

8 Religious Freedom and Blasphemy Law in a Global Context: The Concept of Religious Defamation

Mirjam van Schaik

INTRODUCTION

Religious liberty is a general concept used by politicians and academics. As a right, freedom of religion or belief is incorporated in the constitutions of many Western states. It is also a classical human right, and has been adopted in international conventions. In general, universal human rights have been discussed and agreed upon by the international community, accepted as an international norm, and defined as fundamental and authoritative.

This chapter, about the freedom of religion and belief (freedom of religion) and its *universal status*, addresses matters of great contemporary concern. There are various places in the world where strict measures to restrict this fundamental right have been taken. A special status is granted to a particular religion, apostasy is outlawed under the criminal code, as is blasphemy for causing offence to religious feelings.

Freedom of religion has continuously been interpreted in various ways. Additionally, polemics have become an incentive for the establishment of this right, but not always in a positive way. Several of the interpretations and applications in recent decades have demonstrated an inclination towards derogating from its very status as a fundamental human right by implicitly or explicitly subverting its non-distinctive application, content and universality as allocated in the International Covenant on Civil and Political Rights (ICCPR).

To substantiate this claim I will address a severe abuse in the field of freedom of religion. I will discuss examples where religious freedom is amalgamated with political strategies or policies of protecting the reputation

of religions against defamation. I have defined this as a *political derogation*, which results in severe consequences for the normative framework of this right. To demonstrate this, I will analyse resolutions and international documents drafted by the Organisation of Islamic Cooperation (OIC), which has for almost twenty years tabled resolutions on the issues of “combating defamation of religions” and “combatting religious intolerance” in the Commission on Human Rights, in its successor the Human Rights Council, and in the General Assembly. Their founding documents will also be examined. I will furthermore discuss some reports of the United Nations Special Rapporteurs. These reports reveal information about the various violations of religious freedom perpetrated or condoned by member states of the OIC. In addition, some views within academia will be addressed.

For normative references I will rely on article 18 ICCPR, which states that everyone has the right to freedom of thought, conscience and religion. And although not binding, article 18 of the United Nations Universal Declaration of Human Rights (UNUDHR) is also relevant, for it has influenced many constitutions globally, and has functioned as a foundation for several national and international legal documents.

THE ORGANISATION OF ISLAMIC COOPERATION

The OIC, formerly known as the Organisation of the Islamic Conference (1974–2011), was founded after the so-called ‘criminal arson of the Al-Aqsa Mosque in occupied Jerusalem’ on 21 August, 1969. This occurrence was followed by a conference of 24 Islamic heads of state in September in 1969 in Rabat—as well as various Islamic Conferences of Foreign Ministers—to found an Islamic organisation that would represent the Islamic people. The OIC was subsequently formally established in May 1971, and adopted its charter in 1972. It is based in Jeddah, Saudi Arabia, and claims to represent the universal Ummah, a community of more than 1.5 billion Muslims. The OIC considers itself to be “the collective voice of the Muslim world”, and takes it upon itself “to safeguard and protect their interests ... in the spirit of promoting international peace and harmony among various people of the world”.¹

1 Website of the OIC, available at: http://www.oic-oci.org/oicv2/page/?p_id=52&p_ref=26&lan=en. It is important to note that this chapter does not examine to what extent the OIC is legally authorised to speak on behalf of all Muslims, or even Islam.

After the United Nations (UN), the OIC is currently the largest intergovernmental organisation, with 57 members. Except for the Palestinian authority, all states are members of the UN. The supreme body of the OIC is the Islamic Summit, consisting of kings and heads of state. It assembles every three years to discuss and set out policy, offer advice on all issues for the realisation of the objectives of the OIC and additional important issues for the member states and the Ummah in general. There is also the Council of Foreign Ministers, which gathers every year and is responsible for the implementation of the general policy. Furthermore, there is an executive body, known as the General Secretariat. Over the years the OIC has created subsidiary committees to coordinate and realise their actions in various areas, including political, economic, cultural, social, scientific, financial, sports, technological, educational, media, social, humanitarian and religious.² In 2011 the OIC created an advisory body, the Independent Permanent Human Rights Commission (IPHRC), which has the legal authority to oversee human rights in OIC member states. Since June 2013 the OIC has had an official representative office for the European Union (EU) in Brussels, Belgium, *inter alia* to contribute to the dialogue between the two parties.³

The OIC has a unique position, being a religious intergovernmental organisation with permanent observer status at the UN.⁴ This entails that the OIC has free access to most of the UN meetings, a standing invitation to participate as an observer in the sessions of the General Assembly and maintains a permanent office at the UN headquarters in New York. With this permanent observer status the OIC has a dominant role, or at least a prominent one, when the human rights agenda is addressed.

DISPUTING UNIVERSALITY

For several decennia the OIC has disputed the universality of the Universal Declaration and its subsequent human rights framework. In 1981 the Islamic Republic of Iran was one of the first states that opposed its universality

2 Ibid.

3 “President Barroso meets the Secretary General of the Organisation of Islamic Cooperation (OIC), Mr Ekmeleddin İhsanoğlu,” 25 June 2013, available at: http://europa.eu/rapid/press-release_MEMO-13-609_en.htm (accessed 26 April 2015).

4 There are no other religious intergovernmental organisations with this status. However, as a non-member state, the Holy See, has the status of permanent observer.

during a meeting of the General Assembly (UNGA).⁵ The representative stated that Iran appreciated “the true meaning of human rights through an understanding of the genuinely emancipating teachings of Islam and through their implementation.”⁶ He stated that “all rules regarding human rights must be founded exclusively on principles of divine ethics, and justice must be defined in terms of eternal moral principles.”⁷

This indicates the core of the OIC’s view: human rights are not founded on *universal secular principles* but on *divine ethics*. This led to the drafting of several Islamic human rights documents, such as the Universal Islamic Declaration of Human Rights⁸ and the Arab Charter on Human Rights.⁹ However, these documents did not have the same impact or prevalence as the Cairo Declaration on Human Rights in Islam (CDHRI), adopted in 1990. This agreement was drafted during the Cairo Islamic Conference of Foreign Ministers of the OIC.¹⁰ The preamble to the CDHRI declares that the OIC is

[b]elieving that fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion and that no one as a matter of principle has the right to suspend them in whole or in part or violate or ignore them in as much as they are binding divine commandments, which are contained in the Revealed Books of God and were sent through the last of His Prophets to complete the preceding divine messages thereby making their observance an act of worship and their neglect or violation an abominable sin, and accordingly every person

5 David. G. Littman, “Universal Human Rights and “Human Rights in Islam,” *Midstream*, February/March 1999, 5–6.

6 See A/C.3/37/SR. 56, paras 50–51.

7 Iran voted in favour of the UNUDHR, but changed its stance after its revolution in 1979. What is interesting to note is that Saudi Arabia was one of the few states that abstained from voting for the UNHRD. The reason for this was, inter alia, article 18 of the Declaration, which also states that everyone has the right to change his religion or belief.

8 In accordance with the Muslim World League, this document was drafted by the Islamic Council, and ratified in 1981 and presented to UNESCO.

9 The Arab Charter on Human Rights was adopted by the Council of the League of Arab States on 22 May 2004.

10 Res. 49/19-P. The Cairo Declaration on Human Rights in Islam. The Nineteenth Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development), held in Cairo, Arab Republic of Egypt, 31 July–5 August 1990.

is individually responsible - and the Ummah collectively responsible - for their safeguard.¹¹

With the Cairo Declaration the OIC laid down distinctive Islamic principles that conflicted with UN human rights law, thereby not only restricting fundamental human rights, but subjecting all to superseding Islamic norms. The CDHRI is—in pursuance of the Iranian statement—generally seen as a reaction to the UNUDHR, resulting in the *supremacy of religious law* over universal human rights; derogating from their universal status.¹² As a result, instead of the UNUDHR, the CDHRI would from now on function as a guiding document in the application of human rights for the OIC members.

The Cairo Declaration declares that in the member states of the OIC all human rights must be addressed from an Islamic perspective, and, according to articles 24 and 25, all rights and freedoms are subject to Islamic law (Sharia). No right to freedom of religion is included, since article 10 forbids the practice of- or conversion to any religion other than Islam. The Declaration states that “Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism.” There is a so-called freedom of expression, but it is restricted by Islamic law, and infringement will result in severe punishment in accordance with Sharia: see articles 19 and 22 CDHRI.

THE TEN-YEAR PROGRAMME OF ACTION: A NEW FOCUS ON HUMAN RIGHTS?

