



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).

Introduction

Religious liberty is a general concept used by lawyers, politicians, and academics. As a right, the 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 international norms, and defined as fundamental and authoritative. This research about the freedom of religion or belief and its universalistic nature addresses matters of great contemporary concern. There are various places in the world where measures to restrict this fundamental right have been taken: a special status is granted to a particular religion, and apostasy is outlawed under the criminal code, as is blasphemy for causing offence to religious feelings.

Freedom of religion or belief has been interpreted in various ways. Additionally, polemics have become an incentive for the legal enshrinement of this right, but not always in a positive way. Sometimes this freedom seems to be interpreted and implemented negatively. The question that is addressed in this enquiry is: *To what extent do the current interpretations of the freedom of religion or belief detract from its content, equal (i.e. non-discriminatory) implementation, and universality as a human right? And on what levels is this development perceptible?* In order to explore this issue, I address various situations in which the content, equal implementation, and universal status of the freedom of religion or belief, as they are allocated in the human rights provisions regarding freedom of religion or belief, are—implicitly or explicitly—diminished. I argue that these developments have led and will continue to lead to the diminishing of the normative force of the legal provisions regarding the freedom of religion or belief.

Over the past decades, the relationship between religion and politics (or religion and the state) has been the subject of increasing tension, social debate, and scholarly analysis. This research aims to make a contribution to that field of interest. In this study, I concern myself with the prevailing *de jure* situation in the international legal order and the implications of this for the different states in the world. This analysis in particular is significant, for it demonstrates how legal and political practices function to broaden or narrow the scope and content of freedom of religion or belief globally.

As I demonstrate in the course of this study, there are instances in which the conceptualisation of freedom of religion or belief is interpreted differently, or even misinterpreted, resulting in a blurring of its normative content and contours, which diminishes its protection. I establish these developments on various levels, *viz.*, on a legal and political level and within a national and international setting. My argument is that these developments affect the general applicability of the freedom of religion or belief in a negative sense, or rather, weaken its normative force. Throughout this study, I also assess the value and significance of secularist philosophies and constitutional models that accommodate a peaceful coexistence of people with different religious convictions.

The Religious Population

This research is contextualised by the actual state models. It departs from the premise that Europe will continue to develop into a continent with great religious and cultural diversity. Although this is generally considered to be a given, there is widespread disagreement about the most viable constitutional model to manage or regulate this diversity. Some models, like the French laicist

model, try to keep religion out of politics as much as possible.¹ This ideal is characterised as political secularism.² Other models (the multiculturalist model in particular) try to adopt a welcoming attitude towards religion in ‘the public sphere’.³ Political secularism and multiculturalism seem to be the two most viable models regulating the relationship between the state (or politics) and religion. The importance of political secularism is embedded throughout this research.

Basically, the state can adopt five attitudes towards religion:⁴ 1. Suppress religion (political atheism); 2. Remain ‘neutral’ or ‘agnostic’ towards religion (political secularism and political agnosticism); 3. Adopt and accommodate all religions (multiculturalism); 4. Organise cohesion around one specific religion while tolerating others (state religion); 5. Suppress all atheism and religious diversity, proclaiming one religion to be the only permissible religious option (theocracy).⁵

For this study, the religious population figures, drafted by the Pew Research Center, are important. According to this empirical research, the approximate numbers of adherents to the largest faiths as percentages of the world’s total population are as follows: Christianity 31.2%, Islam 24%, non-religious/unaffiliated 16%, Hinduism 15.1%, Buddhism 6.9%, folk religion 5.7%, other religions 0.8%, and Judaism 0.2%.⁶ These figures demonstrate that approximately half of the current world population subscribes to a monotheistic religion, over a quarter to other beliefs, and 16% consider themselves to be ‘non-religious’. Some remarks have to be made in interpreting these figures.

The first remark is about the characteristics of religion, and more in particular an individual’s affiliation with religion. The abovementioned figures are based on what people *say*

¹ P. Weil, ‘Why the French Laïcité is Liberal’, *Cardozo Law Review*, Vol. 30, No. 6, 2009, pp. 2699-2714; M. Akan, ‘Laïcité and Multiculturalism: the Stasi Report in Context’, *The British Journal of Sociology*, Vol. 60, No. 2, 2009, pp. 237-256.

