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

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4 Religious Freedom in a Global Context: The Concept of Religious Defamation

4.1 Introduction⁶¹²

As the previous chapters have demonstrated, the conceptualisation and application of the freedom of religion or belief meet with various difficulties. Polemics have become an incentive for the legal adjustment of this right, and the scope is interpreted in various ways. Several of the applications and interpretations in recent decades demonstrate an inclination towards a detraction from its very status as a fundamental human right by implicitly or explicitly subverting its non-discriminatory content and universality as allocated in the Universal Declaration and ICCPR.

To substantiate this claim, this chapter addresses a severe abuse in the field of freedom of religion or belief. Examples in which freedom of religion or belief is amalgamated with (international) political strategies or policies of protecting the reputation of religions against defamation are also discussed. This political undermining of the freedom of religion or belief has resulted in the undermining of the normative force of the legal provisions regarding the freedom of religion or belief. To demonstrate this, analyses are made of resolutions and international documents drafted by the *Organisation of Islamic Cooperation* (OIC), which has introduced resolutions on the issues of ‘combating defamation of religions’ and ‘combating religious intolerance’ in the Commission on Human Rights, in its successor the Human Rights Council, and in the General Assembly for almost twenty years. Their founding documents are examined. Furthermore, a number of reports of the United Nations Special Rapporteurs that shed light on the issue are discussed. These reports reveal the various violations of religious freedom perpetrated or condoned by member states of the OIC. In addition, some views in academia are addressed.

With respect to the normative framework, Article 18 ICCPR is relied on, and although not binding, Article 18 of the Universal Declaration of Human Rights is also relevant, for it has influenced many constitutions globally and has functioned as a foundation for several national and international legal documents.

4.2 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. This was three years after the adoption of the ICCPR. 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’.⁶¹³

⁶¹² This chapter is an elaborated version of the peer-reviewed chapter B.M. Van Schaik, ‘Religious Freedom and Blasphemy Law in a Global 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, pp. 177–207.

⁶¹³ Organisation of Islamic Cooperation, ‘History’, *oic-oci.org*, retrieved 21 April, 2014. It is important to note that this

After the UN, the OIC is currently the largest intergovernmental organisation, with 57 members. Except for the Palestinian authority, all its member states are also 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 and 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 execute its actions in various areas, including political, economic, cultural, social, scientific, financial, sports, technological, educational, media, social, humanitarian, and religious.⁶¹⁴ 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 EU in Brussels, Belgium, to, inter alia, contribute to the dialogue between the two parties.⁶¹⁵

The OIC has a unique position, being a religious intergovernmental organisation with permanent observer status at the UN.⁶¹⁶ This entails that the OIC can freely access most of the UN meetings, has 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.

4.3 Disputing Universality

For several decades, the OIC 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 during a meeting of the General Assembly.⁶¹⁷ The representative said that Iran appreciated ‘the true meaning of human rights through an understanding of the genuinely emancipating teachings of Islam and through their implementation’.⁶¹⁸ He noted 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’.⁶¹⁹

This indicates the core of the OIC’s view: human rights are not founded on *universal secular principles* but on *divine ethics*. Subsequently, it has led to the drafting of several Islamic human rights

chapter does not examine to what extent the OIC is legally authorized to speak on behalf of all Muslims, or even Islam.

⁶¹⁴ Organisation of Islamic Cooperation, ‘History’, *oic-oci.org*, retrieved 21 April, 2014.

⁶¹⁵ European Commission, ‘President Barroso meets the Secretary General of the Organisation of Islamic Cooperation (OIC), Mr Ekmeleddin Ihsanoglu’, *ec.europa.eu*, retrieved 26 April, 2015.

⁶¹⁶ There are no other intergovernmental religious organisations with this status. However, as a non-member state, the Holy See has the status of permanent observer.

⁶¹⁷ D.G. Littman, ‘Universal Human Rights and ‘Human Rights in Islam’’, *Midstream*, Vol. 45, No. 2, 1999, pp. 5-6.

⁶¹⁸ See A/C.3/37/SR.56, para. 50-51.

⁶¹⁹ Iran voted in favour of the Universal Declaration, 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.

documents, such as 'The Universal Islamic Declaration of Human Rights'⁶²⁰ and 'The Arab Charter on Human Rights'.⁶²¹ These documents, however, did not have the same impact or prevalence as the Cairo Declaration on Human Rights in Islam (CDHRI), adopted in 1990. The Cairo Declaration was drafted during the Cairo Islamic Conference of Foreign Ministers of the OIC.⁶²² The preamble of the Cairo Declaration declares that the OIC is based on the belief 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 is individually responsible—and the Ummah collectively responsible—for their safeguard.⁶²³

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 them to superseding Islamic norms. The Cairo Declaration is—in pursuance of the Iranian representative's statement on the 'true meaning' of human rights—generally seen as a reaction to the Universal Declaration, resulting in the *supremacy of religious law* over universal human rights, thereby diminishing their universal status.⁶²⁴ As a result, instead of the Universal Declaration, the Cairo Declaration 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 CDHRI, 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 transgression will result in severe punishment in accordance with Sharia; see Articles 19 and 22 CDHRI.

⁶²⁰ In accordance with the Muslim World League, this document was drafted by the Islamic Council and ratified and presented to UNESCO in 1981.

⁶²¹ The Arab Charter on Human Rights was adopted by the Council of the League of Arab States on 22 May, 2004.

⁶²² Res. 49/19-POL. 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.

⁶²³ Preamble, Res. 49/19-POL. The Cairo Declaration on Human Rights in Islam.

⁶²⁴ See for more chapter 46 of R. Bhala, *Understanding Islamic Law: Shari'a*, New Providence, LexisNexis Publishing, 2011.; Littman, 1999, pp. 2-7; A. Guichon, 'Some Arguments on the Universality of Human Rights in Islam', in J. Rehman & S.C. Breau (eds.), *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices*, Leiden Boston, Martinus, Nijhoff Publishers, 2007, pp. 185-186.

