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12501 Old Columbia Pike

Silver Spring, Maryland 20904-6600, United States of America

Phone: +301.680.6686 Fax: +301.680.6695

E-mail: Info@IRLA.org Web site: www.IRLA.org

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We believe that religious liberty is a God-given right.

We believe that legislation and other governmental acts which unite church and state are contrary to the best interest of both institutions and are potentially prejudicial to human rights, and hold that religious liberty is best exercised where separation is maintained between church and state.

We believe that government is divinely ordained to support and protect citizens in their enjoyment of natural rights, and to rule in civil affairs; and that in so doing, government warrants respectful obedience and willing support.

We believe in the natural and inalienable right of freedom of conscience—to have or not have a religion; to adopt the religion or belief of one's choice; to change religious belief according to conscience; to manifest one's religion individually or in community with others in worship, observance, practice, promulgation, and teaching—subject only to respect for the equivalent rights of others.

We believe that religious liberty also includes the freedom to establish and operate appropriate charitable or educational institutions, to solicit or receive voluntary financial contributions, to observe days of rest and celebrate holidays in accordance with the precepts of one's religion, and to maintain communication with fellow believers at national and international levels.

We believe that religious liberty and the elimination of intolerance and discrimination based on religion or belief are essential to promote understanding, peace, and friendship among peoples. We believe that citizens should use lawful and honorable means to prevent the reduction of religious liberty.

We believe that the spirit of true religious liberty is epitomized in the Golden Rule: *Do unto others as you would have others do unto you.*

STATEMENT OF PURPOSES

The purposes of the International Religious Liberty Association are universal and nonsectarian. They include:

- 1 Dissemination of the principles of religious liberty throughout the world;
- 2 Defense and safeguarding of the civil right for all people to worship, to adopt a religion or belief of their choice, to manifest their religious convictions in observance, promulgation, and teaching, subject only to the respect for the equivalent rights of others;
- 3 Support for religious organizations to operate freely in every country through the establishment of charitable or educational institutions;
- 4 Organization of local, national, and regional chapters, in addition to holding seminars, symposiums, conferences and congresses around the world.

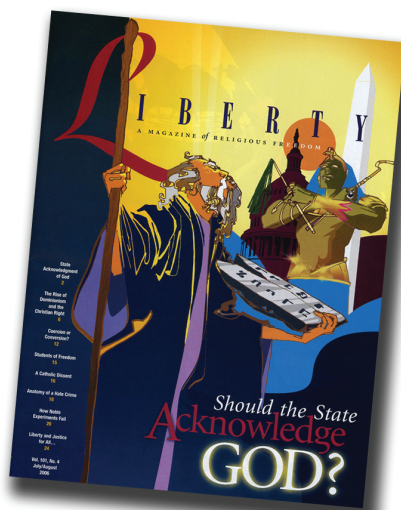
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12501 Old Columbia Pike
Silver Spring, Maryland 20904-6600, USA
Phone: 301.680.6686 Fax: 301.680.6695
www.IRLA.org

John Graz, Publisher

Barry W. Bussey, Editor

Deborah Knott, Managing Editor

Kevin Gurubatham, Assistant Editor

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EDITOR'S MESSAGE

It is my privilege to address the audience of *Fides et Libertas* for the first time as senior editor. I am particularly honored by this appointment as I have been an avid reader of this journal for many years. Since 1998, the International Religious Liberty Association has been gathering articles from a wide array of top international scholars on current issues impacting religious freedom. While we apologize to our readers that it has been two years since our last publication, we are pleased to present a double issue, covering 2008 and 2009. There are some exciting changes in store for this journal beginning next year which are discussed below. However, first let me introduce this current issue.

DEFAMATION OF RELIGIONS

I had the opportunity to represent the IRLA in March of 2009 during the United Nations Human Rights Council (HRC) in Geneva. The Council again passed a resolution against the “defamation of religions.” Member countries on the HRC did so despite the growing chorus of opposition to the proposal which seeks to protect religions and religious ideologies at the expense of religious freedom, freedom of expression and freedom of speech.

“Defamation of religions” resolutions have become familiar at the UN since 1999 when Pakistan first presented the idea. Pakistan remains the leading proponent. For a number of years the resolution passed without much opposition. However, that has now changed. More countries represented at this international body charged with safeguarding human rights recognize the inherent contradictions of such a resolution.

The March resolution passed by a vote of 23 yes, 11 no, and 13 abstaining. There were more combined “no” votes and “abstentions” than the “yes” votes. It was not always this way. We would like to think that credit for the change of sentiment is in large part a result of the work of NGOs who highlighted the possible problems such a resolution brings. The International Religious Liberty Association joined up with others in Geneva—including the Becket Fund for Religious Liberty and UN Watch.

In this issue we have included a number of articles dealing with the matter. The IRLA has felt it necessary to devote two meetings of the Panel of Experts to the subject—which was the impetus of the articles presented here. We trust you will understand why we felt “defamation of religions” is worth the amount of ink devoted to it.

LATIN AMERICA

As Scott Isaacson has pointed out in his article—while Europe is losing its religious moorings, it is Latin America that is gaining religious momentum. The IRLA held its first Festival of Religious Freedom in “Inter-America” this year. Some 13,000 people filled the stadium in Santo Domingo. We provide two articles that were presented in a special forum on religious freedom in Latin America held a couple of days before the festival.

