



Universiteit
Leiden
The Netherlands

Defaming the freedom of religion or belief: a historical and conceptual analysis of the United Nations

Schaik, B. van

Citation

Schaik, B. van. (2022, April 5). *Defaming the freedom of religion or belief: a historical and conceptual analysis of the United Nations*. Retrieved from <https://hdl.handle.net/1887/3281796>

Version: Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/3281796>

Note: To cite this publication please use the final published version (if applicable).

Defaming the Freedom of Religion or Belief

A Historical and Conceptual Analysis of the United Nations

Belkis Mirjam van Schaik



Universiteit
Leiden

Defaming the Freedom of Religion or Belief

A Historical and Conceptual Analysis of the United Nations

Proefschrift

ter verkrijging van
de graad van doctor aan de Universiteit Leiden,
op gezag van rector magnificus prof.dr.ir. H. Bijl,
volgens besluit van het college voor promoties
te verdedigen op dinsdag 5 april 2022
klokke 11.15 uur

door

Belkis van Schaik
geboren te Haarlem
in 1985

Promotor: prof. dr. P.B. Cliteur

Co-promotor: mr. dr. A.J. Kwak

Promotiecommissie: prof. dr. A. Ellian

prof. dr. J.W. Sap, (Open Universiteit, Heerlen)

prof. dr. B.R. Rijpkema

mr. dr. G. Molier

dr. L. Tomoiaga (Technical University of Cluj-Napoca, Romania)

Table of Contents

| | |
|--|----|
| Introduction | 1 |
| 1 The History of Religious Freedom and Its Legal Framework..... | 11 |
| 1.1 Introduction | 11 |
| 1.2 The Pre-Twentieth Century Evolution of Religious Liberty | 11 |
| 1.3 Ruffini’s Historical Analysis..... | 15 |
| 1.3.1 Juridical Religious Liberty..... | 16 |
| 1.4 Religious Toleration | 18 |
| 1.4.1 Tolerating Religious Differences..... | 20 |
| 1.5 Believers and Beliefs | 24 |
| 1.6 The Freedom of Thought and Conscience | 25 |
| 1.7 Institutional Separation between Church and State | 28 |
| 1.8 Freedom of Religion or Belief in UN Documents..... | 29 |
| 1.9 Freedom of Religion or Belief in European Union Documents..... | 33 |
| 1.10 Defining Religion and Belief..... | 34 |
| 1.10.1 A Legal Definition of Religion and Belief..... | 35 |
| 1.10.2 Concerns with Respect to Defining Religion or Belief..... | 38 |
| 1.11 The Forum Internum and the Forum Externum | 39 |
| 1.12 The Holistic Understanding..... | 40 |
| 1.13 Conclusion..... | 41 |
| 2 Freedom of Religion or Belief as a Universal Human Right | 43 |
| 2.1 Introduction | 43 |
| 2.2 The Call for Universal Human Rights..... | 44 |
| 2.2.1 Roosevelt’s Four Freedoms | 45 |
| 2.2.2 Wells’ Rights of Man Declaration | 45 |
| 2.3 Plans for the Post-War World | 47 |
| 2.3.1 The UN Charter..... | 48 |
| 2.4 An International Bill of Human Rights..... | 50 |
| 2.4.1 The Composition of the Drafting Committee | 50 |
| 2.4.2 The Secretariat’s Outline | 54 |
| 2.4.3 Balancing Differences: a Draft Declaration..... | 55 |
| 2.5 The Legal Conceptualisation of Religious Freedom | 57 |
| 2.5.1 The Introduction of the Right to Apostasy | 58 |
| 2.5.2 Every Individual..... | 59 |

| | | |
|---------|--|-----|
| 2.5.3 | Deleting the Freedom of Thought? | 61 |
| 2.6 | The Third Committee: Questioning the Theoretical Underpinnings | 62 |
| 2.6.1 | The USSR Amendment: A Focus on the Freedom of Thought | 63 |
| 2.6.2 | The Saudi Arabian Amendment: Fear of Political Proselytism | 64 |
| 2.6.3 | A Plea for Atheism | 66 |
| 2.6.4 | Rejection of the Amendments | 67 |
| 2.6.5 | Islam as a Missionary Religion | 67 |
| 2.6.6 | The Final Vote | 68 |
| 2.7 | A Deity in the Universal Declaration | 69 |
| 2.7.1 | Acknowledging Religious Sentiment | 70 |
| 2.7.2 | Harmonising Religion and Politics | 71 |
| 2.7.3 | Fundamental Rights and Divine Authority | 72 |
| 2.7.4 | Religion as a Basis for Ethics | 73 |
| 2.7.5 | Man's Divine Origin in the Preamble | 75 |
| 2.7.5.1 | Ignoramus et Ignorabimus | 77 |
| 2.8 | Universalism in Article 18 UDHR | 79 |
| 2.8.1 | Textual Universalism | 80 |
| 2.9 | Criticising the Universal Declaration | 81 |
| 2.9.1 | A Cultural-Relativist View | 81 |
| 2.9.2 | Against Universal Moralism | 82 |
| 2.9.3 | Cultural and Ideological Critics | 84 |
| 2.9.4 | Human Rights as Fiction and Urges | 86 |
| 2.9.5 | The New Critics of Religious Freedom | 87 |
| 2.10 | Rethinking Cultural Relativism | 89 |
| 2.10.1 | A Common Denominator | 90 |
| 2.10.2 | Moral Infallibility | 91 |
| 2.10.3 | The Civilizational Perspective; the Consensus Approach | 92 |
| 2.10.4 | Rebutting Ethnocentrism: A Plurality of Voices | 94 |
| 2.11 | Conclusion | 96 |
| 3 | Freedom to Change Religion or Belief: a Right to Apostasy | 99 |
| 3.1 | Introduction | 99 |
| 3.2 | Apostasy at the UN | 100 |
| 3.2.1 | UN Reports: The Krishnaswami Study | 103 |
| 3.2.2 | The Odio Benito Report | 104 |