4.3.1 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 image and noble values of Islam and its civilizational approaches’.⁶²⁵ This programme was intended to help the OIC review ‘the most prominent challenges facing the Muslim world’.⁶²⁶

Several scholars described the adoption of this action programme as a positive change of course in the OIC’s human rights policy, inter alia, because it expressed the desire to establish an independent body to promote human rights: the Independent Permanent Human Rights Commission (IPHRC). As Turan Kayaoglu, an associate professor of international relations at the University of Washington Tacoma, points out: ‘[w]ith the adoption of a ten-year “program of action” in 2005, human rights gained greater prominence on the OIC agenda’.⁶²⁷ Also, according to Kayaoglu, ‘the 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’.⁶²⁸ Kayaoglu, however, seems to overlook the fact that, according to section VIII paragraph 2 of the action program, the establishment of the IPHRC must 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 recognise the fundamental human right of freedom of religion or belief and certain other freedoms only when they are in keeping with Islamic law. The term ‘human rights’ in the title of the commission therefore seems 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 argues 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 [...]’.⁶²⁹ He claims that the founding OIC documents are more focussed on an Islamic perspective on human rights, as opposed to a universal one, than the ten-year action programme is.⁶³⁰ 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 *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, Ameli refers to the drafting of other international

⁶²⁵ 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, *oic-oci.org*.

⁶²⁶ 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, *oic-oci.org*.

⁶²⁷ T. Kayaoglu, ‘A Rights Agenda for the Muslim World? The Organization of Islamic Cooperation’s Evolving Human Rights Framework’, *Brookings Doha Center*, Vol. 2013, No. 6, 2013, p. 12.

⁶²⁸ Kayaoglu, 2013, p. 13.

⁶²⁹ S.R. Ameli, ‘The Organisation of Islamic Conference: Accountability and Civil Society’, in J.A. Scholte (ed.) *Building Global Democracy?: Civil Society and Accountable Global Governance*, Cambridge, Cambridge University Press, 2011, p. 152.

⁶³⁰ Ameli, 2011, pp. 152-153.

Islam-oriented documents during the following years, such as the Islamic Charter for Human Rights and the Universal Islamic Declaration of Human Rights.

His conclusion seems 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 program, is not. Secondly, the documents mentioned 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, according to their website, has been extended to the year 2025.

4.3.2 The 2008 Charter

In addition to the Ten-Year Programme of Action, the OIC adopted 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 revitalize 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.⁶³¹

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 Sharia law, as was the case in the Ten-Year Programme of Action. Furthermore, the objectives and principles of the new charter include that the OIC members are determined 'to adhere [...] [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 with regard to realising fundamental human rights standards, and some scholars agree with this, such as Dutch author Paul Frentrop.⁶³² However, what Frentrop seems to overlook is that the same paragraph states that these 'commitments' need to be in accordance with the constitutional and legal systems of the particular member states. In general, the OIC member states have constitutionally entrenched Islam as the official state religion. Some are even theocracies and suppress all religious diversity. This creates a presumed *legal-religious justification* 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 of the previous charter, the one from 1972, explicitly stated that the OIC members 'reaffirm 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 absence is read in conjunction with the provision that commitments to the aforementioned ideals need to be in accordance with

⁶³¹ Eleventh Islamic Summit held in Dakar on 13–14 March, 2008, Organisation of Islamic Cooperation, 'About OIC', *oic-oci.org*, retrieved 26 April, 2015.

⁶³² P. Frentrop, *Voor Rede Vatbaar. Een Filosofisch Woordenboek voor Nederland*, Amsterdam, Prometheus Amsterdam, 2019, pp. 229–230.

the legal systems of the member states, it is not surprising that there is no reference to universal human rights, since such a reference would conflict with their national norms.⁶³³

In addition, it is relevant to address that Article 1 of the new charter contains a paragraph that proclaims the OIC's objective as 'to protect and defend the true image of Islam', and 'to combat defamation of Islam'.⁶³⁴ With this addition, the OIC members formally enshrined these concepts in their charter and created the *legitimacy* for the path they have been following over the years, a path which has dominated the Human Rights Council and General Assembly since 1999.⁶³⁵ However, before this is discussed, the interesting question that needs to be answered, a question that is often neglected when this topic is addressed within academia is: Why did the OIC introduce the concept of defamation of Islam in the Human Rights Council in 1999? Or in other words, what were the reasons for the OIC to start this policy in the UN? The next paragraphs further elucidate this point.

4.4 The OIC's motivations

In order to have a clear understanding of what caused, or rather contributed to the launch of the defamation resolutions, 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 examine OIC declarations, resolutions, and policy documents. Overall, at least three developments can be distinguished that have contributed to the cause. In the first place, as is the view of Lorenz Langer, a lecturer at the University of Zurich, the defamation resolutions were introduced to uphold the reputation of Islam, i.e. 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 irritation within the OIC countries, play a role.⁶³⁶ 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 his book *The Satanic Verses*. The next section further elucidates these points.

4.4.1 The Image of Islam

The first motive for launching the defamation resolutions, 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

⁶³³ See for more A.E. Mayer, 'The OIC's Human Rights Policies in the UN. A Problem of Coherence', *The Danish Institute for Human Rights*, Vol. 2015, No. 4, 2015, pp. 10-11.

⁶³⁴ It was also added in the 2005 Ten-Year Programme of Action.

⁶³⁵ There was never any reference to the concepts in their founding document from 1972.

⁶³⁶ L. Langer, *Religious Offence and Human Rights, The implications of Defamation of Religions*, Cambridge, Cambridge University Press, 2014, pp. 165-169. Lorenz Langer is a lecturer at the University of Zurich.

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.⁶³⁷

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 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.

The use of the word ‘nation’ to designate a religion, i.e. Islam, may seem peculiar, but we recognise this same use of the word nation in ‘The Nation of Islam’, the African-American political and religious movement founded by Wallace Fard Muhammad in 1930 and led today by Louis Farrakhan. In this sense, ‘nation’ is not connected to the ‘nation state’, the organisational model the world has chosen since 1648 (and also the basis for the United Nations), but to a shared heritage of values that transcends state borders.

In the following years, the OIC pursued the same course, until Salman Rushdie’s *The Satanic Verses* was published. In 1989, Rushdie’s work, interpreted as an attack on the reputation of Islam, was ‘strongly condemned’ by the OIC, and Rushdie was regarded an apostate and his work a blasphemous publication.⁶³⁸ 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’.⁶³⁹ Furthermore, it declared that ‘all Islamic countries should make more effective efforts to ensure respect for Islam and its noble values’ and that ‘blasphemy could not be justified on the basis of freedom of thought or expression’. It also ‘appealed to all members of the international community to ban the book and take necessary measures to protect the religious beliefs of others’.⁶⁴⁰ 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 ‘act,’ i.e. to set norms to protect their religion.