THE NEW US ADMINISTRATION

Since our publication in 2007, many events have taken place which are having a dramatic effect on religious freedom around the globe. The coming to power of the first African-American United States President has been a watershed moment—not only for the U.S. but for the world. I contribute an article that briefly reviews the new administration’s stance on religious freedom. It is remarkably clear that, perhaps now more than ever, the country is sharply divided between the “right” and the “left.” I am not so sure that such labels are helpful any longer given the rhetoric that has been associated with each—the line of demarcation is difficult if not impossible to discern at times. Yet there was a great sense of optimism that Barack Hussein Obama would change things for the better. The early days of the Obama administration created much discussion on the public role of religion, a subject the new President has never been shy to explore. He spoke about it during his campaign and again in office, most notably on the campus of the University of Notre Dame and later in Cairo. Though, as his first year progressed, religion—like many other issues—was sidelined by the health-care debate.

JOHN CALVIN

This year marks the 500th anniversary of the birth of one of the great Protestant Reformers—John Calvin. The results of Calvin’s profound impact on the Christian religion are still seen today. It is fitting that we include an article in this issue recognizing this milestone of the Protestant faith.

NEW SERIES

This issue will mark the end of the way things were for *Fides et Libertas*. In 2010 we will launch a new series of *Fides et Libertas*. It promises to be an exciting adventure. We are moving toward the next step in the journal’s evolution by instituting a peer-review process for every article published. This is a big move for the International Religious Liberty Association and will involve greater resources to ensure we have a quality product that will be taken seriously in the conversation of International Religious Freedom.

We are searching for unsolicited manuscripts that meet IRLA’s mission to promote such matters as: religious liberty as a God-given right; separation of

church and state; government's role in protecting citizens; the inalienable right of freedom of conscience; freedom of religious community; the elimination of religious discrimination; and the Golden Rule.

We will publish a broad range of articles including:

- historical studies;
- articles that deal with theoretical questions of theology and freedom;
- essays on the meaning of such concepts as human rights, and justice;
- works focused on politics and religion; law and religion.

We will continue with one issue per year but our long-term vision is to see a quarterly publication. Your continued support of this journal will be more important than ever as we embark on this new journey.

The journal is meant to be a place of conversation—where participants, who have their own unique life experiences from different countries and religious understandings, gather to engage others on ideas and meanings of religious freedom. We look forward to your participation in this “meeting place” where faith and freedom are discussed in a spirit of peace. Let us gain knowledge together and learn to respect our differences.

Barry W. Bussey
September 11, 2009





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FIDES ET LIBERTAS



PART ONE: DEFAMATION OF RELIGIONS



FREEDOM OF EXPRESSION AND INCITEMENT TO HATRED

NATAN LERNER

Dr. Natan Lerner is professor of international law at the International Interdisciplinary Center in Herzliya, Israel. His latest book is titled Religion, Secular Beliefs and Human Rights.

INTRODUCTION

The subject of this meeting is “Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.” This paper will concentrate on the analogies and parallels to be drawn from situations where the State or the international community limit freedom of expression to provide protection against incitement to, or advocacy of, some hate crimes and the applicability of such limitations to advocacy of religious hatred. The links between, and balancing of, Articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR) in general will not be discussed here. For the purposes of this paper, the notions of religion and freedom of religion have the reach and meaning established in Article 18 of the Universal Declaration of Human Rights, Article 18 of the ICCPR and relevant articles of the 1981 Declaration on the Elimination of all Forms of Intolerance and Discrimination on Religion or Belief.

Freedom of expression is not an absolute right, and does not belong to the list of rights that cannot be derogated according to Article 4 of the ICCPR. States may legitimately limit that freedom when it is abused by the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The victims of that incitement are national, ethnic or religious groups, or their members. The nature of the group exposed to incitement—national, ethnic, or religious—should not justify differences in the treatment of those groups. This is particularly valid with regard to racial and religion-related groups. Racial and religious hatred involve similar motivations and produce similar consequences. Parallels can thus be drawn from limitations imposed upon freedom of expression in documents referring to one of those evils.

This approach is supported by the historical context, as well as by the developing notion that there exists an international public order encompassing treaty law and norms described as “soft law”, emanating from non-mandatory instruments. Originally, when the United Nations’ attention was drawn to a series of anti-Semitic outbursts in 1959-1960, the General Assembly, following resolutions of the relevant bodies, condemned “all manifestations and practices of racial, religious and national hatred...” (Resolution 1510 (XV)). In the discussion of how to implement the resolution there were different opinions. Some States proposed

to prepare a convention on racial discrimination; other States preferred to adopt only a declaration, while some favored an instrument dealing with racial as well as religious discrimination. Finally, the General Assembly adopted similar Resolutions 1780 (XVII) and 1781 (XVII), asking to prepare declarations and draft conventions dealing separately with race and with religion. Concerning race, a Declaration was adopted in 1963 and the Convention was completed in 1965. As to religion, only a Declaration was adopted, in 1981. A draft convention is pending, *sine die*.

For obvious methodological reasons, the Convention on Race does not refer to religion, but it seems reasonable to apply, by analogy, relevant provisions to religion-related discrimination or intolerance. The Convention was concluded with large support in December 1965. A year later, the two Covenants on Human Rights were adopted, and Article 20 of the ICCPR deals with advocacy to both racial or religious (or national) hatred. The preparation of a draft declaration and a draft convention on religion or belief made very slow progress, and in 1972 the General Assembly decided to give priority to the draft declaration. This meant in practice postponing indefinitely the work on a mandatory treaty. It took nine more years to reach agreement on the Declaration.