In 2005, during the Mecca Islamic Summit Conference, the OIC prepared a ten-year action programme for “the Muslim Ummah to achieve its renaissance, and in order to take practical steps towards strengthening the bonds of Islamic solidarity, achieve unity of ranks, and project the true

11 Preamble, Res. 49/19-P. The Cairo Declaration on Human Rights in Islam.

12 See for more Raj Bhala, *Understanding Islamic Law* (LexisNexis Matthew Bender & Company, 2011), ch. 46, in particular paras 46.05–46.06; David.G. Littman, “Universal Human Rights and “Human Rights in Islam,” *Midstream*, February/March 1999; Audrey Guichon, “Some Arguments on the Universality of Human Rights in Islam”, in Javaid Rehman and Susan C. Brean (eds), *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices* (Leiden/Boston, Mass.: Martinus Nijhoff Publishers, 2007), 185–186.

image and noble values of Islam and its civilisational approaches.”¹³ This programme was intended to help the OIC to review “the most prominent challenges facing the Muslim world.”¹⁴

Several scholars described the adoption of this action programme as a positive change of course in the OIC’s human rights policy, inter alia by the desire expressed in it to establish an independent body to promote human rights, the Independent Permanent Human Rights Commission (IPHRC). As associate professor of international relations at the University of Washington Tacoma, Turan Kayaoglu, points out: “With the adoption of a ten-year ‘program of action’ in 2005, human rights gained greater prominence on the OIC agenda.”¹⁵ Also according to Kayaoglu, “[T]he IPHRC signals a newfound commitment to human rights issues within the OIC. It represents a shift away from the organisation’s past cynicism on human rights.”¹⁶ Kayaoglu, however, seems to overlook the fact that according to section VIII paragraph 2 of the action programme, the establishment of the IPHRC had to be in accordance with the principles of the Cairo Declaration. One must ask to what extent there is a positive change in human rights policy, since the Cairo Declaration does not even recognise the fundamental human right of freedom of religion or belief, and certain other freedoms merely when they are in accordance with Islamic law. The term ‘human rights’ in the title of the commission does therefore seem to be rather misleading.

The analysis made by Saied Reza Ameli, Professor of Communications at the University of Tehran, is even more flawed, as he uses incorrect arguments to argue that there is a shift towards UN human rights discourse within OIC policy and that “... the Ten-Year Programme of Action puts more emphasis on human rights ...”.¹⁷ He claims that the founding OIC documents are more focussed on an Islamic perspective on human rights, as opposed to a

13 OIC/3EX-SUM/05/PA/FINAL, programme of action to meet the challenges facing the Muslim Ummah in the 21st century. Third extraordinary session of the Islamic summit conference, Mecca, Saudi- Arabia, 7–8 December 2005, available at: http://www.oic-oci.org/oicv2/upload/pages/typoa/en/poa_en_rev1.pdf.

14 Ibid.

15 Turan Kayaoglu, “A Rights Agenda for the Muslim World? The Organization of Islamic Cooperation’s evolving Human Rights Framework,” *Brookings Doha Center*, 6 January 2013, 12.

16 Ibid., 13.

17 Saied Reza Ameli, “The Organisation of Islamic Conference: accountability and civil society,” in Jan Aart Scholte (ed.), *Building Global Democracy?: Civil Society and Accountable Global Governance* (Cambridge: Cambridge University Press, 2011), 152.

universal one, than the ten-year action programme is.¹⁸ One can agree that in the founding charter from 1972 human rights were indeed addressed from an Islamic perspective, however explicit references were made to the concept of *fundamental human rights* that are *universal*. In the Ten-Year Programme of Action which currently applies, there are references in paragraph VIII to human rights, *but thus only* when they comply with Islamic law. In addition, not a single reference is made in the action programme to either the UN Charter or other UN documents. To further substantiate his claim, Reza Ameli refers to the drafting of other international Islam-oriented documents during the following years, such as the Islamic Charter for Human Rights and the Universal Islamic Declaration of Human Rights.

This argument is unconvincing for three reasons. First of all, it is true that these documents were strongly inspired by Islam, but that does not mean that the current one, the action programme, is not. Secondly, the mentioned documents were not drafted by the OIC but by other Islamic institutions. And, thirdly, they did not have as much influence within the Islamic world as the Cairo Declaration did in 1990. The Declaration is still of great significance, especially for the OIC's Ten-Year Programme of Action on the topic of human rights, which is extended to the year 2025 according to their website.

THE 2008 CHARTER

In addition to the Ten-Year Programme of Action, the OIC implemented its current charter three years later. It was adopted by the Eleventh Islamic Summit in March 2008, and aims to affirm the unity and solidarity among its members, to preserve Islamic values, to revitalise Islam's role in the world, to enhance and strengthen the bond of unity and solidarity among Muslims, and to contribute to international peace and security.¹⁹

The charter gives the impression that regarding its stance on universal human rights it is an improvement, since it no longer refers to the Cairo Declaration and its notion of sharia law, as was the case in the Ten-Year Programme of Action. In the objectives and principles of the new charter it is

18 Ibid., 152–153.

19 Eleventh Islamic Summit held in Dakar on 13–14 March 2008, website of OIC under 'About OIC', available at: http://www.oic-oci.org/oicv2/page/?p_id=52&p_ref=26&lan=en (accessed 26 April 2015).

furthermore included that the OIC members are determined “to adhere ... [to their] commitment to the principles of the United Nations Charter, the present Charter and International Law”, and “to promote human rights and fundamental freedoms, good governance, rule of law, democracy and accountability in Member States.”

At first glance this appears to be progress. However, the same paragraph states that these commitments need to be in accordance with the constitutional and legal systems of the particular member state. In general, the OIC member states have a strong state religion, where Islam is constitutionally entrenched. Some are even theocracies and suppress all religious diversity. This creates *religious legitimacy* for the OIC members to escape their UN human rights obligations, even though most of them are signatories to the international human rights treaties and are legally bound by them.

Also relevant is the fact that the preamble to the previous charter, the one from 1972, explicitly stated that the OIC “reaffirm[s] their commitment to the United Nations Charter and fundamental Human Rights, the purposes and principles of which provide the basis for fruitful cooperation among all people.” This explicit reference to the term fundamental is nowhere to be found in the current charter or in the action programme. If this gap is read in conjunction with the passage that commitments to the aforementioned ideals need to be in accordance with the legal systems of the member states, it is no surprise that there is a lack of reference to universal human rights, since it would conflict with their national norms.²⁰

In addition it is relevant to mention that article 1 of the new charter contains a paragraph that states the OIC’s objective “to protect and defend the true image of Islam”, and “to combat defamation of Islam.”²¹ With this addition the OIC members formally enshrined these concepts in their charter, and created the legitimacy for the course they have been sailing over the years, a course which has dominated the Human Rights Council and General Assembly since 1999.²² However, before this grasp is discussed, the interesting question that needs to be answered, the question that is often neglected when this topic is discussed within academia is: why did the OIC

20 See for more Ann Elizabeth Mayer, “The OIC’s Human Rights Policies in the UN. A Problem of Coherence”, *Matters of Concern. Human Rights Research papers*, The Danish Institute for Human Rights, 2015, 10–11.

21 It was also added in the 2005 Ten-Year Programme of Action.

22 There was never any reference to the concepts in their founding document from 1972.

in 1999 introduce the concept of defamation of Islam in the UNHRC? Or, in other words, what were the reasons for the OIC to start this UN policy? The next paragraphs will further elucidate this point.

THE OIC'S MOTIVATIONS

To get a clear understanding of what caused, or, better said, contributed to this launch, it is relevant that the background and motives of the OIC and its member states are considered. To provide this context it is necessary to take a look at OIC declarations, resolutions and policy documents. Overall, at least three developments can be distinguished that have contributed to the cause. In line with the view of Lorenz Langer, a lecturer at the University of Zurich, in the first place it is all about upholding the appearance of Islam, that is, the image of Islam in general. Secondly, the reprimands several of the individual member states of the OIC received in various UN forums, which led to aggravation within the OIC countries.²³ And in addition to Langer's view, the third development involves the consequences of the fatwa that Ayatollah Ruhollah Khomeini issued against Salman Rushdie for writing *The Satanic Verses*. The next section will further elucidate these points.