² P.B. Cliteur, *The Secular Outlook: In Defense of Moral and Political Secularism*, Chichester, Wiley-Blackwell, 2010, pp. 172-281.

³ B. Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Houndmills/London, Macmillan Press, 2000; B. Parekh, *A New Politics of Identity: Political Principles for an Interdependent World*, Houndmills, Palgrave Macmillan, 2008; R. Trigg, *Religion in Private Life: Must Faith be Privatized?*, Oxford, Oxford University Press, 2007; R. Hasan, *Multiculturalism: Some Inconvenient Truths*, London, Politico’s Publishing (Methuen), 2010.

⁴ P.B. Cliteur, ‘State and Religion against the Backdrop of Religious Radicalism’, *International Journal of Constitutional Law*, Vol. 10, No. 1, 2012, pp. 128-133; M. Zee, *Choosing Sharia: Multiculturalism, Islamic Fundamentalism & British Sharia Councils*, The Hague, Eleven, 2015; P.B. Cliteur & A. Ellian, ‘The Five Models for State and Religion: Atheism, Theocracy, State Church, Multiculturalism, and Secularism’, *Vienna Journal of International Constitutional Law*, Vol. 14, No. 1, 2020, pp. 103-132. See also B. Vermeulen, *Vrijheid, gelijkheid, burgerschap*, Den Haag, SDU Uitgevers, 2007; J.W. Sap, ‘De gevaarlijke verleiding van de staatskerk’, in C. Van Den Broeke, A.J. Overbeeke, T.J. Van Der Ploeg & G. Van Der Schyff (eds.), *Perspectieven op de godsdienstvrijheid en de verhouding tussen staat en religie*, Zutphen, Uitgeverij Parijs, 2019, pp. 33-45.

⁵ K. Armstrong, *The Battle for God: Fundamentalism in Judaism, Christianity and Islam*, London, HarperCollins, 2000; A. Ellian, ‘Het monotheïstisch probleem’, in D.a.A. Loose & A.J.A. De Wit (eds.), *Religie in het publieke domein: fundament en fundamentalisme*, Budel, Damon, 2007, pp. 212-258; P. Herriot, *Religious Fundamentalism and Social Identity*, London, Routledge, 2007; M. Ruthven, *Fundamentalism. The Search for Meaning*, Oxford, Oxford University Press, 2004.

⁶ Over the time period of 2015–2060 the world population is estimated to increase by 32% to 9.6 billion. During that timeframe the number of Muslims (3 billion) will continue to grow and will even match the number of Christians (3.1 billion), with Muslims and Christians respectively making up 31% and 32%.⁶ It is expected that the other world religions will constitute a lesser percentage of the world population. The numbers of Hindus, Jews, and adherents of folk religions will also increase, but not at the same rate as the Muslims. Pew Research Center, ‘The Changing Global Religious Landscape’, 5 April 2017, *Pew Research Center*, pewforum.org, p. 8.

about their own affiliation or what is *supposed* to be their affiliation. The question is: do these people have sufficient knowledge of the concepts involved (i.e. the essential characteristics of the religions to which they subscribe)? What does the individual have to believe to call himself, e.g., a ‘Christian’? Suppose someone says: ‘I do not believe in God, or in the afterlife, but I think Jesus Christ was a supremely good being’? Or: ‘I do believe in God, but I think that Jesus Christ was not his son, that Christ did not rise from the dead, and that perhaps he never lived’?⁷ The British philosopher Bertrand Russell addressed this problem in his lecture *Why I am Not a Christian* (1927).⁸ Russell begins by explaining what specific propositions someone is supposed to subscribe to in order to legitimately call himself a ‘Christian’. His answer is that there has to be (i) belief in the existence of God; (ii) belief in immortality; (iii) and some kind of belief in Christ. The question now arises: How many of the 31% ‘Christians’ have specific beliefs about these three subjects? Are many people not Christians in name only? And how does this ‘belief’ relate to a possible invocation of the freedom of religion or belief?