Several articles of the Declaration show the clear influence of the instruments on racial discrimination. The definition of the terms *intolerance* and *discrimination* also follows the model of the definition in the Racial Convention. This should be kept in mind when considering its applicability, by analogy, to advocacy of religious hatred. The relevance of other developments in international law should also be considered to that effect. Such are the instruments dealing with genocide, its denial, defamation of collectivities, and, in general, legislation restricting freedom of expression when it affects fundamental liberties.

STRIKING A BALANCE BETWEEN RIGHTS

The possibility of clashes between different human rights has been frequently discussed in several contexts. The matter is thus not new. However, in recent years, it has become acute with regard to religious groups. In principle, no difference should be made between religious groups and other groups defined by race, nationality, language, culture, color or any other characteristic pertaining to groups that deserve the protection of international and human rights law. Still, the emotions usually accompanying religious convictions increase sensitivity in the case of incitement to religious hatred, and this may cause, as has already occurred, acts of violence at the national and international levels. Therefore it was argued that advocacy of religious hatred may justify a more severe limitation of freedom of expression. This would mean, however, underestimating the impact of that hate speech which affects ethnic or cultural communities and their members. Freedom of expression also protects speech that may offend, hurt or shock,

and can equally harm racial, religious or national groups and their members. The fact that its abuse can produce different reactions does not justify differences as to the limits of freedom of speech. Hate speech violates equally the rights and freedoms of the mentioned groups and individuals. Equality of social or psychological damage requires equality in the limitation on speech causing that result.

Until World War II, classic international law paid little attention to the right of collectivities to be protected from incitement to hostility. After World War II, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which aimed at protecting the physical existence of *religious, racial and cultural* groups, was a major exception to this trend. A decade later, the already mentioned Resolution 1510 (XV), on Manifestations of Racial Prejudice and National and Religious Intolerance, started international legislative work to protect racial, religious and national groups. Major results of that work were the Declaration and the Convention on Racial Discrimination and the Declaration on Religious Intolerance, but the change in the tendency also influenced other human rights issues such as those concerning minorities, indigenous populations, migrations, group defamation, anti-Semitism, and related phenomena. Despite the traditional reluctance of international law to deal with non-State entities and the resistance of human rights law to transcend the area of individual liberties, the necessity of curbing prejudice, incitement, persecution and violence against certain groups, and their members because of membership, became essential.

A distinction must here be made between the clear-cut prohibition of *discrimination* on racial or religious grounds and the less precise approach to *hatred* and *intolerance*, notions involving difficulties as to their strict legal meaning. The definition of discrimination contained in Article 1 of the Convention on Racial Discrimination has been followed by similar definitions referring to other protected rights. It is with regard to hatred and intolerance that a clash may more easily evolve between basic rights such as freedom of expression or association, on the one hand, and, on the other, the right of collective entities and their members to be protected from defamation, hostility, hatred, intolerance, and incitement to such evils.

Articles 19 and 20 of the ICCPR are the basis for any discussion of this matter. The major instruments concerning race and religion, particularly the Conventions on Genocide and on the Elimination of Racial Discrimination and specially its Article 4, are equally relevant. So are other international instruments, such as the 1981 Declaration on Religious Intolerance and the 1978 UNESCO Declaration on Race and Racial Prejudice, as well as various regional treaties. The European Convention on Human Rights deals with the matter in Articles 9 and 10, and the European Court of Human Rights produced important and well known pertinent decisions. To mention one case, in *Otto-Preminger-Institut v. Austria* (1994 ECHR 26) the Court stated that “as a matter of principle it may be

considered necessary in certain democratic societies to sanction or even prevent improper attacks on objects of religious veneration.”

It should be noted that three Special Rapporteurs of the United Nations, on freedom of religion or belief, on freedom of opinion and expression, and on racial discrimination, felt the need to issue, in 2006, a joint statement urging all parties “to refrain from any form of violence and to avoid fuelling hatred” and stressing the need of respect for freedom of expression, while avoiding “the use of stereotypes and labeling that insult deep-rooted religious feelings...”

The issue is, of course, how to strike the balance between the two aims. Article 19 of the ICCPR permits limitations on freedom of expression to protect the rights and reputation of “others.” Article 20 forbids advocacy of national, racial, or religious hatred when it constitutes incitement to discrimination, hostility, or violence. Article III of the Genocide Convention declares punishable “direct and public incitement to commit genocide.” The European Convention on Human Rights restricts freedom of expression, assembly and association “when necessary in a democratic society in the interests of the ‘prevention of disorder’ and ‘protection of the reputation or rights of others’.” The American Convention on Human Rights affirms everyone’s right to his honor and dignity, aims at ensuring the protection of the “reputation of others,” and penalizes advocacy of national, racial or religious hatred that constitute incitement to lawless violence...on any grounds including those of race, color, religion, language, or national origin.” The 1981 Declaration on Intolerance and Discrimination Based on Religion or Belief refers to “appropriate measures to combat intolerance on grounds of religion or other belief.” The 1978 UNESCO Declaration on Race and Racial Prejudice urges taking steps “to prohibit and eradicate racism [and] racist propaganda” and to “combat racial prejudice.” The 1990 Paris Charter for a New Europe, adopted by the Conference on Security and Co-operation in Europe, stresses the need “to combat all forms of racial and ethnic hatred, anti-Semitism, xenophobia, and discrimination against anyone, as well as persecution on religious and ideological grounds.” Statements of international organizations and conferences in recent years used similar language.