The first development, the defence of the image of Islam, made its first appearance at the third Islamic Summit Conference in Mecca in 1981. During this Summit the members of the OIC agreed to “develop ... mass-media and information institutions, guided in this effort by the precepts and teachings of Islam, in order to ensure that these media and institutions will have an effective role in reforming society, in a manner that helps in the establishment of an international information order characterized by justice, impartiality and morality, so that our nation may be able to show to the world its true qualities, and refute the systematic media campaigns aimed at isolating, misleading, slandering and defaming our nation.”²⁴ In this quotation some aspects need to be emphasised. In the first place, the term ‘nation’ has to be understood as Islam in general. In addition, it is not solely about the image of Islam for Muslims, or within the OIC countries, but

23 Lorenz Langer, *Religious Offence and Human Rights, The implications of Defamation of Religions* (Cambridge: Cambridge University Press, 2014), 165–169. Lorenz Langer is a lecturer at the University of Zurich.

24 Mecca Declaration, Third Islamic Summit Conference OIC (Palestine and Al Quds Session), Mecca, 25–28 January, 1981, Final Communiqué, para. 6.

more specifically about the perception of Islam by non-Muslims worldwide. It concerns what and why information about Islam is made public and how it is done.

During the following years the OIC pursued the same course, until Salman Rushdie's *The Satanic Verses* was published. In 1989 Rushdie's work was "strongly condemned" by the OIC, and he was regarded as an apostate and his work a blasphemous publication.²⁵ The OIC called for action, and issued "a Declaration on Joint Islamic Action to combat blasphemy against Islam in which it expressed the resolve of all Islamic States to coordinate their efforts, based on Sharia, to effectively combat blasphemy against Islam and abuse of Islamic personalities."²⁶ They furthermore declared that "all Islamic countries should make more effective efforts to ensure respect for Islam and its noble values. ... [B]lasphemy could not be justified on the basis of freedom of thought or expression. ... It appealed to all members of the international community to ban the book and take necessary measures to protect the religious beliefs of others."²⁷ It was a clear message, with strong demands. It was no longer merely about creating institutions to "inform people about Islam", but it was time to "take action", that is, set norms to protect their religion.

In this regard, the Dakar Islamic Summit, held two years later in 1991, is important. The OIC stated in the resulting Dakar Declaration that it was determined to "counter individually and collectively, any campaign of vilification and denigration waged against Islam and its sacred values as well as the desecration of the Islamic places of worship."²⁸ And it stated it would "inform the whole world of the essence of Islamic civilization, culture and thought so as to provide the best possible reflection of the true image of Islam and to participate in the enrichment of universal civilisation."²⁹ So again there is a clear emphasis on the provision of information and on concrete actions—individually as a state, and the OIC as a collective—for the defence of the image of Islam. However, this time the OIC went a step further. It drafted a resolution entitled "On adopting a *unified stand on the*

25 Eighteenth Islamic Conference of Foreign Ministers (Sessions of Islamic fraternity and solidarity), Final Communiqué, 13–16 March 1989, para. 46.

26 Ibid.

27 Ibid.

28 Dakar Declaration, Sixth Islamic Summit Conference, Dakar, Senegal, 9–11 December, 1991, under III Cooperation in the social, cultural and information fields, iv–v.

29 Ibid.

attack of Islamic sanctities and values [emphasis mine]” and in it requested the Secretary-General “to take the necessary measures for the drafting of an *international convention* [emphasis mine] to ensure respect for sanctities and values, and to submit a progress report thereon to the next Islamic Conference of Foreign Ministers,”³⁰ with the result that in the conference of foreign ministers in 1993 they recalled the adoption of “a unified stand” and focused on the adoption of “a joint stand on the debasing of Islamic Sanctities and Values.”³¹ They appealed to the Secretary-General “to prepare and submit [at] the next International Conference of Foreign Ministers a study on the conclusion of an *international legal instrument* [emphasis mine].”³² In addition to the intention to create an international legal instrument the OIC continued to express its resentment at “the persistence of some quarters in publishing further editions and new issues of the book ‘Satanic Verses’ and publicising its author in many places, particularly in Europe.”³³

Over the years, the development of the OIC’s objectives, from wanting to positively inform about Islam to the appeal for an international legal instrument to protect their religion, was thus *inter alia* influenced by Rushdie’s work. It is remarkable to see what a novel can lead to.

In subsequent years several resolutions with similar actions followed. During the 1994 summit, the members extensively discussed the “image of Islam outside the Islamic World”, and they were determined to “project the correct image of Islam”, because the Western states continued to discredit it.³⁴ At the Islamic Summit in 1997 in Teheran, the OIC expressed that it wanted a “Group of Experts on the Image of Islam” to prepare a policy that would contribute to their eventual project.³⁵

In relation to what has been argued about the influence of Rushdie’s novel, more can be said about the OIC’s actions after its publication, which constitutes a second development that contributed to the launch of the

30 Ibid., Res. NO. 3/6-C(IS), “On adopting a Unified Stand on the Attack on Islamic Sanctities and Values”.

31 Conference of the Foreign Ministers, Karachi, Islamic Republic of Pakistan, 25–29 April, 1993, Res. no. 17/21-C “A Unified Stand on the Belittling of Islamic Sanctities and Values”.

32 Ibid.

33 Ibid.

34 Seventh Islamic Summit Conference, Casablanca, Morocco, 13–15 December, 1994, final communiqué, para. 22. E/CN.4/1997/71, para. 27, section 3.

35 Eighth Islamic Summit Conference Tehran, Islamic republic of Iran, 9–11 December, 1997, final communiqué, paras 16, 110 and 112.

defamation of religion resolution in 1999 in the UN. The call for action by the OIC in 1989 was not entirely unexpected, for it was in the same period that Khomeini, the religious leader of Iran, one of the prominent states of the OIC, had issued a fatwa on Rushdie for writing and publishing the aforementioned book. Although the OIC members did not actually comment on the fatwa, they did consider Rushdie to be an apostate, condemned his blasphemous actions, and called for action.³⁶ However, they, like Khomeini, never had the legal authority to combat blasphemous crimes internationally. In contrast though to Khomeini, the OIC did have a seat at the UN table, and could therefore initiate and politically influence a debate on this topic. The report in which Rushdie was pronounced an apostate was also presented to the UN and circulated in the General Assembly.³⁷ This was the first time the OIC had condemned blasphemy within UN contours, a stance that they, as the next paragraph will describe, developed and expanded in the next ten years.

The third development that contributed to the start of the defamation resolutions in 1999 consists in the reprimands of the individual OIC member states in various UN forums.³⁸ In particular the reports of the UN special rapporteurs on Religious Intolerance and its successor Freedom of Religion or Belief were critical. For instance, in 1994 the annual report of the Special Rapporteur of Religious Intolerance, Abdelfattah Amor, addressed occurrences and state actions in several member states of the OIC that were inconsistent with the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. The report mentioned that in Saudi Arabia “the legal system ... allows flogging, amputation and beheading for the punishment of, inter alia, comments on religion” and it described several other cases where people arrested on charges of blasphemy faced possible execution.³⁹ Saudi Arabia’s response was

36 Although not relevant for this chapter, a lot can be said about what it actually meant to declare Rushdie to be an apostate. See for more on this topic Paul B. Cliteur, Professor of Jurisprudence at Leiden University, who has extensively published on this topic: see, e.g., *The Secular Outlook: In Defense of Moral and Political Secularism* (Chichester: Wiley-Blackwell, 2010), Paul B. Cliteur, Tom Herrenberg and Bastiaan R. Rijpkema, “The New Censorship,” in Afshin Ellian and G. Moliet (eds), *Freedom of Speech under Attack* (The Hague: Eleven International Publishing, 2015), 291–319.

37 A/44/235/20600, 20 April 1989.

38 Lorenz Langer, *Religious Offence and Human Rights, The implications of Defamation of Religions* (Cambridge: Cambridge University Press, 2014), 165–169.

39 E/CN.4/1994/79, paras 31–33.

fierce: according to it the report was filled with “false interpretations of the Islamic religion and Islamic practices.” They also stated that the rapporteur was not qualified “to assess the Islamic religion” and that “his summation based on ‘allegations’ is deplorable.” Saudi Arabia even questioned whether this “disturbing disinformation on Islam and the Islamic people” was “a sort of a new ‘crusade’ which is so familiar in international politicking under the banner of the ‘white men’s burden?’”⁴⁰ They made it clear that they had had enough of this conduct. In the same report Amor mentioned that Sudan was also seriously infringing the right to freedom of religion. Cases are described in which several people were arrested and detained for practising a religion that was not Islam. Sudan’s reaction was equivalent to that of Saudi Arabia; the allegations were “false” and “absurd”.⁴¹ The country visit to Pakistan in 1996 also led to a very critical report, one in which the discriminatory legislation regarding religious minorities and the blasphemy laws with their severe penalties were especially criticised.⁴²

In the following years, different OIC members were criticised for discriminatory regulations concerning freedom of religion and belief, for instance Iran, Egypt, United Arab Emirates, Brunei and the Maldives.⁴³ These reprimands continued to pile up, causing resentment against the UN by the OIC members, which eventually contributed to the IOC taking the matter into its own hands: the international introduction of combatting defamation of religions.