In this regard, the Dakar Islamic Summit, held two years later in 1991, is essential. 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’.⁶⁴¹ Moreover, it said that it would seek to ‘[i]nform the whole world of the essence of Islamic civilization, culture and thought so as to

⁶³⁷ Mecca Declaration, Third Islamic Summit Conference OIC (Palestine and Al Quds Session), Mecca, 25–28 January, 1981, Final Communiqué, para. 6.

⁶³⁸ Eighteenth Islamic Conference of Foreign Ministers (Sessions of Islamic fraternity and solidarity), Final Communiqué 13–16 March, 1989, para. 46.

⁶³⁹ Eighteenth Islamic Conference of Foreign Ministers (Sessions of Islamic fraternity and solidarity), Final Communiqué 13–16 March, 1989, para. 46.

⁶⁴⁰ Eighteenth Islamic Conference of Foreign Ministers (Sessions of Islamic fraternity and solidarity), Final Communiqué 13–16 March, 1989, para. 46.

⁶⁴¹ Dakar Declaration, Sixth Islamic Summit Conference, Dakar, Senegal, 9–11 December, 1991, under III Cooperation in the social, cultural and information fields iv–v.

provide the best possible reflection of the true image of Islam and to participate in the enrichment of universal civilisation'.⁶⁴²

Once more, there is a clear emphasis on the provision of information and on concrete actions—individually as a state, and the OIC as a collective—in defence of the image of Islam. However, this time the OIC went a step further. It drafted a resolution titled 'On adopting *a unified stand on the attack of Islamic sanctities and values* [emphasis added]' and in it requested the Secretary-General 'to take the necessary measures for the drafting of an *international convention* [emphasis added] to ensure respect for sanctities and values, and to submit a progress report thereon to the following Islamic Conference of Foreign Ministers'.⁶⁴³ The result was 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'.⁶⁴⁴ 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 added]'.⁶⁴⁵ In addition to the intention to create an international legal instrument, the OIC continued to express its discontent for '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'.⁶⁴⁶

Over time, the development of the OIC's objectives, from wanting to positively inform about Islam to the appeal for an international legal instrument to protect its religion, was thus influenced by Rushdie's work, among other things. It is remarkable to see what kind of spark a novel can ignite.⁶⁴⁷

In subsequent years, several resolutions with similar activities followed. During the 1994 summit, they extensively discussed the 'image of Islam outside the Islamic World', and they were determined to project the correct image of Islam, because states continued to discredit it.⁶⁴⁸ At the Islamic Summit in 1997 in Teheran, the OIC decided that it wanted a 'Group of Experts on the Image of Islam' to prepare a policy that would contribute to their future project.⁶⁴⁹

⁶⁴² Dakar Declaration, Sixth Islamic Summit Conference, Dakar, Senegal, 9–11 December, 1991, under III Cooperation in the social, cultural and information fields iv–v.

⁶⁴³ Sixth Islamic Summit Conference, Dakar, Senegal, 9–11 December, 1991, Res. 3/6-C(IS), 'On adopting a Unified Stand on the Attack on Islamic Sanctities and Values'.

⁶⁴⁴ Conference of the Foreign Ministers, Karachi, Islamic Republic of Pakistan, 25–29 April, 1993, Res. 17/21-C 'A Unified Stand on the Belittling of Islamic Sanctities and Values'.

⁶⁴⁵ Conference of the Foreign Ministers, Karachi, Islamic Republic of Pakistan, 25–29 April, 1993, Res. 17/21-C 'A Unified Stand on the Belittling of Islamic Sanctities and Values'.

⁶⁴⁶ Conference of the Foreign Ministers, Karachi, Islamic Republic of Pakistan, 25–29 April, 1993, Res. 17/21-C 'A Unified Stand on the Belittling of Islamic Sanctities and Values'.

⁶⁴⁷ See also P.B. Cliteur, 'Rushdie's Critics', in P.B. Cliteur & T. Herrenberg (eds.), *The Fall and Rise of Blasphemy Law*, Leiden, Leiden University Press, 2016, pp. 137–157.

⁶⁴⁸ Seventh Islamic Summit Conference, Casablanca, Morocco, 13–15 December, 1994, final communique, para. 22 and 126.

⁶⁴⁹ Eight Islamic Summit Conference Tehran, Islamic republic of Iran, 9–11 December, 1997, final communique, para. 16, 110, and 112.

4.4.2 A Blasphemous Novel

In relation to what has been argued about the influence of Rushdie's novel, more can be said about the OIC's activities after its publication, which constitute a second development that contributed to the launch of the defamation of religion resolution in 1999 at 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.⁶⁵⁰ 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. However, the OIC, like Khomeini, never had the legal authority to combat blasphemous crimes internationally. Nevertheless, both Khomeini and the OIC did have a seat at the UN table, and could therefore initiate and politically influence the debate on this topic. The OIC report in which Rushdie was pronounced an apostate and the Satanic Verses a 'blasphemes publication' was also presented to the UN on the instructions of the Saudi Arabian delegation and actually circulated in the General Assembly.⁶⁵¹ This was the first time the OIC condemned blasphemy within the context of the UN, a stance that, as the next paragraph describes, developed and expanded in the following ten years.

4.4.3 The Reprimands

The third development that contributed to the introduction of the defamation resolutions in 1999 consists in the reprimands of the individual OIC member states in various UN forums.⁶⁵² 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.⁶⁵³

The response from Saudi Arabia was fierce: according to them, the report was filled with 'false interpretations of the Islamic religion and Islamic practices'. They also said that the rapporteur was not qualified 'to assess the Islamic religion' and that 'his summation based on "allegations" is deplorable'. They even questioned if 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'.⁶⁵⁴ Saudi Arabia made it clear that they had had enough of this conduct. Needless to say, the rapporteur did not report on the 'Islamic religion', as the Saudi

⁶⁵⁰ R. Blackford, 'The Rushdie Affair – Lest we Forget', *Free Inquiry*, Vol. 34, No. 4, pp. 8, 53; D. Pipes, *The Rushdie Affair: The Novel, the Ayatollah, and the West*, New Brunswick and London, Transaction Publishers, 2003.