RELEVANCE OF ARTICLE 4 OF THE CONVENTION ON RACE

Far-reaching positive provisions related to incitement against groups, communities or collective entities have been incorporated into the Convention on the Elimination of all Forms of Racial Discrimination, specially its Article 4. This Article, as the whole issue of freedom of expression versus other basic rights, engendered controversy and was subjected to criticism. Formal reservations or declarations were submitted. Notwithstanding, it became a clear guideline for the international community, and several States enacted domestic legislation in its spirit.

As already indicated, for methodological reasons, the Convention on Racial Discrimination avoided references to religion. It is, however, also reasonable to interpret Article 4 as applicable, by analogy, to manifestations of incitement on grounds of religion or belief. This approach is supported by the historical link between the instruments on race and those on religion, as well as by the view expressed by the judiciaries of several countries. More important than the specific nature of a group, or the identifiable elements that define that group, is the basic fact of the undisputed existence of the group, its self-perception and its perception by the surrounding world. In some cases, race, religion and culture overlap, and those who wish to hurt the group or incite against it are not overly worried by the character of the object of their hostility or hatred. Moreover, the argument that members of a group defined by the offenders as a religious group cannot invoke an anti-racist act was rejected in several occasions.

Article 4 of the Racial Convention is far-reaching. It imposes upon State parties to the Convention the duty to adopt immediate and positive measures designed to eradicate incitement to, or acts of, discrimination. States shall declare an “offence punishable by law” all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any “race or group of persons of another color or ethnic origin”. If only one instrument on both race and religion had been adopted, there is little room to doubt that “a group of persons of another religion or belief” would also have been listed. The same assumption would be valid if identical, separate instruments had been adopted. To leave out groups based on religion or belief from the protection that international law provides to groups based on race, ethnic origin or color seems unfair and illogical.

Article 4 was the result of a compromise between those who saw it as the “key article” of the Convention and those who considered it a threat to freedom of speech and association. As with every compromise, the text may be not entirely satisfactory. But, as argued elsewhere by this writer, it may be seen “as a guideline to interpret in a similar spirit the provisions on incitement in the instruments on religious rights.” Regrettably, no mandatory treaty was adopted in the area of religion or belief, and the reasons for that absence may be weighty enough and reflect political realities. Analogical interpretation of instruments with different degrees of obligatory force may be difficult. The issue of a hierarchy of norms in the field of international law, as well as the fascinating but inconclusive discussion on the existence of an international public order containing norms included in non-binding instruments, cannot be discussed here. Neither is this short comment the place to examine the crucial subject of *jus cogens* and provisions *erga omnes*. But, in the case of race and religion as grounds of hostility or hatred, the parallelism seems reasonable.

The difficulties of some States in ratifying the Convention because they

consider that there is a clash between rights should not be underestimated. The “due regard” clause was not seen as sufficient by some States and several submitted reservations or interpretations in order to make sure that Article 4 would not jeopardize freedom of opinion and expression. But CERD, following recommendations of Special Rapporteur Jose D. Ingles in his *Study on the Implementation of Article 4*, stated in its General Recommendation 1, of 1972, that implementation by States of the provisions of Article 4 is obligatory, and, since the Article is not self-executing, if domestic legislation is not sufficient, it should be supplemented by adequate additional measures. The rights of free expression and association are not absolute, and are subject to the limitations of Article 29 of the Universal Declaration and Articles 19 and 20 of the ICCPR. The mandatory character of Article 4 was reiterated by CERD in its General Recommendation VII. It may also be pertinent to mention the decision of the International Court of Justice in *Dem. Rep. Congo v. Rwanda* and its approach to the prohibition of racial discrimination.

In 1993, in General Recommendation XV (42), CERD referred to “evidence of organized violence based on ethnic origin” and stated that the prohibition of the dissemination of ideas based upon racial superiority or hatred is compatible with freedom of opinion and expression. In the same paragraph of its Recommendation, the Committee draws the attention of States parties to Article 20 of the ICCPR, which refers, of course, explicitly to “religious hatred.”

In the same spirit, the Human Rights Committee, in its General Comment 22 (48), adopted in 1993, declared that Article 20 of the ICCPR, applicable to racial and religious hatred, was fully compatible with freedom of expression. In a former General Comment, 11(19), the Committee declared that State parties are obliged to enact laws prohibiting advocacy of national, racial or religious hatred. The Committee emphasized that the prohibition of incitement to religious hatred is fully compatible with other basic freedoms.

OTHER PARALLELISMS

It seems thus reasonable, for historical as well as for reasons of legal hermeneutics, to see analogies and parallelism between the prohibition of incitement in the racial sphere and the approach with regard to advocacy of hatred based on religion or belief, in accordance with Article 20 of the ICCPR. It may be more complicated to find a similar parallelism in other situations in which the State limits freedom of expression. In the case of laws against blasphemy, there are difficulties with regard to the definition of blasphemy, and these laws deal in general with expressions against one dominant church or religion. Denial of the existence of God would be blasphemy in some countries, but not in others where it would be seen as a manifestation of freedom of thought and expression. Apostasy and obscenity laws are in a similar situation. They are the product of certain legal sys-

tems but are unacceptable to others, and are not regulated in international texts. The margin of appreciation that decisions of the European Court of Human Rights reserve to each State in those and similar issues underscores the differences between them and cases in which fundamental rights are involved.