THE INTRODUCTION OF DEFAMATION OF RELIGION IN THE UN

The OIC presented the concept of religious defamation to the UN on 20 April 1999, when Pakistan, on behalf of the OIC, introduced the draft resolution “Defamation of Islam” under agenda item Racism, racial discrimination, xenophobia and all forms of discrimination in the Commission on Human Rights (UNCHR).⁴⁴ In the resolution the focus is on negative stereotyping

⁴⁰ Ibid.

⁴¹ E/CN.4/1994/79, paras 75–77.

⁴² E/CN.4/1996/95/Add.1. In the annual report of 1995 the Special Rapporteur already addressed several cases concerning these issues regarding Pakistan see E/CN.4/1995/91.

⁴³ This list is not exhaustive. E/CN.4/1997/91, paras 10–16, 19, E/CN.4/1999/58, paras 31–33, 50–52, 66–68, 73–74, 85, 96.

⁴⁴ E/CN.4/1999/L.40, 20 April 1999.

and intolerance towards Islam, and states are urged to “take all necessary measures to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by religious intolerance, including attacks on religious places, and to encourage understanding, tolerance and respect in matters relating to freedom of religion and belief.”⁴⁵ The delegate from Pakistan declared that the reason for the introduction of this draft was that “in the past few years, there had been new manifestations of intolerance and misunderstanding, not to say hatred, of Islam and Muslims in various parts of the world.”⁴⁶ Also, “[t]here was a tendency in some countries and in the international media to portray Islam as a religion hostile to human rights, threatening to the Western world and associated with terrorism and violence, whereas, with the Quran, Islam had given the world its first human rights charter. No other religion received such constant negative media coverage.”⁴⁷ The motivation as portrayed by the OIC for the defamation resolution was clear: it was to protect Islam.

The representative of Germany responded on behalf of the states of the European Union, and underlined that “the European Union was attached to the principles of tolerance and freedom of conscience, thought and religion for all,” but was of the opinion that the general structure of the proposal was not in balance, since it mentioned only the negative stereotyping of Islam. Germany therefore introduced amendments to broaden the scope of negative stereotyping to all religions and change the title of the resolution to “Defamation of Religions”.⁴⁸ These changes were submitted “to deal equally with all religions”.⁴⁹ The Pakistani representative was not pleased with the proposed amendments, and stated that “the problem faced by Islam was of a very special nature and its manifestations took many forms. Some people did not hesitate, for example, to refer to an ‘Islamic bomb’, but no one would ever think of making such an association with another religion. Islam was being portrayed as a threat to the international system, with many negative images, which incited people to hatred of Muslims. That phenomenon endangered world stability and was contrary to the principle of the universality of human rights.”⁵⁰ He continued by stating that “[t]he amendments submitted by

45 Ibid.

46 E/CN.4/1999/SR.61, para. 1.

47 Ibid.

48 E/CN.4/1999/L.90.

49 Ibid.

50 E/CN.4/1999/SR.61, para. 7.

Germany were designed to remove most of the specific references to Islam contained in the draft resolution, but that would defeat the purpose of the text, which was to bring a problem relating specifically to that religion to the attention of the international community.”⁵¹ Thus the OIC requested that the amendments be withdrawn and that the commission accept sub-amendments in which there was a specific focus on Islam again.⁵² Germany, however, declined and asked the EU members to hold to their positions.⁵³ The Pakistani representative asked for further negotiations so the “two parties”—already explicitly dividing East (OIC) and West (Europe) within the international community—could attempt to find common ground.⁵⁴

The next day the two parties reached consensus and drafted a resolution with a general title that included all religions. It resulted in the adoption of Resolution 1999/82, “*Defamation of religions*”.⁵⁵ The resolution *inter alia* urges:

all States, within their national legal framework, in conformity with international human rights instruments to take all appropriate measures to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by religious intolerance, including attacks on religious places, and to encourage understanding, tolerance and respect in matters relating to freedom of religion or belief.⁵⁶

In the Resolution no definition is given of religious defamation. Only the title contains a reference to the concept.

The Pakistani representative stated that “the OIC countries had shown considerable flexibility by agreeing to adopt a nonexclusive approach to the issue.”⁵⁷ And they “looked forward to cooperating with all countries in

51 Ibid., para. 8.

52 E/CN.4/1999/L.104.

53 E/CN.4/1999/SR.61, para. 9.

54 Ibid., para.11.

55 E/CN.4/1999/L.40/Rev.1. There was also one amendment made orally. However, the content of this amendment is not relevant for this analysis.

56 60th meeting, 28 April 1999, Res. 1999/82. E/CN.4/1999/82. Commission on Human Rights Report on the Fifty-fifth session (22 March–30 April 1999), 280–281. E/1999/23, E/CN.4/1999/167.

57 E/CN.4/1999/L.40/Rev.1 and E/CN.4/1999/SR.62, paras 1–2.

promoting a better understanding of Islam ...”⁵⁸ The German representative stated that although “an agreement [was] reached [it] should not ... hide the fact that a high degree of uncertainty remained as to the expediency of the Commission’s continuing to deal with the issue in that way and in that context. ... While joining the consensus on the draft, [they] wished to make it clear that they did not attach any legal meaning to the term ‘defamation’ as used in the title.”⁵⁹

From the German remark it is clear that the EU member states realised that the adoption of the religious defamation resolution would have consequences for the normative contours of the human rights framework. Instead of dismissing the OIC’s whole line of reasoning, they assumed an *accommodating stance*, in particular by merely remarking that the general structure of the resolution was imbalanced, and that it had to be broadened so that all religions would be dealt with equally. It gave the OIC room to manoeuvre and introduce the concept of religious defamation in the UN. Unfortunately, they did not foresee what kind of impact their accommodating attitude would have in the next decade.

FROM CONSENSUS TO MAJORITY VOTE

In the following year, Pakistan, again on behalf of the OIC, introduced a resolution with a similar title and content. After a few amendments it was adopted by consensus in the UNCHR.⁶⁰ What is relevant to mention is that the representative of Portugal, on behalf of the EU, emphasised that the subject of defamation of religion should not be discussed in the UNCHR as it would divert attention from its duty to promote freedom of all religions and beliefs. They were worried that the draft could be interpreted as being focused on one specific religion,⁶¹ which was in fact the case.

In 2001 Pakistan stepped up its efforts and introduced the resolution “Combating defamation of religions as a means to promote human rights,

⁵⁸ Ibid.

⁵⁹ E/CN.4/1999/SR.62, para. 9 and E/CN.4/1999/L.40/Rev.1.

⁶⁰ See amendments: E/CN.4/2000/L.6, E/CN.4/2000/L.18, 7th meeting 26 April 2000, Res.

2000/84. Defamation of religions. Commission on Human Rights Report on the fifty-sixth Session (20 March–28 April), 336–338. E/2000/23, E/CN.4/2000/167.

