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

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Summary

Defaming the Freedom of Religion or Belief: A Historical and Conceptual Analysis of the United Nations analyses the development of and the controversy around the formulation and interpretation of the freedom of religion or belief as a universal right within the United Nations. The inquiry starts with an exploration of the history of the freedom of religion and its codification in human rights treaties. Various vital concepts, such as religious tolerance, the freedom of thought, and the freedom of conscience, are elucidated. It is emphasised that the freedom of religion or belief protects *believers* rather than religions or *beliefs*. In order to accommodate different convictions and related individual or communitarian ethical or ritualistic practices in a pluralistic society, the freedom of religion or belief must be understood as a right to follow one's convictions in matters of morality, irrespective of those convictions having a religious foundation. In order for the freedom of religion or belief to fully come to fruition, it is essential that an institutional separation between church and state be adopted as a principle within the legal framework of a state.

The United Nations included the freedom of religion or belief in article 18 of the Universal Declaration in 1948. The aim of the Universal Declaration was to serve as a document that all people of the world could understand and relate to. Language had to be adopted that could be understood by all participants; it had to encompass an autonomous humanitarian morality. This led to the realisation that a universal basis for religious freedom was to be found in a *secular* version. This was a freedom based on moral autonomy that would not include reference to a deity, meaning it could be invoked by both believers and non-believers. The provision is phrased in such a way that there is an openness to different perspectives and ways of life. It means religious and belief pluralism without state interference.

The drafting history of the provision was not without controversy; in the end, however, it articulated a clear vision on the core meaning of the freedom of religion or belief and opposed policies in which individuals would be excluded. The provision explicitly recognised the right to change religion or belief, which amounted to an explicit recognition of the right to *apostatise*. This was a significant achievement on the part of the drafters of the Universal Declaration: it presented to the world community an ideal representing the freedom of religion and belief as a universal right of every citizen of the world to choose his own religion, change his religion, and defect from a religious position altogether. However, considerable opposition arose during the drafting process and the following years, and this broad interpretation of the right to freedom of religion and belief ultimately succumbed to the pressure of its critics.

Initially, critics challenged the idea of the universality of values and rights and, therefore, the notion of universal human rights. This criticism came from American cultural anthropologists who accused the drafters of the Universal Declaration of ethnocentrism. These cultural anthropologists did not specify their ideological point of departure, but scholars later characterised this as 'cultural relativism'. Accordingly, a hurdle the drafters of the Universal Declaration had to overcome was defending universalism against cultural relativism. As an analysis of the drafting history shows, the accusation that the Universal Declaration is rife with ethnocentrism may partially be explained by a lack of understanding on the part of these scholars with respect to what was discussed during the drafting process.

Subsequently, during the drafting of the International Covenant on Civil and Political Rights (1966), the explicit mention of the freedom to *change* or *reject* religion or belief was challenged.

The critique was that this particular aspect was already implied in the general formulation of the freedom of religion or belief. The Saudi representative was the main proponent of this view. Although various states contested this stance, in order to reach a consensus and in a conciliatory spirit, a compromise text was suggested. Treaty consensus-seeking is unquestionably a complicated exercise, but it has come at the expense of the Universal Declaration's language, as the explicit formulation of the freedom to change religion was removed from the 1966 text, which introduced a different concept, leading to conceptual ambiguity. Therefore, the results of the compromises seem somewhat paradoxical in that they amount to *keeping* control at the price of *losing* it. The textual alteration also affected the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981.

A different concern for the universality and non-discriminatory application of the freedom of religion or belief within the United Nations was the introduction of the concept of 'defamation of religion' by the Organisation of Islamic Cooperation (OIC). There are various examples of the OIC amalgamating the right to freedom of religion or belief with political strategies and policies of protecting the reputation of religions against defamation. Their endeavours to criminalise defamation of religion essentially constituted to a blasphemy ban in a new disguise. 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 religious 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 reveals the opposite.

The final part of this research examines the freedom of religion or belief and how it is realised equally for all citizens in the Dutch liberal-democratic state, which is *inter alia* by abolishing the blasphemy law.

This study demonstrates that the universality, content, and non-discriminatory implementation of the freedom of religion or belief has been questioned since its drafting process, not only on a theoretical level by postmodern views, but also, throughout the years, from a legal and political perspective within the UN. From various angles, these actors seem to 'defame' the freedom of religion or belief—hence the title of this study—and have succeeded in changing the provision by interpreting it differently than its original 1948 objectives. These developments have continued and will most likely continue to lead to a diminishment of the normative force of the legal provisions regarding the freedom of religion or belief.