became the fundamental point of reference for international relations today.³⁶

In a similar fashion, the UDHR although essentially a core foundation for international Human Rights law, is as much a political instrument and heavily draws on international relations, as a legal one. As such it is evident that this paper, although first and foremost aiming to clarify the *legal compatibility* of the concept of (legally) combating Defamation of Religions as stipulated in UN resolutions, is as much a political analysis.

31 Ibid., 55.

32 Ibid., 56.

33 Woyke, *Handwörterbuch Internationale Politik*.

34 Hobe, *Einführung in das Völkerrecht*, 50.

35 Ibid., 306-308.

36 Woyke, *Handwörterbuch Internationale Politik*, 542, 543.

1.2 Methodological Approach

As argued in the previous chapter, theories of international relations and public international law are most crucial for the objectives of this research. As such, the methodological approaches employed in this work closely relate to the theories outlined above.

1.2.1 Clarification on Terminology

For the purpose of creating the necessary framework to answer the research question and meaningfully undertake the goals of this paper, Chapter 2 was devoted to setting boundaries for the terms in question – 'Defamation', 'Religion' and 'Defamation of Religions'. This further included an in-depth discussion of the *nature* of Human Rights. I have argued, that this nature and the interpretation of certain provisions of the Human Rights Covenants are mutually dependent upon each other. Hence, a Human Rights law based approach is required to clarify the validity and compatibility of the various perspectives on the subject. Nonetheless, any research would remain incomplete if it did not include an in-depth political analysis of the international relations (and negotiations) attached to this concept. This is because of the explanatory limitations of international law, as theorised in the previous chapter. Specifically the notions of *ideology* and more precisely *Islam and Human Rights*, as well as the relationship of *Defamation of Religions* to the concept of *Blasphemy* are essential to be elaborated on.

1.2.2 Political Analysis

A political analysis is necessary to understand the changing perspectives regarding the concept, the suspicions that exist between its proponents and critics and the discourse within the UN system. This crucial political analysis is conducted through a combination of qualitative and quantitative research methods, while giving special attention to a *qualitative document analysis* to assess the development of the concept and the Member State perspective towards it.

This content analysis is conducted using *primary sources* including the resolution series itself, statements made by Member States and UN officials; as well as *secondary literature* such as reports and minutes of diplomatic meetings. This approach carves out the underlying connections between discourses regarding the universality of human values such as human rights and the

discourse of the concept of Defamation of Religions itself. While the examination of the content of the sources does not include a comprehensive quantitative data assessment, but selected quantitative indications are given to compliment the picture. But this alone could not give a sufficient understanding of the *voting behaviour* of actors in their embedded regional contexts. An addition of a more *empirical-analytical* approach³⁷ was required:

In this second phase, quantitative and qualitative approaches are utilised in conjunction: In Chapter 4.5, hard data of voting results are connected with the official explanations of Member States regarding their voting. The quantitative data, such as bail-out numbers, voting results, etc are analysed in relation to patterns and developments of selected regional voting groups, particularly considering the influence of the 'non-formal' interest-network, the OIC. To compliment this analysis, the data is connected with and explained by a qualitative analysis of the Member States given 'Explanation of Vote' (EoVs), to draw conclusions concerning the dynamics of the regional group. The sources in use are mainly primary ones such as video records of oral statements made in UN fora. By applying a mixed method investigation of regional voting patterns together with official statements deliver an understanding of the discourse about, but foremost make it possible to formulate hypotheses regarding the further development of the concept of Defamation of Religions.

1.2.3 A Consideration of International law

In a third step the carved out nature of the concept of Defamation of Religions is analysed for its Human Rights compatibility by testing it against the content of the so-called 'International Bill of Human Rights'. This includes inter alia, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). For this purpose I focus on a *normative-ontological* approach, which connects *hermeneutic research* and conceptional interest with an orientation on *moral values (of universal validity)*.³⁸ Such approach is *normative* as it embeds its explanations with ethical values. In the context of this thesis the universal values providing the orientation and guideline for *hermeneutic content analysis* are Human Rights. Practically, the claims and calls of the resolution and the intentions of the proponents, as are worked out in the

³⁷Ulrich Alemann, *Politikwissenschaftliche Methoden : Grundriß für Studium und Forschung* (Opladen: Westdt. Verl., 1995), 22.

³⁸Ibid.

political analysis of this thesis, are tested against the provisions and intentions of international Human Rights law. The in-depth *legal analysis* is carried out to clarify the potential implications that the concept of Defamation of Religion might have for the enjoyment of Human Rights in practice, above all in the cases of the right to freedom of expression, and the manifestation of religion and belief for religious minorities. The testing is conducted with a consideration of articles 31 and 32 of the 'Vienna Convention on the Law of Treaties' on the general rules and supplementary means of the interpretation of treaties. The General Comments provided by the Human Rights Committee (the de facto standard reference for the interpretation of the ICCPR provisions) are additionally useful to back or reject the various arguments made in regard of the concepts Human Rights compatibility. The Vienna Declaration and Programme of Action (VDPA) served as the standard reference for the 'nature' of Human Rights as such. For elaborating on the consequences for vulnerable groups, primarily women and minorities, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Declaration on Rights of Minorities (A/Res/47/135) were essential. All together, these central declarations, covenants, conventions and comments provide the main framework to conduct a plausible and meaningful legal analysis of the compatibility of the concept of (Combating) Defamation of Religions with Human Rights standards and relevant international laws.

1.2.4 Hypotheses Formation

A posteriori, the results of this research and the conclusions drawn from the research question led to the formation of explanatory hypotheses. Based on the results of this research, these hypotheses were formed in an explorative approach through *abductive reasoning*, as suggested by Charles Peirce.³⁹ In his own words Peirce outlines the merits of this approach in distinction to the common approaches of deduction and induction: „*Deduction proves that something **must be**; Induction shows that something **actually is** operative; Abduction merely suggests that something **may be**.*“⁴⁰ Hence in this work, the hypotheses formulated are only *generated* by scientific work, rather than *tested* by it. These (essentially *explanatory working*) hypotheses I suggest for further testing in additional research.

The hypotheses are formulated under consideration of the ideal qualities they should to fulfil, which are:

1. Principle falsifiability of the claim made
2. High level of generalisation in its prediction
3. High level of specifcness qualifying the expected relations
4. High level of specifcness qualifying the determining assumptions
5. High level of verifiability through conclusive operationalibility⁴¹

39 A Aliseda, *Abductive reasoning : logical investigations into discovery and explanation* (Dordrecht ;London: Springer, 2005), 170-172.

40 Charles Sanders Peirce, Charles Hartshorne (ed.), and Paul Weiss (ed.), *Collected Papers of Charles Sanders Peirce, Volumes V and VI: Pragmatism and Pragmaticism and Scientific Metaphysics*, vol. 5 (Belknap Press of Harvard University Press, 1935), para. 171.

41 Jürgen Kriz, *Lexikon der Politik : Politikwissenschaftliche Methoden*, vol. 2 (München: Beck, 1994), 169.

2 Defamation, Religion and Defamation of Religions

Accurate research regarding the compatibility of the concepts of religion, defamation and defamation of religions to the Human Rights framework is highly dependent on well defined terms and the manner in which they are articulated in discussions. Unfortunately, the resolution itself does not supply definitions for either the terms 'Defamation', 'Religion' or 'Defamation of Religions' itself. Nevertheless, respective UN resolutions, official statements of Member States and the reports of the mandated Special Procedures of the UN System provide a useful framework to understand what the the term 'Defamation of Religions' signifies and what is included within it. ,It is crucial for further research to evaluate such sources and test their proposed understanding of the concept against widely accepted definitions of the individual terms of 'Defamation' and 'Religion'.

Fractionalising the term into its elements

Part of the difficulty in defining Defamation of Religions is based on the problem of how to deal with a compound expression like this. Defamation of Religions as a term consists of two interconnected terms, which do not follow the simple equation of $1+1=2$, but influence each others meaning in their own context. The undefined nature of Defamation of Religions created considerable discomfort among diplomats within the UN; a fact that became more than obvious during informal negotiations on the Defamation Resolution in the 64th GA session, where questions regarding the imprecise terminology were frequently voiced. To accurately understand the concept as a whole, the individual terms 'Defamation' and 'Religion' must be understood first, followed by a discussion of their interrelatedness.

2.1 Defining Religion

Defining 'religion' on a scientific level has always been an uneasy task. Although everyone seems to immediately *know* what is meant when speaking about a particular religion or religions in general, a scientific definition that withstands legitimate criticism is hard to come by. Even the most respected and prominent pieces of scientific reference such as Encyclopedia Britannica admit to the difficulties inherent in any attempt to define this term.⁴² Historically, many attempts from different angles were made to define religion, most notably from a religious perspective itself. In the theological Christian tradition, such attempts to define religion remained clearly insufficient. Their scholars could not provide a definition that was broad and inclusive enough to find acceptance across different religions, cultures, traditions and beliefs. Their own religious perspective, in particular Christian theology, always remained a hindrance for reaching an overall cross-cultural agreement. In the end, the limitations of their own religious horizon consequently led to biased ideas about the nature of religion. Today their formulation of religion must be considered as unacceptably euro- or christianity-centric, rather than universally applicable. Throughout time, the understanding of religion was not only dependent on specific religious traditions, but was closely linked “to the predominant understandings of humanity and human nature”⁴³. Consequently, changes in the perception of humanity and the essence of what human nature stands for today, altered the understanding of the term religion accordingly. Not only within the course of time has the term inevitably evolves; the understanding of humanity and therefore, of religion differs across various cultures, societies and religious schools of thought around the world. They all have or try to have, wittingly or unwittingly, an impact definitionally on the approach to religion. It is no surprise then that attempts within a specific religious tradition to formulate definitions have resulted in terms and concepts that remain limited to the understandings of their time as well as their cultural and religious horizons. To circumvent this dilemma, some theologians have tried to come up with extremely minimalistic working definitions. Paul Tillich for instance, “defined religion in terms of man's ultimate concern[..]”⁴⁴ But although such minimalist definitions avoid the problems of limiting religious horizons or compromising on ones own religious teachings, they would then include political ideologies such as communism “as proper objects of the study of religion”⁴⁵

42 *The new Encyclopaedia Britannica*, vol. 26 (Chicago [u.a.]: Encyclopaedia Britannica, 1986), 509.

43 Seth Kunin, *Religion : the modern theories* (Edinburgh: Edinburgh University Press, 2003), vii.

44 *The new Encyclopaedia Britannica*, 26:510.

45 *Ibid.*

In addition religious approaches very often lack the necessary scientific methods and principles to provide a rigorous and sound definition. This is because their results “ultimately rest on belief and therefore on assumptions that are not testable or verifiable”⁴⁶ Consequently, a definition that remains out of reach for scientific evaluation has little value in a scientific debate.

As I have mentioned above, the difficulty in defining the term 'religion' accurately is a general one and does not remain limited to theological hindrance. Various suggestions claim their merits side by side, none of which are truly satisfactory. The World English Dictionary defines religion as:

belief in, worship of, or obedience to a supernatural power or powers considered to be divine or to have control of human destiny⁴⁷

Oxford Dictionary, providing one of the most often referred to definitions, views religion as:

the belief in and worship of a superhuman controlling power, especially a personal God or gods⁴⁸

And the Merriam Webster provides an interesting addition, characterising religion as:

a cause, principle, or system of beliefs held to with ardor and faith⁴⁹

All of these definitions may be successful in catching an essential notion of religion, but fall short in being all-inclusive. While none of them can be called wrong, none of them is complete either. The difficulties are manifold: One hindrance clearly is related to the aim to catch *all* notions of what makes religion so special among human culture. But the sheer amount of variety of religious concepts spread throughout human cultures makes it impossible to accommodate all relevant notions of religion in a single definition. Rather than pin down the essential meaning of religion for human beings, other attempts have been made to circle out *a single essential ingredient* which would be commonly shared by all religions. But as it turns out, elements considered paramount in one religious traditions, were often considered peripheral at best in others.⁵⁰ Not being capable of finding an essential core that all religions would universally share, attempts have been made to focus on the *institutional level*, ending up with technical definitions such as the one suggested by Encyclopedia Britannica:

46 Kunin, *Religion : the modern theories*, vii.

47 “Religion,” in *Collins English Dictionary*, 10th ed. (HarperCollins Publishers, n.d.), <http://dictionary.reference.com/browse/religion>.

48 “Religion,” in *Oxford Dictionaries* (Oxford, 2010), http://www.oxforddictionaries.com/view/entry/m_en_gb0699400.

49 “Religion,” in *Merriam Webster*, n.d., <http://www.merriam-webster.com/dictionary/religion>.

50 *The new Encyclopaedia Britannica*, 26:509.

In practice, a religion is a particular system, or a set of systems, in which doctrine, myths, rituals, sentiments, institutions, and other similar elements are interconnected.⁵¹

While this approach avoids the risk of becoming overly broad that is faced in the impossible task of including all notions of religion, such technical definitions have been criticised for missing the spiritual nature of religion. A general problem is that narrow definitions would shut out many groups, ideas or faiths which are widely considered as legitimately within the ambit of religions; but broad definitions would encompass ideologies, such as communism, which the majority of religious scholars and students would not acknowledge within their scope. Some scholars have attempted to find a middle ground and suggest compromises such as:

A religion, first and foremost, is a collection of beliefs.⁵²

But additionally to 'beliefs', the term religion is widely understood to incorporate organizational structures, rituals and practices which distinguish one from another and contribute to a collective identity. As seen in the short summary above of attempts to define the term, the discussion usually revolves around two major aspects of religion: belief and faith on one side, and practice and its institutional nature on the other. Certainly the United Nations, when drafting the most basic Human Rights instruments, recognized the dilemma and worked around it by avoiding a strong and explicit definition of religion, and instead preferred to list aspects that religion encompasses. In addition, the discussion surrounding Defamation of Religions that is currently taking place, renews the boundaries for what the UN membership actually interpret to rightly fall under the term 'religion'. The resolutions adopted, the reports submitted, the statements made, are all a testimony of the underlying understanding of what religion means to the nations.

Naturally, most relevant for the aims of this paper is to use a working definition that comes closest to the understanding of religion as is reflected in the discussions around the concept and resolution of Defamation of Religions. Therein a very traditional understanding is reflected, which mainly points towards a few main religions such as Islam, Christianity, Judaism or Hinduism. The resolution, while trying to remain inclusive by maintaining general remarks applicable to 'all religions', does not refrain from naming some of these religions either, and maintains a strong emphasis on Islam in particular. This double-sided approach towards the

⁵¹Ibid.

⁵²Brice Dickson, "The United Nations and Freedom of Religion," *The International and Comparative Law Quarterly* 44, no. 2 (April 1995): 1.

understanding of religion is not a surprise, considering that the resolution is first and foremost aimed at protecting 'Islam', while simultaneously working to gain universal agreement. Consequently, the resolution refers to dominant religious ideas pooled together as collective branches. The resolution lists the religious idea of Christianity, but does not differ between the various religious groups contained therein, such as Roman Catholicism, Russian Orthodoxy or various types of Protestantism. And while having a strong focus on Islam, the resolution does not differ between Islamic sects e.g. between Sunni or Shia. Despite the obvious difficulty of listing all existing religions, it is further noteworthy that only a few main religions within the discussion are explicitly referred to as such: namely, Judaism, Christianity and Islam. It would be wrong to say the resolution envisions religion as a term referring primarily to specific faith groups, but should be understood as a reference to religious ideas, which differ from each other and are labelled with commonly accepted names.

This understanding is also supported by statements given by Member States in the fora of the UN bodies, above all by those in support of the concept who were prominent in drafting the language of the resolution.⁵³

The discussions of religion within the wider UN System are not limited to the question of ideas or who the term might apply to. Very often they are connected to the question of what activities and which communities within which these activities are exercised, ought to be rightfully labelled 'religious'. The Human Rights framework with its outline of freedom of religion and belief and the General Comments elaborating on the subject, give good indication of a broader understanding of the term religion, widely accepted by the UN membership. Included are activities meant to manifest ones religion, such as to worship, observance of dietary rules, wearing of particular clothing, et al. It also must be pointed out that these practices are found to be socially organized and often outlined in rules applicable for ones own religious community. The characteristic of exercising religious practices not only in private, but in community together with others, and inter alia in public, is essential and an undisputed notion within the UN membership. Taking into account the considerations voiced by the nations representatives, the perspectives within international law, and the language used within resolutions adopted by the UN bodies, we may draw the conclusion that any working definition of the term 'religion' must include: that they are ideas which are not verifiable, that they are socially organized, and that they provide a spiritual value.

⁵³ United Nations General Assembly, *Official Records of the 3rd Committee, 62nd Session, 52nd meeting*, (A/C.3/62/SR.52) (New York: United Nations, January 2008), para. 11.

Hence, the working definition for this paper will be an adaptation of Kunin's approach, to articulate the meaning of the term as it is understood and reflected within the context of the United Nations:

A religion is first and foremost a *socially organized* collection of *spiritual* beliefs *and ideas*, while remaining *unverifiable*.

2.2 The legal term 'Defamation' and the term 'Defamation of Religions' in the UN System

In legal terms, defamation is defined simply as “the act of making untrue statements about another which damages his/her reputation”⁵⁴. It should be noted that legally, the act of defamation must also include the necessary aspect of *intent*. Essentially defamation does not occur randomly but is an offence only by its intent. The case of defamation has jurisdiction worldwide and to a great extent, is publicly accepted as a punishable offence. Defamation affects the reputation of the individual targeted by it, and international law puts State Parties in charge of protecting the reputation of their citizens.; for this purpose it is within the legitimate instruments of State Authorities to stifle freedom of speech, but only to the extent necessary and as provided by law as Article 19 of the International Covenant on Civil and Political Rights (ICCPR) stipulates⁵⁵. In the debate surrounding the terminology of Defamation of Religions and its underlying conceptual framework, it is noteworthy that international law is concerned solely with individuals in the matter of defamation, and not with objects, ideas or beliefs itself.⁵⁶

While the cited definition is legally well articulated regarding what should be included in the concept of defamation, the resolution on this issue fails to specify the boundaries of the special case of Defamation of Religions.⁵⁷ Instead, one can gauge how the resolution defines these terms by looking at the issues it highlights as symptoms of the phenomenon of Defamation of Religions and the perceptions behind these issues. Also the initiatives welcomed and urged in the resolutions' language give clues as to the kind of responses to the issue that are seen preferable by supporters of the concept. The reports and statements of the Special Rapporteurs appointed by the Human Rights Council (HRC) to research on this topic, and the reactions of Member States towards those results (in form of statements as well as notes in the resolution) further contribute towards an understanding of the concept within the UN System.

54 law.com - Law Dictionary, “Defamation,” n.d., <http://dictionary.law.com/Default.aspx?selected=458>.

55 United Nations, *International Covenant on Civil and Political Rights*, 2200A (XXI), 1976, <http://www2.ohchr.org/english/law/ccpr.htm> Article 19.

56 Matt Cherry, “Speaking freely about religion: religious freedom, defamation and blasphemy,” n.d., <http://www.lheu.org/speaking-freely-about-religion-religious-freedom-defamation-and-blasphemy>.

57 Liaquat Ali Khan, “Combating Defamation of Religions,” 2007, 4, http://www.worldcat.org/oclc/282795813&referer=brief_results.

Although the Defamation Resolution aims to apply to all religions, it continuously highlights “the negative projection of Islam in the media and the introduction and enforcement of laws that specifically discriminate against and target Muslims.”⁵⁸ This notion of understanding Defamation of Religions as equivalent to the “Negative Stereotyping of Islam” has been reaffirmed to me in several personal conversations with diplomats, who had represented the OIC in negotiations over the resolution in recent years.⁵⁹ In order to counter possible claims that stereotyping is not always negative in nature, proponents of an Islam-centred reading further clarified negative stereotyping as one that projects a negative image of Islam. The implication here is that primarily the western media be regulated to combat the phenomenon of said Defamation of Religions. This is as the proponents see predominantly the rights of Muslim minorities as migrant communities in western countries at risk of falling victim to the phenomenon. In this regard the resolution states the countries' deep concern about “negative projection of certain religions in [...] against and target persons with certain ethnic and religious backgrounds, particularly Muslim minorities”⁶⁰ and further strongly condemns “all manifestations and acts of racism [...] against [...] religious [...] minorities and migrants and the stereotypes often applied to them”⁶¹

While not necessarily representing the official position of all OIC Member States, or the understood definition of the concept; such conversations, as well as similar statements held in national capacity at various UN bodies, make it evident that the core issue surrounding Defamation of Religions is that of *communication*. This notion is further supported by the analysis conducted by various Special Rapporteurs, whose reports have been welcomed and even quoted by OIC representatives at several occasions. Special attention must be given to the reports of those Special Rapporteurs who were specifically appointed and mandated by the Human Rights Council to research and report on the phenomenon of Defamation of Religions and to subsequently provide recommendations regarding it. For example, the Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, defined Defamation of Religions as a concept that „[...] provides the intellectual justification and legitimizing discourse that supports all forms of discrimination.”⁶² The Special

58 Ibid., 1.

59 Conversation took place in February 2010, at the Headquarters of UN, in New York. Name and nationality ought to remain unmentioned within this thesis. Exact quotation known to the author.

60 UN. Human Rights Council, *Combating Defamation of Religions (A/HCR/Res/13/16)*, 2010 PP.

61 Ibid. OP 13.

62 Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, *Report on the manifestations of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights*, 2007, para. 13.

Rapporteur further suggested that the “equation of Islam with violence, terrorism and cultural and social backwardness by intellectual, political and media figures”⁶³ is a symptomatic expression of the phenomenon.

In short, Diène's perspective tells us that “defamation of religions is a form of speech about religion that justifies or supports human rights violations”⁶⁴ as Rivers bluntly puts it. Unfortunately of course, any kind of speech can be used to justify human rights violations *in principle*. In other words: any kind of speech about any religion that leads to any human rights violation or is used in any way to justify *any* human rights violation would need to be considered a form of Defamation of Religions. Essentially, it is not possible to assess in advance whether a peaceful speech on religion or the criticism of certain religious practices or practises justified with religious arguments, will subsequently be used as justification for acts of violence or Human Rights violations.

Such considerations make this trend of widening the boundaries of Defamation of Religions to such extremes, problematic to say the least. While Diène fails here in giving a useful definition of the term that would provide feasible boundaries; he does well in framing the concept as essentially being an issue of communication. His remarks clearly show the thematic linkage between 'Freedom of Expression' as a human right and Defamation of Religions as its *presumed misuse*.

Proponents of the resolution tend to frame the concept of Defamation of Religions mostly as a matter of negative stereotyping that is disseminated by media broadcasting. But legally, defamatory statements that are broadcast or are in print are referred to as 'libel' rather than 'defamation'.⁶⁵ Under this perspective, it would be pertinent rather to understand Defamation of Religions as religious libel – nevertheless, this would remain a concept without a sound legal standing.

In short, the most significant difference between the meaning of the legal term 'defamation' and the meaning of the term in the Defamation of Religions resolution lies in their respective areas of application. In the first case, it is an individual or a legal entity that falls victim to defamation. Defamation of Religions, however, not only refers to a a group of individuals but rather to an

63 Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, *Situation of Muslim and Arab peoples in various parts of the world in the aftermath of the events of 11 September 2001* (UN Commission on Human Rights, 2003), para. 2.

64 Julian Rivers, “The Question of Freedom of Religion or Belief and Defamation,” *Religion and Human Rights* 2, no. 3 (November 1, 2007): 115.

65 law.com - Law Dictionary, “Defamation.”

idea that those people might collectively share. This is strongly reminiscent of the long standing legal tradition of Anti-blaspemy laws. Critics point to the problem that while Defamation of Religions might seem like a legal issue located somewhere between traditional defamation law and Anti-blaspemy laws, or as a combined new approach – the terminology 'Defamation of Religions' is – from a legal perspective – is nevertheless quite difficult.⁶⁶ Consequently, some observers of the debate carefully advise both proponents and critics to shift away from a language of 'Defamation of Religions' to the more legally valuable one of 'incitement to religious hatred', a move by and large welcomed by many Human Rights Special Rapporteurs.⁶⁷ Others point out in their statements that indeed terms with *less legal meaning* such as 'disparagement of religions' or 'abuse of religions' would be preferable.⁶⁸ The dispute surrounding the terminology of Defamation of Religions contributes greatly to an explanation of the political dynamics of the resolution; although it does not clarify its implications for the Human Rights standards. These will be considered in a separate section.

⁶⁶Rivers, "The Question of Freedom of Religion or Belief and Defamation," 114, 115.

⁶⁷Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, Special Rapporteur on freedom of religion or belief, Asma Jahangir, and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, "Joint Statement to freedom of expression and incitement to racial or religious hatred," April 22, 2009.

⁶⁸Rivers, "The Question of Freedom of Religion or Belief and Defamation," 115.

2.3 The Relationship between Defamation of Religions and Blasphemy

Essentially, Defamation of Religions pertains the case of the defamation of a *religious idea*. In reality this might trigger legal consequences similar to those of Anti-blasphemy laws, rather than those of usual defamation laws. This has severe repercussions for the States' obligations in practical jurisdictional terms: when it comes to Defamation of Religions, the state authority is forced to make a decision about which religious ideas are acceptable, while in the case of defamation of an individuals' reputation, the state needs to determine what facts are accurate.⁶⁹ Subsequently in the case of Defamation of Religions, the government has to decide which religious ideas are to be accepted or not by public opinion in a manner akin to facts, and which deserve protection from criticism, neglect or libel. In other words, the state must determine which of the statements opposing religious ideas can be acceptably expressed in the public square.

Hence in practice, such laws differ little from Anti-blasphemy laws. In fact, Anti-blasphemy laws and legal measures against Defamation of Religions are the same for all practical purposes, as both target individuals in their eventual execution. This notion is affirmed by Special Rapporteurs mandated to research on the issue and report to the HRC. In a joint statement held in 2009, Mr. Githu Muigai, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Ms. Asma Jahangir, Special Rapporteur on freedom of religion or belief and Mr. Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, referred to anti-blasphemy laws as the practical, legal implementation of the concept of combating Defamation of Religions.⁷⁰

Anti-Blasphemy laws have a long tradition in various societies and national legislation around the world. Such legislation is not outdated as may be presumed; in fact, the Irish Defamation Act just reaffirmed in 2009 an understanding of blasphemy as a punishable offence, and Great Britain only abolished their anti-blasphemy provisions in 2008. Most Muslim countries have

69 Becket Fund for Religious Liberty, "Religious Defamation - Issues Brief," October 29, 2009.

70 Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, Special Rapporteur on freedom of religion or belief, Asma Jahangir, and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, "Joint Statement to freedom of expression and incitement to racial or religious hatred."

laws protecting religious symbols and other sacred elements of Islam. In some cases, like Pakistan or Saudi-Arabia, these laws even include the death penalty as possible punishment for certain blasphemous acts.⁷¹ Pakistan, the main sponsor and strongest proponent of the Defamation of Religions resolution, has exceptionally harsh anti-blasphemy laws. Paragraphs §295 to §298 of Pakistan's Penal Code are dedicated to protecting state religion, which is Islam according to the constitutional provision.⁷² While article 298 targets the religious minority of the Ahmadis and stifles their right to manifest their religion⁷³, the provisions in article 295 set out general rules prosecuting blasphemy. The law forbids 'outraging religious feelings', 'defiling the Quran' or 'defaming the prophet Muhammad'. It should be noted that the latter offence is punishable by death and the defiling of the Quran is punishable by a life sentence.⁷⁴

In their practical application, there is really little difference between the two concepts of Combating Defamation of Religions and Anti-blasphemy law, other than in their titles. In the end, the concept of Defamation of Religions is an attempted globalization of blasphemy laws, by exporting them from a domestic level to one of international politics and law.⁷⁵ The Defamation Resolution brings the idea of an allegedly need to protect religion against blasphemous remarks to the international community of States for their consideration as a legitimate international interest; and provides thereby cover for domestic legislations.

The question of the resulting implications for the enjoyment of Human Rights is not only a theoretical one, but is deeply connected with the implementation of the concept on the ground. Both the Human Rights compatibility and the specifics of legal implementation will be dealt with in separate chapters.

71 Matt Cherry, "Speaking freely about religion: religious freedom, defamation and blasphemy."

72 Government of Pakistan, "The Constitution of Pakistan," n.d., <http://www.pakistani.org/pakistan/constitution/part1.html>, Part 1, Article 2.

73 Government of Pakistan, *Pakistan Penal Code (Act XLV of 1860)*, n.d., <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>, §298 A, B, C.

74 Ibid., § 295.

75 United States Commission on International Religious Freedom, *Annual Report 2009*, May 2009, 65, 228, <http://www.uscirf.gov/images/AR2009/final%20ar2009%20with%20cover.pdf>.

3 The Human Rights Concept

All human beings are born free and equal in dignity and rights.

Article 1, Universal Declaration of Human Rights

3.1 Introduction: A short History of Human Rights

The history of Human Rights is long and complex, but it was in the aftermath of the catastrophe of World War II that a unique opportunity arose to reach a historical agreement and articulate what is known today as the 'Universal Declaration of Human Rights' (UDHR). This foremost document of modern Human Rights understanding was proclaimed by the United Nations General Assembly in Paris on 10 December 1948. It is the very basis of Human Rights instruments and law both on a domestic and international level. Building upon it, a great number of specific and legally binding instruments have been developed that together constitute the international framework for Human Rights today.

In the short window of relative political consensus between the end of World War II and the beginning of the Cold War, the creation of Human Rights took place. The drafting of the UDHR had been merely a peripheral project for the powers of its time. Considering the geopolitical context of the era – the shock of the Holocaust, the beginning Cold War and its proxy wars as in Korea – it can be safely claimed that the Human Rights project received far less attention than one might have reasonably expected considering its real impact. But overshadowed by other matters that seemed more pressing at the time, the project to establish an 'International Bill of Rights' was not then perceived as the challenge for the long standing principle of non-interference in national internal affairs that it was.⁷⁶ Hence – perhaps unknowingly – some of the mightiest nations bowed down before the claims of smaller countries for equal rights, and accepted a document that soon began to question the national sovereignty of even the most powerful among them. Considering its severe consequences, the invention of Human Rights is an event that can hardly be overestimated.

⁷⁶ Mary Glendon, *A world made new: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2002), 236.

Defining Human Rights

As Lynn Hunt in her book “Inventing Human Rights” eloquently puts it, “Human rights are difficult to pin down because their definition, indeed their very existence, depends on emotions as much as on reason”⁷⁷ It is in fact, the emotional disturbance felt when one's dignity is hurt that gives the concept of rights its powerful nature of being perceived as self-evident. This notion of self-evidence is an essential characteristic of the modern understanding of Human Rights. Already in the US Declaration of Independence, drafted by President Jefferson in 1776, it was stated that the rights of all men were self-evident, and would not require any justification. And while the French 'Declaration of the Rights of Man and of the Citizen' of 1789⁷⁸ expressed the 'truth' of rights in a less straightforward manner than the US Declaration due to the legalistic tone of its time, both US and French declaration clearly refer to Human Rights as something 'given', in other words: **self-evident**⁷⁹

This self-evidence is closely linked to another determining quality of Human Rights, the essential assertion of being **natural**. This means that all human beings have these rights at birth and they are not privileges that must be earned, as had been the case with specific civil rights in previous times. In short, Human Rights are understood as characterised by 3 central and highly interdependent qualities:

1. As a **natural right** – given by birth, simply be “being” human, rather than constituting a privilege to be earned or granted for some merits.
2. As **equal** for all humans – which provides the grounds for the rejection of any discrimination based on any distinction made between people.
3. As essentially **universal** – understood to be applicable under all jurisdictions⁸⁰

The essential characteristic of being universal has appeared to cause the most disputes in the long run. It was soon obvious that the notion of universality posed a challenge to national sovereignty and became a tool to justify interference in what is often labelled 'internal affairs'.

⁷⁷ Lynn Hunt, *Inventing human rights : a history* (New York [u.a.]: Norton, 2008), 21.

⁷⁸ National Assembly of France, *Declaration of the Rights of Man and of the Citizen*, 1789, <http://www.hrcr.org/docs/frenchdec.html>.

⁷⁹ Lynn Hunt, *Inventing human rights*, 19.

⁸⁰ Ibid., 20.

The declaration itself does not hold any real power when it comes to legal consequences for non-compliance. It does not contain any provisions or mechanisms to ensure accountability. In fact, legally speaking, the UDHR is irrelevant. The success of the declaration, however, might be explained precisely due to its non-binding character. Not being a legal agreement but a moral one made it something of a general moral beacon for the universal grounds for rights. The UDHR was not drafted to establish a set of laws but rather, reaffirm a collection of inherent and self evident rights that require no further explanation or justification nor any prescribed authority of accountability or legal reference. It is also remarkable that the UDHR focuses on the prevention of Human Rights violations rather than the punishment of its violators.⁸¹ This adds to its use as a tool for activists who call upon the moral rather than legal obligation of State Parties to fulfil their duties in granting their citizens the rights they inherently possess.

For these reasons, the Universal Declaration of Human Rights ultimately becomes a powerful weapon for all those without jurisdictional powers namely, the civil society, in demanding their rights and freedoms.

81 Glendon, *A world made new* Preface - xvi.

3.2 The international Human Rights framework

The international Human Rights framework encompasses today a whole set of various conventions, declarations, resolutions and instruments formally adopted by the international community.

For this paper, the international Human Rights framework will provide an analytical framework to answer the main research question and to test the hypotheses behind it. Most relevant to this research are the principles set out in the UDHR – the Universal Declaration of Human Rights. They provide the necessary moral underpinnings for the idea of Human Rights as such, as well as the legal Human Rights instruments built upon them: namely the ICCPR – the International Covenant on Civil and Political Rights⁸² together with parts of the ICESCR – the International Covenant on Economic, Social and Cultural Rights⁸³. All three together are often referred to as the *International Bill of Human Rights*, a term already used in proclaiming the UDHR itself back in 1948⁸⁴

Collectively, the the International Bill of Human Rights⁸⁵ encompasses today:

- Universal Declaration of Human Rights 1948
- International Covenant on Economic, Social and Cultural Rights 1966
- International Covenant on Civil and Political Rights 1966
- Optional Protocol to the International Covenant on Civil and Political Rights
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

⁸²United Nations, *ICCPR*.