⁶¹ E/CN.4/2000/SR.67, paras 72–77.

social harmony and religious and cultural diversity”.⁶² This time the EU took a different stance. On behalf of the EU the representative from Belgium stated that the

... l’Union européenne appuie le dialogue entre les civilisations, mais considère que l’on ne saurait confondre religion et civilisation. En outre, la liberté d’expression est la condition *sine qua non* d’un dialogue réel entre les civilisations. La liberté d’expression et la liberté de religion sont la manifestation fondamentale de la tolérance au sein des sociétés. Tous ces arguments ont été exposés lors des consultations sur le projet de résolution mais ils n’ont pas été pris en compte par les auteurs. C’est pourquoi, les États membres de l’Union européenne ont demandé qu’il soit procédé au vote sur ce projet de résolution. Quant à eux, ils voteront contre ce texte.⁶³

By emphasising the freedoms of expression and religion, stating that they are a fundamental manifestation of tolerance in society, and stressing that the freedom of expression is the condition *sine qua non* of civil dialogue, the EU member states tried to persuade the OIC. They argued that it was incorrect that the focus was on the protection of religions rather than on the human rights of the individual adherents to these religions.⁶⁴ In addition, they announced that they would ask for a vote, with notice that they would vote against,⁶⁵ but to no avail. The members of the OIC did not take any of the EU’s arguments into account. The draft resolution was taken to a vote and was adopted by 28 votes in favour to 15 against, with 9 abstentions.⁶⁶

62 E/CN.4/2001/L.7/Rev.1.

63 E/CN.4/2001/L.7/Rev.1, E/CN.4/2001/SR.61, 4 December 2001 paras 6, 3. “The European Union supports the dialogue between civilisations, but considers that religion and civilisation cannot be confused. Furthermore, freedom of expression is the *sine qua non* of a real dialogue among civilisations. Freedom of expression and freedom of religion are fundamental manifestations of tolerance within societies. All these arguments were exposed during consultations on the draft resolution, but they were not taken into account by the authors. Therefore, the Member States of the European Union asked for a vote on this draft resolution. As for them, they will vote against it.” [my translation]

64 Ibid., paras 11, 3.

65 Ibid.

66 Commission on Human Rights Report on the fifty-seventh Session (19 March–27 April 2001), 47–49, 372. E/2001/23, E/CN.4/2001/167. Germany, Belgium, Canada, Spain, The United States, France, Italy, Japan, Latvia, Norway, Poland, Portugal, Czech Republic, Romania, United Kingdom

With the E/2001/4 resolution the UNCHR “encourages States, within their respective constitutional systems, to provide adequate protection against all human rights violations resulting from defamation of religions and to take all possible measures to promote tolerance and respect for all religions.”⁶⁷

This course of events would repeat itself in the subsequent years (2002–2005).⁶⁸ Resolutions with similar and more extensive content and effect were adopted by a majority vote, largely consisting of OIC member states. For example, in the next year a resolution with the same encouragement as cited above was adopted, but the words “and their value system” were added to the last sentence.⁶⁹ Only a few words but, as previously described, of great significance.

THE EXPANSION TO THE GENERAL ASSEMBLY

In the aftermath of the Danish cartoon crisis in 2005, the concept of religious defamation expanded to another, larger UN platform. The Yemeni delegate, on behalf of the OIC, introduced the draft resolution “Combating defamation of religions” in the UNGA.⁷⁰ The Egyptian representative argued that the “the draft resolution was not directed against any one country ... Its sole purpose was to emphasize the importance of respect for the religions and beliefs of others, which were an integral part of the vision and way of

of Great Britain and Northern Ireland voted against. “Combating defamation of religions as a means to promote human rights, social harmony and religious and cultural diversity”: 28 votes in favour, 15 against, and 9 abstentions. Res. E/2001/4.

67 E/CN.4/Res. E/2001/4.

68 In 2002 Res. 2002/9, E/CN.4/Res/2002/9 (15 April 2002), Draft resolution by Pakistan, on behalf of the OIC E/CN.4/2002/L.9, E/CN.4/2002/SR.39, paras 28–42, pp. 6–8, “Combating defamation of religion”: 30 votes in favour, 15 against, and 8 abstentions. In 2003 Res 2003/4, E/CN.4/Res/2003/4 (14 April 2003), Draft resolution by Pakistan, on behalf of the OIC E/CN.4/2003/L.16, E/CN.4/2003/SR.47, paras 95–109, “Combating defamation of religions”: 32 votes in favour, 14 against, and 7 abstentions. In 2004 Res 2004/6, E/CN.4/Res./2004/6 (8 April 2004), Draft resolution by Pakistan, on behalf of the OIC E/CN.4/2004/L.5, E/CN.4/2004/SR.45, paras 73–84, “Combating defamation of religions”: 29 votes in favour, 16 against, and 7 abstentions. In 2005 Res. 2005/3, E/CN.4/Res/2005/3 (12 April 2005), Draft resolution by Pakistan, on behalf of the OIC E/CN.4/2005/L.12, E/CN.4/2005/SR.44, paras 2–17, “Combating defamation of religions”: 31 votes in favour, 16 against, 5 abstentions.

69 E/CN.4/Res./2002/9.

70 A/C.3/60/L.29.

life of many peoples.”⁷¹ The member states of the EU made it clear that they would not be on board, for similar reasons as the ones they had given in previous years in the UNCHR.⁷² But to no avail: religious defamation became a fact in the international community when draft resolution A/C.3/60/L.29 was adopted with 88 votes in favour, 52 against, and 23 abstentions.⁷³ The UNGA *inter alia*

urges States to provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from defamation of religions, to take all possible measures to promote tolerance and respect for all religions and their value systems and to complement legal systems with intellectual and moral strategies to combat religious hatred and intolerance.⁷⁴

In the following years the OIC continued to achieve its agenda in various UN fora, and after the disbandment of the UNCHR in 2006, the OIC passed resolutions regarding religious defamation in its successor, the United Nations Human Rights Council (UNHRC).⁷⁵ That same year the UNHRC asked Asma Jahangir, Special Rapporteur on freedom of religion or belief, and Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, to draft a report on the subject of defamation of religion, in particular its implications for article 20, paragraph 2, of the ICCPR. The reason for this was the “... deep concern over the increasing trend of defamation of religions and incitement to religious hatred and its recent manifestation.”⁷⁶

71 A/C.3/60/SR.45, para. 36, 5.

72 A/C.3/60/SR.45, para. 37, 5.

73 A/RES/60/150 (20 January 2006), A/60/509/Add.2 (Part II). For statements in explanation of the vote see A/C.3/60/SR.45, paras 34–45.

74 A/RES/60/150.

75 The UNHRC was created by the UNGA on 15 March 2006 after it adopted resolution A/RES/60/251. In 2006, A/RES/60/150 (20 January 2006), A/HRC/DEC/1/107 (30 June 2006); in 2007, A/RES/61/164 (21 February 2007), A/HRC/RES/4/9 (30 March 2007); in 2008 A/RES/62/154 (6 March 2008), A/HRC/RES/7/19 (27 March 2008); in 2009 A/RES/63/171 (24 March 2009), A/HRC/RES/10/22 (26 March 2009); in 2010: A/RES/64/156 (8 March 2010), A/HRC/RES/13/16 (15 April 2010), A/RES/65/224 (11 April 2011).

76 A/HRC/2/3 (20 September 2006). This was the Implementation of A/RES/60/251.

The report's conclusions were clear. It affirmed, among other things, that "the right to freedom of religion or belief, as enshrined in relevant international legal standards, does not include the right to have a religion or belief that is free from criticism or ridicule."⁷⁷ It furthermore concluded that, "[i]n maintaining a pluralist, diverse and tolerant society, Member States should avoid stubbornly clinging to free speech in defiance of the sensitivities existing in a society with absolute disregard for religious feelings, nor suffocating criticism of a religion by making it punishable by law ..."⁷⁸

Given the actions that would follow, it can be safely said that the UNHRC ignored the conclusions of the report.⁷⁹ In subsequent years it would usually refer to previous reports, where other rapporteurs had been more supportive of the religious defamation concept.⁸⁰

THE POLITICAL DEROGATION

The concept of defamation of religion took up a highly visible position within the UN. The number of references to the concept increased considerably, and, in contrast to its former preambular position, it became part of the substantive paragraphs of the resolutions.⁸¹ In addition, the operative sections of the resolution were expanding.

In its observatory report on islamophobia in 2009 the OIC felt that it had enough authority to state that the

OIC's position with regard to the important issue of defamation of religions has not only been used to create ripples in the Western mind

⁷⁷ Ibid., paras 60, 10.

⁷⁸ Ibid., paras 66, 15.

⁷⁹ In contrast to Jahangir, Diène was much more supportive of the concept in previous years, especially right after the publication of the Danish cartoons in the *Jillands-Posten*. See for more Langer, Lorenz Langer, *Religious Offence and Human Rights, The implications of Defamation of Religions* (Cambridge: Cambridge University Press, 2014), 233–235.

⁸⁰ For example, to Abdelfattah Amor's reports. He was Jahangir's predecessor and, with some comments, he approved the concept. The OIC also referred to Diène's previous reports. See for more Lorenz Langer, *Religious Offence and Human Rights, The implications of Defamation of Religions* (Cambridge: Cambridge University Press, 2014), 233–236.

⁸¹ Robert C. Blitt, "Defamation of Religion: Rumors of its Death are Greatly Exaggerated," *Case Western Reserve Law Review* 62 (2011) 353–354.

and media but also confused with the existing normative framework on the freedom of expression. It needs to be appreciated that this position has over the past decade repeatedly been observed to command support by a majority of the UN member states – a support that transcended the confines of the OIC Member States. The succession of UNGA and UNHRC resolutions on the defamation of religions makes it a standalone concept with international legitimacy.⁸²

With this remark, the OIC seems to claim that there is some sort of *opinio juris*. Its stance is that the succession of majority resolutions created a basis for an international norm for criminalising religious defamation. To evaluate whether or not this stance is legitimate one must ask to what extent ‘succession’ can be seen as a foundation for legally recognising an international punitive standard? This can be concisely answered: within international legal theory succession is not a justification for adopting an international (criminal) standard.