These questions are also pertinent with regard to the concept of ‘god’. Christians and other adherents of the monotheistic faiths subscribe to a belief in ‘God’, i.e. a god with specific characteristics. Some of the characteristics of the ‘monotheistic god’ are that he (apparently male) is considered to be a singular, self-existent, eternal, transcendent, all-powerful, all-knowing, personal, all-good, holy creator.⁹ Belief in the existence of a being with these characteristics should, according to the figures referred to above, be shared by roughly half the world’s population (31% Christians, 24% Muslims, 0.2% adherents of Judaism). But is that really the case? Have liberal conceptions of belief not fundamentally questioned this idea of ‘God’?¹⁰

A fortiori, the same questions apply to Muslims and adherents of other faiths. The implication of this argument is clear: it would imply that the number of religious believers (e.g. the 31% ‘Christians’) probably differs from the official figures. This also introduces a different but important question in terms of protecting freedoms, *viz.*, the legal conceptualisation of religion: how is religion or belief to be legally defined when safeguarding these views in terms of freedom?

A different remark with regard to the religious population figures is that, being based on what people *say* they think and believe, the accuracy of the figures depends on the presupposition that people give reliable information about their innermost thoughts. Is that realistic? It is known that from a historical perspective it is naïve to suppose that people have always felt free to share information about their religious ideas.¹¹ The Dutch philosopher Spinoza (1632–1677) signed his

⁷ See: S.C. Evans, *The Historical Christ & The Jesus of Faith. The Incarnational Narrative as History*, Oxford, Clarendon Press, 1996.

⁸ B. Russell, ‘Why I am Not a Christian’, in *Why I Am Not a Christian and Other Essays on Religion and Related Subjects*, London, Unwin Paperbacks, 1957.

⁹ P.K. McInerney, ‘God’, in *Introduction to Philosophy*, New York, HarperCollins, 1992, pp. 9-22; A. Ellian, ‘Monotheism as a Political Problem: Political Islam and the Attack on Religious Equality and Freedom’, *Telos*, Vol. Winter 2008, No. 145, 2008; J. Kirsch, *God against the Gods: The History of the War between Monotheism and Polytheism*, New York, Viking Compass, 2004.

¹⁰ For instance: J.a.T. Robinson, *Honest to God*, London, SCM Press, 1963; P. Tillich, *The Shaking of Foundations*, Harmondsworth, Penguin Books, 1963 [1949]; P. Edwards, ‘Professor Tillich’s Confusions’, *Mind*, Vol. 74, 1965, pp. 192-214; P. Edwards, *God and the Philosophers*, New York, Prometheus Books, 2009.

¹¹ See: L. Strauss, *Persecution and the Art of Writing*, Chicago, London, The University of Chicago Press, 1988 [1952], pp. 22-38.

letters with ‘Caute’.¹² His *Ethics* was published after his death in 1677, and his *Tractatus Theologico-Politicus* of 1670 was published anonymously.¹³ Spinoza’s situation was not exceptional.¹⁴ Although freedom of speech is arguably a driving force behind change and cultural, political, and scientific improvement, it is wise to remember that freedom of speech was once a highly contested principle (and still is in many parts of the world). For a long time (1559–1966), numerous books that are now considered classical and indispensable works of the Western tradition were prohibited by the Catholic Church and put on the *Index auctorum et librorum prohibitorum*. This list was established by Pope Paul IV (1476–1559) in 1559.¹⁵ On the index, there are works by Calvin, Erasmus, Boccaccio, Dante, and many others. Much better known, of course, are the scientific works included on the list of papal censure. Notorious is Galileo’s *Dialogues on the Two World Systems* (1632), which received a papal condemnation from Pope Urbanus VIII (1568–1644) in 1633.

The list of prohibited books also includes a considerable part of the philosophical canon of the Western tradition. The *Meditations Metaphysiques* by Descartes (1663), the *Essais* by Montaigne (1676), the *Tractatus Theologico-Politicus* by Spinoza (1679), the *Essay Concerning Human Understanding* by John Locke (1734), the French *Encyclopédie* by Diderot and D’Alembert (1758), the *Pensées* by Pascal (1789), the *Rights of Man* by Paine (1792), and Kant’s *Critique of Pure Reason* (1827) feature prominently. To these examples, several more could be added.¹⁶

What all this means is that the chances are slim that reliable information may be heard from people about their moral beliefs in a situation where those beliefs can be used as a reason for sanctions by the state, by the church, or by society at large.¹⁷ For this reason, it is of the utmost importance that the right to freely form one’s thoughts about religious or moral matters and the freedom to act upon these thoughts is safeguarded in a broad sense.