⁸³United Nations, *International Covenant on Economic, Social and Cultural Rights*, 1976, <http://www2.ohchr.org/english/law/cescr.htm>.

⁸⁴see: United Nations, *General Assembly resolution 217 A(III)*, 1948, [http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/217\(III\)&Lang=E](http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/217(III)&Lang=E).

⁸⁵Office of the High Commissioner for Human Rights (Ed.), “Fact Sheet No2. - The International Bill of Human Rights,” June 1996, <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>.

While the UDHR is the foundation for the HR framework, the ICCPR and ICESCR are relevant legal documents that will be used in conjunction with the former as a basis for further discussion of Human Rights in the international context.

International Human Right law as such can be categorised into two main types of instruments. Firstly, *declarations*, usually adopted by bodies such as the UN General Assembly, with no concrete legislative power behind their decision. Those declarations do not constitute *hard law*, hence are not to be understood as truly legally binding. Nevertheless history has shown that these respective documents indeed have considerable moral impact, as they have found agreement in consensus and have been reiterated, referred to and reaffirmed in uncountable resolutions. They may be seen to have achieved the status of *soft law* over time.

Hence, they provide the best outline of mutual understanding on Human Rights as it exists of today. The UDHR itself is perhaps the most prominent agreements of all – although not legally binding under international law, it provides the guidelines and principles for other relevant Human Rights law and instruments and therefore can be interpreted as the first and main standard statement on Human Rights.

The second type of instrument, *Conventions*, are hard law. They are binding for all Member States of the United Nations. The two main pillars of legally binding Human Rights instruments are the above mentioned covenants, ICCPR and the ICESCR.

Besides those Human Rights instruments referred to as the international bill of Human Rights⁸⁶, special attention must be given to the ICERD, the International Convention on the Elimination of All Forms of Racial Discrimination. The ICERD is relevant as it serves as the main thematic and legal vehicle for attempts to introduce the concept of Defamation of Religions into international Human Rights law. In this regard, continuous efforts are made at the Human Rights Council to amend the ICERD with complementary standards, in order to recognize Defamation of Religions as a form of racism prohibited by international law. When in 2009, the Ad Hoc Committee on Complementary Standards met to consider new normative standards to combat contemporary racism, Pakistan on behalf of the OIC, proposed to outlaw Defamation of Religions in a new optional protocol to the ICERD.⁸⁷ Ever since then, proponents of the concept are working to establish and implement complementary standard to do just that.

86 see: United Nations, “Drafting Committee on an International Bill of Human Rights,” n.d., http://www.un.org/depts/dhl/udhr/meetings_1947_1st_draftcom.shtml.

87 UN Human Rights Council, *Report of the Ad Hoc Committee on the elaboration of complementary standards on its second session* (Geneva, October 2009).

Also important for the understanding of the international Human Rights framework is the Vienna Declaration and Program of Action (VDPA)⁸⁸. Adopted in 1993, this document not only reaffirms and outlines the principles of Human Rights but also aims to bridge the legacy of the cold war period – the artificial division between civil and political rights and economic, social and cultural rights. This rather unnatural division into two main sets of rights is a product of the opposing ideologies during the cold war era. While countries under Soviet influence seized on the importance of cultural and social rights as a pretext to undermine unwanted political and civil rights; the western powers in turn sought to downplay the meaning of cultural and social rights, in an attempt to direct attention away from their long standing history of imperialism and colonialism. Till today these demarcations continue to have effects and indeed determine to a significant extent, the scope for political manoeuvres and behaviour of the Member States. Nevertheless, in the short decade after the collapse of the Soviet Union, the opportunity was taken to put aside contradicting perspectives and historical rivalries and reach a crucial agreement over the nature of Human Rights as a whole.

The Vienna Declaration and Program of Action of 1993 not only bridged the political gap but more importantly, reaffirms the *universal acceptance* for the Human Rights principles and underlines the equality and interconnectedness of *all* Human Rights. The UDHR itself had only been adopted by 57 Member States in 1948, which remained a source of constant criticism; the VDPA, however, has found agreement of the full membership of the United Nations after decolonisation and the cold war. Additionally in the VDPA, countries have consensually agreed to view the protection and promotion of all Human Rights and fundamental freedoms as a duty of States, regardless of their cultural systems.⁸⁹ In other words, the Member States have acknowledged the compatibility of all Human Rights with the system of their cultural values. The fact of this consensus in agreement rejects all accusations of ethnocentrism and cultural imperialism as groundless. Most importantly, the VDPA gives a clear statement regarding the nature of Human Rights as a whole, affirming that “All human rights are universal, indivisible and interdependent and interrelated.”⁹⁰ By adopting the exact wording of the VDPA in its pre-ambulatory part, the Defamation of Religions resolution itself acknowledges this crucial aspect of nature of Human Rights.

88 United Nations, *Vienna Declaration and Programme of Action*, 1993, [http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/A.CONF.157.23.En?OpenDocument).

89 Population Council (Ed.), “Vienna Declaration on Human Rights,” *Population and Development Review* 19, no. 4 (December 1993): 877.

90 United Nations, *VDPA* Part 1, Para. 5.

Since the concept of Defamation of Religions is clearly framed by both proponents as well as critics as a matter of communication, or more accurately, a question of the freedom of expression; the Covenants provisions regarding this issue are most relevant for the analytic framework of this paper. Most predominant in this regard are Article 19 and 20 of the ICCPR⁹¹:

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone 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.
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 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 (ordre public), or of public health or morals.

Article 20

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.

Because these provisions are subject to a substantial level of interpretation, the Human Rights Committee adds clarifications to the nature and scope of the Covenants provisions. General Comment No. 22 specifically addresses the matter of freedom of expression as stated in Article 19; while General Comment No. 11 elaborates the prohibition of propaganda during war and for inciting national, racial or religious hatred in reference to Article 20 of the ICCPR⁹². Both comments will serve well for the analysis of the compatibility of the concept of Defamation of Religions with international Human Rights law.

Logically the concept of Defamation of Religions is not simply a matter of freedom of expression, but – as it ultimately claims to aim at the protection of religion – very much a question of freedom of religion and belief. Hence, provisions such as Article 18 of the ICCPR⁹³ that clarify on the meaning and consequences on freedom of religion and belief, are of specific importance.

91 United Nations, *ICCPR*.

92 Ibid.

93 Ibid.

Article 18

1. 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.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom 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.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Moreover, general Comment No. 22 elaborates in detail the extent of the scope covered by Article 18, ICCPR on the right of freedom of religion and belief, including thought and conscience. In addition, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief⁹⁴ will receive necessary attention to cover all aspects of the threats posed to freedom of religion and belief.

In practical terms, Defamation of Religions affects the rights of minorities and it would therefore be crucial to consider the respective Human Rights standards, eminently Article 27 of the ICCPR, and to include the explanation on the subject provided by General Comment No. 23, which reads simply:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.⁹⁵

A more detailed instrument addressing the challenges minorities face in the course of their enjoyment of all Human Rights is provided by the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (A/Res/47/135), aiming at addressing issues related to minorities that haven't been given adequate attention and detail in the provisions of other instruments.⁹⁶

94 United Nations, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, n.d., <http://www2.ohchr.org/english/law/religion.htm>.

95 United Nations, *ICCPR*, para. 27.

96 United Nations, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, n.d., <http://www2.ohchr.org/english/law/minorities.htm>.

The concept of Defamation of Religions is not only a matter of minorities, but – as it will be shown in due to the analysis – a matter of vulnerable groups in general. Prominently, the groups most vulnerable to Human Rights abuse include the category of 'women' as the largest group among them. The Declaration on the Elimination of Violence Against Women (A/Res/48/104) will serve as a base to accompany the understanding and interpretation of the legal Human Rights instruments in regard to the rights of women, in complementation to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁹⁷

All together those central declarations, covenants, and comments provide the main frame to conduct a plausible and meaningful analysis of the compatibility of the concept of (Combating) Defamation of Religions with the Human Rights standards and relevant international law. For that, the legal analysis conducted in this paper will specifically take into consideration: the UDHR, the VDPA, the ICCPR, the ICERD, CEDAW, the Declaration on the Elimination of Violence Against Women (A/Res/48/104), the Declaration on Rights of Minorities (A/Res/47/135), and the Human Rights Committee's General Comments elaborating on the instruments' specifics.

97 United Nations, *Convention on the Elimination of All Forms of Discrimination against Women*, 1979, <http://www2.ohchr.org/english/law/cedaw.htm>. Note: The abbreviation 'CEDAW' may also refer to the 'Committee on the Elimination of All Forms of Discrimination against Women'

3.3 Human Rights and Religion

Already in the early stages of the realisation of a universal declaration, some voices suggested a certain incompatibility between the concepts of religion and the idea of Human Rights. It was pointed out that the “apparent divergence between religious beliefs and human rights is the idea that human rights are reflecting individualistic traditions and religion is based on community”⁹⁸

The modern Human Rights declaration which was the first agreement to have codified Human Rights as 'natural', 'equal' and 'universal', was born out of the era of Enlightenment. In this context, the moral underpinnings behind such human rights were explained by *human reason* as naturally given to, equally shared by and universally applicable for all. This stood in opposition to the tradition of that time to create specific rights without reasonable explanation, often argued as God-given. Human Rights as a concept is hence closely affiliated with the principles of scientific argument, rather than religious or divine justifications. But one should not overlook a crucial similarity: While religious rule is very often argued as being an unquestionable, natural law handed down by God to mankind; a similar notion is advanced by some Human Rights advocates. They argue that Human Rights are in fact *not* pillared by reason, but underline the merit in viewing Human Rights as indeed a natural law; unshakeable and indisputable by any government, for any reason. While religious rules may be argued as God-given, Human Rights are often characterised as inherited by every human naturally. The absolutism in both claims is evident.

Nevertheless, the UDHR as well as its early 'predecessors' was essentially a secular concept – a fact that remains a source of constant criticism and basis for objection by religious scholars, who claim that the concept of Human Rights is a merely western, liberal concept serving the objectives of a certain cultural imperialism.⁹⁹

It is often forgotten that it had been in fact religious associations alongside smaller States from the South and civil society organisations, that pushed hard for the creation of a human rights framework after the second world war.¹⁰⁰ And while the UDHR as such is an essentially secular conception, it does contain strong language for the sound protection of freedom of religion. The UDHR clearly stipulates in Article 2 that distinctions of religious belief may not be any grounds

⁹⁸Susan C. Breau, “Human Rights and Cultural Relativism: The False Dichotomy,” in *Religion, Human Rights and International Law* (Leiden ; Boston: Martinus Nijhoff Publishers, 2007), 141.

⁹⁹David Littman, “Universal Human Rights and “Human Rights in Islam”,” 1999, http://www.dhimmitude.org/archive/universal_islam.html.

¹⁰⁰Glendon, *A world made new* Preface - xv.

for discrimination. It further lists 'religion' in all its provisions that refer to the equality of all humans, and thereby reaffirms the statement made in Article 2.¹⁰¹ Further, Article 18 is dedicated solely to outlining the nature of freedom of religion, reading that:

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.¹⁰²

Article 18 is crucial for the further understanding of the right to freedom of religion or belief as it also indicates three essential dimensions of religious freedom: Possession of religion or belief; its manifestations; and a qualifier dimension for its extension and scope. Important in this regard are the different extents of private to public practice of the different notions of freedom of religion:

possession	manifestation	qualifier dimension
to have a religious belief	to practice	to enjoy all these rights alone or in a community with others
to adopt a religious belief	to teach	the right to exercise ones rights in private and public
to change one's religious belief	to worship	
	to observe	
private	private and public	public

These threefold qualities of the right of freedom of religion, conscience and belief do not come without consequences for legal implications and questions of exercising the right in public sphere. Details regarding the regulation of specific manifestations and the intersection with the public sphere are set forth in Article 18 of the ICCPR¹⁰³. Further efforts within the Human Rights discussion to provide adequate protection for freedom of religion, amounted in 1981 to the creation of the first instrument solely dedicated for this purpose, the 'Declaration on the

101 UDHR, Article 2. "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

102 United Nations, *The Universal Declaration of Human Rights*, 1948, <http://www.un.org/en/documents/udhr/index.shtml>, Article 18.

103 United Nations, *ICCPR*.

Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief'.¹⁰⁴

This relatively young Human Rights instrument, usually simply referred to as *the 1981 Declaration*, sets out in detail the principles of non-discrimination and equality in their legal implications, which derive from the provisions of the UDHR and the ICCPR.¹⁰⁵

Even more important for the understanding of the consequences resulting from the right and fundamental freedom of religion and belief is General Comment Number 22.¹⁰⁶ Conducted by the Human Rights Committee, it clarifies the scope of Article 18 of the Covenant.

Most crucially, the General Comment reminds States that freedom of religion and belief is a whole series of interlinked rights that extends not only to religions but other beliefs, including non-theistic ones. It also elaborates the question of the manifestation of religion and beliefs in the public square and sets far reaching protections for their exercise. This manifestation extends “to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest.”¹⁰⁷ The right to manifest ones religion also includes faith groups' “basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications”¹⁰⁸.

Currently another aspect has become prominent in the debate in western societies, “the wearing of distinctive clothing or head-coverings”.¹⁰⁹ Similarly, in Islamic States, the recognition that the right to freedom of religion and belief essentially includes “the right to replace one's current religion or belief with another or to adopt atheistic views”¹¹⁰ causes dispute and objection.

Apostasy is considered a serious offence in Islamic law and hence this aspect of the provision is looked upon as highly disputable. The contemporary question of Human Rights in its connection with Islam is a pertinent one, that should be elaborated on in the next chapter.

104 Paul Taylor, *Freedom of religion : UN and European human rights law and practice* (Cambridge UK ;;New York: Cambridge University Press, 2005), 2.

105 Office of the High Commissioner for Human Rights (Ed.), “Fact Sheet No2. - The International Bill of Human Rights.”

106 United Nation Human Rights Committee, “General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18),” July 30, 1993, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/9a30112c27d1167cc12563ed004d8f15?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocument).

107 Ibid., 4.

108 Ibid., 4.

109 Ibid.

110 Ibid., 5.

3.3.1 An Islamic Understanding of Human Rights

As the concept of combating Defamation of Religions is an initiative aiming to protect organized religions, primarily Islam, an analysis of its potential implications on Human Rights in this context demands that special attention be given to the religious underpinnings of this discussion. Additionally, specific consideration must be given to the intersection of Islam with international Human Rights law. This is because Islam constructs “an entire legal, social, economic, political and spiritual system in itself that codifies the various aspects of the life of its followers”¹¹¹. As such, Islam influences the understanding and interpretation of Human Rights at the level of their underlying moral value systems, and can determine the individual level of acceptance for different Human Rights.

While prominent scholars reject an incompatibility between Human Rights and Islam and even underline the added value that Islam can deliver to the protection and promotion of Human Rights, it is the conclusions drawn by State Parties on an international political level that are more relevant for the debate at hand. Their understanding does not necessarily reflect the same approach that religious scholars and researchers pursue, and has been criticised by Human Rights advocates as stifling the rights and freedoms guaranteed by the Human Rights framework. Their viewpoints on the principles and nature of Human Rights are most overtly reflected in the creation of regional Human Rights instruments that take into consideration their specific context of Islam.

Attempts to create Human Rights instruments or declarations from an Islamic perspective are not new. As early as 1981, representatives from Muslim countries including Pakistan, Egypt and Saudi-Arabia, proposed a document known as 'The Universal Islamic Declaration of Human Rights' (UIDHR). The text has received much criticism, notably for the substantial difference between the English version of the text which is closer to the language of the UDHR, and its Arabic version that is more oriented towards the language of Shari'ah.¹¹² As a result of this criticism, a new approach was undertaken with the 'Cairo Declaration of Human Rights in Islam', (CDHRI).

111 United Nations High Commissioner for Human Rights, *Combating defamation of religions as a means to promote human rights, social harmony and religious and cultural diversity: Report of the High Commissioner for Human Rights* (UN. Commission on Human Rights, January 27, 2003), para. 22.

112 Delling, Malin, “Islam and Human Rights” (Master Thesis, Göteborg University, 2004), 41, <https://gupea.ub.gu.se/dspace/handle/2077/1978>.

In 1990, the Organisation of Islamic Conference adopted the Cairo Declaration of Human Rights in Islam at their Nineteenth Islamic Conference of Foreign Ministers.¹¹³ Its proponents emphasized the complimentary nature of the text in providing additional guidance for Muslim States to read the UDHR with an Islamic perspective. But critics of this particular instrument, including liberal Muslim groups¹¹⁴, interpreted the CDHRI not as a legitimate Islamic interpretation of Human Rights, but as a politically motivated attempt to undermine the rights, freedoms and principles of equality enshrined in the Human Rights framework¹¹⁵. Critics further argued that the declaration does not contain a single reference to the UDHR, and does not take note of the obligations State Parties are subject to under its provisions. Indeed, according to the CDHRI, Islamic Shari'ah is "the only source of reference for the explanation or clarification of any of the articles"¹¹⁶, and the given rights and freedoms are subject to its jurisdiction.¹¹⁷ The provisions of the Covenants and the Human Rights obligations for States Parties contained therein are meaningless according to the CDHRI. Thus, to use the CDHRI as the determining reference for Human Rights in their application would in practice, put the State firmly in the position of deciding which Human Rights ought to be enjoyed by its citizens and which not, without the need to comply with other Human Rights standards.

Concrete criticisms arose when the provisions of the CDHRI were compared in their substance and compatibility to international Human Rights laws and standards and found to be substantially different in their approach towards the principles of equality and universality:

The core principle of the Human Rights standard is the concept of non-discrimination. Prominently, Article 1 of the Universal Declaration of Human Rights states that every human should be equal in dignity and rights, while Article 2 specifies in greater detail that:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[...]¹¹⁸

113 Organisation of the Islamic Conference (OIC), *Cairo Declaration on Human Rights in Islam (CDHRI)*, 1990, <http://www1.umn.edu/humanrts/instree/cairodeclaration.html>.

114 Washington College of Law: Human Rights Brief, "Column: United Nations Update" 16, no. 1 (2008), <http://www.wcl.american.edu/hrbrief/16/1update.pdf?rd=1>.

115 Fatema Mernissi, *Islam and Democracy* (Cambridge: Perseus Books, 2002), 67.

116 Organisation of the Islamic Conference (OIC), *Cairo Declaration on Human Rights in Islam (CDHRI)* Article 25.

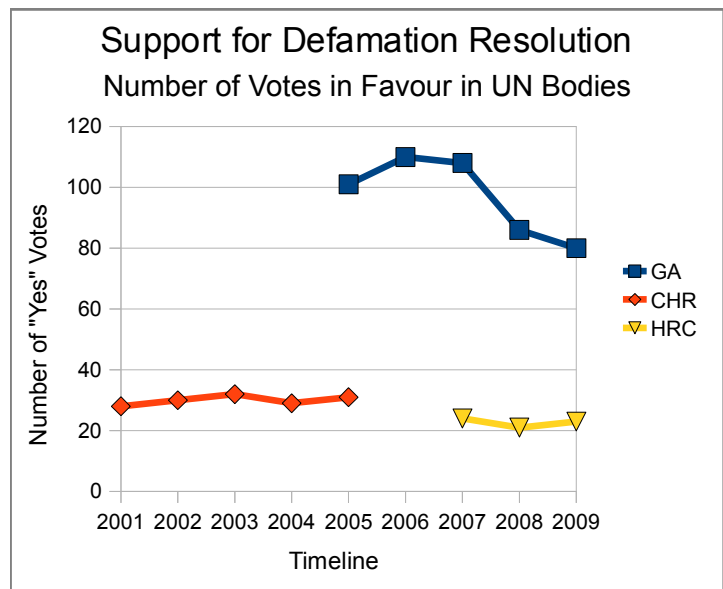
117 Ibid. Article 24.

118 United Nations, *The Universal Declaration of Human Rights* Article 2.

This same idea has been reiterated and reaffirmed not only in all relevant Human Rights instruments of legally binding character, but in uncountable resolutions that have been universally adopted by the international community at the United Nations. This exemplifies the undeniable character of non-discrimination as the basic idea behind the concept of Human Rights. It is highly problematic, therefore, if States refrain from incorporating such central elements and the core Human Rights documents that contain them, in their regional Human Rights instruments.

In the essential aim of granting equal rights based on a principle of non-discrimination, the CDHRI falls short of fulfilling minimum requirements of the international Human Rights standards. Most prominently, the

CDHRI does not grant equal rights to men and women. While the declaration recognises equal labor rights for men and women, it makes distinctions in nearly every other aspect of life related to the traditional societal roles that men and women have. While arguments pointing to the often discriminatory nature of these differences have been advanced, a crucial notion is also that a distinction between male and female roles and obligations is made at all, as it is in itself highly contradictory to the principle of equality.



According to article 6, women are only granted “own rights”, with no further explanation as to how those rights differ from the rights men enjoy. Moreover, equality for women to men is limited to their right to enjoy the same “human dignity” as men. It is problematic that the Declaration does not set out exactly what is to be understood by this, and what consequences can be drawn from it in practice. The same article also stipulates a difference in the duties applicable to women, again giving no further details that are required for understanding the practical implications of this article. The provision continues with the declaration that the husband has sole responsibility for “the maintenance and welfare of the family”¹¹⁹, thereby effectively making

¹¹⁹ Organisation of the Islamic Conference (OIC), *Cairo Declaration on Human Rights in Islam (CDHRI)* Article 6.

him head of the household.

This highly disputed article 6 reads in full length:

- (a) Woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform, and has her own civil entity and financial independence, and the right to retain her name and lineage.
- (b) The husband is responsible for the maintenance and welfare of the family.¹²⁰

¹²⁰Ibid., Article 6.

The other problematic divergence from human rights relates to the right of freedom of religion. Article 18 of the UDHR specifically states that everyone has the right to freely change one's religion and the right to remain free from pressure to change one's religion.¹²¹ The CDHRI however, makes a negative statement in this regard: not emphasising the freedom of religion but rather criminalizing attempts to weaken one's faith or Islamic belief and stipulating that speeches which aim to do so or are suspected of aiming to do so, should be prohibited.

This problematic approach to the matter of changing one's religion comes as no surprise, as Muslim States traditionally have expressed strong feelings regarding this matter; in general, rejecting apostasy and often even labelling it a capital crime in their domestic legislation. It also remains unclear exactly how and when public faith would be weakened, and what limitations should be set in this regard. Such vague provisions stifle freedom of speech beyond the legitimate grounds set forth in precisely those Covenants whose references are missing in the Declaration. This becomes even more evident in the provisions of the CDHRI directly advancing the controversial view that freedom of expression could be subject to interpretation as blasphemous. The declaration merges this universal right with a stipulation against blasphemy:

Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah.¹²²

Hence, speeches interpreted as contradictory to the Shari'ah may be prohibited according to article 22(b) of the CDHRI. In this provision, the declaration clearly violates international Human Rights law by extending the scope of the grounds for restriction of the exercise of freedom of expression beyond the legitimate grounds outlined under articles 19 and 20 in the International Covenant for Civil and Political Rights (ICCPR).

The CDHRI further extends the legal ambit under which freedom of expression may be limited:

Information [...] may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical Values or disintegrate, corrupt or harm society or weaken its faith.¹²³

In other words, information must not be used in any way that would weaken a society's Islamic faith. This would essentially include the missionary activities of other religious organizations of any kind. Also, any kind of criticism regarding Islam and its values and traditions or advocacy of

¹²¹ United Nations, *The Universal Declaration of Human Rights* Article 18.

¹²² Organisation of the Islamic Conference (OIC), *Cairo Declaration on Human Rights in Islam (CDHRI)* Article 22(b).

¹²³ Ibid. Article 22(c).

any other form of lived Islam contrary to mainstream interpretations, could be subject to censorship.

Also, the CDHRI falls short of upholding the level of overarching freedoms and sound protection of rights found in the international Human Rights framework:

The Declaration only selectively reiterates some undisputed rights contained in the UDHR but consistently sets aside those that could conceivably contradict religious teachings under a stricter interpretation of Islamic law. The reluctance to adequately incorporate such rights can partly be ascribed to the differing perspectives of Shari'ah law of the States drafting the declaration: As Islamic law is a highly complex set of codes affecting nearly every aspect of the life of its adherents, there are controversies in its exact interpretation, which can not be solved easily.¹²⁴ Due to the lack of common grounds in this regard, some essential aspects of specific rights and fundamental freedoms such as aspects of divorce, changing of ones religion, protection of religious minorities et al, are simply not mentioned at all in the CDHRI. In her research on Islam and Human Rights, Malin Delling notes that:

“Not dealing with the rights of women and religious minorities in an Islamic document on human rights is consequently only a hypocritical way of allowing these discriminations to continue.”¹²⁵ Provisions in the CDHRI that did refer to important aspects of the Human Rights composition have been subject to harsh criticism; such provisions include the declarations' advice to States to reject asylum seekers if their application is based on grounds that are “regarded by the Shari'ah as a crime”¹²⁶, and the notion that education is obligated to “strengthen man's faith in Allah”¹²⁷. Such provisions either demand the promotion of Islam or seek punishment for any non-compliance with Islamic law. This is also connected to the more general apprehension regarding the rights of non-Muslims and the application of Shari'ah law on them. In short, these provisions are either inconsistent with the principles of equality, or at least work to weaken them significantly.

Proponents of the CDHRI argue that the declaration must be read as a text complementary to existing Human Rights documents, but this argument does not hold water as any reference to the UDHR which would support such a claim is missing from the CDHRI. In fact, on the basis of the

124 Breau, “Human Rights and Cultural Relativism: The False Dichotomy,” 142.

125 Delling, Malin, “Islam and Human Rights,” 37.

126 Organisation of the Islamic Conference (OIC), *Cairo Declaration on Human Rights in Islam (CDHRI)* Article 12.

127 Ibid. Article 9.

arguments outlined above, the CDHRI cannot be seen as a complementary text offering interpretations of Human Rights in the context of Islam but rather, as an alternative that challenges the principles and provisions set out in the UDHR and the Human Rights Covenants. Moreover, some provisions made in the CDHRI particularly with reference to the right of freedom of expression, clearly violate existing and internationally binding Human Rights law. Rather than a text guiding the interpretation of Human Rights in the specific context of Islam, the CDHRI should be seen as an attempt to protect mainstream Islam and State practices at the expense of sacrificing essential rights and freedoms, inter alia by encouraging anti-blasphemy laws which limit the right of freedom of expression beyond the scope granted by Human Rights instruments.

3.4 Contradicting Ideological Viewpoints

When the UDHR was presented to the United Nations General Assembly in Paris in 1948, it found adoption without a single dissenting vote. But the handful of States that did abstain and raised concerns regarding the instrument, gave an early indication of the underlying ideological differences that would only grow in years to come.

Under its apartheid regime, South-Africa could not support the UDHR because it upheld equal rights for coloured people. In lieu of the fact that it was the beginning of the cold war period, the Soviet Union abstained for political reasons; and Saudi Arabia refused because equal rights for women were proclaimed in the text. It should be noted here that the differences are located not in individual disagreements over particular aspects of the declaration, but rather in their very principles. In considering this contextual facet of the Human Rights discourse, a historical examination of the roots and developments of ideological positions becomes pertinent. Attempts to challenge the principles of Human Rights arose in the 1950s with the entry into the arena of international relations, of new nations bound together by the experience of colonialism. Many of these small and relatively weak States rallied collectively under the patronage of the Soviet Union.¹²⁸

Nevertheless for decades, during the period of the Cold War, the opportunity to bring change in the underlying principles of Human Rights did not exist.¹²⁹ Rather, the existing framework was split in two. Countries under Soviet influence seized on the importance of economic and social justice and worked to distract from claims for political and civil rights within their countries; the Western powers in turn sought to downplay the importance of cultural and social rights, in an attempt to direct attention away from their long standing history of imperialism and colonialism. They rather pointed to the relevance of political and civil freedoms, which mostly remained neglected in the communist countries. Following these ideological demarcations between the 'East' and the 'West', two Covenants codified the Human Rights into legally binding documents: one specifically addressing political and civil rights, the ICCPR, and the other addressing economic, social and cultural rights, the ICESCR.

¹²⁸ Glendon, *A world made new*, 223.

¹²⁹ Glendon, *A world made new* Preface - xix.

Although it made political sense for conflicting positions to derive from respective cold war stances, another major source of dispute over Human Rights was the increasing globalization of jurisdiction. At the time that the UDHR was drafted, the prevailing approach was one of non-intervention and instruments such as the UDHR were conceived of simply as moral beacons with no concrete obligations that governments could be held accountable for. International law had been a set of rules based on mutually agreed upon norms organizing the relations between nations.¹³⁰ In the course of the second half of the 20th century however, this paramount paradigm of a sanctified national sovereignty became increasingly impractical and elusive. The moral failure of humanity in the second World War, the threat of a potential nuclear fuelled conflict and the increasing trends of globalization became grounds for an emerging interest in the international community – intervening in the internal affairs of other nations while at the same time, watching over their own sovereignty like hawks.

Newly created treaties between nations, instruments to safeguard international agreements, and reformed institutions to govern international relations are increasingly mandated to monitor and report on individual countries compliance with international norms and standards. They are concerned with establishing mechanisms of accountability and thereby have effectively established definite limits on sovereign autonomy.¹³¹ General Comment No. 31 points out that with respect to the protection of Human Rights, “[...] every State Party has a legal interest in the performance by every other State Party of its obligations”¹³²

Moreover, with the advent of new globally available communication technologies, the voice of the civil society has increased substantially, making it a stronger force in working for more intervention. The emerging power that civil society actors gained as credible, critical voices enabled them to pressurize States for greater compliance with Human Rights standards and acceptance of accountability mechanisms, again reducing the extent of national sovereignty. Non-state actors of the civil society in this context must not be understood to be limited only to typical NGOs such Human Rights Watch or Amnesty International, but encompass religious and social movements too; all of whom exercise political influence in the processes of national and international decision making.¹³³

130 Paul Berman, “The Globalization of Jurisdiction,” *University of Pennsylvania law review*. 151, no. 2 (2002): 356, 357.

131 Ibid., 357.

132 United Nation Human Rights Committee, “General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,” 2004, para. 2.

133 Paul Berman, “The Globalization of Jurisdiction,” 357-358.

Those developments of the Human Rights system from a simple moral beacon to an instrument of law interfering with national sovereignty and a powerful tool for civil society to pressure governments, explain the various attempts to weaken the Human Rights framework. This is not to say that criticism relating to Human Rights should not be taken seriously, but one cannot neglect the fact that some countries with the worst Human Rights records attempt to use such arguments to leverage the Human Rights system as a whole. Despite Member States regularly adopting text with language such as “universally recognized human rights and fundamental freedoms”, including Human Rights instruments of binding character and Human Rights related GA resolutions on an annual basis, systematic attempts to qualify Human Rights principles remain a pressing issue. In several informal negotiations in 3rd committee on Human Rights resolutions in the 64th session of the General Assembly, I witnessed first hand, attempts to undermine the principles of Human Rights on the grounds of arguments such as that the term '*universally recognized* Human Rights' indicates that some Human Rights might *not* be universally recognized, and hence Human Rights as such should be seen as relative to local conditions and cultural specifics. Such arguments are greatly based on a perception of hypocrisy in the Human Rights stances of Western States, on ideas of cultural relativism and on a suspicion of Human Rights being a perfidious project of cultural imperialism. In the following subsections, these three underlying narratives will be elaborated further.

Perceptions of Western hypocrisy

Human Rights are often put to question by arguments building upon the perception that the strongest advocates of these rights are hypocrites themselves unwilling to comply with what they are calling for. In fact it is held that precisely “those who so confidently declared rights to be universal [...] turned out to have something much less all-inclusive in mind”¹³⁴ It is true that when the first tentative steps towards a Human Rights regime dating back till the 18th century were taken, the provisions of these early Human Rights documents proclaiming equal rights for all human beings did not include those colonised, those held in slavery, the general poor man or women in general. These groups remained shut out as equality was articulated as applying to *white European men* exclusively. It were grassroot movements in the 20th century, eg the civil rights movement in the United States, the Indian struggle for self-determination or the resistance against the apartheid regime in South Africa, etc that brought an end to this injustice step by step.

¹³⁴Lynn Hunt, *Inventing human rights*, 18.

This long standing tradition of hypocritical double standards by Western countries continues to have an effect on the Human Rights debate and undermines the credibility of States who have historical marks on their otherwise shiny Human Rights record. The hypocrisy of nations preaching compliance with Human Rights standards for others while not complying themselves, has hence been often used as an argument that the concept of Human Rights is a tool of imperialism and the suppression of the weak by the mighty. Violations of Human Rights when committed by those States most prominently advocating for Human Rights in international fora, including inter alia by openly pinpointing the worst, most notorious Human Rights violators, are perceived as nothing less than a proof of the hypocrisy of the western world.

The subsequent arguments against Human Rights based on perceptions of hypocrisy overlook two crucial points:

Firstly, the UDHR itself does not constitute a guarantee for the *enjoyment* of Human Rights, but rather lays the groundwork for claiming them and for the possible enforcement of ones rights.¹³⁵ Essentially it must be understood that non-compliance with any law cannot be seen as an argument against the law itself, but rather simply as grounds for better and more sound implementation and the establishment of accountability mechanisms to avoid future violations. To illustrate this point, one can see the example of Murder which is universally outlawed throughout the different jurisdictions of all UN Member States. Nonetheless, murder does take place every day. But the fact that it does happen does not serve as grounds for abolishing the prohibition of murder. This reasoning is contrary to the illogical argument against the Human Rights regime based on the fact that Human Rights are violated by proponents of the system.