Central in the resolutions is, among other things, “... the enactment or strengthening of domestic frameworks and legislation to prevent the defamation of religions”;⁸³ “stressing ... the need to effectively combat defamation of all religions ...”⁸⁴ and the notion that “... the right to freedom of expression ... may be subject to limitations as provided by law and necessary for ... respect for religions and beliefs”.⁸⁵ It is remarkable that in none of the resolutions is a definition of religious defamation given, for it is not in line with the legal definitions of defamation, slander and libel.

From an examination of the resolutions, it can be deduced that they include the call for states to take strict measures to legitimately restrict the freedom of expression. It is not only a call for censorship, but also to develop legislation that criminalises blasphemy or take other actions that

82 OIC-CS-2ndOBS-REP-FINAL-10 May 2009, 4. See also Robert C. Blitt, “Defamation of Religion: Rumors of its Death are Greatly Exaggerated,” *Case Western Reserve Law Review* 62 (2011), 353–354. See for a detailed overview Appendix 1: Reports Generated By UN Resolutions Related to Defamation of Religions, by Reporting Mandate, in Robert C. Blitt, “The Bottom up Journey of ‘Defamation of Religion’ from Muslim States to the United Nations: A Case Study of the Migration of Anti-Constitutional Ideas,” *Studies in Law, Politics, and Society* 56 (2011). Much can also be said about the concept of Islamophobia.

83 A/RES/64/156.

84 A/HRC/RES/10/22.

85 A/RES/61/164.

have a threatening or discriminatory effect on critics and dissenters. Most importantly, it is seen as an *international call to criminalise blasphemy*.⁸⁶

It must also be questioned whether the concept of defamation of religion is sustainable at all. After all, is not every religion by its nature the defamation of other religions? The representative of Pakistan has to understand that when he states that Muhammad is the Seal of the Prophets, he is defaming the faith of the Bahai, for they recognise later prophets. And when Christ is seen as the son of God, this is blasphemous from a Jewish perspective.⁸⁷

In addition, the emphasis in the defamation resolutions is on the *protection of religions*. While it is clear that this is to protect one religion, Islam, it is not clear whom this protection benefits in practice. Is it the state religion, the religious ruler, or perhaps the majority of the believers? Apart from that, the protection of the rights of religious minorities is central to the mandate on freedom of religion. And the idea of protecting religions is evidently at odds with the freedom of religion, and with the human rights acquis in general, in which the individual and his freedoms are protected.⁸⁸

Accordingly, it seems safe to conclude that religious defamation is an *ambiguous concept*. It is vague and has a scope wide enough to encompass different kinds of chilling effects on the freedoms of religion and expression. With the defamation resolutions, the OIC amalgamates freedom of religion with political policies and diminishes its original intent and scope. And by implicitly undermining its content, and explicitly undermining its non-distinctive application, the OIC *politically derogates* from its very status as a fundamental, universal human right, leading to severe consequences for its normative framework.

RESOLUTION 16/18 COMBATTING RELIGIOUS INTOLERANCE

In 2009 there was a noticeable change in support for the religious defamation concept. A joint petition was presented and signed by more than 200 civil organisations, including monotheistic, humanist and atheist organisations,

86 See for more Heiner Bielefeldt, "Misperceptions of Freedom of Religion or Belief," *Human Rights Quarterly* 35 (2013) 41–42; L. Bennett Graham, "Defamation of Religions. The End of Pluralism?," *Emory International Law Review* 23 (2009) 69; Robert C. Blitt, "Defamation of Religion: Rumors of its Death are Greatly Exaggerated," *Case Western Reserve Law Review* 62 (2011).

87 Paul Cliteur, "Taylor and Dummett on the Rushdie Affair," *Journal of Religion & Society* 18 (2016) 15.

88 Ibid.

urging member states of the UNHRC to reject the 2009 defamation resolution.⁸⁹ In addition, the combined abstentions and votes against the defamation resolutions reached a higher number than the votes in favour.⁹⁰ The same occurred in the UNGA, and there was an even further decline in support in 2010.⁹¹

In 2011 there was what was considered to be a turnaround, or even a breakthrough. The OIC introduced into the UNHRC resolution 16/18 on “Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against persons based on religion or belief”.⁹² The resolution was adopted with consensus on 24 March 2011, and has since then functioned as a guiding document for discussion within the UN.⁹³

In the general comments and explanations before the vote the United States stated that it was “pleased” that consensus had been reached, and hoped that it “become[s] a blueprint for constructive, meaningful actions that the international community will take to promote respect for religious differences.”⁹⁴ The Algerian representative stated that

le consensus atteint autour du projet de résolution L.38 sur la lutte contre l'intolérance et la haine basées sur l'affiliation religieuse,

89 Human Rights Council Resolution “Combating Defamation of Religion”, The International Humanist and Ethical Union, 26 March 2009, available at: <http://iheu.org/human-rights-council-resolution-combating-defamation-religion> (accessed 9 June 2015).

90 A/HRC/RES/10/22.

91 In 2009 A/RES/64/156 Combatting defamation of religions, A/64/439/Add.2 (Part II), 9–11, there were 81 votes in favour, 55 votes against, and 43 abstentions. In 2010 A/RES/65/224, A/65/456/Add.2 (Part II), 73–74, A/C.3/65/L.46/Rev.1, there were 76 in favour, 64 against, and 42 abstentions.

92 A/HRC/RES/16/18 (24 March 2011). It is salient that a few months before the resolution was adopted in the UNHRC, a resolution regarding combatting defamation of religions was adopted in the UNGA. A/RES/65/224 (21 December 2010).

93 Heiner Bielefeldt, “Misperceptions of Freedom of Religion or Belief,” *Human Rights Quarterly* 35 (2013), 41–43. In the following years resolution 16/18 was reaffirmed in the UNHRC: on 23 March 2012 resolution 19/25, A/HRC/RES/19/25, on 22 March 2013 resolution, 22/31, A/HRC/RES/22/31, on 28 March 2014 resolution 25/34, A/HRC/RES/25/34, on 27 March 2015 resolution 28/29, A/HRC/28/RES/29. And in the UNGA: on 19 December, 2011 resolution 66/167, A/RES/66/167, on 20 December 2012, resolution 67/178, A/RES/67/178, on 18 December 2013 resolution 68/169, A/RES/68/169, on 18 December 2014 resolution 69/174, A/RES/69/174.

94 46th Meeting, HRC Extranet, Sixteenth Session, Draft resolutions, decisions & President’s statements, A/HRC/16/L.38.

constitue une avancée significative. C'est vraiment pour ma délégation la traduction contemporaine du "I have a dream" de Martin Luther King. Merci à tous pour avoir jeté des ponts plutôt que d'avoir jeté l'éponge.⁹⁵

For Algeria, a member of the OIC, it was certainly more than a blueprint, considering that she compared it to a watershed moment in American civil rights history, Martin Luther King's historic speech on 28 August 1963. A rather exaggerated and slightly inappropriate comparison. Nonetheless, it can be safely concluded that both the OIC and the Western states stated that they were decisive in focusing on combatting religious intolerance.

What stands out when resolution 16/18 is analysed is that there is no longer an explicit reference to the concept of defamation of religion. It refers to persons, so it seems that the aim is to protect the individual rather than religions, which is more in line with the human rights acquis. However, there is still an implicit emphasis on one religion in particular, as a speech of Ekmeleddin İhsanoğlu, the Secretary-General of the OIC, is explicitly addressed in the resolution.⁹⁶ It is furthermore relevant that other and even more concepts are included in the resolution, which have more or less the same ambiguity as defamation of religions, for example "derogatory stereotyping", "negative profiling", and "stigmatisation".⁹⁷ In general, these vague concepts lack both definition and criteria, and risk being subject to various interpretation.

95 48th Meeting, Final general remarks on 16th session UNHRC, HRC Extranet, Sixteenth Session, Oral statements, 25 March 2011. "The consensus around draft resolution L.38 on the fight against intolerance and hatred based on religious affiliation, is a significant step. It is for my delegation really the contemporary translation of the 'I have a dream of Martin Luther King'. Thank you all for having built bridges instead of throwing in the towel" [my translation].