Restricting the Freedom of Religion or Belief

According to Pew research, a significant change in the religious landscape is underway: a shift in the percentage of adherents to the monotheistic religions. By the year 2035, babies born to Muslim mothers will outnumber babies born to Christian mothers, who at present still constitute the largest

¹² K.O. Meinsma, *Spinoza en zijn kring. Over Hollandsche Vrijgeesten*, Utrecht, HES Publishers, 1980 [1896]; E. Renan, ‘Spinoza: 1677 and 1877’, *The Contemporary Review*, Vol. 29, 1877, pp. 763-777; J.I. Israel, *Radical Enlightenment: Philosophy and the Making of Modernity 1650-1750*, Oxford, New York, Oxford University Press, 2006.

¹³ Benedict de Spinoza, *Theological-Political Treatise*, J.I. Israel (ed.), Cambridge University Press, Cambridge, New York 2007 [1670]; S. Nadler, *A Book Forged in Hell: Spinoza’s Scandalous Treatise and the Birth of the Secular Age*, Princeton: Princeton University Press, 2011.

¹⁴ See: J.B. Bury, ‘The Trial of Socrates’, in H. Temperley (ed.) *Selected Essays of J.B. Bury*, Cambridge, Cambridge University Press, 1930, pp. 75-90; J.B. Bury, *A History of the Freedom of Thought*, London, Thornton Butterworth, 1932 [1913]; S. Jacoby, *Freethinkers: A History of American Secularism*, New York, Henry Holt and Company, 2004; J.M. Robertson, *A History of Freethought: Ancient and Modern to the Period of the French Revolution* London, Watts & Co., 1936.

¹⁵ D. MacCulloch, *Reformation: Europe’s House Divided 1490-1700*, London, Penguin Books, 2004.

¹⁶ D. Nash, *Blasphemy in the Christian World: A History*, Oxford, Oxford University Press, 2010 [2007]; L.W. Levy, *Blasphemy: Verbal Offense against the Sacred from Moses to Salman Rushdie*, Chapel Hill, London, The University of North Carolina Press, 1993.

¹⁷ Which was the theme of J.S. Mill’s famous apologia for freedom in: J.S. Mill, *On Liberty*, Harmondsworth, Penguin Books, 1977 [1859].

religious group, and the number of religiously unaffiliated people will decline.¹⁸ Moreover, starting in 2015, a rise can be observed in the global restrictions imposed on religious believers, from laws, policies, and actions by state officials to violence and social hostilities centred on religion. This development needs to be interpreted in the context of increasing migration numbers in Europe.¹⁹

In a world where it is proclaimed that every individual has the freedom to choose their own religion or belief, it is disturbing that four in ten countries have an official state or preferred religion. It is also worrisome that more than eighty of the 199 countries and territories around the globe officially or unofficially favour a particular religion. This varies in form from an official, government-endorsed religion to giving one religion special treatment over other beliefs.²⁰

More specifically, other Pew research demonstrates that, among the 199 countries, 43 countries (22%) have an official state religion, 40 countries (20%) have a preferred or favoured religion, 106 countries (53%) have no official or preferred religion, and 10 countries (5%) are hostile towards religious institutions.²¹ This research also reveals that Islam is the major state religion. No fewer than 27 countries, most of which are located in the Middle East and North Africa, have Islam as their official state religion. Christianity is the state religion in 13 countries, 9 of which are in Europe. In 40 countries worldwide, a form of Christianity is officially favoured by the state, and Christian institutions enjoy special protection. In 2 countries, Buddhism is enshrined as the state religion. Judaism is enshrined as the sole state religion in Israel.²²

As these figures demonstrate, faith is thus often a matter of government policy, and in some countries it is the cornerstone of the state. From a perspective of political secularism (or the First Amendment of the U.S. Constitution or the principle of *laïcité* in French constitutional law), this is illegitimate. Almost a quarter of the world's states have a formal link to a religion enshrined in their constitutions or laws. Although this does not always lead to severe sanctions on apostates, heretics, and dissident believers, it is certainly illegitimate from a secularist point of view and from the perspective of the universal freedom of religion or belief, which implicates that that individual citizens are free to choose their religion or belief.