Secondly, incidents of Human Rights violations committed by officials in a country continue to undermine the credibility of its government in their standing on Human Rights issues. This is despite the fact that the uncensored publication of those violations and an open handling of them speaks *for* the credibility of these countries commitment to comply with Human Rights.

¹³⁵ Glendon, *A world made new*, 236.

Arguments of cultural relativism and imperialism

The attack on the Human Rights understanding from the point of view of culture, is predicated on two levels:

- the accusation that Human Rights is a project of *cultural imperialism*, and
- *cultural relativism* or in other words, the claim of cultural diversity as means of a qualifier

Both arguments are connected to the claim that rights require adaptation to the local specifics of cultural diversity, and this fact has not been taken into account by the Western understanding of Human Rights.¹³⁶

The accusation that the Human Rights framework is barely more than a project of cultural imperialism can be easily dismissed. Countries like China or Russia, a veto power in the UN, that regularly use this line of argument to justify their Human Rights violations against dissidents¹³⁷, nevertheless still fully agreed with the UDHR as is exemplified by their signatory assent. Moreover, eastern and middle eastern countries like China as well as Egypt, played a significant role in drafting the UDHR. While it is true that the majority of the world's people, dominated by colonialism, were not represented adequately within the UN in the 1940s, the UDHR document was however formulated by persons with highly diverse backgrounds. It was in fact precisely those contributions of cultural diversity to the document, that made the acceptance throughout all nations and ideologies acceptable in the first place. Most notable the diplomats and philosophers, Charles Malik from Lebanon and Chang Peng-chun from China had a heavy hand in working out the principles of the UDHR.¹³⁸

Furthermore, the misgiving that claiming universal applicability may cause dispute and conflict in a multicultural world has been recognized from the early beginnings of the Human Rights project. As early as 1947, UNESCO had been given the task of examining whether the fundamental principles of Human Rights would be compatible with the sociocultural ideas held by people around the world.¹³⁹ The questionnaire was sent out to politicians and scholars, such as Mohandas Gandhi or Aldous Huxley, to inquire and incorporate their opinion on the principle idea of creating a Universal Declaration of Human Rights. The answer of UNESCO scholars

¹³⁶ vgl. Ibid., 221.

¹³⁷ Ibid.

¹³⁸ "Chang Peng-chun," in *Encyclopædia Britannica* (Encyclopædia Britannica Online, 2010), <http://www.britannica.com/EBchecked/topic/1056274/Chang-Peng-chun>.

¹³⁹ Glendon, *A world made new*, 222.

could not have been clearer: Regardless of their origin they agreed that despite cultural differences all people and nations shared two great principles and common ideals, '*the right to live a life free from the haunting fear of poverty and insecurity*'.¹⁴⁰ Essentially, although people might not agree in theory, they can agree in practice.

Interestingly, the same political and civil rights that today are most often labelled 'Western rights' and held up as instances of cultural imperialism, were the least controversial ones when the articles of the UDHR were taken up one by one during its adoption in 1948.¹⁴¹

As the Human Rights system had not yet been understood as the challenge to political power it would soon become, questions of the freedom of expression and similar rights were of little concern. In fact it was the cultural rights – the right to change ones religion¹⁴² and ones right to marry¹⁴³ (Article 16, UDHR) – that had been singled out by countries like Saudi Arabia as being Westernised concepts incompatible with their values.¹⁴⁴ One should not forget that the UDHR also came under siege in the West itself. Immediately following its adoption, it was heavily criticized by the conservative circles in the United States for *not being imperialistic enough*. Not only did these groups complain about the fact that only 3 members from English-speaking countries had been part of the Human Rights Commission, but also openly referred to the UDHR as a 'pink paper' which would encourage state socialism and lead to communism.¹⁴⁵ Such perspectives, not simply footnotes in history but commonly shared ideas in conservative circles, have their share in engendering the suspicion which remains powerful among people with critical perspectives regarding the west; that the Human Rights project is merely a project of cultural imperialism.

Accusations of cultural imperialism are often backed by claims of inadequate representation as only 57 nations originally adopted the UDHR as the common grounds for Human Rights understanding. This argument implies that if the world had been decolonized back then, a project of cultural imperialism would not have been accepted that easily or would have been altogether dismissed. There is an important counterargument to this, disqualifying any of such arguments. In June 1993, 171 countries *unanimously* adopted the Vienna Declaration and Programme of

140 UNESCO, "UNESCO and the Declaration," n.d., <http://www.unesco.org/new/en/social-and-human-sciences/themes/human-rights/advancement/60th-anniversary-of-udhr/unesco-and-the-declaration/>.

141 Glendon, *A world made new*, 226.

142 United Nations, *The Universal Declaration of Human Rights* Article 18.

143 Ibid. Article 16.

144 Glendon, *A world made new*, 226.

145 Ibid.

Action (VDPA) at the World Conference on Human Rights, without any dissenting vote.¹⁴⁶ Not only does this paper clarify some of the disputed issues which had so far remained unresolved, but it also is more precise in its language. It reaffirms the UDHR as the common ground for Human Rights with the consensual agreement of *all* Member States. Together the nations reaffirmed “the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.”¹⁴⁷ And more importantly stated that “Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.”¹⁴⁸ The universal acceptance of Human Rights could barely be affirmed in any clearer way.

Cultural relativism might be the greatest challenge to the concept of Human Rights and its claim of universal applicability. Cultural relativism essentially claims that one should not judge behaviour upon standards born out of a different culture. Behaviour based on the values of different cultures should be respected and not be judged upon.¹⁴⁹ This argument is put forward also within the UN context, noteworthy under the term of 'cultural diversity', and the eponymous resolution traditionally introduced by the Non-Aligned Movement (NAM). The claim of cultural relativism implies that there is no such thing as a universal human culture that would connect mankind or would rightly leave room for a moral judgement beyond cultural differences. Human Rights must be understood and interpreted as *flexible considering local specifics* because, essentially, there are no universal standards by which different cultures could be morally 'evaluated'. But this is precisely what the concept of Human Rights proposes: A universal culture viable as a standard inherent to all people – *human dignity*. The rights drawn from it serve simply as the protection mechanisms and political guarantees for everyones dignity. It must be pointed out that human dignity as a concept is rarely disputed, instead it is the rights drawn from the concept itself that serve as powerful tools for activists to argue for greater individual freedoms, that come under constant attack from relativist arguments.

146 Office of the High Commissioner for Human Rights (Ed.), “Fact Sheet No2. - The International Bill of Human Rights.”

147 United Nations, *VDPA* I, 1.

148 United Nations, *The Universal Declaration of Human Rights* Article 18.

149 Breau, “Human Rights and Cultural Relativism: The False Dichotomy,” 138.

A notion often raised by OIC members is that dignity is more important than rights. While the importance of Human Dignity is not questionable, this may not be an argument against the concept of rights itself. Indeed, as rights for humans are as much based on emotions as on reason, Human Rights essentially require dignity as a central element of the human condition to be effective. It is this emotional sense of dignity that is hurt by Human Rights violations. This feeling of disturbance gives the UDHR its moral power of a commonly shared idea of how humans deserve to be treated and what humanity means. Pointing towards dignity as an attempt to undermine the concept of Human Rights is based on an ill-suited argument. Dignity is an essential under-pinning of rights, and strengthening the importance of dignity could very well lead to a stronger Human Rights stance in the long run. Consequently, the UDHR “ [...] came to be recognized as a historic document articulating a common definition of human dignity and values. The Declaration is a yardstick by which to measure the degree of respect for, and compliance with, international human rights standards everywhere on earth.”¹⁵⁰

Another typical critique voiced along the lines of arguments of cultural relativism and imperialism is an allegedly overemphasis of the individual, amounting to liberal western individualism and threatening the welfare and stability of the society. This argument overlooks the fact that the civil and political rights that are the main sources of growing individualism are only one part of the Human Rights system. The cultural, economic and social rights serve well for concerns in the higher interests of social stability, such as the right for food, the right for adequate housing, health or education. Much of those rights can not be seen what is negatively labeled 'individualistic'.¹⁵¹ Cultural relativism also overlooks the point that while Human Rights follow a general notion of universal application to the individual (a notion shared by western liberalism) this is not the only principle underlying the construction of Human Rights and does not mean that diverse cultural elements aren't included. Cultural relativism assumes that western ideas are exclusive to the Western world and exclusively responsible for the formulation of Human Rights principles.

Arguments against Human Rights made by proponents of cultural relativism are also ill-suited when claiming that Human Rights would have to be rejected as universal because they are only a set of western ideas born out of enlightenment thought. This is not logical, as Lynn Hunt points out in this regard referring to the UDHR: “The origins of documents do not necessarily tell us

150 Office of the High Commissioner for Human Rights (Ed.), “Fact Sheet No2. - The International Bill of Human Rights” unpagued.

151 Breau, “Human Rights and Cultural Relativism: The False Dichotomy,” 147.

something significant about their consequences”¹⁵² On a more general note, one might claim that origin of *ideas* does not predetermine their *added value*, and the codification of an idea in a specific context, time and origin does not mean that those very same ideas were not conceptualized elsewhere and before also. It is barely arguable that human dignity and the deriving urge for basic inherent rights, would have been created with the drafting of a single paper in 1948.

Interestingly, the argumentation and idea of cultural relativism itself has arisen from the very same world region that critics claim the UDHR was born out of: It had been the American Anthropologist Association which formulated the criticism of cultural relativism against a universal Human Rights standard, not any group from the south. These arguments of cultural imperialism must be dismissed because it is essentially similarly imperialistic to argue for the neglect of Human Rights for persons simply on the grounds that they do not belong to the same world region or cultural sphere where the concept of Human Rights was formulated. In other words, should someone enjoy any less protection from torture, arbitrary killing, or enjoy any less freedom of thought, or right to food etc, based on the fact that they do not belong to the 'west', politically, ideologically or culturally? This would be more than hard to argue.

¹⁵²Lynn Hunt, *Inventing human rights*, 18.

Concluding remarks

Surprisingly, there have been few other texts, cited and referred to as often and “yet so little read or understood”¹⁵³ than the Universal Declaration of Human Rights.

Human Rights challenge the national sovereignty of a country, making them a natural target for all those who do not wish for interference in their internal affairs. The arguments of hypocrisy, cultural imperialism and double standards do not hold water for the reasons outlined above. Instead of blaming individual governments for violations, they attack the concept of Human Rights itself. The very same accusations made can also more than validly be raised against those attacking the Human Rights system themselves. When authoritarian governments with poor human rights records attack the foundations of Human Rights law and the principles of Human Rights under the pretext of cultural imperialism, they often bear in mind, domestic interest and “troubles at home”.¹⁵⁴ The concept of Human Rights becomes a weapon and tool for the suppressed, and authoritarian governments need to fear the resistance of their own populations and the moral pressure of media attention.

With the UDHR, the international community gave itself a sound moral beacon whose worth is exemplified by the fact that it can be found referenced in nearly any Human Rights document consensually adopted by the international community. The declaration constitutes the underlying framework for our understanding of Human Rights, on which other Human Rights instruments of a more legal character were built. As such, the ICCPR and ICESCR put the rights set out in the UDHR into precise legal norms and obligations for their practical implementations. With their legally binding character applicable for the whole UN membership, they constitute the core of international Human Rights law. Moreover, the VDPA elaborated the nature and principles of Human Rights resulting in an outline of possibly their most crucial characteristic, stating that “All human rights are universal, indivisible and interdependent and interrelated”¹⁵⁵ Together “[...] the International Bill of Human Rights represents a milestone in the history of human rights, a veritable Magna Carta marking mankind's arrival at a vitally important phase: the conscious acquisition of human dignity and worth.”¹⁵⁶

153 Glendon, *A world made new* Preface - xvii.

154 Ibid., 224.

155 United Nations, *VDPA* Part 1, Para 5.

156 Office of the High Commissioner for Human Rights (Ed.), “Fact Sheet No2. - The International Bill of Human Rights” unpagged.

Overall, the concept of Human Rights clearly improved “the odds of reason and conscience against power and interest”¹⁵⁷ And the UDHR with its moral beacon has done more for the advancement of human rights than any other legally binding treaty such as the ICCPR or ICESCR.¹⁵⁸ And while attempts to undermine the principles of Human Rights through accusations of cultural imperialism have to be dismissed, accusations of Human Rights serving as tools of cultural imperialism may not be and instead, must be taken very seriously¹⁵⁹ – in particular by Human Rights defenders themselves.

157 Glendon, *A world made new* Preface - xix.

158 Ibid., 236.

159 Ibid., 224.

4 The Defamation Resolution and its Political Context

4.1 Status of the Defamation of Religions Resolution

The political dynamics and debate surrounding the resolution and its underling concept are interconnected and interdependent with the development of the resolutions language over the last decade. Before going into further detail of the complex political context and the development of the resolution in the various UN bodies, this chapter will briefly summarize the current status.

Although the concept of Defamation of Religions has been framed as being negative stereotyping in particular of Islam and by the media, it remains vaguely defined in terms of its boundaries. While the resolution does not give a clear and overt definition, several Member States have explained in their statements that they understand Defamation of Religions as the negative stereotyping of religions,¹⁶⁰ or more specifically as “[...] expressions which negatively projected Islam [...]”¹⁶¹. Nonetheless, the scope of Defamation of Religions is not limited to this understanding alone but encompasses further issues such as those of incitement to religious hatred, violence and discrimination; topics that are indeed covered by the existing Human Rights framework. In the emerging dispute around the intersection of and the interrelation between Defamation of Religions and Freedom of Expression, the resolution framed Defamation of Religions as an abuse of freedom of expression. This claim is based on the presupposition that Human Rights can be abused at all.

Despite the vague demarcation lines of the term itself, the resolution uses the strongest language of all General Assembly resolutions; giving concrete directives for public officials of other Member States. It further calls for measures to combat the phenomenon by means of creating new laws, aiming to extend the grounds for restricting the exercise of freedom of expression beyond the legitimate limits of the ICCPR.

Due to the lack of a precise definition of what it means to 'defame religions' within the resolution itself, proponents and opponents of the concept differ substantially in their articulation of the meaning of the term. Above all, there is an underlying, but significant difference of Member States' understanding of the application and scope of the resolution itself:

160 UN. General Assembly, *Official Records of the 3rd Committee, 64th Session, 42nd meeting, (A/C.3/64/SR.42)* (New York: United Nations, March 2010) Para 67.

161 United Nations General Assembly, *Official Records of the 3rd Committee, 61st Session, 48th meeting, (A/C.3/61/SR.48)* (New York: United Nations, January 2007), para. 22.

Proponents read the resolution focusing on its scope on an *international level*, on the *role of the media* as perpetrators of Defamation of Religions, and on *Muslim and Arab migrant communities* in western countries as the most vulnerable victims of Defamation of Religions.

Critics, on the other hand, tend to focus on *concerns of domestic nature* as a *matter of state policy* for the Member States supporting the resolution itself, and find the *concept flawed on an definitional level*. Opponents are mostly alarmed by the tendency of the resolution to extend grounds for the legitimate limitation of the right of freedom of expression. These critics are highlighting the potential misuse of the concept in the countries as a tool for mainstreaming the dominant religious ideology, for undermining Human Rights, for silencing the media and for suppressing the role of the opposition as a critical political voice. The European Union took note of these considerations, pointing out that “Members of religions or communities of belief should not be viewed as mere particles of homogeneous and monolithic entities.”¹⁶²

Since its introduction, the concept of Defamation of Religions underwent major changes and developed from a resolution that had been conceived as a text aimed at raising concerns about discrimination, into a highly disputed topic within the Human Rights discussion. The initiative is today perceived by critics as an attempt to undermine the very foundations of Human Rights, but for supporters it is a case exemplifying the hypocrisy of discriminatory double standards of the West.¹⁶³

While the resolution was adopted in consensus in 1999 and 2000, the initiative has since lost support with more than half of the UN membership. The opposition had been predominantly limited to 'Western European and other Group' (WEOG) and like minded States, until the resolution found its way to the General Assembly in 2006. Today several African, Asian countries and members of the 'Latin American and Caribbean Group' (GRULAC) have shifted their stance to one of opposition also, either by abstaining or openly voting against the resolution. In the most representative of the UN bodies, the General Assembly, the support for the resolution dropped below 44%. Nevertheless, the OIC have kept their votes for the resolution in both Human Rights bodies, in the old Commission of Human Rights as well as its successor the Human Rights Council, relatively stable.

¹⁶² Ibid., para. 25.

¹⁶³ Note: Insights on this perspective are also based on personal conversations with 4 NAM representatives, 2 of them members of the OIC

The gravity of the misgivings regarding the concept behind the initiative are best illustrated by the explanation given by the European Union before voting on the resolution. Therein it states that overall “the concept of Defamation of Religions is not relevant in a debate on Human Rights.”¹⁶⁴ Unimpressed, the OIC continues to push the resolution forward, although fully aware of the fact “that the positions of partners who opposed the text would not change unless the core issues addressed in it were compromised”¹⁶⁵

The opposing positions are clear: The OIC frames Defamation of Religions as a form of Human Rights violation that needs to be prohibited by means of limiting the freedom of expression. Proponents argue that existing Human Rights instruments are falling short in adequately protecting the freedom of religions and new, legally binding instruments that outlaw Defamation of Religions are needed. Opponents of the resolution, on the other hand, warn of the consequences which the legal implementation of the concept would have on the enjoyment of Human Rights, particularly in the case of minorities and with regard to freedom of expression. They see an inherent threat in the resolution leading to the increased suppression of people through State Authorities and go as far as to condemn the whole initiative as barely more than a hidden attack on the Human Rights system.

The following chapter will outline the development of the resolution, the debates and criticism attached, as well as the political dynamics resulting therein.

164 *Explanation of Vote before the Vote on Draft Resolution A/HRC/13/L.1 made by France on behalf of the European Union. Mr. Jean-Baptiste Mattei* (UN Human Rights Council, Geneva, n.d.), <http://webcast.un.org/ramgen/ondemand/conferences/unhrc/thirteenth/hrc100325am1-eng.rm?start=02:36:57&end=02:41:24>.

165 UN. General Assembly, *Official Records of the 3rd Committee, 64th Session, 42nd meeting, (A/C.3/64/SR.42)* Para. 57.

4.2 Claims made by the Resolution

The claims outlined below form the underlying basis for the provisions of the resolution being examined. They exemplify how Defamation of Religions is conceptualized, and further reflect the understanding of the Human Rights system within the OIC.

Insufficiency of Existing Initiatives

Proponents of the resolution argue that existing initiatives have in practice proven to be insufficient in solving the problems at hand. Initiatives such as resolutions¹⁶⁶, are looked upon as meaningless and legally binding instruments that directly aim at the elimination of religious intolerance, the protection of freedom of religion and the rights of religious minorities are considered as incomplete. Representatives of delegations commonly cited events of discrimination against Muslim communities or individuals in western countries, as instances that support the need of the resolution. The underlying accusation in these conversations was that the concerns raised by the OIC could not possibly be met by western initiatives, such as the religious intolerance resolution mentioned above. This is, according to their argument, due to a lack of true willingness to understand divergent cultural perspectives. Regardless of such perceptions, the question of the need for additional legal initiatives boils down to whether or not existing regulations and Human Rights laws (including the necessary remedies provided for Human Rights violations) have been effectively implemented. Elaborating on this issue, General Comment No. 31 suggests that violations of rights where appropriate remedies were formally prescribed, should be presumed to be a result of the failure of those remedies to function effectively in practice.¹⁶⁷

It can be concluded that this comment suggests that existing tools be seen as sufficient until proven incomplete only after their effective implementation. Hence, arguments for the need to introduce additional legal instruments to address instances of religious intolerance should be rejected if existing instruments lack proper implementation. Furthermore, calls for additional legal initiatives must also be rejected if internal laws are serving as justification for recurring Human Rights violations, whose prevention is in fact already covered by existing legal

¹⁶⁶See for instance resolutions on the “Elimination of all forms of religious intolerance”

¹⁶⁷United Nation Human Rights Committee, “General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,” 20.

instruments. On this subject, the General Comment on the legal obligations of the ICCPR imposed on State Parties, reinforces the principles contained in Article 27 of the Vienna Convention on the Law of Treaties; according to which a State Party 'may not invoke the provisions of its internal law as justification for its failure to perform a treaty'.¹⁶⁸

The provisions provided by existing Human Rights instruments already prohibit any advocacy of intolerance that would amount to incitement of religious hatred, discrimination, hostility or violence; and consequently put States under the obligation to protect people from this. Moreover, they put State Parties under obligation to prohibit such occurrences by law.¹⁶⁹ Hence, the argument that there is additional need for legal grounds to address issues of religious intolerance holds no water.

Defamation of Religions as a Human Rights Violation

Article 3 of the '1981 Declaration' on the Elimination of All Forms Intolerance and Discrimination Based on Religion and Belief reaffirms that discrimination on the grounds of religion or belief constitutes an affront to human dignity, and that such discrimination rightly constitutes a Human Rights violation. The proponents of the Defamation Resolution however attempt to put this Human Rights violation on equal footing with Defamation of Religions: They adapt the language of the declaration for this purpose, replacing the term 'discrimination' with 'defamation'. As such the resolution proclaims that Defamation of Religions is a "serious affront to human dignity"¹⁷⁰ and further suggests that it "[...] could lead to social disharmony and violations of human rights, [...]"¹⁷¹. Even if supporters of the concept argue that a root cause relation exists between the two, it is still merely an indirect link to Human Rights. Indeed, when read carefully the resolution only suggests that Defamation of Religions could lead to Human Rights violations, on the basis of such acts as "incitements to religious hatred and violence"¹⁷². Hence, Defamation of Religions itself *does not* amount to a Human Rights violation, and there is no provision in the resolution claiming otherwise. Nevertheless, implications in the language, as outlined in the chapter above, indicate that the resolution aims to frame the phenomenon of

¹⁶⁸ Ibid., 4.

¹⁶⁹ United Nation Human Rights Committee, "General Comment No. 11: Prohibition of propaganda for war and inciting national, racial or religious hatred (Art. 20)," July 29, 1983, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/60dcfa23f32d3feac12563ed00491355?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/60dcfa23f32d3feac12563ed00491355?Opendocument).

¹⁷⁰ United Nations General Assembly, *Combating defamation of religions (A/Res/64/156)* ([New York]: UN, 2009), PP. 10.

¹⁷¹ Ibid., PP. 13.

¹⁷² Ibid., PP. 10.

Defamation of Religions as a unique form of Human Rights violation. While proponents argue Defamation of Religions *amounts to* a violation of Human Rights; a closer look at the resolution itself shows that the underlying claim is rather that Defamation of Religions *could lead to* the aforesaid violation. The resolution further identifies media broadcasting as the predominant means of articulating and disseminating Defamation of Religions, promoting “negative projection of certain religions”.¹⁷³

All together a core claim remaining implicit in the language of the resolution, is that Defamation of Religions should be viewed equal to a Human Rights violation.

Protecting Freedom of Religion

The Human Rights violation that proponents of the resolution have in mind when addressing the issue of Defamation of Religions is the right of freedom of religion and belief. The resolution proclaims that Defamation of Religions will lead to the illegitimate restriction of the freedom of religion for adherents of the defamed religion.¹⁷⁴ Hence, by combating defamation and protecting religions from this act, the Human Right of freedom of religion will be defended.

This logic is exemplified inter alia by Operative Clauses welcoming “[...] steps taken by Member States to protect freedom of religion through [...] legislation to prevent the defamation of religions [...]”¹⁷⁵. Here again the idea can be found that religious ideas can themselves be subject to defamation or insults, rather than individual adherents of the religion being victims of such.

In short, supporters of the initiative argue that combating Defamation of Religions is a necessary step to prevent religious intolerance and promote Human Rights and freedom of religion. This understanding is opposed by critics who hold that, at the level of principle, “prohibiting speech did not promote tolerance”¹⁷⁶; and that the notion of religious ideas being subject to defamatory insults is conceptually flawed. Furthermore, critics voice their apprehensions over the rights of religious minorities that might be compromised for the sake of protecting religious majorities.

173 UN. Human Rights Council, *Combating Defamation of Religions* (A/HCR/Res/13/16).

174 United Nations General Assembly, *Combating defamation of religions* (A/Res/64/156), PP. 10.

175 Ibid., OP. 19.

176 UN. General Assembly, *Official Records of the 3rd Committee, 64th Session, 42nd meeting, (A/C.3/64/SR.42)*, para. 66.

The resolution as a reaction to 9/11

In conversations on the subject with diplomats of Member States that promoted the resolution, a common argument voiced was that the resolution and its underlying concept are necessary because after the events of 9/11, Defamation of Religions had become a major issue and a significant threat to the well-being of adherents of Islam. This notion is put forward within the resolution very clearly in its version from 2002:

Alarmed at the impact of the events of 11 September 2001 on Muslim minorities and communities in some non-Muslim countries and the negative projection of Islam, Muslim values and traditions by the media, as well as at the introduction and enforcement of laws that specifically discriminate against and target Muslims.¹⁷⁷

And further in its operative clause 3:

Notes with concern the intensification of the campaign of defamation of religions, and the ethnic and religious profiling of Muslim minorities, in the aftermath of the tragic events of 11 September 2001;¹⁷⁸

These concerns link with and fortify the paragraph about identification of Islam with terrorism which has been in the resolution since 1999, and are frequently emphasized by scholars in favor of the concept: „[...] in the aftermath of the September 11 attacks on the United States, Islam has been frequently and wrongly associated with terrorism.[...]“¹⁷⁹

While not directly claiming so, these arguments suggest that the resolution should be understood as a *direct reaction* to the attacks of September 11, legitimately aiming at the prevention of the resulting discrimination against Muslims. Furthermore, diplomats occasionally argue that it is due to the increasing suspicion towards Islam and its equation with terrorism post 9/11 that official support of the resolution has also declined. But in fact, the resolution was introduced two years before the events of 9/11 in 1999 and while it found consensual adoption in the beginning, had lost significant support already in April 2001, 4 months before the attacks of September 11. Only 28 members of the Commission on Human Rights voted in favour of the resolution, while already 15 countries voted against the initiative and 9 decided to abstain.¹⁸⁰

177 UN. Commission on Human Rights, *Combating defamation of religions* (2002/9), 2002.

178 Ibid., OP. 3.

179 Liaquat Ali Khan, “Combating Defamation of Religions,” 1.

180 UN. Commission on Human Rights, *ECONOMIC AND SOCIAL COUNCIL - OFFICIAL RECORDS* (E/2001/23 - E/CN.4/2001/167), 2001, <http://www.unhchr.ch/huridocda/huridoca.nsf>, Chapter IV, Paras: 88, 90.

Defamation of Religions as a form of racism

As seen in the chapter on the development of the resolution, the language of the CDHRI puts great effort into linking the nature and characteristics of Defamation of Religions to those of racism. Equating cases of Defamation of Religions with cases of racism and even more critically, arguing that Defamation of Religions is just another form of that phenomenon would in effect, make existing international laws combating racism applicable to Defamation of Religions also. Indeed, proponents of the concept have begun to argue using this perspective, that Defamation of Religions should be seen as already outlawed by the ICCPR. They mainly cite Article 20 in this regard, pointing toward the obligation of States to prohibit advocacy of national, racial or religious hatred. In addition they use the provisions of the ICERD, as Article 4 stipulates the prohibition of the dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination.¹⁸¹ As outlined previously, many States, while open to the idea and concept of Defamation of Religions in principle, reject the idea that it is in itself, a matter of racism.

Concluding remarks

In short, proponents of the concept of Defamation of Religions claim that religious ideas and doctrines deserve protection by the State in order to ensure that the sensibilities of believers are not offended. Such offences that do not target individuals but religious thought itself, would constitute an “affront to human dignity, a restriction of the freedom of religion, and an incitement to religious hatred and violence”¹⁸². Defamation of Religions should be considered a form of human rights violation and an abuse of the right of freedom of expression, manifested in the negative stereotyping of religion, predominantly through media broadcasting. It is argued that any existing mechanisms to address the issues raised have proven insufficient and incomplete, hence additional legal instruments are required.

¹⁸¹ United States Commission on International Religious Freedom, *Annual Report 2009*, 229.

¹⁸² United Nations General Assembly, *Official Records of the 3rd Committee, 63rd Session, 46th meeting*, (A/C.3/63/SR.46) (New York: United Nations, January 2009), para. 31.

4.3 Critique of the Resolution and Concept of Defamation of Religions

Many concerns have been voiced from various quarters since the introduction of the Defamation of Religions concept to the UN. Some of them circulate exclusively around the theoretical level, while others address practical implications, but most of them are interrelated with each other. And while not all of them have direct implications for the Human Rights framework, they must be viewed upon in a holistic manner and should be discussed comprehensively. This chapter will give an overview of the misgivings attached with the resolution and the concept, while those components that it is claimed directly conflict with the international Human Rights standards, will be elaborated in further detail in a separate chapter.

Vague language used in the resolution

A major source of dispute around the resolution, is an *overly broad and vague language*, suggesting that the concept may easily be abused by States in order to shield themselves from critics, to mainstream public opinion and to suppress opinions opposing governmental policies. Such suspicions are accompanied and reinforced by accusations that some of the major supporters of the concept are among those with the poorest Human Rights records, who face difficulties with a sound implementation of democratic standards.

Remarks of the representative of the United States in their delegation's explanation of vote in regard of the latest General Assembly versions of the resolution, provide a summary of these concerns:

His delegation would vote against the resolution because [...] the concept of defamation of religions continued to be used to justify censorship, criminalization and even violent assaults and deaths of political, racial and religious minorities around the world. Contrary to the intentions of most Member States, some Governments were likely to abuse the rights of individuals in the name of that draft resolution and in the name of the United Nations.¹⁸³

The criticism that irresponsible vagueness is maintained in the language is rooted in the fact that even the term 'Defamation of Religions' itself has remained undefined in every one of the versions of the Defamation Resolution so far. In this connection, several of the UN Special Rapporteurs warned in a joint statement held in April 2009 that:

¹⁸³ UN. General Assembly, *Official Records of the 3rd Committee, 64th Session, 42nd meeting, (A/C.3/64/SR.42)*, 66.

Indeed, the difficulties in providing an objective definition of the term 'defamation of religions' at the international level make the whole concept open to abuse.¹⁸⁴

Unsurprisingly, a vague term such as 'Defamation of Religions' leads to even more vague language when it comes to setting the boundaries for recommendations and suggestions. The precise circumstances in which recommendations and demands that are made in the resolutions would be applicable, remain ambiguous. The blatantly obvious vagueness of the term has been compensated with strong language overall in the recommendations set out by the resolution on methods to counter instances of Defamation of Religions. This use of exceptionally strong language, which is more demanding than in any other comparable type of GA resolution in practice, in combination with the poor definition of the subject itself, causes discomfort among many Member States. It is unusual for this type of resolution to actually demand such concrete action and to advise specific national policies to Member States, which is precisely what the Defamation Resolution does. The resolution even goes as far as to advise other Member States' officials in detail on how to behave in the exercise of their duties.¹⁸⁵

In short, the religious Defamation Resolution uses vague language in outlining the meaning and scope of the phenomenon, but is rather strong and demanding in its suggested means to address Defamation of Religions. This is perceived as, if not a deliberate act, at least an unlucky combination as it further enhances the possibility of misuse of the resolution as a tool for governments to shield themselves against critics and to cover suppression and Human Rights violations. As the High Commissioner for Human Rights outlined in an expert seminar addressing this matter, the right to freedom of expression is mostly “denied to those most vulnerable to arbitrary excesses of power, such as members of religious minorities”¹⁸⁶ Therefore, the matter of Defamation of Religions is not only a question of the freedom of expression but even more critically, a matter of minority rights, although the estimated impact differs according to different perspectives. While critics claim that the practical implementation would further impede the enjoyment of Human Rights by minorities, supporters of the concept are convinced

¹⁸⁴Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, Special Rapporteur on freedom of religion or belief, Asma Jahangir, and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, “Joint Statement to freedom of expression and incitement to racial or religious hatred.”

¹⁸⁵United Nations General Assembly, *Combating defamation of religions (A/Res/64/156)* OP 20.

¹⁸⁶United Nations High Commissioner for Human Rights., *REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD*

CONFERENCE ON HUMAN RIGHTS - Addendum -

Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights: “Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence”, January 16, 2009 Para 3.

that it is in fact, necessary to protect minorities. As outlined in the resolution, this protection is directed towards those facing any form of discrimination by state regulations and laws that particularly target Muslim and Arab minorities, often with migration backgrounds.¹⁸⁷

Freedom of Expression

One of the most significant criticisms relates to what is perceived as a call for the limitation or *restriction of the right of freedom of expression*, and the welcoming of such practices, in particular at the level of legal measures.¹⁸⁸ The language of the resolution suggests an extension of the legitimate grounds for the limitation of the right to exercise freedom of expression and welcomes domestic initiatives that already do so. Furthermore, the resolution has a tradition of calling upon the Secretary-General to report on the implementation of the provisions of the resolution “and the steps taken by States to combat”¹⁸⁹ Defamation of Religions, essentially implying the introduction of defamation laws that limit freedom of expression. These repeated calls in the resolution for legal steps are seen by its critics as attempts to restrict rights beyond the legal limitations set out in the ICCPR. On the other hand, these same calls for the restriction of the freedom of expression to protect religion¹⁹⁰, are justified by supporters of the resolution as necessary means to protect the full enjoyment of the freedom of religion.

The European Union and like minded States argue against this conceptualization, holding that all human rights are indivisible by their nature and mutually reinforcing. In this perspective, “freedom of expression was the very manifestation of freedom of thought, conscience, religion or belief.”¹⁹¹

Critics point out that the resolution, in remaining vague in determining relevant boundaries around the term Defamation of Religions, falls short of making the necessary distinction between legitimate criticism of religions and incitement to religious hatred.¹⁹² The United Nations held a related expert seminar on this subject, reaffirming the need to define the general criteria

187 see for instance: UN. Human Rights Council, *Combating Defamation of Religions (A/HRC/Res/13/16)* OP 5.