| | | |
|---------|---|-----|
| 3.2.3 | General Comment 22..... | 105 |
| 3.2.4 | An implicit Recognition..... | 105 |
| 3.3 | Drafting Article 18 ICCPR | 106 |
| 3.4 | The Saudi Proposal: Delete ‘to Maintain or Change Religion’ | 108 |
| 3.4.1 | An Implicit Reference to Apostasy | 111 |
| 3.4.2 | An Explicit Reference to Apostasy | 111 |
| 3.4.3 | Emphasising Religion..... | 113 |
| 3.4.4 | Freedom to Proselytise | 115 |
| 3.4.5 | The Freedom of Atheism | 117 |
| 3.5 | The Scope of Article 18 ICCPR: A Religious Connotation? | 120 |
| 3.6 | The Brazilian and Philippine Amendment: Religious Choice..... | 121 |
| 3.6.1 | Freedom to Have or to Adopt..... | 123 |
| 3.6.1.1 | A Spirit of Compromise..... | 125 |
| 3.7 | An Academic View..... | 126 |
| 3.7.1 | The Inclusive Stance | 126 |
| 3.7.2 | The Meaning of Choice | 128 |
| 3.7.3 | The Exclusive Stance | 129 |
| 3.8 | Diminishing the Normative Force..... | 130 |
| 3.9 | A Reconceptualisation of Article 18 ICCPR..... | 131 |
| 3.10 | Conclusion..... | 132 |
| 4 | Religious Freedom in a Global Context: The Concept of Religious Defamation..... | 135 |
| 4.1 | Introduction | 135 |
| 4.2 | The Organisation of Islamic Cooperation..... | 135 |
| 4.3 | Disputing Universality | 136 |
| 4.3.1 | The Ten-Year Programme of Action: A New Focus on Human Rights? | 138 |
| 4.3.2 | The 2008 Charter..... | 139 |
| 4.4 | The OIC’s motivations | 140 |
| 4.4.1 | The Image of Islam | 140 |
| 4.4.2 | A Blasphemous Novel | 143 |
| 4.4.3 | The Reprimands..... | 143 |
| 4.5 | The Introduction of Defamation of Religion | 144 |
| 4.5.1 | From Consensus to Majority Vote..... | 146 |
| 4.5.2 | The Expansion to the General Assembly | 148 |
| 4.6 | A Political Undermining..... | 149 |

| | | |
|-------|--|-----|
| 4.7 | Resolution 16/18 Combatting Religious Intolerance | 151 |
| 4.7.1 | The Reactions to Resolution 16/18..... | 153 |
| 4.7.2 | The Aftermath Discussions: The Istanbul Process | 153 |
| 4.8 | A New Strategy | 155 |
| 4.9 | Conclusion..... | 157 |
| 5 | Realising the Freedom of Religion or Belief Equally: Blasphemy in the Netherlands..... | 159 |
| 5.1 | Introduction | 159 |
| 5.2 | The Legislative History of Blasphemy in the Netherlands..... | 160 |
| 5.2.1 | Van het Reve and God as a Donkey..... | 161 |
| 5.2.2 | Donner & Hirsch Ballin: Reviving the Law..... | 163 |
| 5.3 | Reasoning against Blasphemy..... | 165 |
| 5.3.1 | A <i>Status Aparte</i> for Believers..... | 165 |
| 5.3.2 | Protecting the Public Order | 167 |
| 5.4 | Legislative Initiatives during the Abolition..... | 168 |
| 5.4.1 | Directly Discriminatory?..... | 169 |
| 5.5 | A European Perspective on Blasphemy..... | 172 |
| 5.6 | Conclusion..... | 173 |
| | Conclusion..... | 175 |
| | Bibliography | 183 |
| | Case Law | 206 |
| | UN Documents | 207 |
| | Summary | 213 |
| | Samenvatting..... | 215 |
| | Curriculum Vitae | 217 |

United Nations Reference System

| | |
|----------------|--|
| A/ | General Assembly |
| A/PV. | General Assembly, Plenary, Verbatim Record |
| A/C.3/ | General Assembly, Third Committee |
| E/ | Economic and Social Council |
| E/CN.4/ | Commission on Human Rights |
| E/CN.4/AC.1 | Commission on Human Rights, Drafting Committee 1947-1948 |
| E/CN.4/AC.2 | Commission on Human Rights, Working group on the Universal Declaration of Human Rights 1947-1947 |
| E/CN.4/Sub. I | Sub-Commission on Freedom of Information and of the Press |
| E/CN.4/Sub. II | Sub-Commission on Prevention of Discrimination and Protection of Minorities |
| E/AC.7/ | Economic and Social Council. Social Committee 1947-1977. Title changed in 1978 to Second Committee; symbol changed to E/(year)/C2/ |
| S/ | Security Council |
| T/ | Trustee Council |
| SR. | Summary Record (minutes of meeting) |
| | * This can be the meetings of the Commission on Human Rights itself, in which case a document is referred to as 'E/CN.4/SR.*' The * being the number of the meeting. |
| | * When the meetings are those of the Drafting Committee set up by the Commission 'AC.1' is inserted, as in 'E/CN.4/AC.1/SR.*'. |
| | * When the meetings are those of the Working Group set up by the Second Session of the Commission 'AC.2' is inserted. |
| | * 'W' refers to a working paper distributed by Humphrey's Human Rights Division. |
| L. | Limited (distribution) |