The *Penguin State of the World Atlas* (2012) makes a distinction between four categories of stances the state can take towards religion: 1. Discriminating against all religions and interference with religious freedom; 2. Favouring the religion of the majority of the people and interfering with or limiting the freedom of other religions; 3. Favouring the religion of the majority but tolerating the religions of others; 4. Tolerating all religions.²³ Only the last position is truly secularist. It is

¹⁸ Pew Research Center, 'The Changing Global Religious Landscape', 5 April 2017, *Pew Research Center*, pewforum.org, pp. 4-5. 'By 2055 to 2060, just 9% of all babies will be born to a non-religious mother, while more than 7 out of 10 will be born to either a Muslim (36%) or Christian (35%) mother'.

¹⁹ Pew Research Center, 'Global Restrictions on Religion Rise Modestly in 2015, Reversing Downward Trend', 11 April 2017, *Pew Research Center*, pp. 7-8.

²⁰ Pew Research Center, 'Many Countries Favor Specific Religions, Officially or Unofficially', 3 October 2017, *Pew Research Center*, pewforum.org, p. 3.

²¹ Pew Research Center, 'Many Countries Favor Specific Religions, Officially or Unofficially', 3 October 2017, *Pew Research Center*, pewforum.org, p. 8.

²² Pew Research Center, 'Many Countries Favor Specific Religions, Officially or Unofficially', 3 October 2017, *Pew Research Center*, pewforum.org, p. 13.

²³ D. Smith, *The Penguin State of the World Atlas*, New York, Penguin, 2012, pp. 78-79. The stances as adopted in *The Penguin State of the World Atlas* show similarities to the criteria used by the researchers in the Pew report.

relevant to make this claim, since especially the last position is a source of controversy and misunderstanding. Sometimes secularism is (incorrectly) associated with not tolerating any religion. This study is premised on a different view: secularism means that all religions are treated equally and have the same rights within the polity.

Based on this typology, China has a bad record: it discriminates against all religions. The Chinese state practices 'state atheism'.²⁴ Although less severe, this second category of states also violates the freedom of religion or belief: Mauretania, Sudan, India, Pakistan, Afghanistan, Turkey, Saudi Arabia, Yemen, Eritrea, and Iran favour the religion of the majority (Islam) and interfere with the religious freedom of others. A better record with regard to freedom of religion or belief is to be found in the countries that adopt the third policy: favouring one religion but tolerating others. A number of South American states, like Brazil, Argentina, and Bolivia, favour Roman Catholicism. Morocco, Algeria, Libya, Egypt, and Chad have to be placed into that same category, except they favour another world religion: Islam. Only the U.S., Western Europe, Australia, and the Scandinavian countries have a respectable record from the secularist perspective of treating all religious positions equally. They tolerate all religions, at least officially.²⁵ This, of course, has far-reaching consequences for human rights policy, which I discuss throughout the upcoming chapters.

Research

The research question of this thesis is addressed in various chapters. From a methodological perspective it is important to emphasise that different research methods are used in different chapters. Some chapters are descriptive in nature, with normative components and implications, while others feature in-depth analyses with critical reflections.

The intention is that each chapter, focused on its own sub-questions, will contribute to answering the main question: To what extent do the current interpretations of the freedom of religion or belief detract from its content, equal (i.e. non-discriminatory) implementation, and universality as a human right? And on what levels is this development perceptible? This study is structured as follows:

In Chapter 1, I assess the history of freedom of religion or belief and how it is codified in human rights treaties, which provides a foundation for the study. Various international developments are discussed from a more historical perspective. In addition, the development of the *de jure* situation regarding the concept of religious liberty is analysed. To this end, the theoretical framework of Francesco Ruffini is discussed. His assertion that freedom of religion or belief is, in fact, a concept with a legal nature is leading for this study. In the subsequent sections, I address some principles relating to religious freedom, and conceptual clarity is provided with regard to the following ideas and concepts: tolerance; freedom of conscience; freedom of worship; the relationships between the individual, the collective, and religious liberty; and finally the institutional separation between state and religion.

In the second part of this chapter, I examine the contemporary international framework of freedom of religion or belief. This encompasses an explication of the legal framework of the

²⁴ Like the Soviet Union did before 1989. S. Luehrmann, *Secularism Soviet Style: Teaching Atheism and Religion in a Volga Republic*, Bloomington, Indianapolis, Indiana University Press, 2011.