“Notes with deep concern the intensification of the overall campaign of defamation of religions and incitement to religious hatred in general, including the ethnic and religious profiling of Muslim minorities in the aftermath of the tragic events of 11 September 2001;”

188 United Nations General Assembly, *Combating defamation of religions (A/Res/64/156)* OP 11, OP 19.

189 United Nations General Assembly, *Combating Defamation of Religions, A/Res/64/156*, n.d. OP 27.

190 UN. Human Rights Council, *Combating Defamation of Religions (A/HRC/Res/4/9)*, 2007 OP 10.

191 United Nations General Assembly, *Official Records of the 3rd Committee, 63rd Session, 46th meeting, (A/C.3/63/SR.46)*, para. 43.

192 Ibid.

distinguishing between speeches constituting incitement to religious hatred that should be subject to legitimate limitations of their expression, and those speeches that do not.¹⁹³

One particular operative clause in the resolution claims the need to combat Defamation of Religions especially in Human Rights fora¹⁹⁴ including the HRC itself, where criticisms raised are regularly condemned as a form of Defamation of Religions. Critics highlight this clause as an attempt to silence critical voices in such Human Rights forums. They invoke examples where representatives from the civil society speaking against the resolution were silenced through strident denunciation of their criticism as an attack on Islam itself; or point towards Islamophobia being misused as a tool to silence opponents who are then accused of promoting hate speech.¹⁹⁵ Such incidents can only reaffirm the perception (inter alia of already suspicious Member States) of the resolution containing language aiming to undermine Human Rights, first and foremost the right for freedom of expression. Critics see therein a direct affirmation of the concept of combating Defamation of Religions serving as a practical tool to silence political opponents and critical voices, *not* the additional tool to promote Human Rights as proponents of the resolution claim it to be.

There is a difference in restricting the exercise of a right under certain circumstances and the limitation of a human right as such. This difference is blurred by the language of the resolution. In referring to this sensitive issue, the language used indicates the restriction of the right itself, rather than restricting the right to exercise a human right, as is the common language of relevant and internationally binding Human Rights instruments such as the ICCPR. Article 19 of that declaration clearly outlines that the rights as such may not be subject to limitation but “The exercise of the rights [...] may [...] be subject to certain restrictions”.

Furthermore, the circumstances under which such restrictions are considered legitimate according to international binding law, are bluntly expanded in scope by the language given in the resolution – by adding the purpose of protection of religion and belief to the list of legitimate

193 United Nations High Commissioner for Human Rights., *REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS - Addendum -*

Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights: “Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence”, para. 42.

194 United Nations General Assembly, *Combating defamation of religions (A/Res/61/164)* ([New York]: UN, 2006) OP 8. “Stresses the need to effectively combat defamation of all religions, Islam and Muslims in particular, especially in human rights forums;”

purposes outlined in article 19, ICCPR¹⁹⁶ for restrictions on the freedom of expression. As will be elaborated in the chapter researching the concepts' accord with Human Rights law, this attempt is incompatible with the Human Rights framework.

Rights of Minorities

In relation to the dispute surrounding the focus of the resolutions and to concerns attached to the potential misuse of the difficult language of the resolution, questions regarding the effective *protection of religious minorities* have been raised. The arguments and perspectives outlining the linkage between Defamation of Religions and religious minorities are twofold in principle as discussed below.

Those arguing for the concept of Combating Defamation of Religions as an instrument protecting respect for religion, see in the act of religious defamation the violation of Human Rights for their adherents. Hence it is argued that initiatives aiming at the prevention and elimination of Defamation of Religions would contribute to the protection of religious minorities. The resolutions repeatedly underlines this understanding, inter alia by pointing towards the issue of religious profiling of Muslim minorities¹⁹⁷ and the state's obligation to protect religious minorities by means of legislation, suggesting therefore the inclusion of Defamation of Religions.¹⁹⁸ The resolution focuses on the enjoyment of rights by religious minorities being impaired through discriminatory national policies¹⁹⁹ rooted in opinions based on the dissemination of defamatory stereotyping of religion. The European Union stated in this regard to be “particularly concerned at the insistence on asking special protection for one specific religion.”²⁰⁰

Critics oppose the above perspective because their focus on minorities is a different one. Religious minorities do not face the same situations and challenges solely due to the fact that they share the commonality of being a minority within their respective environment. While the resolution predominantly addresses issues most relevant to minorities with migration

195 *Arte Thema: Menschenrechte und Vereinte Nationen.*, 2009, http://www.youtube.com/watch?v=zmaJ_65xnMc&feature=youtube_gdata_player.

196 United Nations, *ICCPR* Article 19 (3).

197 United Nations General Assembly, *Combating defamation of religions (A/Res/64/156)* OP 5.

198 *Ibid.* OP 14.

199 *Ibid.* PP 8.

200 UN. Commission on Human Rights, *SUMMARY RECORD OF THE 39th MEETING, 58th Session*, 2002, para. 32.

backgrounds, with home governments speaking out in their interest on an international level, critics of the concept point to the Human Rights problems that domestic religious minorities face in relation to their own governments.

The concerns here converge again on two aspects:

Firstly, the concrete recommendations on combating the issue of defamation together with an overly broad language on setting its boundaries, add to the suspicion of being a tool or even initiative to undermine Human Rights rather than protect them.

Secondly, observers point to the issue of religious ideas contradicting each other and potentially constituting what is seen as *defamation of one religion over the other*:

While all religions claim universal truth to some level, opinions expressed might be looked upon as blasphemous by adherents of a different religion. While for instance, adherents of Islam view Muhammed as the prophet of God, adherents of Christianity reject this fact in accordance to their scholars as a false claim.²⁰¹ Similarly, “when a Muslim states his belief that Jesus was a prophet, but not God incarnate, such statements could also be considered 'defamation' against the Christian faith of many believers. But no OIC member state supporting 'defamation of religions' laws would want to strip Muslims of their right to state this Qur’anic teaching.”²⁰²

Pakistan is traditionally advancing the resolution on behalf of the OIC, and its strong support for the concept, is well reflected in its own rule of law. Penal code §295 states that defiling Islam or its prophets deserves life imprisonment or the death penalty. Speeches considered blasphemous before the law, for example by rejecting the idea of Muhammed's prophet-hood, can hence be punished by death. This ultimately puts the state authority in the position to decide which religious claim would stand over the other, be more 'true' than the other, and which ones would have to be considered blasphemous or defaming to religion. This is problematic insofar as no religiously argued truth can be rejected or proven on the grounds of reason. Additionally, experts outline in regard to articles 19 and 20 of the ICCPR that “no one must be penalized for statements that were true”.²⁰³ In practice this means that a speech assessed in court as being a

201 Becket Fund for Religious Liberty, “Religious Defamation - Issues Brief,” 11.

202 Becket Fund for Religious Liberty, “Religious Defamation - Issues Brief.”

203 United Nations High Commissioner for Human Rights., *REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS - Addendum -*

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case of Defamation of Religions and therefore a punishable offence, is hence highly contextualized and dependent on the local majority religion. Critics conclude that the combination of the resolutions unclear language and the subsequent potential misuse as a tool of silencing critics and mainstreaming domestic religious concepts, is contra-productive towards the protection of religious minorities and their enjoyment of rights.²⁰⁴

The concept may further be used as tool to silence divergent ideas within a certain religious group and mainstream mass opinions. This could hinder attempts to reform certain traditions or generate internal discussions over religious disputes. The European Union took note in this regard, pointing out that “Members of religions or communities of belief should not be viewed as mere particles of homogeneous and monolithic entities.”²⁰⁵ Moreover, an expert seminar conducted by the Office of the United Nations High Commissioner for Human Rights in 2008 warned on the linkage between Articles 19 and 20 of the ICCPR that the “honest debate and research on religious issues” is at risk of being outlawed and freedom of expression and freedom of religion or belief would be at stake if Article 20 of the ICCPR is applied in a broad way.²⁰⁶ The experts concluded that “article 20 could be used as a pretext for persecuting and oppressing religious minorities”²⁰⁷. The 'Becket Fund for Religious Liberty' argues that, in practice “[...] much of the persecution and discrimination has resulted not from 'defamation of religions' but from state action against religious minorities and dissenters, who promote viewpoints that are often considered offensive to the majority religious populations in each of these countries.”²⁰⁸

Regardless of the effectiveness of the concept in actually protecting respect for religion, the concept serves the interest of the majority over the rights of the minority. Critics from the civil society go as far as to declare religious defamation laws as conceptualized in the resolution, “as a form of thought control and work solely to the advantage of religious majorities that have the power to sanction which ideas should be permitted in the public square.”²⁰⁹ The implications for vulnerable groups such as religious minorities, deriving from the broader application of

204 Becket Fund for Religious Liberty, “Religious Defamation - Issues Brief.”

205 United Nations General Assembly, *Official Records of the 3rd Committee, 61st Session, 48th meeting*, (A/C.3/61/SR.48), para. 25.

206 United Nations High Commissioner for Human Rights., *REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS - Addendum - Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights: “Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence”*, para. 42.

207 Ibid., para. 43.

208 Becket Fund for Religious Liberty, “Religious Defamation - Issues Brief,” 12.

209 Ibid., 8.Ibid., 8.Ibid., 8.Ibid., 8.

Defamation of Religions in its practical implementation in reference to Articles 19 and 20 of the ICCPR will therefore be examined in detail in a separate chapter. The compatibility of the concept as it is proclaimed in the resolution with the enjoyment of Human Rights of persons belonging to minorities will also be assessed therein.

Defamation of Religions as a Flawed Concept

At first sight, Defamation of Religions seems to be an extension of the scope of the traditional application of defamation laws protecting the reputation of a person, to the level of groups of individuals. Critics point to the issue in group defamation of providing a justification to introduce censorship and stifle freedom of expression on grounds of social harmony. While the concept of Defamation of Religions might be closely related to the idea of group defamation law in its practical execution, it goes further beyond it on a conceptional level. Defamation of Religions extends its protectionist aim towards religious ideas and their related doctrines,²¹⁰ implying the idea that religion can be a possible subject to injury of reputation by falling prey to defaming statements. The idea of religion having a personal reputation is problematic enough to judge Defamation of Religions as being an inherently flawed concept: Defamatory statements do not only require to be *intended* but – more importantly – have to actually *be* false statements. In questions of faith, the level of *truth* to statements is highly difficult to assess from a jurisdictional point of view. Differing claims of religious truths, even denouncing other religious teaching, have often proven to be the epicentre of particular religious teachings.

From a legal perspective, Defamation of Religions is flawed in its conceptualization and as such, incompatible with current interpretations of international law although not necessarily though with the Human Rights standard itself.

Some of the concerns mentioned above already contain criticism regarding the concept itself. As will be outlined in the chapter researching the concepts compatibility with the Human Rights framework, the term defamation is highly problematic when being applied to 'religion'. The legal term 'defamation' is the matter of an insult against an individual, causing emotional injury on the part of the victim. Applying this idea on a term such as religion would mean that (depending on the definition) either an idea about the world, an institution or a group or all of them together, could be subject to defamatory injury. While the legal concept of group defamation may apply in

²¹⁰Liaquat Ali Khan, "Combating Defamation of Religions," 4.

some cases, essentially religious ideas themselves cannot be subject to such defamatory insults. In this logic, the concept of Defamation of Religions is inherently flawed. As Human Rights apply to individuals and not to groups as such and certainly not to ideas, the concept is often also seen flawed in its proposal to be framed as a Human Rights issue. Most prominently, the European Union has voiced strong reservations about discussing the issue of Defamation of Religions in the context of Human Rights. They argue the topic to be misplaced in the discourse of Human Rights.²¹¹ The UN Special Rapporteur on the Freedom of Religion or Belief also concluded that the international Human Rights law regime protects individuals against Human Rights violations, but does not extend to belief systems. Essentially, the right of anyone to freedom of religion or belief does not encompass the right to have one's religion or belief protected against criticism; even if this fact is considered inadequate by adherents, as the concept of the Defamation Resolution proposes.²¹²

Race and Religion

Another point of discomfort among Member States is the growing tendency of the language used in the resolution to conflate *identities based on race and religion*, with references to “increasing acts of racism and xenophobia”²¹³ as well as to the World Conference against Racism ('Durban Conference')²¹⁴ These references, such as highlighting the “intersection of religion and race”²¹⁵ and their consequences, give the indication that both aspects should be seen as equal in nature. This is to place Defamation of Religions and racism on an equal footing; an attempt that became a source of dispute even among proponents of the concept. The members of the OIC draw an analogy between acts of racial hatred and defamation of religion, as they see any form of discrimination equivalent if directed “against a group of individuals if these were clearly identifiable as a group and were discriminated against as such.”²¹⁶

211 United Nations General Assembly, *Official Records of the 3rd Committee, 61st Session, 48th meeting*, (A/C.3/61/SR.48), para. 25.

212 United States Commission on International Religious Freedom, *Annual Report 2009*, 229.

213 United Nations General Assembly, *Combating defamation of religions (A/Res/61/164)* PP; United Nations General Assembly, *Combating defamation of religions (A/Res/62/154)* ([New York]: UN, 2007) PP; United Nations General Assembly, *Combating defamation of religions (A/Res/63/171)* ([New York]: UN, 2008) PP.

214 Becket Fund for Religious Liberty, “Religious Defamation - Issues Brief,” 3.

215 United Nations General Assembly, *Combating Defamation of Religions* PP 23.

216 United Nations High Commissioner for Human Rights., *REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS - Addendum -*

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Indications of internal disputes regarding the resolution such as inter alia, last minute oral revisions right before the vote, include disputes over such references to the intersection of race and religion. This connotes that an agreement over this question can be found on a case by case basis and only at a very late stage in the negotiations.²¹⁷ Not all countries which in principle agree to the idea of Defamation of Religions want to see the the issues of racism and Defamation of Religions intermingled. Some abstained from voting on the resolution specifically due to their reservation about linking the issue of Defamation of Religions with racism.²¹⁸ Even Albania, an OIC member itself, voiced its irritation over “attempts to associate defamation of religions with racial discrimination” in an explanation of its vote in 2009.²¹⁹

Such criticism against the conflation of the terms 'race' and 'religion' is based on the following reasoning. Member States irritated by this tendency, point out that unlike religion which might be adopted or changed at free will, aspects used to racially categorise are mostly determined at birth and are assumed to remain unchangeable. Hence both subjects are of different nature, and should not be mistakenly assumed as being essentially the same nor should they be treated as such. This view is supported by experts mandated by the UN to elaborate on the subject, who noted that a clear distinction between religious and racial hatred should be made. More importantly, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on freedom of religion or belief as well as the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression have spoken out against the notion of the resolution conflating race and religion: They argued that while “any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous”²²⁰ religious statements claiming truth and superiority over each other (statements that are hence defamatory over another religion), “have been traditionally accepted as part of their theological grounds”²²¹. Consequently, racism and defamation of religions are not issues of equal nature and should not be conflated.

217 UN. General Assembly, *Official Records of the 3rd Committee, 64th Session, 42nd meeting, (A/C.3/64/SR.42)* Para 59. (The phrase “the intersection between religion and race” in paragraph OP 25, of Resolution 64/154 had been added only orally by Malaysia speaking on behalf of the OIC in an explanation of vote before the vote.)

218 Ibid. Para 67.

219 Ibid., para. 76.

220 Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, Special Rapporteur on freedom of religion or belief, Asma Jahangir, and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, “Joint Statement to freedom of expression and incitement to racial or religious hatred.”

221 Ibid.

While proponents of the concept and the resolution argue that legal measures fighting against racism should incorporate cases of Defamation of Religions, the Special Rapporteurs conclude from their argumentation that legislation directed against acts of racism would not necessarily be applicable in case of religious intolerance.

Narrow focus on the protection of Islam

Another point of criticism is the *narrow focus on the protection of Islam*. Even countries which in principle support the initiative and the ideas behind it, feel strongly enough about this issue to not vote in favour on the resolution.²²² Throughout the history of the resolution, critics have pointed out that the language has maintained a narrow focus on Islam, despite efforts to accommodate these concerns by including more general references to religion in various sections. Nevertheless, a closer view of the text reveals that the substantive clauses predominantly focus on Islam.

The European Union reminded the UN membership in this regard repeatedly that “[...] discrimination based on religion or belief, which constituted a serious violation of human rights, must be addressed comprehensively; it was vital to recognize that such discrimination was not confined to any one religion or belief, or to any one part of the world.”²²³ The argument goes further, that “Singling out one group only distracted from the ultimate objective of promoting respect for all religions or beliefs.”²²⁴

Alleged Campaigns against Islam

Criticisms arise as well over the barely hidden claim in the resolution of the existence of a joint and deliberate *campaign against Islam*, which is even actively “condoned by Governments”²²⁵. Together with additional language pointing towards “the intensification of the overall campaign of defamation of religion”²²⁶, this creates the subtext of an allegedly existing conspiracy against Islam. It further constructs Defamation of Religions as generally an act of conscious

222 Statements made by India: UN. General Assembly, *Official Records of the 3rd Committee, 64th Session, 42nd meeting*, (A/C.3/64/SR.42), para. 67.

223 United Nations General Assembly, *Official Records of the 3rd Committee, 61st Session, 48th meeting*, (A/C.3/61/SR.48), para. 25.

224 UN. Commission on Human Rights, *SUMMARY RECORD OF THE 39th MEETING, 58th Session*, para. 31.

225 United Nations General Assembly, *Combating defamation of religions (A/Res/63/171)* OP 4.

226 Ibid. OP 5.

discrimination, rather than possibly an occurrence based on a lack of inter-cultural competence or cultural sensitivity. Unsurprisingly, such accusations do no good to the atmosphere in which the negotiations for the resolution take place. It is not constructive to accuse other Member States with differing perspectives regarding the concept, of acting unfaithfully and with ill-intent. Such remarks only add to the atmosphere of suspicion and mistrust in which the negotiations about the resolution take place.

4.3.1 Elements missing in the Critical Debate

In light of the discussion surrounding the concept of Defamation of Religions and its probably negative consequences, two major critical aspects have not found mention in the political arguments yet. One aspect is the potential use of the concept as grounds for arguments to justify non-compliance with State regulations; it might well be that this aspect was allowed to slide in the debate for reasons of political sensitivities and common interest. More surprising is the omission even of representatives of civil society to voice apprehensions of the practical consequences of the application of Defamation of Religions legislation for the enjoyment of Human Rights for *women*.

Rejection of State Authority

It must be noted that the concept of Defamation of Religions, in practice little different from the concept of Blasphemy, might as well be used by non-state actors (groups) to effectively *cut themselves off from state authority*. Rejecting specific legal regulations or law enforcement as a form of governmental interference that defames religious belief, rules or practices might well contribute to increased tensions among society. This is more than a theoretical possibility, it has been a recurrent and historical threat for state stability. The most recent example was the most prominent supporter of the resolution itself: Pakistan, where the rejection of state authority is justified on religious arguments claiming the state as being anti-Islamic. Groups such as the Tehrik-e-Taliban Pakistan go as far as to justify their growing insurgency and acts of violence against the state, society and religious minorities with arguments of blasphemy to fight against 'Anti-Islamic forces' within – and against – their own country.²²⁷

227 Human Rights Watch, "Pakistan: Massacre of Minority Ahmadis," n.d., <http://www.hrw.org/en/news/2010/05/31/pakistan-massacre-minority-ahmadis>; United States Commission on

A government officially adopting the concept of criminalizing Defamation of Religions in official policy and therefore putting it into a legal framework, would fuel existing tendencies to splinter religious groups further off from governmental control. This should incentivise the need to carefully weigh the benefits and constraints of Defamation of Religions laws for its supporters.

Rights of women

Neither in the criticism of Member States opposing the resolution, nor by NGOs present in the UN fora has any mention yet been made about the potential *negative consequences for women*. Combating Defamation of Religions can result in increased restriction and censorship of criticism against certain religious traditions. As such, prohibition has shown in practice that criticism aiming at patriarchal and discriminatory practices against women are very often included therein. This can severely impair the enjoyment of Human Rights for women, as Anti-blasphemy laws in this regard would work to undermine even speaking out against Human Rights violation against women, let alone the prosecution of such violations. While no concerns about women's rights have been voiced yet in the critical evaluation of the concept, such analysis most definitely should be conducted. A first critical step in this regard will be the chapters elaborating the concepts' compatibility with the Human Rights legal framework and in relation to women's rights.

International Religious Freedom, *Annual Report 2009*, 229.

4.4 Development of the Resolution within the UN System

The following chapter gives a short overview of the development of the Defamation Resolution in the relevant UN bodies from 1999 onwards till today. The resolution has received varying degrees of attention and agreement over time; while its language evolved from a text meant to highlight concerns regarding the negative conceptions projected of adherents of Islam to a paper with unusually strong recommendations and demands for all members of the UN.

CHR – 1999/82: “Defamation of religions”

The resolution now known as “Combating Defamation of Religions” was first introduced to the United Nations in 1999 by Pakistan, in the Commission on Human Rights on behalf of the OIC under the agenda item 'racism'.²²⁸ The draft entitled “Defamation of Islam” was adopted, after amendments and extensive negotiations, as resolution 1999/82 “Defamation of Religions“. While having broadened its scope due to demands of other Member States, the resolution nevertheless kept its primary focus on Islam. Despite this, the resolution found agreement by all Member States represented in the Commission and was adopted in consensus without a vote.

The language of the text has been kept vague, yet strong, particularly within its operative clauses and with regard to defining the terms in use, but its underlying intention is quite obvious:

The resolution framed the concept of Defamation of Religions as a matter of religious intolerance, specifically in relation to Islam, and linked its meaning closely to what is referred to as “negative stereotyping of religions”.²²⁹ OP 2 further explains this particular wording by expressing “[...] deep concern that Islam is frequently and wrongly associated with human rights violations and with terrorism”²³⁰. This qualm has also been brought forward as a reason for the necessity of the resolution.

The resolution further highlights the role of the media in augmenting the aforesaid negative stereotyping²³¹ and calls upon Member States to combat religious intolerance within their national legal framework.²³² Considering that the resolution repeatedly urges for legal measures to be undertaken, it must have been foreseeable that this topic would resurface at a later stage as

²²⁸The Commission on Human Rights was the predecessor to the Human Rights Council until 2005

²²⁹UN. Commission on Human Rights, *Defamation of religions (1999/82)*, 1999 OP 1.

²³⁰Ibid. OP 2.

²³¹Ibid. OP 3.

²³²Ibid. OP 4.

a source of dispute. The resolution closes with a request to the 'High Commissioner' Mary Robinson herself, as well as the 'Special Rapporteur on religious intolerance' and the 'Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance' to pay attention to the issue of religious defamation and to report their insights to the members of Commission on Human Rights.²³³

Interestingly, the text of this resolution does not refer even once to any of the existing Human Rights instruments nor the UDHR itself, but contains singled out references to specific Human Rights, mainly those affecting freedom of religion and belief, and discrimination and violence on the grounds of religious intolerance. Instead of a strong reference committing to Human Rights as such, this resolution is predicated on the notion that “[...] discrimination against human beings on grounds of religion or belief constitutes an affront to human dignity”.²³⁴

Reservations made by the EU were not limited to the questionable use of language referring to Human Rights, but extended to the problematic legal definition of the term “defamation”, which they considered had no legal meaning attached to it.²³⁵ Some delegations, including those of the European Union, felt strongly that the resolution was unbalanced in its sole focus on Islam, and pushed the OIC to compromise on accommodating their concerns for the benefit to ensure a common accord for the adoption of the resolution.²³⁶ India also pointed out that the resolution was misplaced under the sub-item 'racism' and should rather be considered under “agenda item 11 (Civil and political rights), sub-item (e) (Religious intolerance)”²³⁷. This conflation between racism and religious intolerance would become a major source for dispute in the coming years. Pakistan, on behalf of the OIC, explained in a statement made in a next meeting, that “The reason why they had proposed the draft under the agenda item on racism was that the phenomenon of intolerance against Islam concerned Muslims as a group because of what were presumed to be their religious beliefs.”²³⁸ India was also the only member-state that made careful reference in their statements to the question of the approach that the resolution took, noting that “the best way to combat defamation and negative stereotyping was to promote tolerance and

²³³ Ibid. OP 6.

²³⁴ Ibid.

²³⁵ UN. Commission on Human Rights, *SUMMARY RECORD OF THE 62nd MEETING, 55th Session*, 1999, para. 9.

²³⁶ Becket Fund for Religious Liberty, “Combating Defamation of Religions,” Issues Brief, June 2, 2008, 2, <http://www.becketfund.org/files/a9e5b.pdf>; UN. Commission on Human Rights, *SUMMARY RECORD OF THE 61st MEETING, 55th Session*, 1999, 3, 9.

²³⁷ UN. Commission on Human Rights, *SUMMARY RECORD OF THE 61st MEETING, 55th Session*, para. 5.

²³⁸ UN. Commission on Human Rights, *SUMMARY RECORD OF THE 62nd MEETING, 55th Session*, para. 2.

strengthen legislation.”²³⁹ The European Union also made the remark that all “States should endeavour to ensure that no religion was invoked as a pretext for violating human rights or conducting terrorist activities.”²⁴⁰ This statement could easily have been misunderstood as a side-blow on the issue of identifying Islam with terrorism and Human Rights violations, a major concern specifically made mention of in the resolution.²⁴¹

Despite the misgivings, the resolution passed in the Commission without being called for a vote, as the OIC compromised on the narrow focus on Islam that the introduced draft had contained.²⁴²

CHR – 2000/84: “Defamation of religions”

The resolution remained a carbon copy in 2000, but critical remarks made by Germany on behalf of the European Union in the previous session, and similar references in this session by Member States as well as by non-governmental organizations increased the tensions. Pakistan on behalf of the OIC, accused those statements of being made deliberately to defame Islam, allegedly portraying Islam as an ideological opponent to Human Rights and falsely connecting Islam with terrorism. The representative from Pakistan in turn claimed such accusations would serve as justifications for States to suppress Muslims within their populations.²⁴³ The European Union noted that doubts persisted whether the issue of Defamation of Religions should be dealt within the Commission on Human Rights at all and urged the OIC to refrain from introducing the resolution the next session. Nonetheless the EU remained in good-faith and joined consensus on the resolution.²⁴⁴

The Special Rapporteur on freedom of religion and belief who had been mandated to take up the question of Defamation of Religions in his research, shared indeed the concerns raised by the resolution in 1999. But the Special Rapporteur also pointed to the concern he had in relation to efforts in combating the phenomenon of Defamation of Religions. He emphasised that “these should not be used to censure all inter-religious and intra-religious criticism. Several other communications from the Special Rapporteur illustrate the danger that efforts to combat defamation (particularly blasphemy) may be manipulated for purposes contrary to human

239 UN. Commission on Human Rights, *SUMMARY RECORD OF THE 61st MEETING, 55th Session*, para. 5.

240 UN. Commission on Human Rights, *SUMMARY RECORD OF THE 62nd MEETING, 55th Session*, para. 9.

241 UN. Commission on Human Rights, *Defamation of religions (1999/82)* OP 2.

242 Becket Fund for Religious Liberty, “Combating Defamation of Religions,” 2.

243 UN. Commission on Human Rights, *SUMMARY RECORD OF THE 67th MEETING, 56th Session*, 2000, para. 73.

244 *Ibid.*, para. 75.

rights.”²⁴⁵ Noteworthy, the Special Rapporteur referred in one part of his report to the use of blasphemy acts against the Ahmadi community in Pakistan.²⁴⁶

CHR – 2001/4: “Combating defamation of religions as a means to promote human rights, social harmony and religious and cultural diversity”

The resolution underwent major developments in 2001. The new version of the resolution declares the act of combating the phenomena of Defamation of Religions a means to promote Human Rights, even in its resolution title. This emphasis on the promotion of Human Rights suggests indirectly that Defamation of Religions would need to be considered a violation of Human Rights in itself.²⁴⁷ This claim is inconsistent with the following framing of the subject:

The resolution suggests that combating Defamation of Religions should be viewed also as means to promote social harmony, and religious and cultural diversity. In other words, the resolution postulates Defamation of Religions to cause social disharmony and via this proxy, to lead to violations of Human Rights.²⁴⁸ But in this way the resolution further defines the nature and meaning of Defamation of Religions itself, framing the link between Defamation of Religions towards Human Rights as *negative, indirect and imperative*:

Negative as the linkage points towards the violation of Human Rights.

Indirect as Defamation of Religions does not directly lead to Human Rights violations but can lead to situations that could provide the grounds for it.

Imperative as while the language does not claim Defamation of Religions to be the sole cause for such situations, it does suggest that it automatically leads to Human Rights violations as its sole consequence.

245 Special Rapporteur on freedom of religion or belief, Mr. Abdelfattah Amor, *CIVIL AND POLITICAL RIGHTS, INCLUDING RELIGIOUS INTOLERANCE*, February 15, 2000, para. 111, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2000/65&Lang=E>.

246 Ibid., para. 79.

247 UN. Commission on Human Rights, *Combating defamation of religions as a means to promote human rights, social harmony and religious and cultural diversity (2001/4)*, 2001.

248 Ibid. PP 6.

By outlining the meaning of Defamation of Religions, the authors of the resolution created clearer definitional boundaries for this concept. And while the title of the resolution might suggest otherwise, those characteristics define Defamation of Religions as *not* constituting a Human Rights violation in itself.

Another point to take note of in the resolutions 2001 version is the suggestion contained therein of a linkage between race and religion. While the resolution already had been introduced in 1999 under the subitem 'racism' and Pakistan on behalf on the OIC defended this approach, the resolution gave in its version of 2001 more specific indication that these issues should be seen as connected. It does so by referring to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance which was to be held in Durban later in that year, and a further note about racism and xenophobia in the operative part. As the language of the resolution sought to connect Defamation of Religions with acts of racism, it risks a conflation between the terms *race* and *religion*. Criticism has arisen that in fact the conflation between race and religion should be seen as a deliberate act, that is aimed at bringing cases of Defamation of Religions on an equal footing with generally accepted cases of Human Rights violations based on racism. This, so the criticism goes, should make Defamation of Religions more easily acceptable as a Human Rights violation itself.

In keeping with its conception that Defamation of Religions is a matter of negative stereotyping primarily manifested in the voice of the media, the resolution also deplored “the use of print and electronic media to incite xenophobia against Islam or any other religion.”²⁴⁹

The resolution now entitled, “Combating defamation of religions as a means to promote human rights, social harmony and religious and cultural diversity” could not find adoption by consensus any more in 2001. As the reservations several members of the Commission had not been accommodated to their satisfaction, the European Union called for a role call in an attempt to oppose the resolution. While the resolution found support with 28 Member States, it faced 15 opposing votes and 9 abstentions. Besides like minded States such as Canada and the United States of America, the opposing votes remained limited to those of the European Union.

249 Liaquat Ali Khan, “Combating Defamation of Religions,” 1.

CHR – 2002/9: “Combating defamation of religion”

In 2002, the resolution underwent changes in the light of the 9/11 terrorist attack that had taken place the previous year. The resolution now specifically mentioned those events as grounds for further negative projections of Islam in the media, with a particular reference to “Muslim values and traditions” being stigmatized.²⁵⁰

By not elaborating exactly what negative projections of Muslim traditions are being alluded to, the resolution conflates discriminatory remarks which ought to be rejected on grounds of existing Human Rights laws, with legitimate criticism against certain traditions often justified by religious arguments. This was interpreted by Member States and critics from the civil society as an attempt to shield traditions assumed significant for Muslim values by adherents, against criticism from the outside. A central element that became a source of dispute can be found in the underlying, but barely hidden accusation that governments promote Defamation of Religions. Proponents of the resolution have used the language in its clauses to link governmental support to what is referred to in the resolution as “extremist organizations”. Both of them together are allegedly campaigning against Islam.²⁵¹

Pakistan, speaking on behalf of the OIC, noted in a statement that Muslims and Islam are victims of a defamatory campaign, that has been carried out deliberately and after 9/11 with increased intensification, implying the existing of a broad conspiracy. It further accused Human Rights Defenders, such as NGOs aiming at the promotion and protection of Human Rights, of being biased and ignoring massacres against Muslims happening in connection with aforesaid campaigns against Islam.²⁵²

The language of the resolution also evolved to more differentiated and detailed advice in references regarding legal recommendations on addressing Defamation of Religions. The resolution now urges States to take measures to combat occurrences of intolerance and acts of violence within their national legal framework. Interestingly, the resolution focuses on recommendations on a domestic level, while the issues that need to be addressed with these legal instruments appear to be of international relevance. The paragraph includes a note that all measures have to remain in conformity with international human rights instruments, in response

250 UN. Commission on Human Rights, *Combating defamation of religions* (2002/9) PP 9.

251 Ibid. OP 5. : “Expresses deep concern at programmes and agendas pursued by extremist organizations and groups aimed at defamation of religions, in particular when supported by Governments;”

252 UN. Commission on Human Rights, *SUMMARY RECORD OF THE 37th MEETING, 58th Session*, 2002, para. 88.

to critical voices assuming that States might fall short in their obligation to protect other human rights in their attempts to combat the phenomenon of Defamation of Religions.²⁵³

The conflation of religious defamation with racism has been retained and further underlined by calling upon the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to “examine the situation of Muslim and Arab peoples”.

However, it was not this conflation of race and religion but the reference to the Durban Declaration and Programme of Action that has been more critical for some Member States, above all among the WEOG countries. Disregarding all other misgivings, the clear statement in the text that welcomed the highly disputed declaration of Durban was, as expected, enough to trigger resistance. While supporters of Durban may have been brought in favour of the resolution, criticism arose among non-Muslim NAM members that the resolution was unbalanced and overly oriented towards Islam, as noted by India in an statement before the vote.²⁵⁴

It has to be pointed out that the first resolution that mentioned the Universal Declaration on Human Rights was the 2002 version, although it did so only by referring to “common universal values”²⁵⁵ enshrined therein, not to rights as such.