As to defamation, the European and the American Conventions on Human Rights refer to the “reputation” of others. National legislation in this respect differs with regard to substance as well as procedure, including the issue of *locus standi* demanding that a plaintiff be *personally* included in the defamation statement. The borderline between defamation and incitement is difficult to determine. Article 20 of the ICCPR refers to incitement as the outcome of advocacy of national, racial or religious hatred. The incitement should lead to discrimination, hostility or violence. Defamation that does not involve *advocacy* and *incitement* may thus not be covered by Article 20, although it may be sanctioned by domestic legislation.

Particularly difficult are the areas related to religion. The difference between permissible criticism of a given religion by describing its dogmas as wrong, absurd or false, on the one hand, and incitement against the same religion as stated in Article 20 of the ICCPR, on the other, is not merely an issue of degree or a quantitative one. A basic issue is when does criticism become defamation? And when does defamation become incitement to discrimination, hostility or violence? This may lead to the question of intent or intention.

In the case of incitement to genocide, there is no doubt that it means incitement to violence, in the most extreme meaning of that term. But since genocide is such a massive crime that generally it can only be committed by States or by non-State collective actors, the issue of the proof of intention is crucial. The controversial decision of the ICJ in February 2007 (*Bosnia v. Serbia*) reflects the difficulties involved. Even when the Court concluded that there was genocide, as in Srebrenica, it could not reach consensus regarding intention on the part of Serbia, namely its government or authorities.

The question is to what extent can ridiculing a religious dogma, or portraying an entire religious group in terms that imply contempt, become incitement in the sense of Article 20. Believers in a given religion may be profoundly offended by shocking critical statements, but when do such expressions become contrary to public order and when do they become incitement in the terms of Article 20?

The problems created by some utterances and the reaction of religious groups that feel themselves hurt, offended and even threatened cannot be ignored, and the General Assembly expressed its concern and alarm with regard to such developments. The three major religions were involved in such incidents. Even at the time of drafting this paper such clashes have been occurring: a major American publishing house announced, on the day when it was supposed to appear in print, the withdrawal of a novel concerning the prophet Muhammad because it

was likely to engender acts of violence; the French press was occupied with the firing of a satirical caricaturist because of a provocative article seen by many as offending an ethnic-religious community. These recent cases did not acquire the public impact of former ones such as the Danish cartoons concerning Islam or certain movies offending Christians or Jews. They show, however, the extent to which the issue repeats itself, threatening in different degrees public peace and inter-group coexistence.

The laws that exist in some countries incriminating denial of genocides, such as those committed against the European Jews or the Armenians, as well as international decisions urging the outlaw of such denials, are related to this problem. The issue is whether denying a case of genocide, or its magnitude, can be construed as implying incitement against the victim group. A positive reply is the basis of the philosophy behind the legislation penalizing those denials. It is relevant in this connection to point out the distinction between denying established facts, recognized in judicial pronouncements, on the one hand and, on the other, disputing the validity or veracity of dogmas, or value judgments, considered absolute truth by some and mythical, unreal or impossible by others.

Merely offensive or insulting expressions against religious dogmas do not necessarily involve incitement. When offensive words may be seen as *fighting words* (in the sense used in some countries to exclude them from the protection of freedom of expression) is not easy to determine. But developments in this sphere have caused and are causing conflictive situations. The analysis of the analogies and parallels that can be drawn from remedies already provided in international life may be useful in confronting the severe dangers resulting from advocacy of religious-related hatred, without losing sight of the need to respect freedom of speech.

CONCLUSIONS

1. Freedom of expression is a fundamental right that may be subject to the limitations determined by law. It is not an absolute right.
2. Article 19 of the ICCPR, which permits certain restrictions, should be read in conjunction with Article 20 of the Covenant, prohibiting advocacy of hatred that constitutes incitement to discrimination, hostility or violence.
3. In principle, there should not be a difference in the treatment of incitement to national, racial or religious hatred. International realities, as well as eventual consequences of incitement to hatred against religious groups or symbols, may however require a particularly cautious approach, fully respecting freedom of speech as a fundamental human right that can be restricted only according to law.

4. Limitations on freedom of expression regarding other liberties may in some cases be useful to draw analogies. This is particularly possible with regard to Article 4 of CERD because of the legislative history of the UN approach to racial and religious incitement, as well as because of the broad interpretation of Article 4 by CERD and Special Rapporteurs. Equally relevant is Article III of the Convention on Genocide. The discussion on the hierarchy of norms in international law and the existence of an international public order incorporating rules of soft law has to be considered as well.
5. In the case of genocide, the 1948 Convention deals equally with incitement against racial and religious groups. Existent denial legislation was applied to groups in which ethnicity and religion overlap, but nothing precludes their application to groups strictly defined by religion if they were victims of genocide.
6. It seems reasonable, because of the historical context and trends prevailing in human rights law, to apply to incitement to religious hatred analogies drawn from Article 4 of CERD and Article III of the Genocide Convention,. This is compatible with respect for freedom of expression, a fundamental freedom that may be restricted only in accordance with human rights law.





REPORT ON THE HUMAN RIGHTS COUNCIL SUBCOMMITTEE

NATAN LERNER

Dr. Natan Lerner is professor of international law at the International Interdisciplinary Center in Herzliya, Israel. His latest book is titled Religion, Secular Beliefs and Human Rights.