²⁵ D. Linker, *The Theocons: Secular America under Siege*, New York, Doubleday, 2006.

religious freedom provisions within the EU and UN and its normative implications. The question of how religion or belief is to be construed within these contours is addressed. In this context, it is argued that interpreting freedom of religion or belief as a human right means understanding it as a right to follow one's conviction in matters of morality, irrespective of those convictions having a religious base. I discuss this within the holistic understanding of human rights.

In order to answer the main question—and thus prove that, to some extent, current interpretations of the freedom of religion or belief demonstrate a detraction from its universal status—it first has to be determined whether freedom of religion or belief can be interpreted as a universal human right. Chapter 2 focusses on this question.

In this second chapter, I discuss the nature of freedom of religion as a universal human right, with a focus on the Universal Declaration. The Declaration has significant influence in the legal order and is used to diplomatically and morally pressure governments that violate its provisions.

However, despite this influence and recognition, there is the perpetual charge of ethnocentrism, fed by the suspicion that something went wrong at the start of the drafting process. This criticism comes from different corners, such as religious actors and international organisations, and it is fuelled in academic circles, which results in the disputation of the universality of human rights standards as adopted in the Universal Declaration. This accusation or claim of ethnocentrism, which I examine within the overall theme of cultural relativism, is not one of recent years: it was already expressed during the drafting of the Universal Declaration by the American Anthropological Association. Other political-philosophical movements have also adopted a sceptical attitude towards the adoption of universal moral standards such as multiculturalism, communitarianism, and postmodernism. The focus in this chapter is on the (cultural) relativist critique.

In this chapter, some arguments are presented to refute the cultural-relativist claim of ethnocentrism. I argue that the accusation is partially instigated by the fact that these critics do not seem to have a clear insight into the discussions of the drafting process. This has resulted in inaccuracies in their idea of how the Universal Declaration was drafted and what the intentions and goals of the international community were. In order to do this, it is imperative to present a legal-historical analysis so as to understand and assess these complex and sometimes perplexing academic debates on the universal status of freedom of religion or belief.

The historical analysis consists of an elaborate examination of the drafting history. I focus in particular on the drafting process of the provision regarding freedom of religion or belief and on the question of what religious and secular conceptions the representatives thought the Declaration should embody. This analysis may be innovative first in that it is detailed with regard to religious-freedom-related matter, and second in that it questions the cultural relativists' accusation that the Universal Declaration expresses a purely Western vision regarding human rights and that only Western intellectuals took part in the preparations.

In Chapter 3, I focus on the ICCPR. This covenant contains a variety of provisions regarding religious freedom which seem to imply that the freedom of religion or belief and its accompanying aspects are well protected. However, as the Pew figures at the beginning of the Introduction demonstrated, several aspects of this freedom have often gone unrecognised within actual state practices, and to this day there are religions that do not allow conversion to another

religion. Most contemporary legal systems claim that they endorse the right to freedom of religion in all its facets; however, there is evidence that the full exercise of that right encounters insurmountable obstacles. This assumption is further specified in this chapter to the aspect of the freedom to change religion or belief, which I analyse from three perspectives. The implications of this for the universal status and content of the right are also discussed.

First, the legal documents are analysed, and an enquiry is made into a literal interpretation of the entrenched rights. In other words, the (exact) wording of the legal contours of Article 18 ICCPR is examined. The focus here lies on the legal situation prevailing in the international legal order and what the implications are for the different states in the world. This analysis is particularly significant, for it demonstrates the scope of the freedom to change religion or belief.

To properly understand and interpret Article 18 ICCPR, I study the *travaux préparatoires*. This means that the intentions of the drafters of the ICCPR and the objectives they aimed to realise with the provision are closely examined. This is the second analysis. The legislative history of Article 18 ICCPR is interesting particularly because the drafting parties had strong and widely divergent views about the scope and interpretations of several concepts of the provision. Due to the influence of a vast range of states, it was a complicated process to reach consensus on the various concepts and terminology.

In this context, I pay particular attention to the extent to which the freedom of religion or belief includes the right to reject or change religion, which was absent at times in the conception of various delegates. The political strategies of the state representatives are also considered here.