In an prior explanation of their impending vote, the European Union expressed its deep concern with the resolution, and implicitly said that the Defamation Resolution was needless by pointing out that the issues raised in the resolution were meaningfully addressed in other resolutions.²⁵⁶ For the first time, the problematic notion of the resolution applying Human Rights on ideas rather than individuals have been taken up in a statement of Spain on behalf of the European Union.²⁵⁷

Despite the discomfort among several Member States which had triggered the recorded vote in 2001, the resolution gained more support this time and was adopted with 30 votes in favour. Nevertheless, 15 countries opposed the initiative and 8 more abstained.

253UN. Commission on Human Rights, *Combating defamation of religions* (2002/9) OP 6.

254UN. Commission on Human Rights, *SUMMARY RECORD OF THE 47th MEETING, 59th Session*, 2003, para. 101.

255UN. Commission on Human Rights, *ECONOMIC AND SOCIAL COUNCIL - OFFICIAL RECORDS (E/2002/23 - E/CN.4/2002/200)*, 2002, <http://www.unhchr.ch/huridocda/huridoca.nsf> OP 9.

256UN. Commission on Human Rights, *SUMMARY RECORD OF THE 39th MEETING, 58th Session*, para. 30.

257Ibid., para. 31, 32.

CHR – 2003/4: “Combating defamation of religions”

In 2003, in response to rising criticisms, the resolutions' language was drafted in an increasingly more ecumenical tone. The references to “all religions” increased and the general importance of “[...] tolerance, understanding among different cultures and mutual appreciation of cultural and religious values”²⁵⁸ was highlighted in various forms and paragraphs. For the first time the resolution specifically examined the theme of law enforcement and various executive state affairs, by placing emphasis on the need for public officials to “[...] respect different religions and beliefs and do not discriminate on the grounds of religion or belief [...]”²⁵⁹ in their work.

The resolution further regained momentum in 2003: Supporting votes increased from 30 to 32, while 14 remained not in favour of the resolution and 7 abstained.²⁶⁰

CHR – 2004/6: “Combating defamation of religions”

Although little changed in substance in the 2004 version of the text, the initiative nevertheless lost support within the Commissions membership. Through statements made by the representative of Pakistan speaking on behalf of the Organisation of the Islamic Conference (OIC), the attempt to conflate race and religion was made more visual during the previous 60th session of the Commission on Human Rights. Under this session's sub-item of 'Racism, Racial Discrimination, Xenophobia and all forms of discrimination', Pakistan's statement was entirely focused upon religion, noting for instance that “The Islamic world was seriously concerned that there had been no decline in the defamation of Islam and attacks against its values and followers”, and pointing towards negative stereotyping as “[...] the media continued to portray Muslims as terrorists”²⁶¹ These remarks, made as they were at a forum dealing with racism, clearly suggest that the phenomena of racism and Defamation of Religions were viewed upon as being of equal nature. This approach has not received agreement by all members of the Commission. While the conflation of race and religion was raised as a matter of concern by most Member States, it had been the unbalanced aim to protect a single religion that triggered the most criticism. Countries such as Guatemala or the Dominican Republic decided upon this ground to

258 UN. Commission on Human Rights, *Combating defamation of religions (2003/4)*, 2003 PP.

259 Ibid. OP 8.

260 Ibid.

261 UN. Commission on Human Rights, *SUMMARY RECORD OF THE 14th MEETING, 60th Session*, March 22, 2004, 15, <http://www.unhchr.ch/huridocda/huridoca.nsf>.

vote against the resolution, as they clarified in their statements.²⁶²

As a consequence the resolution lost support on a recorded vote for the first time. Only 29 votes were given in favour while 16 Member States opposed the resolution and 7 remained abstaining.²⁶³

CHR – 2005/3 and GA – 60/150: “Combating defamation of religions”

In 2005, an operative clause was introduced, urging States “to prohibit the dissemination [...] racist and xenophobic ideas and material aimed at any religion or its followers”²⁶⁴, further conflating the term race and religion, and thus putting the issue of racism and the topic of Defamation of Religions again on an equal footing.

Moreover in 2005, a topic that hadn't been given much attention namely education, gained a more prominent place in the focus of the text. In the previous versions of the resolution, the text mentioned education as a necessary tool to spread tolerance, by pointing for instance, towards “the importance of education in ensuring tolerance of and respect for religion and belief”²⁶⁵. Consistent to the proposal from 2001 that Defamation of Religions was a means of contributing to social harmony²⁶⁶, the 2005 resolution emphasized the need to combat the defamation of religions through “education and awareness-raising” *inter alia in human rights forums*. This extension of scope haunts critics in such human rights fora as the Human Rights Council itself, where their remarks became vocally disqualified as attempts at defaming Islam. The topic of education became the primary vehicle to call for combined efforts on a regional and international level to combat Defamation of Religions, pointing towards a need for “strategizing and harmonizing actions”²⁶⁷.

The resolution not only found extension in its scope but also in its reach. In 2005, the initiative found its way to New York when Pakistan, on behalf of the OIC, introduced a carbon copy of the text first introduced at the Commission of Human Rights, as a UN General Assembly resolution.

262 UN. Commission on Human Rights, *SUMMARY RECORD OF THE 45th MEETING, 60th Session*, 2004, para. 78, 81.

263 UN. Commission on Human Rights, *Combating defamation of religions (2004/6)*, 2004.

264 UN. Commission on Human Rights, *Combating defamation of religions (2005/3)*, 2005, OP. 9.

265 UN. Commission on Human Rights, *Combating defamation of religions (2004/6)*, PP. 16.

266 UN. Commission on Human Rights, *Combating defamation of religions as a means to promote human rights, social harmony and religious and cultural diversity (2001/4)*.

267 UN. Commission on Human Rights, *Combating defamation of religions (2005/3)*, OP. 12; United Nations General Assembly, *Combating defamation of religions (A/Res/60/150)* ([New York]: UN, 2005), OP. 12.

It should be stated that the composition of the members of these two bodies are significantly different. While the UN General Assembly constitutes of a universal membership, the Commission of Human Rights is limited to only 53 seats. Hence the General Assembly is a more representative body of the United Nations, illustrating the general opinion on a subject more accurately, than the smaller Commission on Human Rights.

A comparison between the voting results in both bodies is particularly interesting and valid as the voting took place in both forums over a nearly identical text. The only difference in the two resolutions was that in its General Assembly's version, the resolution requested the Secretary-General to submit a report on the implementation of the resolution to the membership in its next session, instead of requesting the 'Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance' to do so, as was done in the version of the Commission on Human Rights. In the Commission, 60%²⁶⁸ of the members voted in favour of the resolution. With 31 supporting countries, this has been the best result achieved by an adoption through a roll call for the Defamation Resolution till then. With 53% support, the vote in the General Assembly however, had shown barely half of the UN membership in favour of the resolution.²⁶⁹ The introduction to the General Assembly with its broader UN membership led to a more in-depth analysis than had been the case before; taking a closer look at the concept and language in use. Alarmed at what was perceived by them as an erosion of the right of freedom of expression, concerns were being voiced regarding Human Rights now in New York as well. So far, criticism had remained limited to the narrow focus on Islam and the conceivably problematic conflation of the terms race and religion; from here on out, criticism would increasingly focus on questions of freedom of expression and related political and civil rights. The implication with those thematic area had also been raised by India in every statement the country had made so far in regard to the Defamation Resolution, pointing out that the topic was on of political and civil right, not one to be discussed under sub-item 'racism' of the Human Rights agenda. In fact, the Defamation Resolution was then introduced as sub-item 71(b) "Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms", instead of under the item dealing with questions of the elimination of racism and racial discrimination.²⁷⁰

268 Resolution adopted by a recorded vote of 31 to 16, with 5 abstentions. → 59,61% votes in favour.

269 UN. Commission on Human Rights, *ECONOMIC AND SOCIAL COUNCIL - Draft Report on the Commission on Human Rights (E/CN.4/2005/L.10/Add.6)*, 2005, chap. IV, <http://www.unhchr.ch/huridocda/huridoca.nsf>.

270 United Nations, "Documentation listed by agenda items - 60th session of the United Nations General Assembly," n.d., <http://www.un.org/ga/60/documentation/themes.html>.

The change of the voting results also must be seen under light of the changing composition of the Commission. While countries supportive of the concept such as China entered the Commission, some countries sceptical of the resolution such as Chile left it.²⁷¹ Hence, the relatively small changes do not necessarily reflect a change in the political dynamics, but the changed composition of the Commission. The changing voting patterns in the General Assembly after 2005 give a more reliable reflection of the political dynamics and approaches towards the concept and resolution as the universality of membership ensures a stable composition of the body.

The Defamation Resolution was adopted in the Commission on Human Rights with 31 votes in favour, 16 opposing votes and 5 abstentions²⁷²; and in its General Assembly version with a recorded vote of 101 to 53, and with 20 abstentions.²⁷³

GA – 61/164: “Combating defamation of religions”

In 2006, the United Nation instituted a reform replacing the Commission on Human Rights with the new Human Rights Council. With the structural reform, the composition of the Human Rights body changed accordingly. This must be taken into account when analysing the changing voting patterns on the resolution adopted by the Commissions' successor.

As well in 2006, the Defamation Resolution of the 61st General Assembly session introduced new language on the balance of rights, touching the question of limitations of the right to freedom of expression under certain circumstances. Article 19 of the ICCPR states that the exercise of the right of freedom of expression may be subject to certain restrictions, only if necessary “For respect of the rights or reputations of others” and “For the protection of national security or of public order (ordre public), or of public health or morals.”²⁷⁴ In a critical move, the proponents of the resolution suggested a significant expansion of the scope of Article 19 by adding the protection of “respect for religions and beliefs”²⁷⁵ as the grounds for restriction of the freedom of expression.

271 UN. Commission on Human Rights, *SUMMARY RECORD OF THE 45th MEETING*, 60th Session, 83; UN. Commission on Human Rights, *SUMMARY RECORD OF THE 44th MEETING*, 61st Session, 2005, 16.

272 UN. Commission on Human Rights, *Combating defamation of religions* (2005/3).

273 United Nations General Assembly, *Official Records of the General Assembly, 60th Session, 64th meeting*, (A/60/PV.64) (New York: United Nations, December 16, 2007).

274 United Nations, *ICCPR*, Article 19.

275 UN. Human Rights Council, *Combating Defamation of Religions* (A/HRC/Res/4/9), OP. 10; United Nations General Assembly, *Combating defamation of religions* (A/Res/61/164), OP. 9.

This served as the main grounds for criticism that the resolution would now not be compatible with the provisions of Human Rights law, and in fact, would constitute their violation.

Furthermore, the language of the paragraph dealing with this sensitive issue makes reference to *restricting the right*, rather than *restricting the right to exercise* a human right, as is the proper phrasing found in the relevant Human Rights instruments, such as the ICCPR, Article 19.

There is a crucial difference in restricting the exercise of a right under certain circumstances and the limitation of a human right as such. The fact that this significant difference is blurred by the language used in the resolution, provides grounds for accusations that the resolution would deliberately be phrased as such, in order to serve as a tool to justify the systematic undermining of Human Rights.

Nevertheless, the resolution was adopted by a recorded vote of 111 votes to 54, with 18 abstentions.²⁷⁶

HRC – 4/9 and GA – 62/154: “Combating defamation of religions”

The positions countries have taken towards resolutions that are thematically related to the Defamation Resolution also reflect their political position, aims and goals in the wider perspective. These interests give valuable insights into the approaches different countries adopt and the underlying reasons for their stances towards the Defamation of Religions resolution.

Of special importance in this regard is the 2007 Human Rights Council resolution renewing the mandate of the Special Rapporteur on freedom of religion or belief.²⁷⁷

Pakistan, representing the position of the OIC, criticised the resolution for its inclusion of “respect for norms about the right to change one’s religion,”. Although the right to changes one's religion is a Human Right that was agreed upon in the relevant Human Rights instruments, the issue of apostasy is one that Muslim Member States feel strongly about.²⁷⁸ The OIC aimed at deleting the respective reference in the resolution²⁷⁹ and Saudi-Arabia and Algeria went as far as

²⁷⁶ United Nations General Assembly, *Official Records of the General Assembly, 60th Session, 64st meeting*, (A/60/PV.64).

²⁷⁷ UN Human Rights Council, *Draft Resolution - Elimination of all forms of intolerance and of discrimination based on religion or belief* (A/HRC/6/L.15/Rev.1), A/HRC/6/L.15/Rev.1, 2007.

²⁷⁸ *Explanation of Vote before the Vote on Draft Resolution A/HRC/6/L.15/Rev.1 made by Pakistan on behalf of the Organisation of Islamic Conference. Mr. Masood Khan.* (UN Human Rights Council, Geneva, n.d.), [rtsp://webcast.un.org/ondemand/conferences/unhrc/sixth/hrc071214pm-eng.rm?start=01:43:42&end=01:48:20](http://webcast.un.org/ondemand/conferences/unhrc/sixth/hrc071214pm-eng.rm?start=01:43:42&end=01:48:20).

²⁷⁹ Pakistan on behalf of the OIC, *Amendments to Draft Resolution A/HRC/6/L.15/Rev.1, A/HRC/6/L.49*, 2007, <http://daccess-ods.un.org/TMP/7135195.html>.

to criticise the resolution and its language of tolerance as being against the Shari'ah and hence incompatible with Islam.²⁸⁰ Pakistan on behalf of the OIC, further demanded a stronger denouncement of religious stereotyping in conformity with the idea of the Defamation Resolution. Pakistan also rejected provisions aiming to remind States of their responsibility to be reliable in their Human Rights related reporting, by urging state's to reply favourably to inquiries of the mandated Special Rapporteurs.²⁸¹

The HRC resolution also exacerbated accusations against other Member States that alleged that these States support campaigns against Muslim minorities under their jurisdiction. By adding new language, it imputes their active involvement in such campaigns to “[...]laws or administrative measures that have been specifically designed to 'control' and 'monitor' Muslim and Arab minorities, [...]”²⁸².

The resolution was adopted in the Human Rights Council after the EU called a recorded vote with 24 countries in favour, 14 opposing votes and 9 abstentions²⁸³; and in its General Assembly version also by a recorded vote of 108 to 51 with 25 abstentions.²⁸⁴

HRC – 7/19 and GA – 63/171: “Combating Defamation of Religions”

In 2008, the dynamics further changed. Although Egypt stepped in as an important player both in the OIC and in the African group and helped to combine the supporters; the numbers nevertheless show a decline in the general support for the resolution. For the first time in the history of the Defamation Resolution, the opposing votes together with the countries abstaining outnumbered the countries favouring the resolution. In other words, adopted by a recorded vote of 21 to 10, with 14 abstentions in the HRC, the support for the resolution had dropped below 50%.²⁸⁵ The continuous decline in support may be understood in the context of the negotiations around another related resolution to renew the mandate of the Special Rapporteur on Freedom of

280Explanation of Vote before the Vote on Draft Resolution A/HRC/6/L.15/Rev.1 made by Saudi Arabia. Mr. Abdullah Abbas Rashwan (UN Human Rights Council, Geneva, n.d.), [rtsp://webcast.un.org/ondemand/conferences/unhrc/sixth/hrc071214pm-eng.rm?start=01:58:09&end=02:00:33](http://webcast.un.org/ondemand/conferences/unhrc/sixth/hrc071214pm-eng.rm?start=01:58:09&end=02:00:33); Explanation of Vote before the Vote on Draft Resolution A/HRC/6/L.15/Rev.1 made by Algeria. Mr. Idriss Jazyiry (UN Human Rights Council, Geneva, n.d.), [rtsp://webcast.un.org/ondemand/conferences/unhrc/sixth/hrc071214pm-eng.rm?start=02:31:24&end=02:35:22](http://webcast.un.org/ondemand/conferences/unhrc/sixth/hrc071214pm-eng.rm?start=02:31:24&end=02:35:22).

281Pakistan on behalf of the OIC, *Amendments to Draft Resolution A/HRC/6/L.15/Rev.1*.

282UN. Human Rights Council, *Combating Defamation of Religions (A/HRC/Res/4/9)*, OP. 3.

283Ibid.

284United Nations General Assembly, *Official Records of the General Assembly, 62nd Session, 76th meeting, (A/62/PV.76)* (New York: United Nations, December 18, 2007).

285UN. Human Rights Council, *Combating Defamation of Religions (A/HRC/Res/7/19)*, 2008.

Expression. Although Canada, as the main facilitator of that resolution, made compromises regarding the limitations of rights after long negotiations dating back to 2007, the OIC nevertheless attempted to introduce further language addressing the 'abuse of the right of freedom of expression'.

A respective amendment introduced as 4C-bis passed on a recorded vote and led to the withdrawal of the original sponsors of the resolution.²⁸⁶ The resolution, including the disputed clause that introduced the idea of an 'abuse' of a human right – the fundamental right of freedom of expression – passed in a vote with 32 to 15 abstentions. The idea that a Human Right could itself be abused, found further acceptance beyond the group of supporters of the resolution. Thus the representative of India, in an explanation of their vote on the resolution in 2009, stated that the issue of negative stereotyping of religions “was best addressed in the context of religious intolerance or the abuse of freedom of expression.”²⁸⁷

Another resolution related to the Defamation Resolution was the one renewing the mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance. Egypt attempted to introduce language expressing the concept of Defamation of Religions by proposing that the mandate of the Special Rapporteur should be extended to the issue of 'contempt for religion'. This paraphrase of the term Defamation of Religion using the synonym of 'contempt' of religion, has found its inclusion in the Defamation of Religions resolution itself in a clause requesting the “High Commissioner for Human Rights to [...] submit a study compiling relevant existing legislations and jurisprudence concerning defamation of and contempt for religions[...].”²⁸⁸ While this language did not find wider support in the Council in this case, a listing of “Anti-Semitism, Christianophobia, Islamophobia” and a general reference to religious discrimination found its inclusion into the mandates renewal.

The resolution was adopted in the Council by a recorded vote of 21 to 10, with 14 abstentions²⁸⁹ and later this year in the General Assembly by 86 votes to 53, with 42 abstentions.²⁹⁰

286 OP 4C-bis as it reads: “To report on instances where the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination taking into account Articles 19(3) and 20 of the [ICCPR] and that General Comment 15 of the Committee on Elimination of All Forms of Discrimination which stipulates that the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the freedom of opinion and expression.”

287 UN. General Assembly, *Official Records of the 3rd Committee, 64th Session, 42nd meeting, (A/C.3/64/SR.42)*, para. 67.

288 UN. Human Rights Council, *Combating Defamation of Religions (A/HRC/Res/7/19)*, OP. 16.

289 Ibid.

290 United Nations General Assembly, *Official Records of the General Assembly, 63rd Session, 70th meeting, (A/63/PV.70)* (New York: United Nations, December 18, 2008).

HRC – 10/22 and GA – 64/156: “Combating defamation of religions”

In 2009, the HRC version of the resolution saw further inter-connectedness of the subjects of Defamation of Religions and the incitement on a jurisdictional level. The resolution indicated a relation between incitement laws and Defamation of Religions.

Surprisingly, the OIC reverted to its ICCPR reference and attempted to extend the scope of the legitimate restriction of the exercise of the fundamental right of freedom of expression. While in 2008, the resolution still retained its language indicating that the need to protect 'respect for religion' is legitimate grounds for the limitation of expression; in 2009, this language was replaced with the phrase “general welfare”²⁹¹. This was even more vague language, as it was less specifically pointing towards Defamation of Religions. The paragraphs now also referred to the respective clauses in the ICCPR – Article 19 and 20. The same clause in the General Assembly resolution, while not taking note of the respective ICCPR articles, underwent complete deletion of the phrase “respect for religion and belief”, rather than replacement through the vague expression of “general welfare” as in the HRC.

The HRC resolution welcomes in a pre-ambulatory paragraph the recent reports of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance “in which the Special Rapporteur highlighted the serious nature of the defamation of all religions and the need to complement legal strategies,”²⁹² This language seems to indicate that the Special Rapporteur would have underlined the need for additional legal initiatives; an argument also constantly raised in conversations with diplomats of the OIC. But the recommendation drawn by the Special Rapporteur in their original wording, read far less clearly as a call for complementary legal measures. In his Report submitted to the Council at its 9th session, the Special Rapporteur outlines the need to “combine legal measures with an intellectual, cultural and ethical approach that takes account of the processes, mechanisms and representations at the origin of these manifestations of discrimination over time;”²⁹³ This must not necessarily be interpreted as an additional need for legal strategies, but could as well be read as a need to combine *existing ones* with approaches *other than legal ones*.

291 UN. Human Rights Council, *Combating Defamation of Religions (A/HCR/Res/10/22)*, 2009, OP. 10.

292 Ibid.

293 Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, *Report on the manifestations of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights*, September 2, 2008.

In a joint statement in April 2009, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on freedom of religion or belief and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression emphasised that they welcomed a shift that seemed to take place away from the language of 'Defamation of Religions' towards the more widely accepted concept of "incitement to racial or religious hatred".²⁹⁴

Within the debate, the strong proponent of the concept, Pakistan started using language of 'hate speech', which is typically used as synonymous to 'incitement to racial or religious hatred', but did not show any readiness to distance itself from the concept as such. In reaction to the criticism of Defamation of Religions stifling freedom of expression, Pakistan, speaking in the HRC on behalf of the Organisation of the Islamic Conference, said in the Council that the OIC would attach "great importance to the exercise of freedom of belief and expression, but the exercise of this right carried with it duties and responsibilities, including the need to fight against hate speech."²⁹⁵ Hence, the OIC would see the limitation of freedom of speech justified in such cases, but as attached to the debate about the adoption of the Defamation Resolution, the statement implicitly suggests cases of Defamation of Religions to be included within the language of 'hate speech'. This assumption is further affirmed as Pakistan also reiterated in the same statement that "Negative stereotyping or defamation of religions was a modern expression of religious hatred and xenophobia."²⁹⁶ and that these phenomena would also "spread not only to individuals but to religions and belief systems"²⁹⁷ The European Union in turn noted that "the notion of a moral and social responsibility of the media as expressed in the resolution went well behind the special duties and responsibilities".²⁹⁸

In this connection, the representative of Chile gave a very strong explanation of their vote: While admitting that there was a need to prohibit the misuse of freedom of expression in the form of incitement to violence, the representative held that international law was already in place to deal with such incidents. However, the "concept of the defamation of religion took them in an area

²⁹⁴ Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, Special Rapporteur on freedom of religion or belief, Asma Jahangir, and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, "Joint Statement to freedom of expression and incitement to racial or religious hatred."

²⁹⁵ United Nations, "HUMAN RIGHTS COUNCIL ADOPTS SIX RESOLUTIONS AND ONE DECISION ON DISCRIMINATION AGAINST WOMEN AND FREEDOM OF EXPRESSION, AMONG OTHERS (Press Release - 2 October 2009)," October 2, 2009, <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/6A69FF0F95283CE7C12576430046793B?opendocument>.

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ Ibid.

that could lead to the actual prohibition of opinions.”²⁹⁹

Within the same session of the HRC, the resolution on religious intolerance, traditionally introduced by the European Union and having found adoption by consensus so far, was surprisingly called to a vote by South Africa. The abstaining countries of the OIC as well as the only member state voting against the resolution – South Africa, had been pushing hard during negotiations for the introduction of stronger language on the limitation of freedom of expression. The European Union, represented by Sweden, once more explained their position towards the concept of Defamation of Religions which would severely limit “freedom of expression and endangered the very tolerance that allowed people of different faiths to co-exist.”³⁰⁰

Considering that the conflict surprisingly also expanded towards other initiatives it is doubtful whether the positive notion in the joint statement by the Special Rapporteurs that debate would result a more acceptable term, is actually true. Considering the statements made by various representatives, the conflict around the terminology of Defamation of Religions and the strings attached for the interpretation and application of international Human Rights law seem in fact to be tighter and more problematic.

In the HRC version, the Defamation Resolution votes was adopted with 23 Council members in favour to 11 opposing and with 13 abstentions.³⁰¹ In the General Assembly, the resolution gained the lowest support to date, with only 80 votes to 61, and 42 abstentions³⁰², one vote less than a even a few weeks before when it had been adopted in the 3rd Committee.³⁰³

HRC – 13/16: ”Combating defamation of religions.”

In 2010, the initiative kept losing support and only gained 20 votes in favour to 17 opposing and 8 abstaining Council members – an all time low in support for the resolution.

The United States made a very strong explanation of their position before the vote, pointing out that the Defamation Resolution “has become an instrument of division”³⁰⁴ and that prohibiting

²⁹⁹ Ibid.

³⁰⁰ UN. General Assembly, *Official Records of the 3rd Committee, 64th Session, 42nd meeting, (A/C.3/64/SR.42)*, para. 61.

³⁰¹ UN. Human Rights Council, *Combating Defamation of Religions (A/HRC/Res/10/22)*.

³⁰² United Nations General Assembly, *Official Records of the General Assembly, 64th Session, 65th meeting, (A/64/PV.65)* (New York: United Nations, December 18, 2009).

³⁰³ UN. General Assembly, *Official Records of the 3rd Committee, 64th Session, 42nd meeting, (A/C.3/64/SR.42)*, para. 69.

³⁰⁴ *Explanation of Vote before the Vote on Draft Resolution A/HRC/13/L.1 made by the United States of America.* Ms. Eileen Chamberlain Donahoe (UN Human Rights Council, Geneva, n.d.),

speech cannot be a way to promote tolerance. As said in the General Assembly they repeated at the HRC, that the concept would continue to be “used to justify censorship, criminalization and in some cases violent assaults and deaths of political, racial and religious minorities all around the world”³⁰⁵ The United States also pointed out in both bodies that “It was a central tenet of human rights law that rights were held by individuals, not by Governments, institutions or religions.”³⁰⁶

In a speech in front of the 3rd Committee of the General Assembly, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Githu Muigai, who had been mandated by the Defamation Resolution to take into account Defamation of Religions in his work, noted that focus should be given to the rights of individuals, who needed protection from racial and religious intolerance, discrimination or violence. He further took note that the controversy and dispute around the terminology of “defamation of religions” and “incitement to racial or religious hatred” regrettably had distracted attention from the real problems affecting the people on the ground.³⁰⁷ In his report for the 12th session of the HRC, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Githu Muigai, who had been mandated by the Defamation Resolution in the previous year to report on the manifestations of defamation of religions, and particularly on the ongoing serious implications of Islamophobia, vis a vis the enjoyment of all rights by their followers; made following significant statement: “Indeed, the strategic response to hate speech is more speech”³⁰⁸; stifling of freedom of expression could not be a sufficient response in combating religious hatred and hate speech, as merely symptoms of deeply rooted causes: intolerance and bigotry.³⁰⁹ With regard to the latest Human Rights Council resolution 13/16 on Combating Defamation of Religions, the Special Rapporteur emphasised in regard of the matter of legal measures against defamatory statements that “the implementation of

<http://webcast.un.org/ramgen/ondemand/conferences/unhrc/thirteenth/hrc100325aml-eng.rm?start=02:41:36&end=02:46:08>.

305 *Explanation of Vote before the Vote on Draft Resolution A/HRC/13/L.1 made by the United States of America*. Ms. Eileen Chamberlain Donahoe; UN. General Assembly, *Official Records of the 3rd Committee, 64th Session, 42nd meeting, (A/C.3/64/SR.42)*, 66.

306 *Explanation of Vote before the Vote on Draft Resolution A/HRC/13/L.1 made by the United States of America*. Ms. Eileen Chamberlain Donahoe; UN. General Assembly, *Official Records of the 3rd Committee, 64th Session, 42nd meeting, (A/C.3/64/SR.42)*, 65.

307 Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, “Statement held at the 3rd Committee, General Assembly, 64th Session” (United Nations, November 2, 2009), <http://www2.ohchr.org/english/issues/racism/rapporteur/docs/SpeechGA64.pdf>.

308 Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, *Report 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*, July 1, 2009, para. 42.

309 Ibid.

sanctions, if any, should in no way be of a criminal nature”³¹⁰

In the vote of the HRC resolution 13/16, the decline in support for the resolution even in traditional strongholds became evident. With the exception of South Africa, no non-OIC member of the African group supported the Defamation Resolution. And while 5 countries of the African group voted in favour, equally 5 members either abstained or opposed the resolution.³¹¹ Without counting the votes of the OIC members, the African group would have supported the initiative with only 25%.

Concluding remarks

The positions are clearer than ever before: While Pakistan and the OIC frame Defamation of Religions as a form of Human Rights violation that needs to be prohibited by means of limiting freedom of expression, opponents judge the concept to be incompatible with the Human Rights framework at best and an insidious attempt to undermine Human Rights principles and international law at worst.

In the following part of the thesis therefore, it should be researched and clarified whether or not the concept of Combating Defamation of Religions is compatible with the Human Rights framework. It further should be asked whether the concept provides added value to efforts in eliminating discrimination, hatred and violence based on religious intolerance, or – as critics of the concept believe – it in fact provides the underlining grounds for increasing religious conflicts within societies.

³¹⁰Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, *Report on the manifestations of defamation of religions, and in particular on the ongoing serious implications of Islamophobia, for the enjoyment of all rights by their followers*, July 12, 2010, para. 78.

³¹¹A/HRC/Res/13/16 - Against: Zambia ; Abstaining: Cameroon, Ghana, Madagascar, Mauritius ; In favour: Senegal, South Africa, Djibouti, Egypt, Nigeria

4.5 Analysis of Voting Patterns

An analysis of the voting patterns of different regional groups should add to the understanding of the development of the resolution as outlined in the chapters above. Voting generally takes place along the lines of regional groups. The positions of individual countries are highly influenced by the general position of the regional group that they are a part of. Differing perspectives on a specific topic might be sacrificed for the sake of keeping ranks closed in political alliances within those regional voting groups. Undoubtedly a whole variety of other considerations are of equal or even higher importance; the country's own ideological stance as well as political calculations like trading one vote for another play a significant role in determining a States position. Some countries simply suffer from a lack of the necessary resources to be cover all UN bodies adequately or be concerned with all the resolution brought to consideration for the Member States. Due to their more pressing issues such as poverty they look upon the Defamation Resolution with a certain indifference. Some however, might be additionally pressurized by regional powers that they are economically or politically dependent on to vote in line of their stance on the subject.

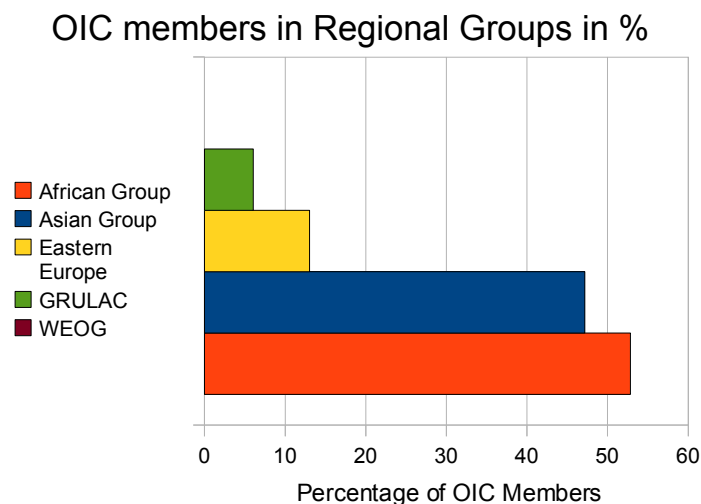
It is, unfortunately, barely possible to explain in-depth these specific considerations of every UN member-state or attempt to analyse the balance of interests of each that leads to their respective voting patterns. While the value of such review would remain limited, it makes sense to have a closer look at the larger entities within the UN system, namely regional groups. An analysis of voting patterns along regional groups provides valuable understanding regarding the political dynamics surrounding the resolution as well as the shifting perspectives of the concept of Defamation of Religions itself. An examination of votes held by individual Member States serves as an indication also of the changing position of partners within the regional groups itself. Indeed, Member States often speak on behalf of their entire group explaining their common position on the subject. The review of voting patterns of such regional groups will allow for better prediction regarding the future of the concept within the UN system.

Explaining the meaning of Y-A-N votes

Voting on resolutions is a relatively simple procedure. If Member States cannot agree to a resolution being adopted by consensus, a vote is called. In the following procedure, each countries may vote in favour (Y), oppose the initiative (N), or abstain on the voting (A). Often more interesting than a change from a 'No' to 'Yes' vote, is the decision of Member States not to support the resolution and abstain. In the world of diplomacy, this is already a strong sign of disapproval. Also a lack of 'Yes' votes does not necessarily mean any movement away from a particular concept. Often the lack of physical presence of the diplomat in question can explain the 'missing' Yes vote of a traditional supporter. It should also be mentioned that States can (and regularly do) choose to 'act absent' while being physically in the room. Although this indeed can be interpreted as a change in the perception of a concept or resolution, there is no practical way to check the physical presence of a diplomat acting absent in retrospect.