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First of all, permit me to thank John Graz and his colleagues for the invitation to attend this meeting in this beautiful environment. Since Rosa María Martínez de Codes already presented a very clear picture of the United Nations and European institutions' resolutions on what we are going to discuss in this meeting, and we have discussed formerly in Bucharest and in other places, I will limit myself to some general aspects. I will try to give you a general picture of what happened in the meeting of October 2008, in the expert seminar of the Human Rights Council. And I will try to deal also with the conceptual issues involved.

I would like to start by saying that generally the subject seems to me to be less pressing, less dramatic than it appeared to us when we met in Bucharest a year ago. Things seem to be quieter, more reasonable, and some things that happened in the meeting that I attended in Geneva are an expression of that quieting down of the issue. Still, this issue is highly politically charged, and one can expect many manifestations, including attempts to impose them by majorities in U.N. meetings. But I believe there is a general consensus today that it is much more important to clarify and ratify and consolidate the notion of freedom of expression than to introduce a new legal figure which nobody is able to define very clearly, namely, defamation of religions.

I believe that a statement by this group may be useful. What we started doing in Bucharest should be continued, possibly elaborated on and shortened. I would like to make a few general and conceptual remarks.

Our meeting was presented under the general heading of "Hate Speech and Defamation of Religions." Hate speech is speech originated in hatred. Hatred is an unclear concept; it is a feeling; it is a sentiment which requires many qualifications. Hatred may in some cases be legitimate. "I hate some food." "I hate some noisy music." "I hate some aggressive pictures." This is legitimate. This is not a crime. In that respect, my hatred belongs to my internal sphere.

Hatred may become illegal, it may become a criminal act when it means advocating national, racial, or religious hatred which constitutes incitement to three issues, to three attitudes: *discrimination*, a clear-cut legal concept; *hostility*, a difficult concept to define clearly because it belongs to the same category of words as

hatred or intolerance. It's loose, it's not clear, it is indefinite; or—and this is clear—violent. These are the terms of Article 20 of the Civil and Political Covenant. If it were up to me, I would say that I can live with the existing provisions concerning hatred, hate speech, hate crimes, and so on. But of course the issue is still under discussion.

The second difficult terminological problem is the question of “defamation of religion.” It's an equivocal term. A religion, its credo, its doctrines, its commandments may be criticized. They may be attacked. They may be ridiculed. This is not a crime. It is legitimate—except when it becomes incitement in terms of Article 20 of the Covenant, or of Article 3 of the Genocide Convention, or of Article 4 of the Racial Convention (and I know in this respect I am walking on insecure ground because I am speaking in the United States, and Americans do not like Article 4 of the Racial Convention, which I believe is a very good provision, but this is a question and this is not our subject today).

Since incitement has an object, an address, an aim, incitement is always against some people, against someone clearly determined. It is incitement to discrimination, hostility, violence against a group or its members. It is not defamation of religions, which may be a theoretical concept or a philosophical matter in which law has only a secondary role to play, but the issue is how we prevent religious persons belonging to religious groups from being attacked, vilified, insulted, offended, in terms of the existing international law, which includes the three main instruments which I have mentioned; namely, the Genocide Convention, the Racial Convention, and the Covenant, and some provisions at the European level which Rosa María mentioned. They are becoming more relevant because the OSCE and the European Union are working quite efficiently in dealing with the issue of incitement, not always to the taste of American legal scholars, strongly interested, with very few exceptions in putting emphasis on freedom of expression. Europeans and others are much more inclined to put a limit, to put restrictions on this concept of freedom of expression, according to law and democratic principles.

There is a problem concerning the nature of the victim groups. Existing legislation on the international level protects three groups: ethnic or racial groups, cultural or linguistic groups, and religious groups. It left out a couple of groups which are also becoming lately the subject of preoccupation in international law and national law—homosexuals, some groups of invalids or permanently limited persons who cannot enjoy the advantages of a free society. But on the whole the three important groups are racial, religious, and cultural.

Those groups have to be permanent. They have to be spontaneous. They have to be natural. They should not be the result of an artificial approach. Persons using glasses, for example, are not supposed to be defended against incitement. It's not a crime to say that people with glasses are not so pleasant looking

at you as people with natural eyes. But this is irrelevant from a legal viewpoint. From a legal viewpoint, the permanent, natural, and well-defined groups are the objects which have to be defended, protected.

Our program speaks about the Human Rights Council's *position*. I would dare to say that there is no Human Rights Council position. There have been a set of resolutions adopted in the past. I don't know what is going to happen this year, but when we met in Geneva in October 2008, my feeling was that to some extent the offensive to create a new legal figure called Defamation of Religions has receded. Doudou Diene (whom many of you know well), in his paper presented to the Geneva meeting, took a different position from the one he took in his former reports. It is therefore easy to understand why the general feeling of the seminar—it wasn't really a seminar; it was a small general assembly—was against criminalizing, or adopting a mandatory document of United Nations concerning prohibition of defamation of religion, whatever it means and whatever is the way in which it is being defined.

The subject of the seminar itself, to which I'm going to refer briefly also, was links between Articles 19 and 20 of the ICCPR. The issue of defamation of religions relates to it. It was generally agreed that the subject is already covered by the provisions on incitement against racial or religious or cultural groups, which, of course, is a position that I and other people who participated in the seminar advocated. Diene called for the debate to be resituated in the framework of human rights and the Covenant, in particular, with regard to the notion of incitement to racial and religious hatred. And I believe that this was a general consensus, and everyone seemed to agree that freedom of expression is an essential, basic, fundamental human right. It can be restricted; it cannot be abolished. It cannot be diminished in its importance by creating artificial figures that clash with the notion of freedom of expression.