This legal historical analysis is imperative to understand and assess the complex and sometimes perplexing nature of contemporary academic debates on the freedom to change religion or belief, which is the third perspective from which I study this topic. The stances of several renowned authors on the freedom to change religion or belief are discussed, and it is demonstrated that these conceptions seem to diverge significantly, which possibly has consequences for the normative implications of this right.

The analyses from these three perspectives lead to the argument that several positions can be adopted towards the interpretation of Article 18 ICCPR and the freedom to change religion or belief. I argue that within the UN, member states tried and succeeded to change Article 18 ICCPR by interpreting its original objectives differently. These developments have led and will continue to lead to an actual diminishing of the normative force of the freedom of religion or belief within the international dimension.

In the end, I argue that more conceptual clarity is needed. In order for the freedom of religion or belief to have a scope broad enough to include the freedom to change religion or belief, it must be explicitly formulated so that the risk of misinterpretation is minimized. This would mean that Article 18 ICCPR has to be reconceptualised. A suggestion to that effect is made in this chapter.

In Chapter 4, I discuss an ‘open’ but severe abuse in the field of freedom of religion or belief. In this chapter, examples are discussed in which religious freedom is amalgamated with political strategies or policies of protecting the reputation of religions against defamation.²⁶ To

²⁶ This chapter is an elaborated version of B.M. Van Schaik, ‘Religious Freedom and Blasphemy Law in a Global

demonstrate this, analysis of resolutions and international documents drafted by the Organisation of Islamic Cooperation (OIC), which introduced resolutions on the issues of ‘combatting 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 for almost twenty years. The OIC’s founding documents are also examined. Furthermore, some reports of the United Nations Special Rapporteurs are discussed.

These reports reveal information about the various violations of the freedom of religion or belief perpetrated or condoned by member states of the OIC. In addition, some views in academia are addressed. In the end, it is argued that the OIC has deliberately been misusing the freedom of religion or belief as the basis for its battle against the defamation of Islam. By using this approach, the OIC has politically undermined the universality, non-discriminatory implementation, and content of the right to freedom of religion or belief.

After having discussed the importance of decriminalizing blasphemy for the universality and equal implementation of the freedom of religion or belief in previous chapters, in the next chapter I demonstrate how this discussion was conducted in the Netherlands, and I demonstrate how freedom of religion or belief was realised equally in this liberal democratic state. This chapter consists of a case study of the Netherlands, a country with, according to research conducted by the International Humanist and Ethical Union, one of the highest ratings on the realisation of freedom of religion or belief.²⁷

This chapter not only describes and analyses the Dutch discussion and the justification for the abolition of blasphemy, but also tries to broaden it in order to ascertain how this legislative change is desirable in light of the international debate that was discussed in the previous chapters. I demonstrate that, despite the fact that the Dutch state system was *de facto* committed to freedom of religion or belief, it was *de jure* not adequately equipped to ensure a full exercise of the right until it abolished the criminalisation of blasphemy. I argue that the Dutch ‘case’ can function as an example of how the freedom of religion or belief ought to be applied in a state.

In Chapter 6, the concluding chapter, I discuss the outcomes of the foregoing chapters, and answer the main question as addressed in this introduction.

Context: ‘The Concept of Religious Defamation’, in P.B. Cliteur & T. Herrenberg (eds.), *The Fall and Rise of Blasphemy Law*, Leiden, Leiden University Press, 2016.

²⁷ This chapter is an elaborated version of the (double-blind, peer-reviewed) article B.M. Van Schaik & J. Doomen, ‘Blasfemie in de huidige context’, *Netherlands Journal of Legal Philosophy*, Vol. 44, No. 1, 2015, pp. 47-61. The Netherlands is rated as ‘Free and Equal’ with regard to the realisation of the freedom of thought, religion and belief. International Humanist and Ethical Union, ‘Freedom of Thought Report 2015. A Global Report on Discrimination Against Humanists, Atheists, and the Non-religious’, *International Humanist and Ethical Union*, fot.humanists.international, pp. 509-510; International Humanist and Ethical Union, ‘Freedom of Thought Report 2017. A Global Report on the Rights, Legal Status and Discrimination Against Humanists, Atheists and the Non-religious’, *International Humanist and Ethical Union*, fot.humanists.international, p. 9.