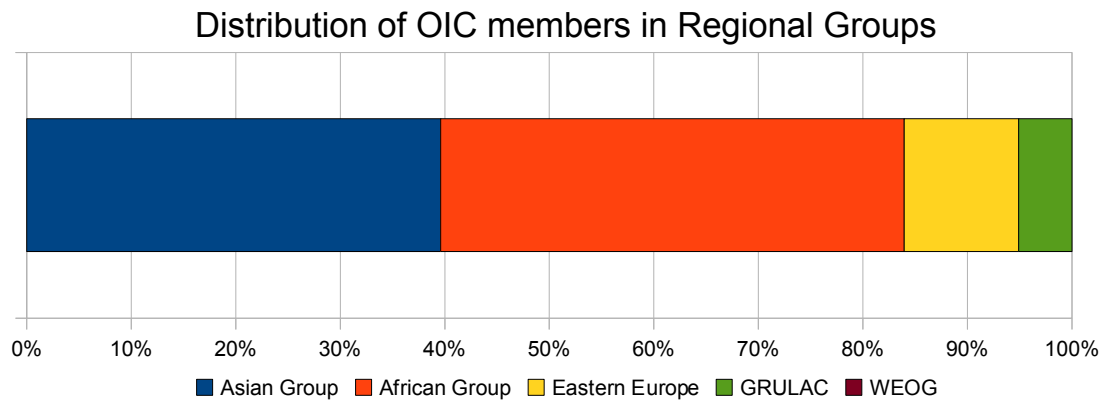
4.5.1 Regional Groups in the United Nations

When it comes to votes on resolutions, regional groups within the UN deserve special attention as such votes usually occur roughly along specific regional divides.³¹² The Organisation of the Islamic Conference (OIC) on whose behalf the resolution was introduced, is not a regional voting group itself, but its membership is spread throughout the other groups with differing strength of representation. Naturally, one can expect the OIC to support its own initiative. Hence, it is of added value to look upon the voting patterns of regional groups with consideration to their OIC members. As has been illustrated previously, it made quite a significant difference to simply count the supporting votes within the African Group as a whole or to have a closer look at the voting patterns of its non-OIC members. Therefore in this analysis, regional groups are primarily considered in their non-OIC composition. Still it can be predicted that the greater the number of OIC members within a group, the greater their influence on the position of the group itself. This fact is critical when taking into account that the OIC members are not found to be equally spread throughout the various regional groups:

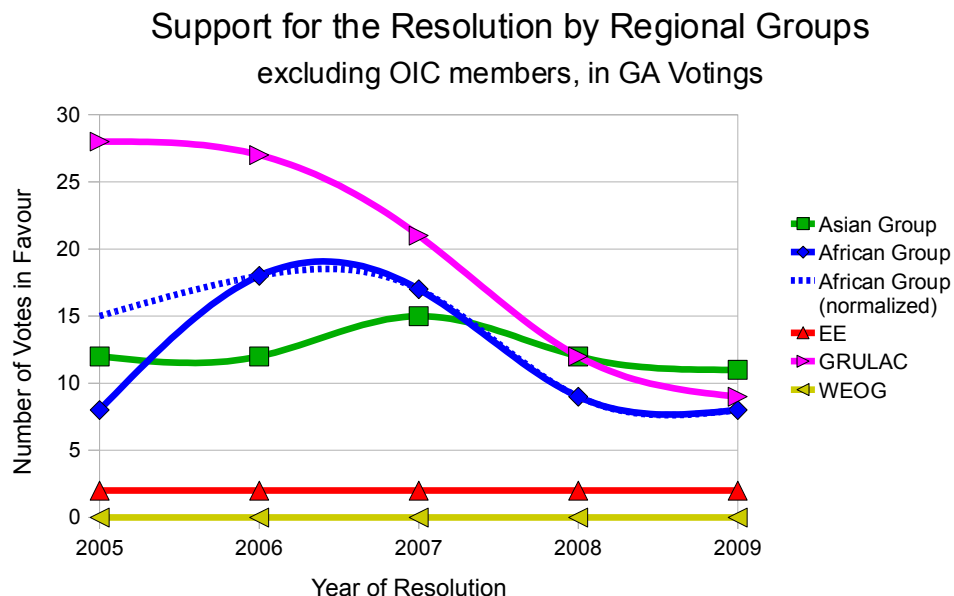


The OIC finds its biggest representation in the African Group with 53% of all members of the group belonging as well to the OIC, and the Asian Group with a relative share of 44%.

³¹² Becket Fund for Religious Liberty, “Combating Defamation of Religions,” 2.



The support of OIC members for their own resolution is barely surprising.³¹³ More interesting is the position of non-OIC members towards the resolution. Hence, subtracting the OIC members draws a more relevant picture for the understanding of the changing support for the resolution. Also the comparison supports the assumption that the influence of the OIC is rising in relation to its relative representation in the regional groups. It is obvious that the greater the membership of the OIC, the higher its influence is on the stance of the whole group regarding the resolution. As such, part of the reason for the support of the resolution must be found in political interests, rather than in conceptual agreement to the theme of Defamation of Religions.



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³¹³ Note: Albania, full OIC member, did abstain the resolution as well as Bosnia and Herzegovina, with observer status in the OIC, on several occasions.

³¹⁴ Note: Normalized African Group Data refers to a assumed voting pattern if absent States of this group would

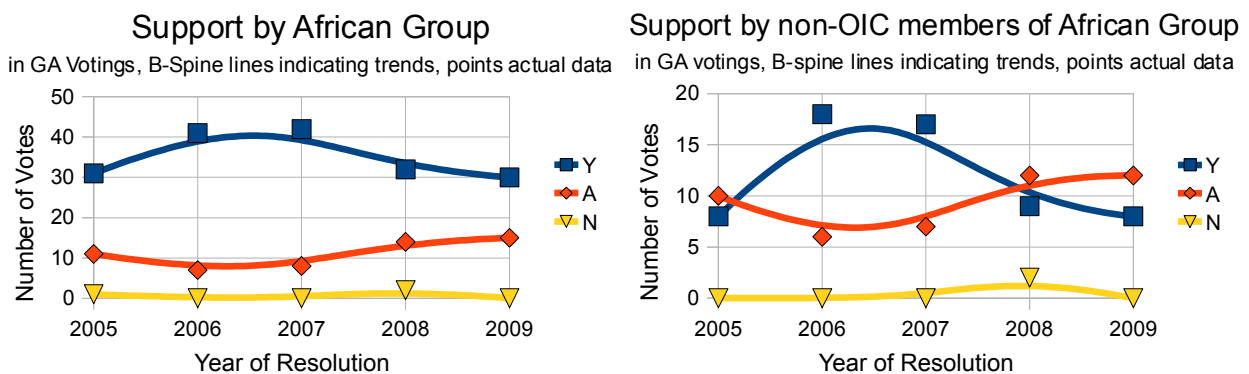
The position of the Western European and Other Group (WEOG) is as clear and evident as the position of the OIC. Opposing both the concept and resolution, not a single WEOG member has ever voted in favour of the resolution.³¹⁵ As becomes overtly evident, the OIC and WEOG are natural opponents in the struggle surrounding acceptance of the concept and resolution. Their positions on the subject are undoubtedly clear and changes in their voting patterns are unlikely, yet significant. Of far greater interest and influence, however, are the dynamics in other groups; the Latin American and Caribbean Group (GRULAC), the African Group and the Asian Group. These shall be analysed in the following sub-chapters. There is also no significant change in the voting of the Eastern European Group (EE), and as such, these voting groups will be excluded from the following examination that focuses on the dynamics and developments of the voting patterns.

had been present – see the chapter dealing with the African Group for more details.

315 *Note:* It is this strong stance and difference between the OIC and the WEOG that might bring into mind the infamous idea of an 'clash of civilizations'. This thought is shared by not just a few diplomats and other relevant actors, and hence risks to become somewhat of a self-fulfilling prophecy.

4.5.2 The African Group

The African Group consists of 53 Member States, with more than half (28 countries) as members of the OIC at the same time. With about 53% of all African countries being OIC members, the organisation has a stronghold in the African Group. Some major regional players such as Egypt and Libya have exceptionally high influence within the Group. Therefore, a particular strong support for the resolution within the group may be expected. And indeed, the African group remains to date the strongest ally of the OIC in defending the resolution and concept behind it. However, it is noteworthy to compare the difference between the voting patterns between the African Group as a whole and the non-OIC members of the Group, as it reveals a somewhat less consistent picture. As shown in the graphs below, the support for the resolution has been declining recently, with or without the supporting votes of the OIC.

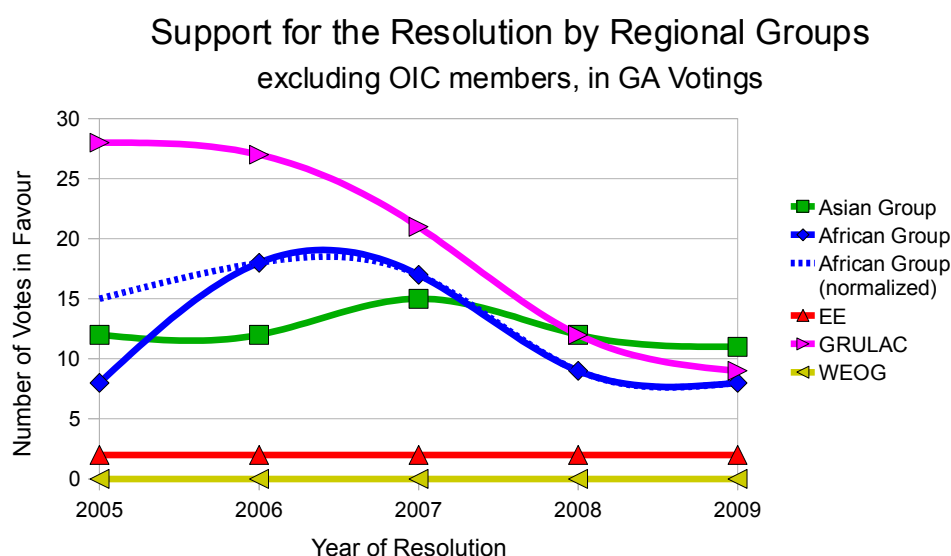


The support for the resolution is obviously consistently declining, with an interesting peak in 2008 when two countries, Cape Verde and Liberia, decided to openly oppose the resolution. The representative of Cape Verde went as far to take the floor in the General Assembly to emphasize that “the text had not struck the proper balance” and pointed to “the need to guarantee the full freedom of religion and belief, along with the freedom of choice for those who wanted to change their religion.”³¹⁶ Moreover, since 2008 even within the African group, less Member States voted in favour (9 votes, 2008) than countries that were not supporting the resolution any more (14 votes, 2008). It should be noted that although the supportive votes remained intact with 9 Yes votes in 2005 as well as in 2009 for the non-OIC members of the African Group, the numbers for

³¹⁶United Nations General Assembly, “Press Release - GA/10801 - GENERAL ASSEMBLY ADOPTS 52 RESOLUTIONS, 6 DECISIONS RECOMMENDED BY THIRD COMMITTEE ON WIDE RANGE OF HUMAN RIGHTS, SOCIAL, HUMANITARIAN ISSUES,” December 18, 2008, <http://www.un.org/News/Press/docs/2008/ga10801.doc.htm>.

2005 should be taken with a grain of salt. It would be more accurate to assess the support for the resolution in the early stages of the resolution at the level of the General Assembly with 2006 results of the voting than the ones of 2005. This is due to the notable absence of members of the African Group, potentially supportive of the resolution, during the vote of 2005. Of course there is no way to claim with certainty that the absent countries would have voted in favour if present. But all members of the group that had been absent in the vote of 2005 and was present in 2006, indeed voted in favour for the resolution. Hence, it may be safely assumed that the voting in 2005 was distorted by the significant differences in the election turn-out, rather than a spontaneous shift in their perspective on the resolution. I therefore assume the results in 2005 would have shown a far greater support for the resolution had the Member States of the African group in question been present. Under such an assumption the resolution would have enjoyed an overall support within the African Group (excluding OIC members) of 60% compared to the actual 44.44% in 2005.

To give a more accurate picture of the development of the voting outcomes, it is more reliable to use the 2006 voting records as the basis for further analysis. Looking at the numbers from 2006 to 2009 in the GA voting results, the decline of support for the resolution adds up to 55.55% within the African Group (excluding OIC members). Using the assumed voting results of 2005, if absent States would have voted the same way in 2005 as they did then in 2006, we see a decline of 46.66% in the support, as the figure below shows. In both cases, the data shows clearly that even within what is traditionally the most supportive group for the resolution – the African Group – support is on the decline.



The evident decline of support in the group when singling out its non-OIC members (indeed more Member States abstaining in their vote than expressing their support) can be explained with their increasing discomfort of the tendency of the resolutions language to blur the difference between religious intolerance and racism. A general misgiving over the conflation of the terms 'race' and 'religion' are shared mostly by sub-Saharan States, not limited only to a matter of the Defamation Resolution.³¹⁷ As outlined in previous chapters, the resolution's language puts great effort into linking the nature and characteristics of Defamation of Religions to one of racism.

Arguing successfully that Defamation of Religions is just another form of racism, would suddenly make existing international laws dealing with racism equally applicable to Defamation of Religions. Hence, in the unlikely case that existing international Human Rights law is made applicable to Defamation of Religions, it would not be necessary anymore for proponents of the resolution to press for new legislation. Indeed, proponents of the concept within the OIC have begun to argue from this perspective that Defamation of Religions should be seen as already prohibited by the provisions of ICCPR and ICERD. They mostly cite Article 20 of the ICCPR in this regard, pointing towards the obligation of States to prohibit advocacy of national, racial or religious hatred. In addition they use the provisions of the ICERD, as Article 4 stipulates the prohibition of the dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination.³¹⁸

Many African States reject the idea of Defamation of Religions being in itself a matter of racism, while in principle continuing to be open to the idea and concept of Defamation of Religions. This explains the declining support of these nations for the resolution. The element of connecting race and religion, or rather 'acts of racism' with 'Defamation of Religions', is central to the resolution. It links the disputed idea of Defamation of Religions towards an issue commonly understood to be a severe Human Rights violation, and hence adds much needed justification to the weaker concept. Therefore, it is unlikely that the OIC would distance itself in any near future from using language conflating both issues. This also predicts that the OIC will be hard put to convince members of the African Group to remain supportive of the resolution, let alone regain any lost support in the group.

The voting patterns of the African Group are best reflected in the results of the votes in the General Assembly. The HRC voting is less representative due to its non-universal composition

317 Becket Fund for Religious Liberty, "Religious Defamation - Issues Brief," 4.

318 United States Commission on International Religious Freedom, *Annual Report 2009*, 229.

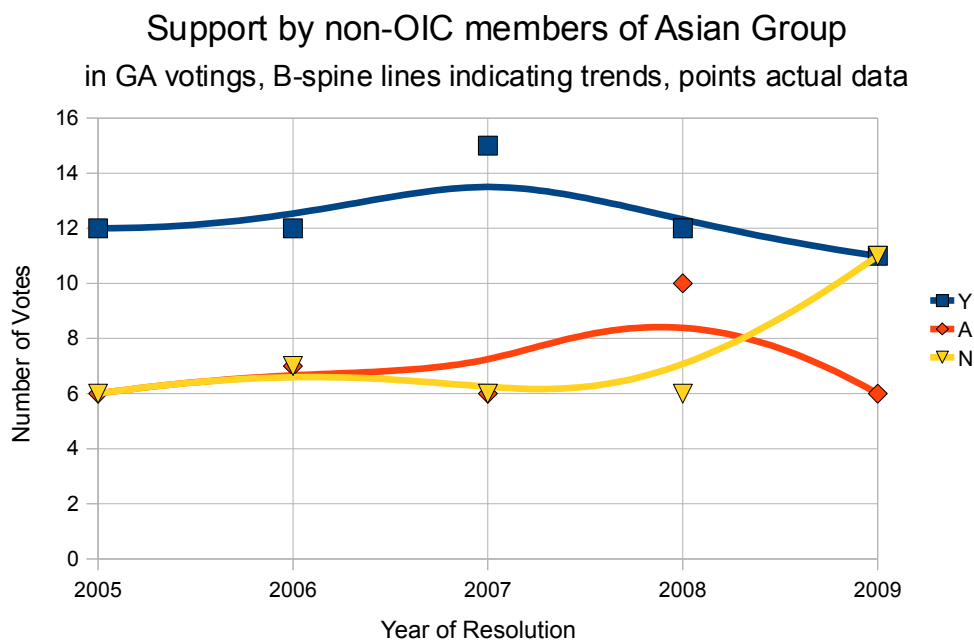
but can be helpful to observe patterns and trend of regional groups. In the last vote on the Defamation Resolution A/HRC/Res/13/16, 5 out of 10 African countries represented in the HRC did not support the resolution any more.³¹⁹ Surprisingly even one of the OIC members in the African group – Cameroon – decided to abstain, and Zambia openly opposed the resolution. With the exception of South Africa, no non-OIC member of the African group supported the Defamation Resolution. And while 5 countries of the African group voted in favour, equally 5 members either abstained or openly opposed the resolution.³²⁰ Without counting the votes of the OIC members, the African group would have supported the initiative with only 25%. This clearly reveals how much support the initiative is actually losing in its traditional stronghold, when taking into consideration the disproportionate number of OIC members in the African group compared to other voting groups. It shows that the African group is far less supportive of the resolution than it appears to be with the inclusion of OIC votes.

319 UN. Human Rights Council, *Combating Defamation of Religions (A/HCR/Res/13/16)*.

320 A/HRC/Res/13/16 - Against: Zambia ; Abstaining: Cameroon, Ghana, Madagascar, Mauritius ; In favour: Senegal, South Africa, Djibouti, Egypt, Nigeria

4.5.3 The Asian Group

With 53 Member States, the Asian Group is as large a regional group within the United Nations as the African Group, but shares a fewer OIC members, making up 44% of the groups composition. At first sight, the resolution receives relatively stable support within the Asian Group. Here again, as before in the African Group, the OIC membership of group members should to be taken into account. Looking at the numbers of the Asian group show declining, but still vast support for the concept. This is – as in the case of the African Group – due to the constant support for the concept of the OIC members of the group. In fact, the OIC could not gain substantial support for the resolution with other members of the Asian Group. The support even declined *acceleratingly* till 2009, when for the first time, 9 No votes were opposing 9 supportive Yes votes, as the graphic below illustrates.



Unfortunately, members of this group tend to remain silent in explaining their position towards the resolution in official meetings. With the exception of India, few statements are made in regard to the Defamation Resolution. India, the traditional opponent of Pakistan (who played a prominent role in the formulation of the idea of the concept and resolution), made specific notes regarding the scope and nature of the provisions contained in the resolution from an early beginning. Typically, the representatives of India would point toward the narrow focus on Islam and would reject the notion of 'non-Muslim countries' as referred to in the resolutions language, pointing out that “there were 140 million Muslims living there, which hardly qualified it [India]

as a non-Muslim country.³²¹ India also claims that the resolution would better fit into the agenda of religious tolerance or civil and political rights, rather than racism.³²² Opposing this stance, China's statements point towards the consequences for Muslims in the aftermath of September 11 attacks, which would justify the resolutions consideration under the agenda of racial hatred.³²³

This represents the opinion of the countries in favour of connecting the issue Defamation of Religions with matters of racism, as the OIC aims to do. While the influence of the OIC seems traditionally greater within the African Group, the resolution has more support within the Asian Group. This supports the argument made in the previous section that despite the traditional support of the African group for the OIC, some of their members feel increasing discomfort with the resolutions tendency to conflate religious intolerance and racism, an issue that African countries feel particularly strongly about. Such conflict might weigh less in the considerations of members of the Asian group.

While the resolution has compared to other groups most support within the Asian Group, it also has the highest relative increase of opposing votes of all regional groups, with votes rejecting the resolution nearly doubling between 2007 and 2009. In 2009, equally as many non-OIC member-state of the Asian group supported the resolution as opposed it, while the abstaining countries were on the decline. Interestingly, it is the Asian Group where countries have taken a clear stand and where the norm to abstain is diminishing.

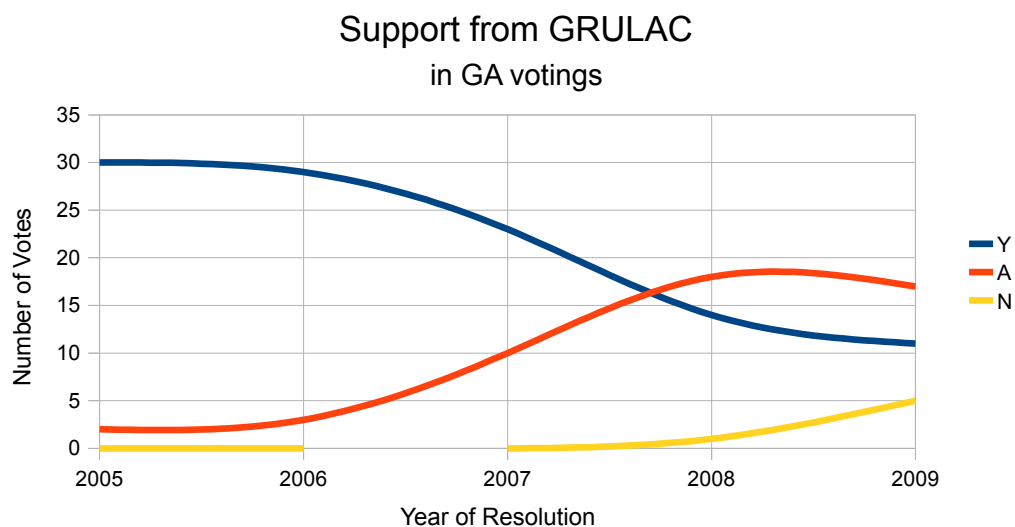
321 UN. Commission on Human Rights, *SUMMARY RECORD OF THE 47th MEETING, 59th Session*, para. 101.

322 UN. Commission on Human Rights, *SUMMARY RECORD OF THE 67th MEETING, 56th Session*, para. 76-77.

323 UN. Commission on Human Rights, *SUMMARY RECORD OF THE 44th MEETING, 61st Session*, para. 15.

4.5.4 The Latin American and Caribbean Group

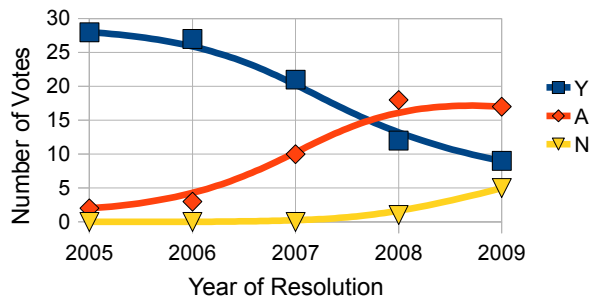
The Group of Latin America and the Caribbean (GRULAC) has 33 members and encompasses nearly the whole area of America and the Caribbean, besides Canada and the United States. Compared to the other voting blocks, the GRULAC has shown a tradition of greater in-group consistency in their voting patterns. In informal statements made by members of the group, it was evident that many of them are waiting for their neighbour to speak out first in opposition of the resolution to voice their own dissent. The same policy could be seen when GRULAC members began to feel increasingly uncomfortable with the resolution and abstained as a larger entity after 2006. This should not indicate however, that the GRULAC group can be understood as a consistent political entity- Some Member States such as Cuba or Venezuela, remain vocal supporters of the resolution. This does not necessarily mean those countries would aim to express a stronger stance for religious freedoms with their voting. It is quite with reason that countries decide to vote for the resolution for reasons other than that, as for instance to 'vote against the West'. Traditionally, the ideological underpinnings of socialist governments are hostile towards the social role of religions.



GRULAC has the least numbers of OIC members in its group compared to the Asian or African Group. Hence the difference between non-OIC voting patterns and those of the group as a whole show little difference. Due to its lack of representation in the group, the OIC can claim little influence on the groups position towards the resolution as well.

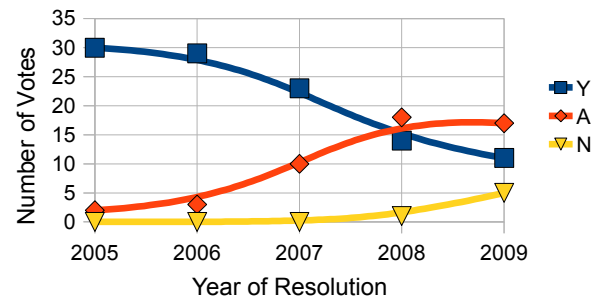
Support by non-OIC members of GRULAC

in GA voting, B-spine lines indicating trends, points actual data



Support by members of GRULAC

in GA voting, B-spine lines indicating trends, points actual data



Compared to the other regional groups reviewed in this paper, the GRULAC is very outspoken on this topic. In every fora, be it the HRC or the 3rd committee of the General Assembly, GRULAC members use various opportunities to explain their position on the initiative on a regular basis. Due to these ample sources of statements by many GRULAC member throughout the history of the resolution, above all those whose enjoy influential positions in the group; a clear picture can be drawn not only of the development of voting behaviour, but also its underpinning conceptions. All Member States in one way or another, expressed their position rejecting and condemning religious intolerance, hatred and discrimination. Many indeed shared the concerns outlined in the resolution, but declared that the chosen approach of addressing them was the wrong one.³²⁴ The GRULAC members critical towards the concept agree with the arguments of WEOG, focusing mostly on Defamation of Religions being a flawed concept not in conformity with international law, stifling freedom of expression and putting religious minorities at risk rather than protecting them. It has further been criticised by GRULAC countries that the resolution does not condemn acts of violence and Human Rights violations executed in the name of religion and the related responsibility of religious leaders in this regard. In addition, the problematic conflation of the issues of race and religion is mentioned regularly.³²⁵

³²⁴ *Explanation of Vote before the Vote on Draft Resolution A/HRC/13/L.1 made by Uruguay. Mrs. Laura Dupuis Laserre* (UN Human Rights Council, Geneva, n.d.), <http://webcast.un.org/ramgen/ondemand/conferences/unhrc/thirteenth/hrc100325am1-eng.rm?start=02:27:29&end=02:28:14>; *Explanation of Vote before the Vote on Draft Resolution A/HRC/13/L.1 made by Mexico. Mr. Juan Jose Gomez Camacho* (UN Human Rights Council, Geneva, n.d.), <http://webcast.un.org/ramgen/ondemand/conferences/unhrc/thirteenth/hrc100325am1-eng.rm?start=02:30:43&end=02:33:31>.

³²⁵ UN. Commission on Human Rights, *SUMMARY RECORD OF THE 39th MEETING, 58th Session*, para. 35-37.

The Role of the Holy See

The Catholic Church has considerable influence on GRULAC's position. Not only did a representative of the mission of Holy See to the United Nation reveal to me in person that such influence existed and was executed in connection to the resolution, but documented evidence in form of statements made in UN fora shows that some countries even refer to the Catholic Church in their explanations of vote or position.³²⁶ The Holy See did not only lobby for their stance on the initiative behind the scenes but took the floor itself in 2008 to overtly declare their perspective on the topic of Defamation of Religions. Their representative, Reverend Bené, stated that “the notion of defamation of religions risked removing the focus away from the basic right of individuals and groups and to the protection of institutions, symbols and ideas;” Further, “it could lend itself locally to support for laws that penalized religious minorities and stifled legitimate dialogue among persons of different faiths and cultures.”³²⁷

Flawed concept

In the last HRC session, the representative of Chile spoke out that “we are talking about rights of individuals of persons”³²⁸ as subject of international law and underlined that “it is not religion that is subject to human rights it is the persons”³²⁹. Considering these statements, it can be safely claimed that the understanding of the concept of Defamation of Religions being inherently *flawed* and incompatible with international Human Rights law as shown by this paper, is shared by the GRUCAL members that are not supportive of the initiative.

Freedom of Expression

Countries have expressed reservations that the concept is incompatible with the principles of *freedom of expression* set forth in international Human Rights law. Brazil, in a very clear statement in the 64th GA session, clearly stated that the “concept of defamation of religions was not consistent with international human rights law”³³⁰ and that the “human rights challenges identified in the resolution should be addressed in a context that was not detrimental to the

326 Ibid., para. 36.

327 United Nations General Assembly, *Official Records of the 3rd Committee, 63rd Session, 46th meeting*, (A/C.3/63/SR.46), para. 33.

328 *Explanation of Vote before the Vote on Draft Resolution A/HRC/13/L.1 made by Chile. Mr. Carlos Portales* (UN Human Rights Council, Geneva, n.d.), <http://webcast.un.org/ramgen/ondemand/conferences/unhrc/thirteenth/hrc100325am1-eng.rm?start=02:17:41&end=02:24:46>.

329 Ibid.

330 UN. General Assembly, *Official Records of the 3rd Committee, 64th Session, 42nd meeting*, (A/C.3/64/SR.42), para. 70.

protection of [...] freedom of expression”.³³¹ In the same tone, Colombia explained that their delegation “abstained in the vote because the use of ambiguous and diffuse concepts such as defamation of religion could lead to unjustifiable limitations on freedom of expression that ran counter to the definitions of that right in the relevant international instruments [...]”.³³²

Rights of minorities

In the course of questions regarding the concepts compatibility with the principles of freedom of expression, Member States voiced their apprehension over negative consequences for *the freedom of religion and the rights of minorities*. Chile made a relevant point in HRC session 10 in 2010, in saying that “you can not exercise your religion if you have no right to express it”³³³ and referred to the need to focus on the protection of individuals when it comes to freedom of religion and the rights of minorities. Similarly, Guatemala decided to vote against the resolution on grounds of the resolution ignoring violations of Human Rights against individuals possessing a different religion than the official state religion.³³⁴

Narrow focus on one religion

Interestingly both the arguments posed and the voting behaviour follow a typical pattern of development: A country previously supportive of the resolution that subsequently changes its position towards abstention, would typically state irritation over the exclusiveness of the approach and the *narrow focus of the resolution on Islam* as an explanation for the shift. Only in a later stages would the country add criticism and misgivings regarding freedom of expression and principle flaws behind the concept to their explanations of their vote (EoVs). Examples of countries that have undergone such transition or are in a state of such flux are inter alia Chile, Brazil, Dominican Republic³³⁵, Costa Rica, Honduras³³⁶ or Jamaica. While a similar pattern could be observed in other regional groups as well, only the numerous statements of countries of the GRULAC truly gives considerable evidence for this pattern.

³³¹ Ibid.

³³² United Nations General Assembly, *Official Records of the 3rd Committee, 63rd Session, 46th meeting*, (A/C.3/63/SR.46), para. 51-52.

³³³ *Explanation of Vote before the Vote on Draft Resolution A/HRC/13/L.1 made by Chile. Mr. Carlos Portales.*

³³⁴ UN. Commission on Human Rights, *SUMMARY RECORD OF THE 44th MEETING, 61st Session*, para. 14.

³³⁵ UN. Commission on Human Rights, *SUMMARY RECORD OF THE 45th MEETING, 60th Session*, para. 78.

³³⁶ UN. Commission on Human Rights, *SUMMARY RECORD OF THE 44th MEETING, 61st Session*, para. 8.

Voting Development

Due to the many statements it has made including in the early development of the resolution, Chile provides the perfect case of the typical development of the average GRULAC member-state in changing their position regarding the resolution.

In 2004, Chile declared that “while, on previous occasions, [Chile] had voted in favour of the corresponding resolution”, it would further abstain because the resolutions' focus “primarily on Islam” would “not guarantee the equal protection of all religions from discrimination”³³⁷

In its next step in 2009, Chile while still abstaining on the vote, raised questions over the proposed limitation of freedom of expression, indicating their misgivings about the misuse of Article 20 of the ICCPR prohibiting propaganda and advocacy of national, racial or religious hatred. The Chilean delegation closed their statement by noting that “measures to counter defamation of religions should not be used to undermine the right to freedom of expression, which was essential to strengthening the rule of law and the democratic process”.³³⁸

Then in the negotiations of the Defamation Resolution in HRC session 2010, Chile appeared as an outspoken opponent against the concept and resolution. The country then voted against the resolution and indicated in its explanation of the vote their understanding of the approach as flawed in failing to address the rights of individuals, and placing minorities at greater risk by hampering freedom of expression.

Chile also referred to the outcome of the Expert seminar on Articles 19 and 20 organized and held by the Office of the United Nations High Commissioner for Human Rights, and spoke out against the resolution saying that the concept had adopted the wrong approach, and that the language of the resolution could not lead to an universal or common way to address the stated concerns.³³⁹

This illustrated the pattern well; Chile began with voicing its irritation over exclusiveness of the resolution, shifted then towards more substantial criticism regarding potential implications of the resolution for other Human Rights and ended up by rejecting the concept as a whole as being flawed and incompatible with international Human Rights law.

337 UN. Commission on Human Rights, *SUMMARY RECORD OF THE 39th MEETING, 58th Session*, para. 43.

338 United Nations General Assembly, *Official Records of the 3rd Committee, 63rd Session, 46th meeting*, (A/C.3/63/SR.46), para. 50.

339 *Explanation of Vote before the Vote on Draft Resolution A/HRC/13/L.1 made by Chile. Mr. Carlos Portales.*

Many GRULAC members show a similar pattern and development in their voting behaviour and given explanations. It is therefore predictable that the resolution will lose more support in the group. This is even more true as with the departure of Chile, Argentina³⁴⁰, Mexico³⁴¹ and Brazil, some of the more influential countries have decided to abandon the initiative.

340 *Explanation of Vote before the Vote on Draft Resolution A/HRC/13/L.1 made by Argentina. Mr. Alberto J. Dumont* (UN Human Rights Council, Geneva, n.d.), <http://webcast.un.org/ramgen/ondemand/conferences/unhrc/thirteenth/hrc100325am1-eng.rm?start=02:34:17&end=02:36:49>.

341 *Explanation of Vote before the Vote on Draft Resolution A/HRC/13/L.1 made by Mexico. Mr. Juan jose Gomez Camacho.* <http://webcast.un.org/ramgen/ondemand/conferences/unhrc/thirteenth/hrc100325am1-eng.rm?start=02:30:43&end=02:33:31>

5 Compatibility with the Human Rights Framework

As stated in the discussion on Human Rights earlier, this concept itself remains disputed. General doubts and criticisms regarding the principles of Human Rights include most prominently, the characteristics of its universality and the nature of its interdependence. More specific emphasis has been placed on different types of rights with reference to cultural particularities being used to justify a resetting according to regional or domestic priorities.

As explained in previous sections, the concept of Defamation of Religions has received much criticism regarding its effect on the enjoyment of Human Rights. It is said to undermine Human Rights under the pretext of cultural particularities, instead of protecting them under specific cultural conditions and considerations. The criticism that has been raised regarding the concept of Defamation of Religions have been grave enough to convince the High Commissioner for Human Rights to conduct an expert seminar addressing the underlying Human Rights concerns behind the concept of Defamation of Religions. The expert seminar was held in October 2008 with the participation of 12 experts and over 200 observers, including from Governments, United Nations agencies and representatives from the media and civil society. The report of this event concentrates particularly on the criticisms linked to the right of freedom of expression and the ambiguous interpretation of the articles 19 and 20 of the ICCPR.³⁴²

In the sub chapters below, these concerns and criticisms are taken up into the general context of the concepts themselves as well as the resolutions compatibility to the existing Human Rights framework.