96 The resolution codified eight points of action that İhsanoğlu addressed in his speech during this meeting. For example, "Speaking out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence." "Adopting measures to criminalize incitement to imminent violence based on religion or belief." "Understanding the need to combat denigration and negative religious stereotyping of persons, as well as incitement to religious hatred, by strategizing and harmonizing actions at the local, national, regional and international levels through, inter alia, education and awareness-building."

97 A/HRC/RES/16/18.

The reactions to the new course from academics and human rights groups were diverse. For example, Evelyn Aswad, Professor of Law at the University of Oklahoma College of Law, was optimistic and wrote that “the 16/18 approach to combating religious intolerance, including offensive speech, reflects the appropriate, effective, and wide-ranging toolbox available to governments in reacting to such speech without resorting to broad bans on speech.”⁹⁸ Ted Stahnke, from the organisation Human Rights First, was also positive. He stated that it was a “decisive break from the polarizing focus in the past on defamation of religions” and stated that “the U.N.’s new approach reflects what is needed to combat the intolerance we continue to see around the world ...”⁹⁹

The reaction of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, who is also Professor of Human Rights at the University of Erlangen-Nuremberg, was moderately positive. He wrote that “whether the UNHRC resolution 16/18 in the long run marks a turning point in the international debate remains to be seen. For the time being, it creates opportunities to address, in a more open inter-group atmosphere important political issues, such as stereotypes, prejudices, and concomitant manifestations of extreme hatred. This certainly is a positive development.”¹⁰⁰ Brett Scharffs, Professor of Law and Associate Director of the International Centre for Law and Religion at Brigham Young University, took a similar stance. He found it hard to predict an outcome, but stated that “the idea seems to have currency”.¹⁰¹ Although few in number, there were sceptical reactions, for example from Robert Blitt, associate Professor of Law at the University of Tennessee. He argued that “the new compromise approach

98 M. Aswad Evelyn, “To Ban or Not to Ban Blasphemous Videos”, *Georgetown Journal of International Law* 44 (2013) 1325–1326.

99 “U.N. General Assembly Abandons Dangerous “Defamation of Religion” Concept” press release, 19 December 2011, available at: <http://www.humanrightsfirst.org/press-release/un-general-assembly-abandons-dangerous-%E2%80%9Cdefamation-religion%E2%80%9D-concept>.

100 Heiner Bielefeldt, “Misperceptions of Freedom of Religion or Belief,” *Human Rights Quarterly* 35 (2013), 43.

101 Brett Scharffs, “International Law and the Defamation of Religion Conundrum,” *The Review of Faith & International Affairs* 11/1 (2013) 69.
Ibid.

risks being exploited”.¹⁰² Jonathan Turley, professor of law at The George Washington University Law School, was also very sceptical. Although he misquoted paragraphs from the resolution in his article, he stated that “... the latest resolution does not repeat the defamation language, the purpose remains unchanged and the dangers for free speech are obvious.”¹⁰³

THE AFTERMATH DISCUSSIONS: THE ISTANBUL PROCESS

To facilitate the implementation of Resolution 16/18, the Istanbul Process, a series of high-level meetings, was called into being in July 2011. The first meeting was hosted by the OIC, and co-chaired by its Secretary-General and former US secretary of state, Hillary Clinton. More than twenty representatives from different states were there.¹⁰⁴ In their joint statement the representatives

... called upon all relevant stakeholders throughout the world to take seriously the call for action set forth in Resolution 16/18 ... Participants, resolved to go beyond mere rhetoric, and to reaffirm their commitment to freedom of religion or belief and freedom of expression by urging States to take effective measures, as set forth in Resolution 16/18, consistent with their obligations under international human rights law ...¹⁰⁵

102 Robert C. Blitt, “Defamation of Religion: Rumors of its Death are Greatly Exaggerated,” *Case Western Reserve Law Review* 62 (2011), 347.

103 Johnatan Turley, “Criminalizing Intolerance: Obama Administration Moves Forward On United Nations Resolution Targeting Anti-Religious Speech,” 13 December 2011, available at: <http://jonathanturley.org/2011/12/13/criminalizing-intolerance-obama-administration-moves-forward-on-united-nations-resolution-targeting-anti-religious-speech/>.

104 The Secretary of State of the United States, the secretary-general of the OIC, the EU high representative for foreign affairs, and foreign ministers and officials from Australia, Belgium, Canada, Denmark, Egypt, France, Germany, Italy, Japan, Jordan, Lebanon, Morocco, Pakistan, Poland, Romania, Senegal, Sudan, Turkey, United Kingdom, the Vatican (Holy See), UN OHCHR, Arab League, African Union were present.

105 Joint Statement on Combating Intolerance, Discrimination, and Violence Based on Religion or Belief, 15 July 2011, available at: <http://www.oicun.org/oicus/oicusprojects/20110719041927244.html> (accessed 12 June 2015). Clinton, representing the Western states, furthermore stated that “this resolution marks a step forward in creating a safe global environment for practicing and expressing one’s beliefs.” In “Remarks at the Organization of the Islamic Conference (OIC) High-Level Meeting

From their statement it appears that they were making efforts to realise the objectives as set in the 16/18 resolution.

This meeting was followed by a meeting behind closed doors in Washington in December 2011, again co-chaired with the OIC. There were representatives from 26 states and several international organisations. This time Clinton had a more prominent role and said that “religious freedom and freedom of expression are among our highest values”¹⁰⁶ and “together [with the OIC] we have begun to overcome the false divide that pits religious sensitivities against freedom of expression ...”¹⁰⁷

The following session in London, hosted by the United Kingdom and Canada, was in December 2012, and topics similar to those talked about during the previous meetings were discussed. The next conference, organised solely by the OIC and held in Geneva in June 2013, provided the opportunity to discuss parts of their initial stance.¹⁰⁸ Besides the annual topics, like the importance of an intercultural dialogue and speaking out against intolerance, the criminalisation of hate speech was put on the agenda. It led to familiar heated debates on the line between freedom of expression and hate speech.¹⁰⁹

on Combating Religious Intolerance,” available at: <http://www.state.gov/secretary/20092013clinton/rm/2011/07/168636.htm> (accessed 12 June 2015.); K. Eckstrom, “Clinton Applauds U.N.’s Religious Freedom Resolution,” *The Huffington Post*, 25 March 2011.

106 Report of the United States on the First Meeting of Experts to Promote Implementation of United Nations Human Rights Council Resolution 16/18: 32, December 2011, available at: <http://www.universal-rights.org/wp-content/uploads/2015/02/1st-Meeting-Conference-Report.pdf>

107 Ibid.

108 “OIC to hold the next event of the ‘Istanbul Process’ on combating intolerance in Geneva,” 20 February 2013, available at: [http://www.oic-oci.org/oicv2/topic/?tid=7758&ref=3157&lan=en&x_key=istanbul process](http://www.oic-oci.org/oicv2/topic/?tid=7758&ref=3157&lan=en&x_key=istanbul%20process). “OIC Secretary General traveling today to Geneva for meeting on combating religious intolerance,” 18 June 2013, available at: [http://www.oic-oci.org/oicv2/topic/?tid=8187&ref=3305&lan=en&x_key=istanbul process](http://www.oic-oci.org/oicv2/topic/?tid=8187&ref=3305&lan=en&x_key=istanbul%20process).

109 In his opening statement, İhsanoğlu, said that “... An open and constructive debate of ideas is indeed useful. It must be upheld as a matter of freedom of opinion and expression. It, however, transforms into a case of incitement to discrimination, hostility or violence when the freedom is abused to denigrate symbols and personalities sacred to one or the other religion. It needs to be understood as a matter of identity. It needs to be acknowledged that people in some parts of the world tend to identify themselves more with a particular religion than elsewhere. It is, therefore, essential to draw a line between free speech and hate speech ...” in “Statement by His Excellency the Secretary General at the 3rd Istanbul Process Meeting on the follow-up of Implementation of HRC Resolution 16/18,” 20 June 2010, available at: [http://www.oic-oci.org/oicv2/topic/?tid=8196&ref=3308&lan=en&x_key=istanbul process](http://www.oic-oci.org/oicv2/topic/?tid=8196&ref=3308&lan=en&x_key=istanbul%20process).

The dividing lines between the West and the OIC reappeared and cracks in the new alliance resulted.¹¹⁰ The same occurred during the fourth meeting in Doha in March 2014,¹¹¹ and during its recently held fifth session in Jeddah, Saudi Arabia, in June 2015.¹¹²

Accordingly, after a few years the efforts to, in Clinton's words "overcome the false divide", were no longer the primary focus for the OIC within UN contours.¹¹³

A DIFFERENT STANCE OR A NEW STRATEGY?