⁶⁵¹ Letter dated 89/04/18 from the Permanent Representative of Saudi Arabia to the United Nations addressed to the Secretary-General, A/44/235/20600, 20 April, 1989.

⁶⁵² Langer, 2014, pp. 165-169.

⁶⁵³ E/CN.4/1994/79, para. 31-33.

⁶⁵⁴ E/CN.4/1994/79, para. 31-33.

response indicated. Neither did the report provide information about Islam or the Islamic people. What the rapporteur did was supply information about human rights violations. Saudi Arabia's conclusion that making critical remarks on its practices with regard to human rights is *eo ipso* making remarks about Islam is groundless.

In the same report, Amor mentioned that Sudan was also seriously infringing on the right of freedom of religion or belief. Cases are described in which several people were arrested and detained for practising a religion that was not Islam. Sudan's reaction was similar to that of Saudi Arabia: the allegations were 'false' and 'absurd'.⁶⁵⁵ The country visit to Pakistan in 1996 also led to a very critical report, one in which especially the discriminatory legislation regarding religious minorities and the blasphemy laws with their severe penalties were criticised.⁶⁵⁶

In the following years, different OIC members were criticised for discriminatory regulations concerning freedom of religion or belief, among them Iran, Egypt, United Arab Emirates, Brunei, and the Maldives.⁶⁵⁷ These reprimands continued to pile up, causing resentment against the UN by the OIC members, which eventually contributed to the OIC taking the matter into its own hands: the international introduction of combatting defamation of religions.

4.5 The Introduction of Defamation of Religion

The OIC presented the concept of religious defamation in the UN on 20 April, 1999, when Pakistan, on behalf of the OIC, introduced draft resolution 'Defamation of Islam' under agenda item 'Racism, racial discrimination, xenophobia and all forms of discrimination in the Commission on Human Rights'.⁶⁵⁸ It is important to remind ourselves that, in 1999, the Pakistani representative spoke from a different perspective than the one who was delegated to the talks prior to the adoption of the ICCPR. In the nineties, Pakistan was a country deeply in the grip of political Islam.⁶⁵⁹ In the resolution, the focus is on negative stereotyping and intolerance towards Islam (the same response the Saudi government gave to criticism of their human rights record). States were 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 or belief'.⁶⁶⁰

The delegate from Pakistan declared that the reason for the introduction of this draft on defaming Islam 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'.⁶⁶¹ In addition, '[t]here was a tendency in some countries and in the international media to portray Islam

⁶⁵⁵ E/CN.4/1994/79, para. 75-77.

⁶⁵⁶ E/CN.4/1996/95/Add.1. In the annual report of 1995 the Special Rapporteur already addressed several cases concerning these issues in Pakistan see E/CN.4/1995/91.

⁶⁵⁷ This list is not exhaustive. E/CN.4/1997/91, paragraphs 10-16, 19; E/CN.4/1999/58, para. 31-33, 50-52, 66-68, 73-74, 85, 96.

⁶⁵⁸ E/CN.4/1999/L.40.

⁶⁵⁹ B. Tibi, *Islamism and Islam*, New Haven/London, Yale University Press, 2012.

⁶⁶⁰ E/CN.4/1999/L.40.

⁶⁶¹ E/CN.4/1999/SR.61, para. 1.

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'.⁶⁶² The motivation as portrayed by the OIC for the defamation resolution was evident: it was to protect Islam.

Responding on behalf of the states of the European Union, the German representative underlined that 'the European Union was attached to the principles of tolerance and freedom of conscience, thought and religion for all', but it was of the opinion that the general structure of the proposal was not in balance, since it only mentioned the negative stereotyping of Islam. Germany therefore introduced amendments to broaden the scope of negative stereotyping to all religions and to change the title of the resolution to 'Defamation of Religions'.⁶⁶³ These changes were submitted 'to deal equally with all religions'.⁶⁶⁴

The Pakistani representative was not pleased with the proposed amendments and commented 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 to hatred of Muslims. That phenomenon endangered world stability and was contrary to the principle of the universality of human rights.⁶⁶⁵

He continued by stating that '[t]he amendments submitted by 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'.⁶⁶⁶ 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.⁶⁶⁷ Germany declined, however, and asked the EU members to hold to their positions.⁶⁶⁸ The Pakistani representative asked for further negotiations so the 'two parties'—already explicitly dividing East (OIC) and West within the international community—could attempt to find common ground.⁶⁶⁹

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' by the Commission on Human Rights.⁶⁷⁰ The resolution, *inter alia*, urges

⁶⁶² E/CN.4/1999/SR.61, para. 1.

⁶⁶³ E/CN.4/1999/L.90.

⁶⁶⁴ E/CN.4/1999/L.90.

⁶⁶⁵ E/CN.4/1999/SR.61, para. 7.

⁶⁶⁶ E/CN.4/1999/SR.61, para. 8.

⁶⁶⁷ E/CN.4/1999/L.104.

⁶⁶⁸ E/CN.4/1999/SR.61, para. 9.

⁶⁶⁹ E/CN.4/1999/SR.61, para. 11.

⁶⁷⁰ 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.

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.⁶⁷¹

In the resolution, no definition is provided of religious defamation. Only the title contains a reference to the concept.

The Pakistani representative remarked that ‘the OIC countries had shown considerable flexibility by agreeing to adopt a nonexclusive approach to the issue’.⁶⁷² And they ‘looked forward to cooperating with all countries in promoting a better understanding of Islam [...]’.⁶⁷³ The German representative said 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’.⁶⁷⁴

From the German remark, it can be deduced 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 whole line of reasoning of the OIC, however, they took on 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 treated equally. This stance provided the OIC room to manoeuvre and introduce the concept of religious defamation in the UN. Unfortunately, the EU member states did not foresee what kind of impact their accommodating attitude would have in the next decade.

4.5.1 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 Commission on Human Rights.⁶⁷⁵ 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 Commission on Human Rights 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,⁶⁷⁶ which was, in fact, the case.

⁶⁷¹ E/CN.4/1999/82; E/1999/23; E/CN.4/1999/167, pp. 280-281.