The meeting of 12 experts became a small general assembly in which more than 200 representatives of States, governments, international agencies and NGOs participated. It was necessary to move the meeting from the Wilson Palace to the Palais des Nations, which is much larger. This was a manifestation of the growth of interest in the subject. The largest individual delegation was that of the Islamic Conference. Its spokesmen seem to have understood that defamation of religion is not going to become a new legal figure. So they receded, they played down the issue, they accepted formally the relevance of existing law.

For instance, the Algerian ambassador mentioned me by name and expressed his support for my position stating that the existing legislation, particularly the Racial Convention and the Genocide Convention, are enough to protect religious groups, beyond different views concerning the interpretation of the limits of incitement and the possibility of applying criminal law to stop it when necessary. I'm not going to discuss it now. But I believe all of us can agree that the Racial

Convention can be certainly applied to protect people belonging to religious groups from any aggressive form of intolerance, of discrimination certainly, and even hostility, if we take a broad approach about hostility, which is a difficult question, I admit.

Now, let me say a few words about who were the participants in the meeting, the 12 experts. They included the outgoing Special Rapporteur on contemporary forms of racism, namely Doudou Diene; the Special Rapporteur on freedom of religion or belief, Asma Jahangir, who played an important role in clarifying many things; the Special Rapporteur on freedom of expression; the Special Rapporteur on displaced persons; the former Rapporteur on freedom of religion, Professor [Abdelfattah] Amor; a member of the Committee on the Elimination of Racial Discrimination, and five university teachers—one of them myself—two British professors, one German professor. It was a group of people really interested professionally and academically in the subject. It was not a political group. Politics came into the room when the representatives of the governments and the non-governmental organizations began to dominate the scene.

All of the 12 (really, 11, because one didn't come) experts presented papers, quite interesting, in general defending the viewpoint that freedom of expression must prevail. The meeting was divided into four panels. But there was a relationship between all of them, and I wouldn't say that there were different approaches, certainly not among the 12 experts.

There was no confrontation, neither among the experts themselves, nor among the experts and representatives of States and NGOs. I must say that even the spokesmen of the Islamic Conference, with few exceptions, didn't take a strong position on the need to go ahead with the issue of defamation of religions.

Personally, I dealt specifically with the question of incitement to hate crimes and religious hatred. It's a topic that I discussed in my earlier writings. My conclusions were that freedom of expression is not absolute, may be limited, but only according to law and the needs of a democratic society to avoid incitement to hatred. There should be no difference of treatment with regard to ethnic, national, or religious groups. The existing restrictions permitted by the Covenant, the Convention on Racial Discrimination, and the Convention on Genocide provide enough protection also against incitement to religious hate. In my oral interventions, I advocated the application of analogies and parallels based on such international legislation, including the legal prohibition of incitement to racial or religious hatred.

I touched two issues that I would briefly mention because they may be relevant. One of them is the idea that is being developed by some legal scholars regarding the existence of a minimum international legal order concerning human rights. What some scholars argue is that the conventions, the declarations, the resolutions of the Security Council to some extent created a sort of international

legal order concerning human rights below which it is impossible to go. I don't believe this is still generally accepted. But it is an interesting point which deserves to be mentioned.

Another point, a sensitive one for me, is the attempt to compare Holocaust denial, that is theories that the Holocaust didn't exist or didn't have the effect that was judicially declared, to this issue of defamation of religions. Also in this respect I believe that the people who were fighting defamation of religions went back, receded. They seemed satisfied with demanding equal treatment; for instance, of the prohibition of anti-Semitism, which is an established legal fact, and the prohibition of what they call Islamaphobia, namely, an attitude concerning Islam or Muslims which is similar to the attitude that some people have concerning Jews, namely, anti-Semites. I can live with that. But I believe it is going too far comparing the most tragic event of the 20th century with a sentiment of dissatisfaction or a feeling of resentment because of the fact that the religion to which some people belong is being insulted or attacked by people belonging to other religions or not belonging to any religion. So it is not an even situation. The Holocaust, the genocide against the Jewish people, cannot be compared to defamation, despicable as this might be.

Another remark refers to the question of blasphemy which was mentioned here before. The issue of blasphemy has not been satisfactorily taken care of by the international legal community. Blasphemy legislation exists, even exists in democratic—if I may say that—Christian countries, Britain, for instance, although only against the Christian religion. I would say it is a remnant of the past. I believe democratic countries will take care of that and will modify legislation concerning blasphemy.

To conclude, I would say that, in general, respect for freedom of expression prevailed in the meeting of experts and in the pronouncements of the delegates of States and NGOs. The attempt to create a new legal criminal figure, defamation of religions, was abandoned or at least postponed. This may be too optimistic a remark, and there may be new attempts to have international legislation concerning defamation of religion, perhaps at the coming General Assembly of the United Nations. I do not believe that it will be dealt with at any other international organization. The Human Rights Council, because of its composition, may be an appropriate setting for some new attempt. So I'm not saying in absolute terms that it is over, that it is passé. The problem exists. The fact that the United States is now involved, the United States is now a member of the Human Rights Council is a very positive development. I believe it can contribute a lot to making the Human Rights Council what it should be, and not what it was in the past in most of the years since it was created to substitute for the old Commission on Human Rights, which was also completely discredited.