It is important to note that there was a difference between how the OIC originally handled and implemented the newly set course with regard to resolution 16/18 in UN contours, for example with the Istanbul Processes, and how they treated it inside their own organisations. This follows from contradictory statements from OIC officials and OIC documents. For example, the Islamic Educational, Scientific, and Cultural Organisation, which was established by the OIC, announced only a year after the adoption of resolution 16/18 that the International Federation of Journalists "should respect Islamic religious symbols and halt desecration of them. In this regard, it underlined that defaming Islamic religious symbols provokes the feelings

110 See for more Turan Kayaoglu and Marie Juul Petersen, "Will Istanbul Process Relieve the Tension Between the Muslim World and the West?," *The Washington Review of Turkish & Eurasian Affairs*, October 2013.

111 Report for Doha Meeting for Advancing Religious Freedom Through Interfaith Collaboration. Istanbul Process 16/18 for Combating Intolerance and Discrimination based on Religion or Belief, 24–25 March 2014, available at: <http://www.universal-rights.org/wp-content/uploads/2015/02/Doha-Meeting-final.pdf>. See for more by Marc Limon, Nazila Ghanea and Hilary Power, "The Policy Report, Combatting Global Religious Intolerance. The implementation of Human Rights Council".

112 See for the official statements https://www.fidh.org/IMG/pdf/fidh_written_submission_-_5th_session_of_the_istanbul_process-2.pdf; Hilary Power and Marie Juul Petersen, Informal Report Of the 5th meeting of the Istanbul Process. "From Resolution to Realisation – how to promote effective implementation of Human Rights Council resolution 16/18", Jeddah, 3–4 June 2015, available at: <http://www.humanrights.dk/files/media/researchpublications/downloads/urg-dihr-report-on-the-5th-meeting-of-the-istanbul-process-jeddah-20152.pdf>.

113 Chile will host the 2016 Istanbul meeting. This will be the first time that a meeting has not been organised by one of the OIC or the Western states. It will be interesting to see what the outcomes of the discussions will be.

of Muslims, and goes against the international media law and media ethics and the UN Resolution 65/224 on combating defamation of religions ...”¹¹⁴

What is even more disconcerting is that only a few months after the adoption of resolution 16/18, the OIC’s Council of Foreign Ministers adopted a new resolution on the topic of combatting defamation of religions. In it the OIC decided “to continue to support the resolution en bloc in favor of the resolution at the Human Rights Council.”¹¹⁵ The OIC furthermore said in it that it was “exploring [an] alternative approach ...”¹¹⁶ and that its members “continue to explore options with regard to broadening support for the resolution on defamation of religions ...”¹¹⁷ It “decide[d] to remain seized of the matter as a top priority item on the agenda of all OIC Summits and Council of Foreign Ministers.”¹¹⁸

These statements not only demonstrate that the OIC members derived other content or means of implementation of the 16/18 resolution than was assumed, but it indicates more: it was not the turnaround the West thought it would be. The Western states were under the impression that they had left the notion of religious defamation behind, and had thus corrected the error they had made in 1999. So one may wonder, why did the OIC initiate this *ostensible change of direction*? After all, it was Pakistan, at the initiative of the OIC, that introduced the draft resolution. What was the reason for this change of direction?

When placed in context it looks like a mere change of tactics, that is, a *strategic move*. There are some arguments for this assumption. First of all, the OIC became aware that its continual rhetoric of arguments, in which it stated that the Western states violated the freedom of expression by failing to

114 ISESCO calls upon IFJ to activate UN Resolution on combating defamation of religions, 21 September 2012. via: http://www.isesco.org.ma/index.php?option=com_k2&view=item&id=7626:isesco-calls-upon-ifj-to-activate-un-resolution-on-combating-defamation-of-religions&lang=en Resolution 65/224, combatting defamation of religions. A/RES/65/224.

115 Res. 35/38 OIC (28-30 June 2011), On Combating Defamation of Religions, Res35/38-POL, in OIC/CFM-38/2011/POL/FINAL, 79–82.

116 Ibid.

117 Ibid.

118 Ibid. See for more Robert C. Blitt, “Defamation of Religion: Rumors of its Death are Greatly Exaggerated,” *Case Western Reserve Law Review* 62 (2011), 361–365; Javaid Rehman and Stephanie E. Berry, “Is ‘defamation of religions’ passé? The United Nations, Organisation of Islamic Cooperation, and Islamic State Practices. Lessons from Pakistan,” *The George Washington International Law Review* 44 (2012) 451.

ban insults to religion, or criminalise defamation of religion, was no longer working. Or, as İhsanoğlu said: “We could not convince them” and “[t]he European countries don’t vote with us, the United States doesn’t vote with us.”¹¹⁹ Secondly, the OIC was aware that there was a decline in support, and more states abstained from voting, in contrast to the position of the West, which remained firm. And the last argument, which is perhaps the most interesting one, is that it realised that the hijacking of different UN fora was only *damaging its own reputation* of being the world’s representative of the Umma, and, a fortiori, it would no longer be taken seriously by the Western states as an equal debating partner when discussing human rights in the future.

These considerations probably made the OIC rethink its strategy and shift to a different approach, namely to *combatting religious intolerance*. Subsequently, the OIC shifted its primary focus in the 16/18 resolution to the freedom of religion, instead of expression, and by changing the semantics it reopened the debate and broadened its scope. The OIC is using the freedom of religion as the basis for its battle against, inter alia, the newly introduced ambiguous concepts of negative profiling, derogatory stereotyping and stigmatisation of persons based on religion (with an implicit focus on Islam). However, this shift and semantic adjustment have not changed the OIC’s original stance. It still has the same objectives, only now it is trying to realise them from a different, more disguised angle. Accordingly, by using this approach, the OIC can continue to politically derogate from the universality, status and content of the right to religious freedom, which will have consequences for the normative framework.

Of course it is possible that attributing this level of strategic planning to the OIC is giving it too much credit. Nonetheless, the fact remains that it explicitly continues to strive for an international norm on criminalising defamation of religion within OIC contours, and implicitly within the different UN forums.

119 “National Secular Society, Islamic bloc abandons plans for global blasphemy law at UN,” 16 October 2012, available at: <http://www.secularism.org.uk/news/2012/10/islamic-bloc-abandons-plans-for-global-blasphemy-law-at-un> (accessed 11 June 2015); Tom Henghan, “West’s free speech stand bars blasphemy ban: OIC,” Reuters, 15 October 2012.

CONCLUSION

In this chapter about the freedom of religion and its universal status, I have addressed an issue of great contemporary concern: the political derogation of the freedom of religion perpetrated by the OIC, resulting in severe consequences for the normative framework.

I have discussed examples of the OIC amalgamating the right to freedom of religion with political strategies and policies of protecting the reputation of religions against defamation. To demonstrate this, I have analysed its various resolutions and founding documents, and discussed some reports of the UN Special Rapporteurs. These reports revealed information about the numerous violations of the freedom of religion perpetrated or condoned by member states of the OIC.

Close analyses have demonstrated that since its establishment the OIC's actions have consisted of incoherent and even self-contradictory statements and documents on human rights law. There is a continuous back-and-forth movement between so-called recognition and endorsement of human rights in general, and the supremacy of Islamic law over universal human rights. While the OIC has given the impression that international law and human rights have over the years obtained a more prominent place on the agenda, closer analysis revealed otherwise. By referring to the Cairo Declaration in its Ten-Year Programme of Action and the lack of reference to UN fundamental human rights in its later 2008 charter, the OIC continues to approach human rights from an Islamic perspective.

From 1999 to 2011 the OIC had a firm grasp on the UNHRC and the UNGA with the adoption of the defamation of religion resolutions. In these resolutions it gave different interpretations of the right to freedom of religion, undermined its non-distinctive application, and argued clamorously against its universality. It considered the freedom of expression also to be subject to limitations. With the shift in 2011 to combatting religious intolerance, the OIC made it appear as if it had turned the tide with the adoption of this new compromise resolution. However, there are indications that it was more a strategic move than an actual reconsideration of its stance. At this time, the OIC is still defending this stance within UN contours.

And despite the fact that the resolutions are non-binding, and the OIC cannot enforce any legal actions with them, they do express the political will of the member states of the UN, and are therefore of significant influence, an influence that is unfortunately dominated by an organisation that continues to derogate from the universal human right of freedom of religion.