⁶⁷² E/CN.4/1999/L.40/Rev.1; E/CN.4/1999/SR.62, para. 1-2.

⁶⁷³ E/CN.4/1999/L.40/Rev.1; E/CN.4/1999/SR.62, para. 1-2.

⁶⁷⁴ E/CN.4/1999/SR.62, para. 9 and E/CN.4/1999/L.40/Rev.1.

⁶⁷⁵ See amendments: E/CN.4/2000/L.6, E/CN.4/2000/L.18; 7th meeting 26 April, 2000, E/CN.4/RES/2000/84, Defamation of religions. Commission on Human Rights Report on the fifty-sixth Session (20 March–28 April), E/2000/23, E/CN.4/2000/167, pp. 336-338.

⁶⁷⁶ E/CN.4/2000/SR.67, para 72-77.

In 2001, Pakistan stepped up its efforts and introduced resolution ‘Combating defamation of religions as a means to promote human rights, social harmony and religious and cultural diversity’.⁶⁷⁷ This time, the EU took a different stance. On behalf of the EU, the representative from Belgium said that the

The European Union supports the dialogue between civilizations, but holds that religion and civilization cannot be confused. Furthermore, freedom of expression is the *sine qua non* of a real dialogue among civilizations. 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.⁶⁷⁸

By emphasising the freedoms of expression and religion or belief, 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 of these religions. In addition, the EU member states announced that they would ask for a vote, giving notice that they would vote against.⁶⁷⁹ But to no avail, since the members of the OIC did not take any of the EU’s arguments into account. The draft resolution was brought to vote and was adopted by 28 votes in favour to 15 against, with 9 abstentions.⁶⁸⁰ With the E/2001/4 resolution, the Commission on Human Rights ‘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’.⁶⁸¹

This course of events would repeat itself in the subsequent years (2002–2005).⁶⁸² Resolutions with similar and more extensive content and effect were adopted by a majority vote

⁶⁷⁷ E/CN.4/2001/L.7/Rev.1.

⁶⁷⁸ E/CN.4/2001/L.7/Rev.1; E/CN.4/2001/SR.61, para. 6, p. 3. The original text reads: ‘[...] 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.’

⁶⁷⁹ E/CN.4/2001/SR.61, para. 4-11.

⁶⁸⁰ Commission on Human Rights Report on the fifty-seventh Session (19 March–27 April, 2001), p. 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, and United Kingdom 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. E/CN.4/RES/2001/4.

⁶⁸¹ E/CN.4/RES/2001/4.

⁶⁸² In 2002: 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, para. 28-42, pp. 6-8. ‘Combating defamation of religion’ 30 votes in favour, 15 against, and 8 abstentions. In 2003: E/CN.4/RES/2003/4 (14 April, 2003). Draft resolution by Pakistan

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.⁶⁸³ Only a few words, but as previously emphasised, they are of great significance, as this implied the introduction of religious values within the UN framework.

4.5.2 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 draft resolution ‘Combating defamation of religions’ in the General Assembly.⁶⁸⁴ The Egyptian representative argued that ‘the draft resolution was not directed against any one country [...]. Its sole purpose was to emphasise the importance of respect for the religions and beliefs of others, which were an integral part of the vision and way of life of many peoples’.⁶⁸⁵ The member states of the EU emphasised that they would not be on board, for similar reasons as the ones they had expressed in the previous years in the Commission on Human Rights.⁶⁸⁶ However, again 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.⁶⁸⁷ The General Assembly, among other things

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.⁶⁸⁸

The following years the OIC continued to further its agenda in various UN fora, and after the disbandment of the Commission on Human Rights in 2006, the OIC passed resolutions regarding religious defamation in its successor, the United Nations Human Rights Council.⁶⁸⁹ That same year,

on behalf of the OIC E/CN.4/2003/L.16; E/CN.4/2003/SR.47, para. 95-109. ‘Combating defamation of religions’ 32 votes in favour, 14 against, and 7 abstentions. In 2004: 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, para. 73-84. ‘Combating defamation of religions’ 29 votes in favour, 16 against, and 7 abstentions. In 2005: 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, para. 2-17. ‘Combating defamation of religions’ 31 votes in favour, 16 against, 5 abstentions.

⁶⁸³ E/CN.4/RES/2002/9.

⁶⁸⁴ A/C.3/60/L.29.

⁶⁸⁵ A/C.3/60/SR.45, para. 36.

⁶⁸⁶ A/C.3/60/SR.45, para. 37.

⁶⁸⁷ A/RES/60/150 (20 January, 2006); A/60/509/Add.2 (Part II); A/C.3/60/SR.45, para. 34-45.

⁶⁸⁸ A/RES/60/150.

⁶⁸⁹ UNHRC was created by UNGA on 15 March, 2006 after it had 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).

the Human Rights Council 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'.⁶⁹⁰

The conclusions in the rapport were evident. 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'.⁶⁹¹ 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 [...]'.⁶⁹²

Given the actions that would follow, it can be safely said that the Human Rights Council ignored the conclusions from the report.⁶⁹³ In subsequent years it would usually refer to previous reports, in which other rapporteurs had been more supportive of the religious defamation concept.⁶⁹⁴

4.6 A Political Undermining

The concept of defamation of religion became highly visible 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.⁶⁹⁵ The operative sections of the resolution also expanded.

In its observatory report on islamophobia in 2009, the OIC thought they 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 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.⁶⁹⁶

⁶⁹⁰ A/HRC/2/3 (20 September, 2006). This was the implementation of A/RES/60/251.

⁶⁹¹ A/HRC/2/3, para. 36.

⁶⁹² A/HRC/2/3, para. 66.

⁶⁹³ 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 Jyllands-Posten. See Langer, 2014, pp. 233-235.

⁶⁹⁴ 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 Langer, 2014, pp. 233-236.

⁶⁹⁵ R.C. Blitt, 'Defamation of Religion: Rumors of Its Death are Greatly Exaggerated', *Case Western Reserve Law Review*, Vol. 62, No. 2, 2011, pp. 353-354.

⁶⁹⁶ Organisation of Islamic Cooperation, '3rd OIC observatory report on Islamophobia, May 2009 - April 2010',

With this remark, the OIC seems to claim that there is some sort of *opinio juris*. Its stance is that the succession of the 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 to legally recognise 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’,⁶⁹⁷ ‘stressing [...] the need to effectively combat defamation of all religions [...]’,⁶⁹⁸ 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’.⁶⁹⁹ It is remarkable that none of the resolutions provide a definition of religious defamation, for it is not in line with the legal definitions of defamation, slander, and libel.