³⁴²United Nations High Commissioner for Human Rights., *REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS - Addendum - Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights: "Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence"*, para. 1-3.

5.1 Protection of Individuals, Groups and Ideas

As discussed in a previous chapter, the legal term 'defamation' is typically defined as the spread of falsehood, with the intent to harm an individuals' reputation and livelihood; and anti-defamation laws are understood as instruments that protect individuals from such libellous activities. In accordance with the provisions of the Human Rights framework, every individual should be protected from incitements to discrimination, hostility or violence aimed against them. Individuals are the defined beneficiaries of Human Rights, and the formulation and defence of their rights is meant to protect their human dignity. Consequently, Human Rights instruments and declarations neither refer, nor apply to ideas, regardless of whether those ideas are secular or religious. Essentially, ideas themselves do not receive the protection of the Human Rights framework, but rather individuals enjoy the specific right to adhere to any religion or worldview of their choice.

Similarly, an idea cannot be subject to defamation but adherents of a religious idea can be defamed on the basis of their beliefs. In fact, the Defamation Resolution highlights examples of such instances of individuals falling victim to defamation as being core issues of concern for the resolution. These cases are framed as the proclaimed consequences or even, the typical symptoms of the phenomenon of Defamation of Religions. Following this understanding, some argue that implementing legal prohibitions against Defamation of Religions wouldn't pose any "[...] greater problems than prohibiting hate speech against racial, ethnic, or religious groups [...]"³⁴³. This argument overlooks a significant difference between the two concepts: Hate speech prohibitions protect individual adherents of specific groups against incitements of hatred, discrimination or violence. Indeed the prohibition of such speech is a mandatory obligation for State Parties. Legal measures to combat Defamation of Religions, however, attempt to shield against speeches or other forms of expressions that *might be interpreted* by members of a religious group as unacceptable on grounds of their religious convictions. From a practical point of view, this means that any such Defamation of Religions or blasphemy legislation calls into question which religious and non-religious world-views are acceptable, which can be voiced in the public square; and – most importantly – who should be in the legitimate position of both authority and expertise to decide this. This poses a difficulty that becomes pre-eminently relevant with regard to religious minorities, whose teachings contradict the convictions of the domestic

343 Liaquat Ali Khan, "Combating Defamation of Religions," 1.

religious majority. The implications of this will be discussed in detail in one of the following chapters.

It can be claimed that a different reading of the term 'religion' as it is used in the Defamation Resolution, suggests that the concept behind the resolution would in fact attempt to protect not ideas, but the rights of (religious) groups. Under this light, the perception that the concept aims to protect certain ideas rather than individual human beings could arguably be just a misapprehension, possibly resulting from the difficult and vague language used in the resolution.

But again, even with regard to group rights, General Comment 31, that evaluates the nature of the general legal obligation imposed on States Parties to the ICCPR, clearly defines the “beneficiaries of the rights recognized by the Covenant”³⁴⁴ as individuals. The General Comment does however, mention that many of the rights and fundamental freedoms set out in the ICCPR – most prominently, the freedom to manifest one’s religion or belief³⁴⁵, the freedom of association³⁴⁶ and the rights of minorities³⁴⁷ – may be exercised and enjoyed in community with others.³⁴⁸ The possibility that these rights may be enjoyed by individuals together in groups, does not extend the application of the right itself to groups as such. As Human Rights are limited to individuals, even when enjoyed in groups,, they can not apply to any groups including of course religious organisations or institutions.

Regardless of whether religion is understood as an idea or as a group, the rights and freedoms set out in the ICCPR do not apply to religion as such. Rather these rights apply to individuals, who indeed might be adherents of aforesaid religious ideas or groups and might exercise and enjoy their rights in private or together in a community.

In conclusion, the concept of Defamation of Religions is aimed at protecting ideas against the violation of rights that are only applicable to humans. This puts into question the terminology of 'Defamation of Religions' as such. In other word, the concept is flawed and it is doubtful if it has any relevance in the Human Rights debate in its current articulation.

344 United Nation Human Rights Committee, “General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,” 9.

345 United Nations, *ICCPR* Article 18.

346 Ibid. Article 22.

347 Ibid. Article 27.

348 United Nation Human Rights Committee, “General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,” 9.

5.2 Freedom of Expression

The Freedom of Expression is one of the fundamental rights set out by the Human Rights framework. The ICCPR sets out the legal standards for freedom of opinion and expression in Article 19. Within this freedom, the right to hold an opinion cannot be regulated, but other aspects such as the right to express opinion may be subject to certain limitations for specific purposes, as set out in the provisions of the ICCPR³⁴⁹:

- (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.

Incidents relating to the intersection of religious feelings and freedom of expression have continuously polarized societies, public opinion and political leadership. And as a result, the question arises as to whether the appropriate answer to these incidents could be a redrawing of “the demarcation line between freedom of expression and hate speech”³⁵⁰; in essence an extension of the purposes under which certain limitations of freedom of expression are applicable.

Supporters of the Defamation Resolution argue that Defamation of Religions constitutes a form of psychological assault, a form of religious discrimination and an insult to human dignity.³⁵¹ Hence, limiting the freedom of expression could be justifiable for the benefit of ensuring social harmony and the protection of the respect for religion. The concepts' proponents have subsequently argued for the need to limit freedom of expression in order to protect the freedom of religion.

Article 19 of the ICCPR, that provides for the circumstances under which such restrictions may apply, includes the statement that the exercise of the right to freedom of expression “carries with it special duties and responsibilities”.³⁵² It is this vague reference that is used by supporters of the Defamation Resolution to justify their attempt at redrawing the line between freedom of expression and freedom of religion. The argument is that Defamation of Religions constitutes an

³⁴⁹ United Nations, *ICCPR*, Article 19.

³⁵⁰ United Nations High Commissioner for Human Rights., *REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS - Addendum - Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights: “Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence”* Para 1.

³⁵¹ UN. Human Rights Council, *Combating Defamation of Religions (A/HCR/Res/10/22)* PP; United Nations General Assembly, *Combating defamation of religions (A/Res/63/171)* OP 3.

³⁵² United Nations, *ICCPR* Article 19, Paragraph 3.

abuse of the freedom of expression and a violation of the duties and responsibilities that come with its exercise. The fulfilment of these duties and responsibilities (although not elaborated in the ICCPR) would be essential for ensuring the right of freedom of expression in the first place. Imposing a restriction of the aforesaid right on the grounds of Defamation of Religions would therefore be an acceptable measure, even if not covered by the provisions contained in the Covenant. But, as the High Commissioner on Human Rights outlined in light of the Defamation of Religions discussion regarding the need to balance the freedom of religion and freedom of expression, both these essential rights and fundamental freedoms are interdependent, not contradictory to each other.³⁵³ This is also reaffirmed by the understanding of the nature of Human Rights as agreed upon in the VDPA as “universal, indivisible and interdependent and interrelated”³⁵⁴. Despite Human Rights being defined as indivisible, the High Commissioner nevertheless mentioned in connection with the drawings of Muhammed in the Danish newspaper *Jyllands Posten*, the “need to explore ways and means to adequately address the issue of religious intolerance by striking the right balance between freedom of expression and freedom of religion”³⁵⁵

From a legal point of view, freedom of expression as one of the basic human rights should not be limited, except where necessary and provided for by international legal instruments. Any other limitation is incompatible with – and a violation of – internationally binding Human Rights law.

Hence, regardless of the concepts' usefulness in realizing its proclaimed goals, the question of its legal compatibility to the Human Rights framework remains. Especially relevant is the ICCPR, whose articles 19 and 20 define the legitimate circumstances for restrictions relating to the exercise of freedom of expression. But first and foremost article 19 guarantees the right for everyone to hold opinions without interference and to subsequently enjoy the right of freedom of expression through any form and media of his/her choice.

As argued previously, the resolution falls short in providing the necessary criteria for Defamation of Religions to distinguish between legitimate criticism and what could be understood as

353 United Nations High Commissioner for Human Rights., *REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS - Addendum -*

Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights: “Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence” Para 3.

354 United Nations, *VDPA Part I*, Para 5; United Nations General Assembly, *Official Records of the 3rd Committee, 63rd Session, 46th meeting, (A/C.3/63/SR.46)*, 43.

355 UN. Secretary-General, *Combating defamation of religions : report of the Secretary-General*. ([New York]: UN, 2006), para. 11.

speeches that need to be prohibited. Moreover, Defamation of Religions framed as the negative stereotyping of religion does not constitute the case of advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence within the scope of articles 19³⁵⁶ and 20³⁵⁷ of the ICCPR. Only if the conditions contained within this framework are fulfilled is it legitimate under international Human Rights law to restrict the right to – and fundamental freedom of – expression, and only for the purposes set out in the respective provisions of the ICCPR.

Not surprisingly the resolution seeks to in fact *extend the scope* of the conditions wherein the exercise of freedom of expression may be restricted. The resolution does this by suggesting additional legitimate grounds for such restrictions that are outlined below.

The proponents of the resolution introduced language that proposes the addition of the case of 'respect of religion' as further grounds for limiting the exercise of freedom of expression. The Defamation Resolution of the 61st General Assembly session first introduced this new language on the balance of rights, drafting the Operative Paragraph 9 as an extension to the respective Article 19 of the ICCPR, reading:

“Emphasizes that 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 or reputations of others, protection of national security or of public order, public health or morals **and respect for religions and beliefs;**”³⁵⁸

In the long run, this language could not find the necessary support with the wider UN membership and was subsequently abandoned by the sponsors of the resolution in the negotiation process in 2008.³⁵⁹ The disputed language was then replaced in 2009 by the more vague terminology “and general welfare”³⁶⁰, but nonetheless remaining an attempt to extend the

356 ICCPR, Article 19, reads:

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone 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.*
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 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 (ordre public), or of public health or morals.*

357 ICCPR, Article 20, reads:

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.*

358 United Nations General Assembly, *Combating defamation of religions (A/Res/61/164)*, OP. 9., [emphasis M.G]

359 United Nations General Assembly, *Combating defamation of religions (A/Res/63/171)* OP 10.

360 UN. Human Rights Council, *Combating Defamation of Religions (A/HCR/Res/13/16)* OP 10.

scope outlined in Article 19(3) for grounds of restricting freedom of expression beyond the legitimate boundaries of the provision. Further, General Comment No. 10 elaborates on the application of article 19 and clarifies the terms and conditions of the restrictions that may be imposed by State Parties: these restrictions must be necessary for the achievement of the purposes for which they are imposed, and the legitimate purposes themselves are limited to those laid down in the respective sub paragraphs a) and b) of paragraph 3.³⁶¹

In this context, the resolution has also been criticised in that it views the possibility to restrict the exercise of freedom of expression as obligatory where defamation of religion occurs, while the limitations to when restrictions may apply are viewed as optional and extendable. In a meeting organized by the High Commissioner for Human Rights to elaborate on related issues, experts outlined the fact that actually, the reverse is true. While restrictions for the purposes set out in Article 19 might be used as a last resort, they do not constitute any obligation for State Parties to apply them. On the contrary, the limitations on the purposes for which such restrictions are applicable are not optional but of binding character.³⁶² Henceforth, any extension of the purposes for the restrictions of the right of freedom of expression is illegitimate.

Under this light, the attempt of the resolution to extend the scope of article 19(3) is incompatible with the framework of the Human Rights instruments; this is because the resolution is in effect calling upon Member States to implement legal measures that would violate international Human Rights law.

The resolution further conflicts with existing Human Rights law, as it tends to blur the distinction between *restricting the exercise* of rights and *limiting rights themselves*:

The resolution uses language in such a way that it suggests that the right of freedom of expression should be subject to restriction rather than emphasising the exercise of that right. The paragraph reads that: “[...] everyone has the right to freedom of expression, which should be exercised with responsibility and may therefore be subject to limitations”³⁶³. Read in its reverse order, but expressing essentially the same, this language states that the right may be subject to

³⁶¹United Nation Human Rights Committee, “General Comment No. 10: Freedom of expression (Art. 19),” June 29, 1983, para. 4, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/2bb2f14bf558182ac12563ed0048df17?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/2bb2f14bf558182ac12563ed0048df17?Opendocument).

³⁶²United Nations High Commissioner for Human Rights., *REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS - Addendum - Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights: “Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence”*, para. 12, 13.

³⁶³United Nations General Assembly, *Combating defamation of religions (A/Res/61/164)* OP 9.

limitations, as the right should be exercised with responsibility. On the matter of such restrictions, General Comment No. 10 takes explicit note of the fact that “[...] when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself”³⁶⁴. Essentially, Human Rights as such may not be limited but restrictions to their exercise may apply as imposed under certain, well-defined circumstances.

This distinction is blurred in the resolution, and it is again the vagueness of the language which provides grounds for the accusation that the resolution was deliberately phrased in such a way to better serve as a tool to justify the systematic undermining of Human Rights.

Concluding remarks

The resolution is not in conformity with Article 19(3) of the ICCPR in aiming to extend of the scope of the purposes for the restriction of freedom of expression by adding either “respect for religions and beliefs “ or “general welfare” to them. Additionally, the resolution is in effect calling upon combating the phenomenon of 'Defamation of Religions' on a legal basis by limiting the freedom of speech to precisely the extent that goes far beyond the legitimate scope of Article 19(3) and 20 of the ICCPR. The resolution is also urging State Parties to adopt such recommendations on a legal base, thereby effectively calling upon governments to violate existing Human Rights law.

364 United Nation Human Rights Committee, “General Comment No. 10: Freedom of expression (Art. 19),” 4.

5.3 Freedom of Religion and Belief

This chapter will discuss the implications of Defamation of Religions vis a vis the freedom of religion and belief. Of specific interest are the rights of persons belonging to religious minorities and of vulnerable groups such as women. Separate chapters will be devoted to each of these groups to take their specific concerns into consideration.

Essentially, the Defamation of Religions resolution closely links the issue of freedom of expression to that of the freedom of religion and belief. The main assumption that proponents of the Defamation of Religions concept make is of an inherent conflict between these two rights; leading to their call for a redrawing of the demarcation line between them skewed in favour of the latter freedom. This builds upon the tradition of the High Commissioner for Human Rights acknowledgement in 2006, where the need to balance the freedom of expression and the freedom of religion was recognised as necessary in order to explore possible means to address the issue of religious intolerance.³⁶⁵ In this regard, supporters of the resolution claim that prohibiting freedom of speech that may be considered defamatory towards other religious beliefs would amount to an active protection of the freedom of religion, and thereby be justifiable.

In this regard, Amyebi Ligabo, Special Rapporteur on freedom of expression, has expressed concern regarding the sacrifice of free expression for the sake of religious feelings.³⁶⁶ It is questionable whether *less speech* actually could lead to *more religious freedom*. In fact, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, emphasised in his report on Defamation of Religion, that: “Indeed, the strategic response to hate speech is more speech: more speech that educates about cultural differences; more speech that promotes diversity; and more speech to empower and give voice to minorities,”³⁶⁷ The resolution aims at protecting religion itself from injury to reputation, rather than protecting the freedom of adherents of a religion to exercise their rights, including the right to express their religion freely. The main argument of the resolution is that the defamation of religion would impede the right of freedom of religion and belief itself. As discussed in the chapters above, the underlying concept remains flawed in this regard. In the expert seminar organized by the Office of the United Nations High Commissioner for Human Rights in October

365 UN. Secretary-General, *Combating defamation of religions*, para. 11.

366 Becket Fund for Religious Liberty, “Combating Defamation of Religions,” 3-4.

367 Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, *Report 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*, para. 42.

2008 in Geneva, Mohamed Saeed M. Eltayeb outlined that the “freedom of religion or belief did not protect religions or beliefs per se”³⁶⁸. He further expressed his view that, “the question whether criticism, derogatory comment, insults or ridicule of a religion encroached on the believer’s right to freedom of religion or belief could only be determined by examining whether such acts negatively affected the various aspects of religious freedom of the believer.”³⁶⁹

To evaluate the resolutions' compatibility with the Human Rights framework, it is critical to examine whether the consequences of the suggested means of addressing Defamation of Religions outweigh their proclaimed benefits or not. To understand what effects recommended legal measures to combat Defamation of Religions may have on the enjoyment of freedom of religion, the far reaching nature of the right itself needs to be taken into account. The 1981 Declaration on the Elimination of All Forms Intolerance and Discrimination Based on Religion and Belief outlines the fundamental freedom of religion and belief in its Article 1.1:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever 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.³⁷⁰

The freedom of religion and belief is a far reaching right, and *all* of its interdependent aspects need to be meaningfully addressed to provide for proper protection mechanisms for the right as a whole. The resolution, however, falls short not only in adequately outlining the need to protect this right but also even in addressing the right *as a whole* taking account of all of its facets. This would not have been as problematic, had the resolution not called for concrete action which impacts the enjoyment of Human Rights. However, not taking into consideration the various aspects of the freedom of religion can result in stifling that right with regard to those aspects, rather than providing better protection to that right as the resolution proclaims it does. A core aspect of the right that remains unaddressed in the resolution, for example, is the right to change one's religion at free will. Questions arose over the manifestation of one's religion, particularly if it is perceived as defamatory to another religion. Essentially, the right for and protection of

368 United Nations High Commissioner for Human Rights., *REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS - Addendum - Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights: “Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence”*, para. 41.

369 Ibid.

370 United Nations, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* Article 1.1.

freedom of religion and belief becomes critical when different religions meet; either in the form of different religious groups that share a common public space or in the form of different understandings within one religion. In both circumstances, strong protection mechanisms are required to ensure the enjoyment of the individuals right to freedom of religion and belief without interference or conflict.

As was outlined in the chapter addressing criticism against the resolution, it is impossible to prove the universal truth of a religious claim, and some of the truths presented naturally contradict each other. In practical terms, one religious teaching defames another and under the solution presented by the resolution, it then becomes the imperative of state authorities to decide which religious argument is given preference in the public square and which must remain silent. In practice then, blasphemy laws tend to be “used to intimidate reform-minded Muslims, sectarian opponents, and religious minorities, or to settle personal scores.”³⁷¹ The tendency of the resolution to stifle freedom of expression, along with the lack of references to core aspects of the freedom of religion and the practical tradition of blasphemy legislation to predominantly prosecute those with dissenting opinions; puts persons belonging to *religious minority groups* at greater risk of Human Rights abuses.

The consequences for minorities deriving from the practical implementation of outlawing so-called defamation of religion will be elaborated in detail in the next chapter. The application of methods to combat Defamation of Religions in the form of Anti-blasphemy laws against reform-minded Muslims in practice also affects other vulnerable groups such as women. As such, a separate chapter is devoted to the question of Women's Rights in context of Defamation of Religions.

In short, the analysis conducted in this paper shows that the concept proclaimed in the resolution is inconsistent with the Human Rights framework's freedom of religion and belief, as it aims to protect religion itself. In this regard, the Defamation of Religions resolution also fails to recognise core aspects of freedom of religion and belief as set forth in Human Rights law. As will be shown in the following chapter, the resolution in fact achieves quite the opposite of the proclaimed aim of protecting the freedom of religion and belief. It severely impedes the rights of religious minorities, and prevents the voicing of demands for women's rights.

371 US Department of State, “International Religious Freedom Report 2006 - Pakistan,” 2006, <http://www.state.gov/g/drl/rls/irf/2006/71443.htm>.

5.4 Rights of Persons belonging to Minorities

This chapter aims to examine the compatibility of the resolution with the rights of persons belonging to minority groups. The Human Rights framework provides for minorities in the ICESCR, the ICCPR, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (A/Res/47/135), Convention on the Rights of Persons with Disabilities, the Declaration on the Rights of Indigenous Peoples and ILO's Convention 169. Of further significant relevance for the enjoyment of freedom of religion and belief for persons belonging to minorities are inter alia, Articles 18, 19, 20 and 27 of the ICCPR, General Comment 22 on the interpretation of Article 18 of the ICCPR and the 1981 Declaration on the Elimination of all Forms of Intolerance and Discrimination based on Religion or Belief.

The specific need for the Human Rights protection of minorities, premised on being a vulnerable group, has been recognized in the Human Rights discourse. Several provisions attempt to take minorities into considerations, such as Article 27 of the ICCPR on the rights of persons belonging to minorities, which reads:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.³⁷²

The Declaration on the Rights of Persons Belonging to National or Ethnic 47/135, which was inspired by Article 27 of the ICCPR, reaffirms and specifies that:

States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.³⁷³

The Declaration requires States Parties to construct and maintain favourable conditions for the religious (or other) identities of minorities and adopt appropriate legislative measures to protect them. The ICCPR further emphasises that persons belonging to minorities have the right to participate in policy making that affects their livelihood and minority group.³⁷⁴

The rights of minorities in this context do not only apply to religious minorities only but also to groups who refrain from holding any religious belief. The Human Rights Committee General

372 United Nations, *ICCPR*, Article 27.

373 United Nations, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, para. 2.

374 Brice Dickson, "The United Nations and Freedom of Religion," 354.

Comment No 22 underlines in this regard:

The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with 'the freedom of religion and belief'.³⁷⁵

The Comment further clarifies:

The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) [...] encompasses freedom of thought [...]. [...] this provision cannot be derogated from, even in time of public emergency.³⁷⁶

The Defamation Resolution is greatly concerned with the rights of minorities, above all of Muslim migrant communities in Western societies; in terms of their rights to manifest their religion, their reputation and their general well-being. The resolution proclaims these groups as specifically vulnerable, and urges for additional protection mechanisms for them, their religious beliefs and value systems.

The resolution points out in its pre-ambulatory part:

Noting with deep concern the serious instances of intolerance, discrimination and acts of violence based on religion or belief, intimidation and coercion motivated by extremism, religious or otherwise, occurring in many parts of the world, in addition to the negative projection of certain religions in the media and the introduction and enforcement of laws and administrative measures that specifically discriminate against and target persons with certain ethnic and religious backgrounds, particularly Muslim minorities following the events of 11 September 2001, and that threaten to impede their full enjoyment of human rights and fundamental freedoms,³⁷⁷

The resolution continues to frame the issue of Defamation of Religions as primarily one of minorities when stating in its operative clauses that it,

Notes with deep concern the intensification of the overall campaign of defamation of religions and incitement to religious hatred in general, including the ethnic and religious profiling of Muslim minorities in the aftermath of the tragic events of 11 September 2001,³⁷⁸

The language further highlights issues such as “the denial of fundamental rights and freedoms of members of target groups, as well as to their economic and social exclusion;”³⁷⁹ and “laws or administrative measures specifically designed to control and monitor Muslim minorities”.

375United Nation Human Rights Committee, “General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18).”

376United Nation Human Rights Committee, “General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18),” July 30, 1993, <http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15> para 1.

377United Nations General Assembly, *Combating defamation of religions (A/Res/64/156)* PP.

378UN. Human Rights Council, *Combating Defamation of Religions (A/HCR/Res/10/22)* OP 5.

379Ibid. OP 6.

In short, the issues raised in the resolution as negative consequences deriving from cases of Defamation of Religions include: *discrimination of religious minorities*, inter alia by *regulation and laws* affecting negatively the equality of religious minorities; *coercion* and pressure exercised on their religious belief systems; and their *reputation threatened* by unfavourable media reporting.

While extensively concerned with the right of Muslim migrant minorities in Western societies, the resolution however does not address domestic religious minorities in Islamic countries and does not take into account the possible side effects of legal measures to combat Defamation of Religions that negatively impact those minority groups.

When it comes to different religions and beliefs, and their interaction with one another, the resolution does welcome efforts to strengthen mutual understanding and respect. It also outlines the role of education for the promotion of tolerance and diversity and underlines the need for cross-cultural and inter-faith harmony.³⁸⁰ While indeed pointing towards the need to improve inter-religious dialogue, understanding and tolerance, it is noteworthy that most of the stipulated provisions address the issue as one *among* cultures and societies, but barely ever *within* societies. The matter is referred to as a more international one, urging nations, civilizations, and religions to interact with each other in harmony and respect. Questions of inter-faith dialogue between regions within a state or society are barely mentioned in the resolution. When it comes to domestic initiatives, the resolution calls solely for legal measures combating religious defamation rather than actions to actively promote tolerance.³⁸¹ And while the resolution raises legitimate concerns regarding religious minorities and their enjoyment of Human Rights, the recommendations for addressing them are in themselves grounds for concern as they can be seen to work to negatively affect the rights of minorities and vulnerable groups rather than protect them. Of particular concern is the potential impairment of the enjoyment of freedom of religion and belief for minorities under the implementation of recommendations stipulated in the resolution. The main facets of concern regarding freedom of religion are many and are well covered in Article 1.1 of the 1981 Declaration, which reads:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever 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.³⁸²

380 United Nations General Assembly, *Combating defamation of religions* (A/Res/64/156).

381 UN. Human Rights Council, *Combating Defamation of Religions* (A/HCR/Res/10/22); United Nations General Assembly, *Combating defamation of religions* (A/Res/64/156).

382 United Nations, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on*

Ideological Context of Concerns for Minorities' Rights

To assess the meaning of the resolutions language it must be placed in the relevant political context that it emerged from and similarly, the misgivings pointed to by opponents of the resolution must be considered in their ideological, religious and political context.

The predominant preoccupation of the freedom of religion for members of religious minorities lies in the right to manifest their religious belief, in particular when exercised in public where it might interfere with the religious beliefs held by the majority. In other words, the act of freely exercising their right to manifest their religion would include all fundamental forms of religious manifestation: Teaching, worship, practice and observance³⁸³, in particular when exercised *visually in the public square*. The right of religious minorities to exercise their freedom of religion can be impaired when their activities involve specific interpretation, such as in the case of *teaching* as a form of *missionary activity*. Acts of practising faith and worshipping deities may be seen as defamatory of a different religious teaching.

Manifestations of religious belief when exercised by religious minorities, often serve as grounds for accusation of missionary activity, because they relate to the highly sensitive issues of apostasy and changing of religious affiliations. While not exclusively an issue limited to Muslim societies, contemporary resistance against freedom of religious choice, in connection to matters of coercion and apostasy, is mostly contained within Islamic States. Shari'ah law, which is the basis for the legislative systems of many OIC members, forbids conversion from Islam to any other religion. A particular problem is that apostasy virtually equals a defamatory statement against Islam in itself. A conversion is in effect proclaiming by implication that Mohammed is not the prophet, or at least is neglecting the fundamental belief of Islam of the Holy Qur'an, as the universal and absolute truth and word of God.³⁸⁴ In other words, apostasy is interpreted as blasphemy, and as such considered a religious crime under existing Blasphemy or Defamation of Religions laws. Subsequently, as the religious practices of minorities may be viewed upon as potentially leading to apostasy when having a proselyting effect, the derived blasphemy rules from the Shari'ah's perspective on apostasy particularly has implications for the freedom of expression of religious minorities. It is enough of a threat that the manifestations of their religious practices of minorities, when taking place in the public space, could weaken or shaken a Muslim's faith. This fear is also reflected in the CDHRI, which states "Information [...] may

Religion or Belief Article 1.1.

383 Taylor, *Freedom of religion : UN and European human rights law and practice*, 210.

384 Dellling, Malin, "Islam and Human Rights," 31.

not be exploited or misused in such a way as may [...] harm society or weaken its faith.”³⁸⁵ Obviously, any deliberate attempt of religious minorities to proselytise is even more vehemently rejected. Unsurprisingly, the countries most supportive of the resolutions recommendation to combat Defamation of Religions by legal measures which in effect limit the freedom of expression, are also the ones most resistant to the idea of an explicit right to change ones religion. The Human Rights Committee clarified that Article 18(3) of the ICCPR includes exactly that; the right to change or to maintain religion at will. At the same time it is essential to note that freedom of religion and belief also contains protection from coercion. The provisions are meant to protect freedom of choice of ones religion, inter alia the choice to maintain ones religion, thereby protecting individuals from coercion that would impair the enjoyment of this right.³⁸⁶ While several OIC members do not recognise the right to change ones religion, they do however interpret any proselytising activity that would lead adherents of Islam to fall from their belief as the kind of coercion that is outlawed by the Covenants provisions.

The Defamation of Religions resolution reflects this fear held by many Islamic countries of faith being weakened also in form of referring to potential coercion resulting from Defamation of Religions to change one's religious belief: The Defamation Resolution urges States to take measures within their legal systems to protect against discrimination, intimidation and *coercion resulting from defamation of religion*.³⁸⁷ This legitimises the targeting of expressions of ones religion that could have a proselyting effect (or could lead to the apostasy of adherents of State religion) by domestic blasphemy legislation. In this perspective, concerns are raised regarding the religious practices of minorities, for instance by the Turkish delegate in the course of drafting the Convention on religious intolerance, in voicing that “freedom to worship or assemble, and to establish and maintain places of worship [...] would encourage proselytising”³⁸⁸ Countries stifling the freedom to manifest ones religion, make a clear distinction between majority and minority groups in this regard. Naturally, disseminating the teachings of the official or dominant religion is tolerated and in some cases even encouraged, while it is the expression of minority religions in public space that is seen as a threat to State religion and often hypocritically framed as threat to the freedom of religion. Contrary to the prejudice in mainstream opinion that suggests that such ideas are solely inherent to Islam, the fear and rejection of proselytising is

385 Organisation of the Islamic Conference (OIC), *Cairo Declaration on Human Rights in Islam (CDHRI)* Article 22 (c).

386 Taylor, *Freedom of religion : UN and European human rights law and practice*, 339.

387 UN. Human Rights Council, *Combating Defamation of Religions (A/HCR/Res/10/22)*, OP. 13.

388 Taylor, *Freedom of religion : UN and European human rights law and practice*, 66.

much more connected to matters of national and cultural identity and thus extends far beyond the Islamic world. As Tylor reveals, Armenia, Bulgaria and Greece are such examples where “Orthodox or State religion is part of the national identity and seen to be threatened by competing religions which proselytise.”³⁸⁹ Continuing in the same line, there are new trends such as the political momentum in many countries aiming to reduce the influx and influence of new religious ideas on society, by protecting traditional State religions through measures of law and regulations.³⁹⁰ First and foremost, but not exclusively, in Islamic countries where domestic law is deeply interlinked with religious law, state provisions and regulations deriving from religion serve to disadvantage new religious movements. The problematic result is that religious jurisdiction is enforced over non-adherents, limiting their rights as minorities. The emergence of political parties pushing for a legal system based entirely on religious law further aggravates this conflict.³⁹¹ Attempts to protect adherents from religious discrimination have led to legal concepts aimed at prohibiting speeches inciting religious intolerance. It has also been a matter of great apprehension that such provisions could serve in practice to cut down on the rights of religious minorities to manifest their religion in certain ways, specifically in the public sphere.³⁹²

As already outlined in the chapter discussing the criticism the resolution has received, the Defamation of Religions resolution does not take into account the natural contradictions of different religious teachings. While all religions claim universal truth, these opinions expressed might be looked upon as blasphemous by adherents of a different religion. As already pointed out in a previous chapter, adherents of Islam view upon Muhammed as the prophet of God, but adherents of Christianity would reject this in accordance to their own religious teachings as false claim. Vice versa, when a Muslim would argue Jesus not being the reincarnation of God, this would essentially be considered as defamatory or blasphemous towards Christian faith. It is highly doubtful, that any OIC member so vocally promoting the idea to outlaw such Defamation of Religions would want to go as far as to strip Muslims of their right to state the Qur'anic teachings, that Jesus is indeed a prophet, but not the reincarnation of God.³⁹³ It is evident, that religious teachings inherently carry the risk of containing a neglect of other religions' teachings, and the probable results of laws and their enforcement deriving from these grounds cannot be assumed to be anything but unequal. Such contradictions might very well be interpreted by

389 Ibid., 65.

390 Ibid., 3.

391 Ibid., 4.

392 Ibid., 3.

393 Becket Fund for Religious Liberty, “Religious Defamation - Issues Brief,” 11.

adherents of a particular religious teaching as defamation of their religion. Each religion claims some sort of truth that people of other faiths might feel offended by. This is a fortiori, as religions tend to claim their truths as universal and exclusive, leaving very little room for accepting the claims of truth made by other faiths.

The Defamation of Religions resolution attempts to expand the scope of legitimate limitations of the right to manifest one's religion for the purpose of protecting 'respect for religions', in its HRC Resolution 4/9, Article 10:

*Emphasizes that 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 or reputations of others, protection of national security or of public order, public health or morals and respect for religions and beliefs*³⁹⁴

Freedom of expression is an essential component of the manifestation of religion, hence the proposed limitation would affect freedom of religion or belief in the course of its operation. It would clearly amount to limiting manifestations of religious beliefs where their exercise would be considered disrespectful to a 'religious truth' of a different belief. In short, the exercise of minorities' religion, in matters of its manifestation, inter alia teaching and public worshipping, can be perceived as forms of expression defaming State religion. The Defamation Resolution is the most far reaching of attempts at the international level that aim to protect religions by creating State obligations to outlaw blasphemy. It also carries the greatest risks for religious minorities in doing so, as the enforcement of legal measures to combat Defamation of Religions "requires a judgement based on the subjective sensibilities of the listener rather than the objectively ascertainable speech of the speaker"³⁹⁵

When, as mentioned above, the purpose of state regulations serves the interest of reducing the influence of religions other than the traditional majority state religion, the risk for the enjoyment of rights for persons belonging to religious minorities becomes paramount. It must be clearly said that limitations or prohibitions of expression of religious minorities deriving therefrom, aiming to protect State religion and shield its teaching from opposing ideas, impair the enjoyment of freedom of religion and belief, and violates international Human Rights law.