From examining the resolutions, it can be deduced that they include the call for states to take strict measures to legitimately restrict the freedom of expression. This is not only a call for censorship but also to develop legislation that criminalizes blasphemy or take other actions that have a threatening or discriminatory effect on critics and dissenters. Most importantly, it is seen as an *international call to criminalize blasphemy*.⁷⁰⁰

This line of reasoning may be extended to the freedom of religion or belief as such. Since instances of defamation of religion may involve conflicts between two different religions or within one religion, it is challenging to justify the protection of defamation of religion on the basis of freedom of religion, for the reason that one person merely having a belief that contradicts or conflicts with another person’s belief can be said to violate the latter person’s freedom of religion. And as was argued in the previous chapter: there is such great diversity in the representation of ‘god’ that there will always be a group of people who feel hurt by what others say. Or rather, one individual’s belief could be someone else’s blasphemy.⁷⁰¹ This is the capriciousness of blasphemy.

It must also be questioned if 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

Organisation of Islamic Cooperation, 2010, p. 4. See also Blitt, 2011, pp. 353-354. See for a detailed overview Appendix 1: Reports Generated By UN Resolutions Related to Defamation of Religions, by Reporting Mandate, in R.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’, in S. Austin (ed.) *Special Issue Human Rights: New Possibilities/New Problems (Studies in Law, Politics, and Society, Vol. 56)*, Bingley, Emerald Group Publishing, 2011, pp. 121-211. Much can also be said about the concept of Islamophobia.

⁶⁹⁷ A/RES/64/156.

⁶⁹⁸ A/HRC/RES/10/22.

⁶⁹⁹ A/RES/61/164.

⁷⁰⁰ See for more H. Bielefeldt, ‘Misperceptions of Freedom of Religion or Belief’, *Human Rights Quarterly*, Vol. 35, No. 1, 2013, pp. 41-42. L.B. Graham, ‘Defamation of Religions. The End of Pluralism?’, *Emory International Law Review*, Vol. 23, No. 1, 2009, pp. 69-84; Blitt, 2011, pp. 347-397.

⁷⁰¹ Jeremy Waldron has made a strong argument in this matter. See for more J. Waldron, ‘Rushdie and Religion’, in *Liberal Rights: Collect Papers 1981-1991*, Cambridge/New York, Cambridge University Press, 1993, pp. 134-142.

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.⁷⁰²

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? Forgetting for a moment that the focus is on Islam, instead of on all religions, the question that arises is why the focus is merely on religion and not also on beliefs. Apart from that, the protection of the rights of religious minorities is central to the mandate of the freedom of religion. And the idea of protecting religions is evidently at odds with the freedom of religion or belief, and with the human rights acquis in general, in which the individual and his freedoms are protected.⁷⁰³

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 restricting effects on the freedoms of religion or belief and expression. With the defamation resolutions, the OIC amalgamates freedom of religion with political policies and diminishes its original intent and scope. And by deviating from its content, and neglecting its non-discriminatory application, the OIC *politically undermines* its very status as a universal human right, which results in the marginalisation and weakening of the normative force of the legal provisions.

4.7 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, urging member states of the Human Rights Council to reject the 2009 defamation resolution.⁷⁰⁴ In addition, the combined abstentions and votes against the defamation resolutions reached a higher number than the votes in favour.⁷⁰⁵ The same occurred in the General Assembly, and there was an even further decline in support in 2010.⁷⁰⁶

In 2011, there was what was considered to be a turnaround or even a breakthrough. The OIC introduced resolution 16/18 on ‘Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against persons based on

⁷⁰² P.B. Cliteur, ‘Taylor and Dummett on the Rushdie Affair’, *Journal of Religion & Society*, Vol. 18, 2016, p. 15.

⁷⁰³ See for more Bielefeldt, 2013, pp. 41-42. Graham, 2009, pp. 69-84; Blitt, 2011, pp. 347-397. See for more A. Dacey, *The Future of Blasphemy. Speaking of the Sacred in an Age of Human Rights*, London/New York, Continuum International Publishing Group, 2012.

⁷⁰⁴ International Humanist and Ethical Union, ‘Human Rights Council Resolution “Combating Defamation of Religion”’, 26 March 2009, *International Humanist and Ethical Union*, retrieved 9 June, 2015, fot.humanists.international.

⁷⁰⁵ A/HRC/RES/10/22.

⁷⁰⁶ In 2009 A/RES/64/156 Combatting defamation of religions. A/64/439/Add.2 (Part II), pp. 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), pp. 73–74; A/C.3/65/L.46/Rev.1, there were 76 in favour, 64 against, and 42 abstentions.

religion or belief in the Human Rights Council.⁷⁰⁷ The resolution was adopted by consensus on 24 March, 2011 and has functioned as a guiding document for discussion within the UN since then.⁷⁰⁸

In the general comments and explanations before the vote, the United States said 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’.⁷⁰⁹ The Algerian representative said that ‘[t]he consensus on draft resolution L.38 on the fight against intolerance and hatred based on religious affiliation is a significant step. For my delegation, it is really the contemporary translation of the “I have a dream of Martin Luther King”. Thank you all for building bridges instead of throwing in the towel’.⁷¹⁰

For Algeria, a member of the OIC, it was apparently more than a blueprint, considering that its delegate 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 expressed 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 by Ekmeleddin Ihsanoglu, the Secretary-General of the OIC, is explicitly mentioned in the resolution.⁷¹¹ Furthermore, it is relevant that the resolution includes additional concepts which have more or less the same ambiguity as defamation of religions, concepts such as ‘derogatory stereotyping’, ‘negative profiling’, and ‘stigmatization’.⁷¹² In general, these vague concepts lack both definition and criteria, and risk being subject to various interpretations.

⁷⁰⁷ A/HRC/RES/16/18 (24 March, 2011). Salient is that a few months before the resolution was adopted in the UNHRC, a resolution regarding combatting defamation of religions was adopted in the General Assembly. A/RES/65/224 (21 December, 2010).

⁷⁰⁸ Bielefeldt, 2013, pp. 41-43. In the following years, resolution A/HRC/RES/16/18 was reaffirmed in the Human Rights Council: 23 March, 2012 A/HRC/RES/19/25; 22 March, 2013 A/HRC/RES/22/31; 28 March, 2014 A/HRC/RES/25/34; 27 March, 2015 resolution A/HRC/RES/28/29. In the General Assembly: 19 December, 2011 resolution A/RES/66/167; 20 December, 2012 A/RES/67/178; 18 December, 2013 A/RES/68/169; 18 December, 2014 A/RES/69/174.

⁷⁰⁹ 46th Meeting, HRC Extranet, Sixteenth Session, Draft resolutions, decisions & President's statements, A/HRC/16/L.38.

⁷¹⁰ 48th Meeting, Final general remarks on 16th session UNHRC, HRC Extranet, Sixteenth Session, Oral statements, 25 March, 2011. The original text reads: ‘Le consensus atteint autour du projet de résolution L.38 sur la lutte contre l’intolérance et la haine basées sur l’affiliation religieuse, 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.’

⁷¹¹ The resolution codified eight points of action that Ihsanoglu 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’, ‘[a]dopting measures to criminalize incitement to imminent violence based on religion or belief, and ‘[u]nderstanding 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’.

⁷¹² A/HRC/RES/16/18.

4.7.1 The Reactions to Resolution 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’.⁷¹³ Ted Stahnke, from the organisation Human Rights First, was also positive. He said that it was a ‘decisive break from the polarizing focus in the past on defamation of religions’ and noted that ‘the U.N.’s new approach reflects what is needed to combat the intolerance we continue to see around the world [...]’.⁷¹⁴

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’.⁷¹⁵ Brett Scharffs of Brigham Young University had a similar stance. He found it hard to predict an outcome, but noted that ‘the idea seems to have currency’.⁷¹⁶ Although few, there were also sceptical reactions. Robert Blitt, an associate Professor of Law at the University of Tennessee, argued that ‘the new compromise approach risks being exploited’.⁷¹⁷ 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 said that ‘[...] the latest resolution does not repeat the defamation language, the purpose remains unchanged and the dangers for free speech are obvious’.⁷¹⁸

4.7.2 The Aftermath Discussions: The Istanbul Process

To facilitate the implementation of Resolution 16/18, the Istanbul Process, a series of high-level meetings, took place in July 2011. The first meeting was hosted by the OIC and co-chaired by former U.S. Secretary of State Hillary Clinton.⁷¹⁹ More than twenty representatives from different states were there.⁷²⁰ In their joint statement, the representatives

⁷¹³ E.M. Aswad, ‘To Ban or Not to Ban Blasphemous Videos’, *Georgetown Journal of International Law*, Vol. 44, No. 4, 2013, pp. 1325-1326.

⁷¹⁴ H.R. First, ‘U.N. General Assembly Abandons Dangerous “Defamation of Religion” Concept’’, *humanrightsfirst.org*.

⁷¹⁵ Bielefeldt, 2013, p. 43.

⁷¹⁶ B. Scharffs, ‘International Law and the Defamation of Religion Conundrum’, *The Review of Faith and International Affairs*, Vol. 11, No. 1, 2013, p. 69.

⁷¹⁶ Scharffs, 2013, p. 69.

⁷¹⁷ Blitt, 2011, p. 347.

⁷¹⁸ J. Turley, ‘Criminalizing Intolerance: Obama Administration Moves Forward On United Nations Resolution Targeting Anti-Religious Speech’, *jonathanturley.org*, retrieved 13 December, 2011.

⁷¹⁹ Clinton was very positive about the newly adopted stance, K. Eckstrom, ‘Clinton Applauds U.N.’s Religious Freedom Resolution’, *The Huffington Post*, 25 March 2011.

⁷²⁰ The secretary of state of the United States, the secretary-general of the OIC, the EU high representative for

[...] 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 [...].⁷²¹

From their statement, it appears that they were making efforts to realise the objectives set forth in the 16/18 resolution. Clinton even said ‘together [with the OIC] we have begun to overcome the false divide that pits religious sensitivities against freedom of expression [...]’.⁷²²

This meeting was followed by a closed-door meeting 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 stressed that the resolution ‘marks a step forward in creating a safe global environment for practicing and expressing one’s beliefs’ and emphasised that ‘religious freedom and freedom of expression are among our highest values’.⁷²³ Suzan Johnson Cook, the U.S. Ambassador at Large for International Religious Freedom, emphasised what Clinton had said in July of the same year.⁷²⁴

The following session, hosted by the United Kingdom and Canada, was in London 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. Besides the annual topics, like the importance of intercultural dialogue and speaking out against intolerance, the criminalization of hate speech was put on the agenda. It led to familiar heated debates on the line between freedom of expression and hate speech.⁷²⁵ The dividing lines between the West and the OIC reappeared, with cracks in the new alliance as a result.⁷²⁶ The same occurred during the fourth meeting in Doha,

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, and the African Union were present.

⁷²¹ U.S. Department of State (Office of the Spokesperson), ‘Joint Statement on Combating Intolerance, Discrimination, and Violence Based on Religion or Belief’, 15 July 2011, retrieved 12 June, 2015.

⁷²² H.R. Clinton, ‘Remarks at the Organization of the Islamic Conference (OIC) High-Level Meeting on Combating Religious Intolerance’, 15 July 2011, *state.gov*, retrieved 12 June, 2015.

⁷²³ H.R. Clinton, ‘Closing Remarks by Secretary of State Hillary Rodham Clinton’, in *Report of the United States on the First Meeting of Experts to Promote Implementation of United Nations Human Rights Council Resolution 16/18*, Department of State, 12 December 2011, p. 32.

⁷²⁴ S. Johnson-Cook, ‘Remarks by Ambassador-at-Large for International Religious Freedom’, in *Report of the United States on the First Meeting of Experts to Promote Implementation of United Nations Human Rights Council Resolution 16/18*, Department of State, 12 December, 2011, p. 36.

⁷²⁵ 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 E. İhsanoğlu, ‘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, 2013, *oichumanrights.wordpress.com*.