Within this contextual setting and considering the vague language of the resolution, determining the boundaries of Defamation of Religions is difficult, especially considering the strong

394 UN. Human Rights Council, *Combating Defamation of Religions (A/HRC/Res/4/9)* OP 10 [emphasis Matthias Gattermeier].

395 Becket Fund for Religious Liberty, "Religious Defamation - Issues Brief," 11.

measures advocated by the resolution to combat the phenomenon. In short, the concern is that Defamation of Religion or blasphemy legislation rules upon the exercise of freedom of religion of minorities as being proselyting activity threatening the integrity of the Muslim faith. In practice, it unrighteously targets persons belonging to religious minorities when prohibiting or prosecuting speeches inciting religious intolerance or hurting religious feelings. This fits in the framework where the 'Defamation of Religions' resolutions constitute an attempt to globalise domestic Anti-Blasphemy laws that already exist in many of the OIC countries that are pushing for the resolution and the outlawing of defamatory and blasphemous remarks by amending international law. The introduction of the concept into UN discussions created a legitimacy that serves as an international cover for existing, often very harsh Anti-Blasphemy laws in Islamic countries.³⁹⁶ As pointed to in the chapter elaborating on the interaction between Islam and Human Rights, one needs to keep in mind that ignoring rights of religious minorities in a document on human rights is just another way of allowing it to continue to happen not only with impunity, but with minimal attention.

Ground Consequences of Legal Implementation

The risks and effects on the enjoyment of Human Rights of persons belonging to minorities, above all religious minority groups, of legal measures to combat Defamation of Religions become overt in their implementation on the ground, foremost in jurisdiction and law enforcement. In practice Anti-Blasphemy laws, as the usual application of legal initiatives combating Defamation of Religions, are evidently biased towards the discriminatory prosecution of religious minorities. As the Special Rapporteur for freedom of religion or belief, Asma Jahangir, has recognised in her reports to the HRC and General Assembly, on the domestic level “numerous examples of persecution of religious minorities” were “result of excessive legislation on religious offences [...]”.³⁹⁷ In Pakistan, for instance, domestic anti-blasphemy laws outlaw defamation of religion as a criminal offence, and include punishments as severe as the death penalty. The broad provisions of Articles 295 and 298 of Pakistan's Penal Code have been consequently used to intimidate and prosecute members of religious minorities, including other Muslim groups.³⁹⁸

³⁹⁶Ibid., 2.

³⁹⁷Special Rapporteur on freedom of religion or belief, Asma Jahangir, *Elimination of all Forms of Religious Intolerance, interim report submitted in accordance with General Assembly resolution 61/161*, 2007, para. 29.

³⁹⁸United States Commission on International Religious Freedom, *Annual Report 2009*, 229.

Pakistan consists of over 96% Muslims, but it is predominantly religious minorities of the remaining 4% of the population that are accused of blasphemy. In fact about 50% of all cases since the introduction of the respective Articles 295 and 298 of Pakistan Penal Code till 2005 have targeted non-Muslim individuals.³⁹⁹ Allegations of blasphemy, which are often proven false, nonetheless “result in the lengthy detention of, and sometimes violence against, Ahmadis, Christians, Hindus, and members of other religious minorities, as well as Muslims.”⁴⁰⁰ In particular, religious minorities continue to be charged on “flimsy, insubstantial and uncorroborated evidence”⁴⁰¹ as having violated blasphemy law. The consequences for stigmatised victims of blasphemy allegations are tremendous, even if they are acquitted under false accusations. Many have been forced into hiding or have sought refuge abroad for being threatened by violence and receiving death threats.⁴⁰² But some have fallen victim to violent mobs, following the acquittance of their groundless cases. While blasphemy laws target and prosecute both Muslims and non-Muslims when a brought to court as a case against mainstream Islam, “in cases where the religious feelings of a minority religion were insulted, the blasphemy laws were rarely enforced and cases rarely brought to the legal system”⁴⁰³. Similarly in Afghanistan, the General Directorate of Fatwa and Accounts declared Baha’i religion as blasphemy and converts from Islam as apostates.⁴⁰⁴

The Becket Fund for Religious Liberty, a law firm defending the right of freedom of religion of individuals belonging to religious minorities, has collected case examples from around the world, wherein it is evident that religious minorities are disproportionately targeted under defamation of religion jurisdiction on the grounds of the interests of the religion of the majority. This includes as well cases of *minority opinion within majority religion*. For instance in Iran, a “member of the pro-reform Mojahedin of the Islamic Revolution was sentenced to death for calling for the reformation of religion in which people should not 'blindly follow' religious leaders” and an Egyptian professor from “Cairo University was declared an apostate for teaching his students to read certain parts of the Qur'an metaphorically”⁴⁰⁵

399 Nina Shea, *Testimony of Nina Shea, Director Hudson Institute's Center for Religious Freedom: PAKISTAN'S ANTI-BLASPHEMY LAWS*, 2009, www.hudson.org/files/documents/SheaPakistan108.pdf.

400 United States Commission on International Religious Freedom, *Annual Report 2009*, 68.

401 Javaid Rehman and Susan C. Breau, *Religion, human rights and international law : a critical examination of Islamic state practices* (Leiden ; Boston: Martinus Nijhoff Publishers, 2007), 435.

402 United States Commission on International Religious Freedom, *Annual Report 2009*, 229.

403 US Department of State, “International Religious Freedom Report 2006 - Pakistan” unpagged.

404 United States Commission on International Religious Freedom, *Annual Report 2009*, 146.

405 Becket Fund for Religious Liberty, “Religious Defamation - Issues Brief,” 11. Also providing additional examples: “In other instances, anti-blasphemy laws punish mere trivialities. In November 2007, a Sudanese court sentenced a British teacher to fifteen days in jail for “insulting religion,” after she named a class teddy

In short, Anti-Blasphemy laws such as seen in the case of many OIC countries, inter alia Pakistan, Iran or Afghanistan have proven to create a *culture of religious intolerance* within the society.⁴⁰⁶ This notion is reaffirmed by UN officials alike. The Special Rapporteur for freedom of religion or belief, Asma Jahangir, herself expressed her concerns in her reports to the General Assembly. Defamation of Religions measures would promote an “atmosphere of religious intolerance”.⁴⁰⁷ Such jurisdiction outlawing Defamation of Religions also serves the purpose of silencing members of the various religious minorities.⁴⁰⁸ In this line of argument, Asma Jahangir pointed out that “[...] domestic blasphemy laws [...] protect only the prevailing religion in the State concerned, or they are applied in a discriminatory sense.”⁴⁰⁹

The use of blasphemy legislation to outlaw defamatory remarks of religion, shows an obvious pattern in prosecuting religious minorities particularly, in comparison to the majority. As the Becket Fund for Religious Liberty⁴¹⁰ concluded, blasphemy jurisdiction as the legal expression of Defamation of Religions measures “do not help [...] minorities. Such laws only benefit those who are in the majority and have the power to determine what is acceptable speech in the public square.”⁴¹¹

It can be postulated that a case of religious defamation or disrespect of religion is most likely to be made by the religious majority which has the power to determine public discourse and opinion deciding what forms of religious expressions are acceptable in the public square and which ones are to be prohibited. As critics have pointed out “[...] much of the persecution and discrimination has resulted not from 'defamation of religions' but from state action against religious minorities and dissenters, who promote viewpoints that are often considered offensive to the majority religious populations in each of these countries.”⁴¹²

bear Mohammed. The bear had been named after a popular student in class who was also named Mohammed.

The teacher was pardoned and deported the following month.⁴⁷ “as well becket fund source

406 Rehman and Breau, *Religion, human rights and international law : a critical examination of Islamic state practices*, 434.

407 Special Rapporteur on freedom of religion or belief, Asma Jahangir, *Elimination of all Forms of Religious Intolerance, interim report submitted in accordance with General Assembly resolution 61/161*, para. 77.

408 United States Commission on International Religious Freedom, *Annual Report 2009*, 5.

409 Special Rapporteur on freedom of religion or belief, Asma Jahangir, *Elimination of all Forms of Religious Intolerance, interim report submitted in accordance with General Assembly resolution 61/161*, para. 70.

410 The Becket Fund for Religious Liberty is a public interest law firm working for the protection of the free expression of all religious traditions.

411 Becket Fund for Religious Liberty, “Combating Defamation of Religions,” 7.

412 Ibid.

Concluding Remarks

While the Defamation of Religions resolution does not violate Human Rights law in this regard directly in its stipulated provisions, it is inconsistent with the Human Rights framework as a whole. As is clear, the concept of combating Defamation of Religions in its practical implementation, has shown to lead to legal regulations, law enforcement and prosecution which impair the enjoyment of Human Rights of persons belonging to minorities, first and foremost with regard to their fundamental freedoms of religion or belief. The Defamation Resolution encourages States to consider implementing laws and regulations impeding those persons' rights.

In this regard it also must be noted that often freedom of religion is less a concern for religious minorities, and rather relevant for Muslims converting to a different religion. The strong feelings that conservative adherents of Islam hold about the questions of apostasy, free choice and the act of changing ones religion negatively affects religious minorities, as they pose a threat as alternatives for Muslims in terms of conversion. As such, their rights, above all freedom of expression, are often sacrificed for the sake of preventing conceivably missionary effects of the manifestation of their religious belief and protecting mainstream Islam. Legal initiatives deriving thereof to combat Defamation of Religions in the form of Anti-Blasphemy laws and other forms of limitations of the freedom of speech in practice empower the ruling majorities against the weak minorities.

5.5 Rights of Women

The role of women is often overseen, sometimes neglected and mostly downplayed but remains of crucial importance to human development. However, women have been subject to discrimination throughout our history in almost all societies through various means of suppression that have served well to stifle their rights. Religion, having been part of our societies and cultures for as long as mankind has existed, is by no means excluded from the structures that have served as instruments for the suppression of women.⁴¹³ Unfortunately the subject of women's Human Rights in the context of religion, is often instrumentalised for ideological and political debates in which some religions are framed as superior to 'others' that allegedly remain backward and primitive. Such attacks serve specific political purposes, draw upon the unspecific fears of people, and are often motivated by racism and xenophobia⁴¹⁴. Although potential areas of tension between women's rights and religions are clearly not an issue exclusive to one religion⁴¹⁵, such widespread false accusations framed upon religious intolerance, add to the negative image of Islam in particular. On the other hand, it is also true that a constant hostility, suspiciousness and negative projection in societies, primarily through media, has led to an over-sensitivity shared by many Muslims that tends to immediately dismiss any criticism as just another deliberate affront against Islam itself.

Unsurprisingly, a central objective in the call for combating Defamation of Religions is to reject and prohibit this negative stereotyping of Islam. The misuse of the question of women's rights and religion as a tool for short sighted political purposes conflates and blurs the boundaries between legitimate criticisms on discrimination against women based on religious arguments, and politically motivated attacks inciting religious intolerance. This is due to the fact that the Defamation Resolution does not contain any mechanism for the protection of rights of women, nor does it contain any provision or reference touching upon this subject. Also generally, the resolution does not differentiate between legitimate criticisms of religious teachings or practices and Defamation of Religions. Criticism over violations of women rights could be easily mistaken – wittingly or unwittingly – for blunt, deliberate attacks against Islam as such and would provoke

413 Mashood A. Baderin, "The Role of Islam in Human Rights and Development," in *Religion, Human Rights and International Law* (Martinus Nijhoff Publishers, 2007), 348.

414 *Take for an example the election poster of the Viennese election champagne 2010 of the Austrian right wing party 'FPÖ', stating that they would protect 'free women' ; indicating thereby that Muslim women would be suppressed by Islam (symbolized by the headscarf)*

415 Christine Chinkin, "Women's Human Rights and Religion: How Do They Co-Exist?," in *Religion, Human Rights and International Law* (Leiden ; Boston: Martinus Nijhoff Publishers, 2007), 53.

counter-reaction in the form of silencing the critical voices whose legitimacy has been thereby denied. In other words, the rights of women are at risk of being stifled under arguments to combat the phenomenon of Defamation of Religions, as is promoted within the resolution today.

There are many reasons for which women's rights can be endangered in religious contexts including particularly, religious teachings aiming to establish the superiority of men, cultural values with a similar purpose that are not overtly prescribed but are justified by religious teaching, disputes over the balancing of rights with the view that one can outweigh another, misunderstandings and suspicions of cultural imperialism and many more.

Conflation of culture and religion

There is some discrepancy between claims made for the freedom and equality of women and those made in the name of religion. Practices that violate rights of women, while often a legacy of certain traditions, may be justified on the grounds of religious teachings when specific elements serving that purpose are singled out. This is not to say that violations of rights for women would occur *because* of some specific religious provisions, but they may be justified *in their name*.

It must be acknowledged that many of the adverse attitudes attributed to Islam are not Islamic in their legal or religious sense.⁴¹⁶ Rather, many traditional practices grown into the conscience of society are often intermingled with religious traditions, and arguments based on religious teachings are used to justify the conservation of existing norms and practices.

Women's rights are exceptionally endangered when, as Chinkin points out, both cultural and religious arguments support the proclamation that the social status of women be determined by community norms. When it comes to social policies, the decision making process remains the right of the male members of the community; but when it comes to compliance of the norms set up it is the women's role in maintaining community honour that is seen as paramount.⁴¹⁷ Remarkably, women themselves are not involved even in matters that directly relate to their own social space, which is an even more critical omission when their opinions are contradictory to existing traditional values. The exclusion of women's opinion and denial of their expression is then justified with religious arguments. Regardless, if those practices are seen as part of the

416 Mashood A. Baderin, "The Role of Islam in Human Rights and Development," 350.

417 Chinkin, "Women's Human Rights and Religion: How Do They Co-Exist?," 59.

religious canon and defended as such, to frame criticism on them would be regarded as blasphemous or defamatory in the context of this resolution.

Balance of freedom of religion over women's rights.

Although discrimination on the grounds of religious opinion is obviously prohibited by the Human Rights standard, the right of freedom of religion and belief serves as a valid argument to deny women's equality and freedoms, when their empowerment is seen to counter the requirements of their religion. Where discrepancies between claims for women's equality and contradicting claims of religious requirements meet, tensions arise. The idea of the justifiable neglect of the rights of women on the basis of religious teachings or manifestations is grounded in the misapprehension that some rights and freedoms deserve greater protection and hold more value than others. Examples of such trade-offs would be for instance, holding facets of religious freedoms with reference to the exercise of their teachings above principles of equality of men and women or rights such as freedom of expression.

However, it should be noted that the right to manifest one's religion is *not* unlimited but falls under restrictions when necessary to protect the freedoms and Human Rights of others as outlined in international law, most prominently the ICCPR.⁴¹⁸ This evidently must include the rights of women.⁴¹⁹ Hence, any justification of the violation of the Human Rights of women on grounds of religious freedom must be rejected in the strongest terms.

Cultural Imperialism and Incompatibilities between Shari'ah and Human Rights law

Women's rights are often rejected on the basis that the concept of Human Rights is a Western construct; its claim for universality is only a vehicle of Western imperialism to impose their own norms over local ones. Within this logic, Human Rights are oppressive of the particularities of local culture and religion that ought to be protected against the imperialism of the Human Rights project.⁴²⁰ The denial of women's rights is perceived as the defence of one's own customary values. One should not forget that women's rights have indeed been instrumentalised for political purposes, such as to add moral justification for US military invasion in Afghanistan⁴²¹. Such

⁴¹⁸Taylor, *Freedom of religion : UN and European human rights law and practice*, 292.

⁴¹⁹Chinkin, "Women's Human Rights and Religion: How Do They Co-Exist?," 55.

⁴²⁰Chinkin, "Women's Human Rights and Religion: How Do They Co-Exist?."

⁴²¹*Ibid.*, 58.

instances undoubtedly fuel suspicions that women's rights are being used as a strategy of cultural imperialism to undermine local social cohesion that is exemplified and safeguarded by traditional family values. The empowerment of women, when seen as an imposition resultant from a lost war against a greater enemy, cannot be expected to be welcomed with open arms.

Most Islamic States view women's rights in the form recognised by international Human Rights instruments such as the 'Convention on the Elimination of all Forms of Discrimination against Women', as being at least partially incompatible with Shari'ah law. This was evident by statements and reservations made by those States in the course of the adoption of CEDAW. Most objections were made in connection to the question of the equality of men and women, in particular with regards to Articles 2, 9 and 29⁴²²; and these objections were defended with reference to the higher authority of Shari'ah law. Above all, Article 2 was seen as unacceptable and willingness to comply to the contained provisions was either limited to those circumstances which would “not run counter to the Islamic Sharia.”⁴²³ or entirely denied its binding character “as they conflict with Sharia law” in principle.⁴²⁴ The incompatibilities identified, it was argued, were a result of the inherent cultural bias of the instruments towards western concepts, ignoring the cultural particularities that made the provisions of CEDAW subject to conflict. On these grounds, Iran, Somalia and Sudan remain the only countries that are non-signatory to the Convention.

Concluding Remarks

As argued before, the application of concepts to combat Defamation of Religions in the form of Anti-blasphemy laws against reform-minded Muslims, in practice also affects women as a vulnerable group. In Afghanistan for instance, a student was charged for religious crimes under blasphemy law for disseminating material on women's right in Islam and was subsequently sentenced to death; a punishment that was later transformed to 20 years imprisonment to avoid international pressure over Human Rights concerns.⁴²⁵ Examples like these make it obvious that advocacy of women's rights can be easily stifled and even effectively prosecuted against, under allegations of defaming Islam or its teachings. Hence, legal initiatives to combat Defamation of

422 United Nations, “Declarations, Reservations and Objections made by State Parties to CEDAW,” n.d., <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>.

423 Egypt, Ibid.

424 Bangladesh, Ibid.

425 United States Commission on International Religious Freedom, *Annual Report 2009*, 144.

Religions must be seen as critical, in particular as the Defamation Resolution is not concerned about the protection of freedom and does not actively call for women's rights. Unfortunately, till today, the resolution does not even recognise any intersection between women's rights and freedom of religion. The proponents of the resolution do not seem to be concerned about the role of women and the implications for their rights if mechanisms of combating Defamation of Religions are imposed. Women are simply not mentioned a single time in the resolution, not even as a potential victim of instances of Defamation of Religions, as though they do not exist in the scope of the phenomenon at all.⁴²⁶

It must be recognised that conservative interpretations of Islamic sources can and do impair various rights to different extents for women.⁴²⁷ Patriarchal, male-dominated governments hold a monopoly on the interpretation of Islam, and may judge arbitrarily, guided by self-interest and lacking higher accountability mechanisms. This negatively affects the Human Rights of women, for instance in Saudi Arabia, where full equality before the law is far from being established, as their rights to freely express themselves, peacefully assemble or simply move freely in public are systematically curtailed.⁴²⁸ In conclusion, conservative interpretations often serve short-sighted political purposes, and is instrumentalised for sake of male dominated political power and the conservation of traditional values denying women's rights. As for the resolution's concept of Defamation of Religions, this adds to the probability that the concept will be misused as a tool to undermine the Human Rights and fundamental freedoms of women, by stifling criticisms of the discriminatory practices against women that are justified by religious arguments. The concept serves to shield States from any kind of criticism, constructive or otherwise, by arguing that it defends Islam and rejecting criticism as negative stereotyping.

A call by the resolution to implement sound mechanisms to protect women's human rights and a definite clarification on which forms of expression are perceived as legitimate and which are not, would do much to improve the situation. It would help to discourage the misuse of the concept as a tool to stifle women's rights. This is critical because not taking women's rights into account in this difficult context is just another way of allowing Human Rights violations against women to continue to happen with impunity in the name and justification of religion and its protectionist mechanisms.

426 Compare with the Defamation Resolutions as far as up to A/HRC/Res/13/16

427 Mashood A. Baderin, "The Role of Islam in Human Rights and Development," 349.

428 United States Commission on International Religious Freedom, *Annual Report 2009*, 88.

6 Conclusion and Hypotheses Formation

In this last chapter I formulate hypotheses that I suggest for testing in further research. Those results are grounded / based on underlying assumptions I have made in beginning of the thesis. Over the course of the research the assumptions made in the beginning of the paper were reaffirmed. Hence, here I repeat those assumptions and elaborate how those have been supported by my research.

Assumption 1:

There is no significant difference between legislation to 'Combat Defamation of Religions' and traditional 'Anti-Blasphemy' laws.

From a legal point of view, there is little difference between the two concepts of Defamation of Religions legislation and Anti-blasphemy law in their practical application. The consequences of existing Anti-Blasphemy laws executed in many countries, including the strongest proponents of the resolution, illustrate the effects that legal measures to combat Defamation of Religions have on the enjoyment of Human Rights on the ground. In addition, one can say that the Defamation Resolution attempts to raise domestic blasphemy legislation to the level of international law under the new term of Defamation of Religions.

Assumption 2:

The proclaimed means of combating Defamation of Religions as proposed in the resolution, are incompatible with international Human Rights law, in particular with respect to the right of freedom of expression and the enjoyment of freedom of religion by persons belonging to vulnerable groups.

Through an examination of various facets related to this question, it has become evident that the resolution is in fact *not compatible* with international Human Rights law. Several facts have been identified which uphold this conclusion:

The resolution calls upon States (and welcomes their compliance with those calls) to implement legal measures that would violate international law, most prominently Articles 19 and 20 of the ICCPR. Crucially, in aiming to extend the purposes for the restriction of freedom of expression by adding either 'respect for religions and beliefs' or 'general welfare' to them, the resolution is

evidently in contradiction of Article 19(3) of the ICCPR. Hence, the resolution is in effect calling upon States to directly violate internationally binding Human Rights law.

Moreover, the findings of this research confirm, that such legislation severely impairs the enjoyment of Human Rights, above all for vulnerable groups such as religious minorities or women.

Assumption 3:

The strong language in the resolution recommending means to address the issue in combination with the lack of a clear definition of Defamation of Religions, opens the concept to misuse, particularly because it puts the State firmly in charge of deciding which ideas may be expressed in the public square and which may not.

This paper has shown the resolution's language to be problematic for Human Rights due to its selective dichotomy of vague and strong language, which opens the door for conceivable misuse as a tool to shield States from criticism, to mainstream public opinion, and undermine Human Rights principles.

Assumption 4:

The terminology of the concept is inherently flawed in proclaiming the protection of religious ideas rather than human beings, and as such is misplaced for the Human Rights discourse.

A central finding of this research is that the concept of Defamation of Religions is aimed at protecting *ideas* against the violation of rights, which are essentially only applicable to human beings. This confirms that the concept itself is flawed and puts to question the terminology of 'Defamation of Religions' as such. Further, this raises serious doubts as to whether the concept in its current articulation, has any relevance in the Human Rights debate altogether.

6.1 Hypotheses on the Political Developments

The EU argues persuasively that the terminology employed by the resolution is flawed and the concept has no relevance in the context of Human Rights. This argument has not only been taken up by countries outside the WEOG but also by powerful regional players such as Brazil. The argument seems to be valid, because the alternative language suggested such as 'incitement to religious hatred' is arguably better suited for meeting the concerns contained in the resolution, and is a more legal implementable language for any practical purpose. A more detailed content analysis of the member-states' Explanation of Votes that changed their position from previously supportive to a more reserved one, could be used to confirm following hypothesis:

Hypothesis 1:

If the OIC retains the terminology of the specific expression 'Defamation of Religions', the resolution will continue to lose support throughout the UN membership.

The patterns in GRULAC indicate a growing concern over the implications of the concept of combating Defamation of Religions for the freedom of expression. There is evidence to suggest that these concerns have translated into a reluctance by GRULAC to support the resolution, which attempts to use the language in its clauses to extend the scope of Article 19 of the ICCPR in restricting the freedom of expression.

Hypothesis 2:

If the OIC further aims at extending the scope of Article 19 ICCPR through the resolutions language, the resolution will lose substantial support among GRULAC.

While African states have not articulated their position on the issue of the linkage between race and religion in the course of the defamation resolution too well; they have however placed their reservations against a conflation of racism and religious intolerance at various other occasions the UN bodies.

Hypothesis 3:

If the OIC continues linking Defamation of Religions with the issue of racism, the Sub-Saharan states of the African Group will begin to revoke support for the resolution.

Similarly, the narrow focus on Islam and by association, effectively singling out one specific religion and side-lining others, is seen as highly problematic by a substantial part of the UN membership. While concerns over the lack of inclusion were frequently posited by member-state as explanation for a change in their position away from the resolution, the case of GRULAC has shown that these concerns are merely the tip of the iceberg. More substantial concerns over Human Rights implications and the terminology of Defamation of Religions as such, have often been voiced in subsequent years. This could indicate that concern regarding the non-inclusive approach of the resolution is merely used as a first step in shifting positions vis a vis the concept, rather than a substantial reservation determining the countries rejection of the resolution. This leads me to the following hypothesis:

Hypothesis 4:

Until concerns over possible Human Rights implications deriving from the resolutions language are dealt with, the accommodation of concerns regarding the narrow focus of the resolution on Islam alone, will not help the OIC in their efforts to sustain the support for the resolution.

As elaborated on previously, the concept of Defamation of Religions differs little from the concept of Blasphemy, and might as well be used by non-state actors (groups) to effectively *cut themselves off from state authority*. As discussed in this paper, groups such as the Tehrik-e-Taliban Pakistan have been using allegations of *anti-Islamic policies* of the government to justify their increasing violence against state authorities and the civilian population in Pakistan. Not necessarily leading to an intensely violent conflict as with the example of Pakistan, the rejection by non-state actors of specific legal regulations or law enforcement on the grounds of being *blasphemous*, might well contribute to increased tensions among society. This might be an

even greater problem for multi-religious societies, societies with religious tensions or societies in which social groups representing extreme or intolerant religious ideas operate. In this context I formulate two hypotheses:

Hypothesis 5:

If Defamation of Religions becomes a jurisdictional tradition, the concept is likely to be employed by religious extremist groups to justify cutting themselves off from state authority.

Hypothesis 6:

If Defamation of Religions legislation is prosecuted indiscriminately and particularly harsh, this tends to lead to higher social hostility among the society.

6.2 Hypotheses concerning Human Rights Implications

Many reports and evidence given, suggest that accusations of blasphemy have been frequently used as an effective tool to settle personal scores and gain private (economic) advantage. The allegation do not need to be substantial for such strategy to eliminate eg: unwanted competition to be successful. Firstly, because allegations of blasphemy, even if they are proven false later, nonetheless often result in an initial lengthy detention. Secondly, because even if victims of false blasphemy accusations are acquitted they often face threats by religious extremists and are forced into hiding. On the other hand, during the research for this thesis no indication has been found that false accusations have been prosecuted for defamation. I therefore hypothesis:

Hypothesis 7:

If Defamation of Religions legislation does not criminalise false allegations of defamation as a punishable offence, it will tend to be misused for revenge and personal benefit.

Conservative interpretations of Islam have been used to restrain various *rights for women*. Patriarchal, male-dominated governments hold a monopoly on the interpretation of Islam and judge arbitrarily, guided by self-interest with a lack of higher accountability mechanisms. This negatively affects the rights of women, as criticism interpreted as going against the dominating interpretation of Islam is outlawed by Anti-blasphemy jurisdiction. The Defamation of Religions resolution in fact, encourages the greater establishment of such Anti-blasphemy laws; and where they already exist, the resolution provides an international cover to justify them by bringing the concept to the international stage. Hence, the Defamation Resolution operates contrary to the objectives of Human Rights and the obligation for States deriving therefrom to protect and promote equal rights for women and men. Surprisingly, the question of the effects of the resolution on women's enjoyment of Human Rights has not yet received any attention, either by proponents or within more critical examinations of the concept. It is especially problematic that the resolution does not take into account women as notable subjects to whom the proposed initiatives may apply or interfere with. To quote Malin Delling, "Not dealing with the rights of women [...] in an Islamic document on human rights [which the Defamation Resolution claims to be, M.G.] is consequently only a hypocritical way of allowing these discriminations to continue."⁴²⁹

Hypothesis 8:

If Defamation of Religions legislation as proposed is used in conservative Islamic Countries to silence public criticism, the rights of women, in particular, will be severely impaired.

The other category identified as exceptionally vulnerable to potential misuse of the concept of combating Defamation of Religions as articulated in the resolution, is that of *religious minorities*. As a matter of fact, the recommendations and provisions of the Defamation Resolution do not conform with its proclaimed goal to provide protection to persons belonging to religious minorities in the exercise of their rights as provided for in international Human Rights law. On the contrary, the resolution calls for measures that would impair individual enjoyment of Human Rights, such as their right to manifest religion in public square. Hence, the Defamation Resolution and its underlying concept is not compatible with the existing Human Rights

⁴²⁹ Delling, Malin, "Islam and Human Rights," 37.

framework for the protection of rights of persons belonging to minorities, most notably religious ones. It becomes evident that the Defamation Resolution does not serve the interest of religious minorities, neither Muslim minorities in Western societies nor the various religious minorities within Muslim States.

This research has shown that the problematic implications of the concept of Defamation of Religions are particularly relevant for Muslims converting to a different religion. The strong feelings that conservative adherents of Islam hold about the questions of apostasy, free choice and the act of changing ones religion negatively affects religious choice, as conversion of Muslims is seen as forbidden by Islamic teaching and perceived as a insult and threat to Islam.

From these considerations, I derive the following three hypotheses for further examination:

Hypothesis 9:

Where Defamation of Religions finds implementation into national legislation, its practical execution in the form of prosecution of individuals in court tends to target persons belonging to religious minorities to a disproportionately greater extent than majorities; thus being discriminatory and violating freedom of religion.

Hypothesis 10:

Where Defamation of Religions legislation is implemented in Islamic countries, the conversion from Islam tends to be interpreted as a criminal offence under this legislation, and thereby violates the human right for freedom of religion.

Hypothesis 11:

If differing opinions within a religion are perceived as threat to the dominant religious teaching Defamation of Religions legislations tends to be instrumentalised as a tool to mainstream the accepted religious interpretation.

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German Summary – Deutsche Zusammenfassung

Seit 1999 bringt die Organisation der Islamischen Konferenz eine Menschenrechtsresolution zum Thema 'Defamation of Religions' in die Foren der Vereinten Nationen ein, die sich mit der negativen Stereotypisierung von Religionen, insbesondere des Islam durch Medien, beschäftigt. Die Resolution stellt die Diffamierung von Religionen als eine Verletzung der menschlichen Würde dar, sowie in weiterer Konsequenz als Menschenrechtsverletzung. Als Reaktion wurden Bedenken laut welche die Kompatibilität des Konzepts mit den grundlegenden Prinzipien der Menschenrechte in Frage stellten. Vor allem das Recht auf freie Meinungsäußerung wurde durch die in der Resolution vorgesehenen Maßnahmen als massiv gefährdet angesehen. Die vorliegende Arbeit knüpft an diese Kritik an und durchleuchtet die Vereinbarkeit des Konzepts mit den Menschenrechten. Zu diesem Zweck wird die Resolution auf ihre rechtlichen Implikationen hin überprüft und eine Analyse der politischen Dynamik innerhalb der Vereinten Nationen durchgeführt. Dabei stehen die juristischen Auswirkungen des Konzepts für den Schutz des Individuums, insbesondere in Verbindung mit Fragen der freien Meinungsäußerung und der Rechte religiöser Minderheiten, im Vordergrund. Die politische Analyse inkludiert eine Untersuchung der Abstimmungsmuster der Mitgliedsstaaten über die Resolution in den verschiedenen Gremien der Vereinten Nationen, sowie deren offiziellen Statements in diesem Zusammenhang, und dient dazu die zukünftige Entwicklung der Resolution besser abschätzen zu können. Folglich konnte nachgewiesen werden, dass das durch die Resolution vorgeschlagene Konzept zur Bekämpfung der Diffamierung von Religionen mit dem Menschenrechtsstandards *nicht kompatibel* ist. Vielmehr, hat das Konzept schwerwiegende Implikationen für verschiedene identifizierte Menschenrechte. Weiters konnte bestätigt werden, dass sich in die Gesetzgebung zur Bekämpfung von Diffamierung von Religionen konzeptionell nicht von traditionellen Blasphemiegesetzen unterscheidet. Die politische Situation ist zudem von einem Stillstand der Positionen gekennzeichnet, Verhandlungen zur Resolution finden in einer Atmosphäre des gegenseitigen Misstrauen und wechselseitigen Verdächtigungen statt. Die Ergebnisse der vorliegenden Arbeit legen nahe, Konzept und Terminologie von 'Defamation of Religions' für die juristisch und konzeptionell besser geeignete Sprache von 'incitement to religious hatred' aufzugeben. Zudem zeigt sich die Notwendigkeit, Anliegen von Minderheiten sowie eine unentbehrliche Gender-perspektive als zentrale Elemente in die Bewertung des Konzepts einzubinden, um Menschenrechtsimplikationen überhaupt adäquat beurteilen zu können.

Curriculum Vitae

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EDUCATION

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| 2004 – 2010 | International Development Studies (Individuelles Diplomstudium Internationale Entwicklung), University of Vienna |
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EXTRA- CURRICULAR ACTIVITIES

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| 2009 – 2010 | Co-Founder and Head of Logistics of the cross-regional dialogue and leadership initiative Muslim Jewish Conference |
| 2008 – 2009 | Organizing the Viennese Delegation for Harvard World Model United Nations conference 2009 (Netherlands) and Lahore Model United Nations 2008 (Pakistan): |
| 2007 – 2009 | Elected Head of the Student Council 'International Development' of the Vienna University |
| 2008 | Study tours to the United Nations (New York), World Bank & International Monetary Fund (Washington D.C.) - organized by the Institute for Political Science, University of Vienna |

PROFESSIONAL EXPERIENCE

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| 2009 – 2010 | Interning as Adviser to the Permanent Mission of Austria to the United Nations , New York <ul style="list-style-type: none"> – covering the 3rd committee of the UN General Assembly, SOCHUM – policy analysis and lobbying for Human Rights - related resolutions – NGO communications and outreach activities |
| 2009 | Management Trainee in 'Sui Northern Gas Pipelines' (SNGPL), Lahore, Pakistan <ul style="list-style-type: none"> – developing the company's Corporate Social Responsibility (CSR) policy and strategy – project design, management and evaluation of various CSR initiatives – field trips to North-West Frontier Province (NWFP), Sindh, Islamabad |
| 2006 – 2007 | Teaching seminar courses at University of Vienna, as tutor in: “Trans-disciplinary Development Research of International Political Economy” |
| 2004 – 2008 | Independent IT consultant for data forensics and recovery services |