⁷²⁶ See for more T. Kayaoglu & M.J. Petersen, ‘Will Istanbul Process Relieve the Tension Between the Muslim World

Qatar in March 2014,⁷²⁷ during its fifth session in Jeddah, Saudi Arabia in June 2015,⁷²⁸ and during the sixth meeting in Singapore in July 2016.⁷²⁹ After the meeting in Singapore, no subsequent Istanbul Process meeting was organised.

Consequently, 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 circles.

4.8 A New Strategy

It is important to note that there was a difference between how the OIC members initially handled and implemented the newly set course with regard to resolution 16/18 within the UN, for example with the Istanbul Processes, and how they treated it inside their own organisations. This can be inferred from the fact that certain statements by OIC officials and OIC documents are contradictory. For example, the Islamic Educational, Scientific, and Cultural Organization, 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 of Muslims, and goes against the international media law and media ethics and the UN Resolution 65/224 on combating defamation of religions [...]'.⁷³⁰

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 this resolution, the OIC decides 'to continue to support the resolution en bloc in favour of the resolution at the Human Rights Council'.⁷³¹ The OIC also said in it that it was 'exploring [an] alternative approach [...]'.⁷³² and that its members 'continue to explore options with regard to broadening support for the resolution on defamation of religions [...]'.⁷³³ 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'.⁷³⁴

and the West?', *The Washington Review of Turkish & Eurasian Affairs*, Vol. 30, 2013.

⁷²⁷ Doha International Center for Interfaith Dialogue, '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* Universal Rights Group, 2014. See for more M. Limon, N. Ghanea & H. Power, 'The Policy Report, Combating Global Religious Intolerance: The Implementation of Human Rights Council Resolution 16/18', Universal Rights Group, 2014.

⁷²⁸ Organisation of Islamic Cooperation, '5th Session of the Istanbul Process. Written Submission', 4 June, 2015, *fidh.org*; H. Power & M.J. 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* Universal Rights Group (the Danish Institute for Human Rights), 2015.

⁷²⁹ 'Report of the 6th Meeting of the Istanbul Process. A cross-regional perspective on best practices and policies for promoting religious tolerance and strengthening resilience', Universal Rights Group, 2016.

⁷³⁰ Islamic Educational Scientific and Cultural Organization, 'ISESCO Calls upon IFJ to Activate UN Resolution on Combating Defamation of Religions', 21 September, 2012, *unesco.org*.

⁷³¹ Res 35/38-POL (Combating Defamation of Religions), in OIC/CFM-38/2011/POL/FINAL, p. 79-82.

⁷³² Res 35/38-POL (Combating Defamation of Religions), in OIC/CFM-38/2011/POL/FINAL, p. 79-82.

⁷³³ Res 35/38-POL (Combating Defamation of Religions), in OIC/CFM-38/2011/POL/FINAL, p. 79-82.

⁷³⁴ Res 35/38-POL (Combating Defamation of Religions), in OIC/CFM-38/2011/POL/FINAL, p. 79-82. The resolution also explicitly mentions that the OIC is '(c)ognizant of the urgent need to protect and defend the true image of Islam, to combat defamation of Islam and encourage dialogue among civilisations and religions'. The OIC also recalled Res 39/37-POL entitled, 'Combating Defamation of Religions' See for more Blitt, 2011, pp. 361-365; J.

These statements do not only demonstrate that the OIC members interpreted the 16/18 resolution differently than was assumed in terms of content and means of implementation, but they indicate more: the resolution was not the turn-around the West thought it would be. The Western states were under the impression that they had left the concept 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 viewed in context, it looks like a mere change of tactics, i.e. a *strategic move*. There are some arguments for this assumption. First of all, the OIC members became aware that their continued rhetoric of accusing the Western states of violating the freedom of expression by failing to criminalise insults to religion and defamation of religion was not effective anymore. 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’.⁷³⁵ 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 the OIC 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 not be taken seriously anymore by the Western states as an equal discussion partner in future human rights debates.

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 or belief, instead of to the freedom of expression, and reopened the debate and broadened its scope. The OIC is using the freedom of religion or belief 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 in a different, more disguised way. Accordingly, by using this approach, the OIC can continue to politically undermine the universal status and non-discriminatory application of the freedom of religion or belief, which results in the marginalisation of the normative force of the legal provisions regarding the freedom of religion or belief.

Obviously, it is possible that attributing this level of strategic planning to the OIC is too far-fetched. Nonetheless, the fact remains that the OIC continues to explicitly strive for an international norm on criminalizing defamation of religion within OIC circles, and implicitly within the different UN forums.

Rehman & S.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*, Vol. 44, No. 3, 2012, p. 451.

⁷³⁵ National Secular Society, ‘Islamic Bloc Abandons Plans for Global Blasphemy Law at UN’, 16 October, 2012, secularism.org.uk.

4.9 Conclusion

In this chapter about the freedom of religion or belief and its universal status, an issue of great contemporary concern, the political undermining of the freedom of religion or belief caused by the OIC, which has serious consequences for the normative framework, was addressed.

Examples of the OIC amalgamating the right of freedom of religion with political strategies and policies of protecting the reputation of religions against defamation were discussed. To demonstrate this, various resolutions, founding documents, and reports of the UN Special Rapporteurs were analysed and discussed. These reports revealed numerous violations of the freedom of religion or belief perpetrated or condoned by member states of the OIC.

Close analyses have demonstrated that, since its establishment, the OIC has issued incoherent and 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 obtained a more prominent place on the agenda over the years, closer analysis proved the opposite. By referring to the Cairo Declaration in its Ten-Year Programme of Action and not referring to UN fundamental human rights in its later 2008 charter, the OIC continues to approach human rights from an Islamic perspective, thereby contradicting the universal character of these rights.

From 1999 to 2011, the OIC had a firm grip on the adoption of the defamation of religion resolutions in the Human Rights Council and the General Assembly. In these resolutions, the OIC had established different interpretations of the right to freedom of religion or belief, undermined its non-discriminatory application, and argued vehemently against its universality. It considered the freedom of expression to also be subject to limitations. With the shift in the resolutions to combatting religious intolerance in 2011, 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 moment, the OIC is still defending this stance within UN circles.

Despite the non-binding nature of the resolutions, in conjunction with the fact that 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. This influence is, unfortunately, dominated by an organisation that continues to strive to politically undercut the universality and non-discriminatory content of the right to freedom of religion or belief.