The last point: Is it necessary to act in favor of a new general comment, on

Articles 18, 19, and 20? I don't know, really. Article 20 and Article 18 have been the object of general comments of the Human Rights Committee, which is a respected, authoritative group of wise experts which works very well. Articles 19 and 20 are obviously related, and this was the purpose of the seminar in Geneva in October. If it is necessary to deal jointly with Articles 18, 19, and 20, I don't know. Why should there not be a new general comment, particularly if it is being made by a respected group like the Human Rights Committee? I wouldn't put it in the hands of the Human Rights Council, because this is not an objective group of experts, of independent experts, but an organ of the UN in which some States prevail. It has, therefore, a clear political orientation. The Human Rights Committee issued very useful comments on Articles 18 and 20. So, if some States or some organizations are interested in a joint statement concerning the three articles, and those three articles are very substantial and very essential articles of the Declaration of Human Rights and of the Covenants, I have nothing against that.

At the meeting in October, no decisions were made. There was no general statement, there was no recommendation. There was certainly no resolution. It became a little bit of a general assembly. It was an interesting intellectual exercise for those who participated in it. It was an opportunity to show that, when the international community fights more or less strongly against decisions to pervert international legislation by introducing artificial things, they can be stopped. The majorities are not always in the position of imposing their viewpoints. In that respect I believe it was a useful meeting, and I was very happy I could participate and make some minimal and modest contribution.





CULTURAL AND LEGAL ISSUES CONCERNING DEFAMATION OF RELIGIONS

JAIME CONTRERAS AND ROSA MARÍA MARTÍNEZ DE CODES

Rosa María Martínez de Codes is professor of history at the Universidad Complutense de Madrid, Spain, where she teaches History and Culture of the USA and Church History in America.

Jaime Contreras is professor of modern history and the director of the Institute of Sephardic and Andalusian Studies at the Universidad de Alcalá de Henares, Spain.

CULTURAL ANALYSIS

It happened in Toledo, Spain half-way through the 16th century; two Christian men became embroiled in a dispute; one of them, furious, exclaimed: “I swear to God,” then his opponent in the debate reproached him: “Do not swear in such a way, for that is a great sin.” The first, absolutely beside himself, replied: “In that case I swear at Mohammed as a filthy, cunning whore.” A *Morisco* (Muslim convert to Christianity) who witnessed the scene took up a garrotte and threatened the blaspheming Christian, asking: “What has Mohammed done to you?” There was an immediate struggle between the Christian and the Muslim convert; people milled around expectantly until the justice officials arrested the opponents. The street recovered its normal appearance and things went no further.

Historians tell us that in Toledo at that time there lived a minority *Morisco* community which had been forced to convert to Catholicism and kept up the beliefs and rites of Islam in private, for the most part. The authorities of the city, the Church, and above all the Crown presented these Muslim convert communities as the causes of the misfortunes which afflicted Spain. The authorities also claimed that the religion of Mohammed was strange, dangerous and radically contrary to the Catholic identity, which was proper and natural to Spaniards. Obviously those Muslim converts were equally Spanish but were not Catholic, and for that reason were notably excluded.

The authorities’ speeches propagated very aggressive and defamatory anti-Moorish slogans. Nevertheless, these speeches contrasted with the attitudes of Christian people closer to the community. For them, the Muslim converts had a different religion and cultural identity but daily life required the maintenance of close relations between the two communities which, though favorable always to Christians, enabled peaceful mutual coexistence. Naturally, as in the case described, there was a certain level of violence, but this did not prevent a slow process of assimilation of some Muslim convert families.

From the above account we can define two different scenarios for analysis:

first, at the head of political decision-making by the Royal Court, which aggressively expressed forms of confessional identity that excluded outsiders; versus a second level of fragmented identities, more practical, expressed by individuals in their daily existence. Both identities were always determined by religious codes and values.

In the West, it was the upper echelons of cultural life that transmitted the message, in many forms, that the interpretation and meaning of life could come from no other background than the religious world. Everywhere it was taught that truth, the whole truth—of the individual and of society as a whole—defined as a “*republic of believers*”—resided in the Christian religion. Up until the revolutionary bourgeois circles of the eighteenth and nineteenth centuries, no other more cohesive factor existed than that which was based on these principles. In a major part of our world today this characteristic is still valid.

This social cohesion, for reasons of religious identity, provides a common idea of a certain destiny, singular and absolute. In this resides the truth, and, consequently, from this standpoint all legal and administrative regulations are structured. This uniformity lends a sense of peace to people and also ensures the continuity of social and political structures. For this reason religious diversity, on the other hand, has divisive effects: it plays down truth, and it spreads disquiet and doubt and a feeling of collective panic in many people. Religious and political authorities thus intensify tension, and talk of great risks and threats for the whole of society. Hate wells up as a strategy wielded to ensure and reinforce a “damaged” identity. The identity of the personal and collective soul, an identity which is expressed in the form of faith, in a code of beliefs, is understood as a collective treasure. For this reason diversity is a traitor to faith, a sin, and a crime at the end of the day.

And what do we do with crime? It must be prosecuted. “*Crimes against the faith must be punished according to the people’s law*”, wrote Calvin in Geneva in 1550, when he alleged that violence was fair as a defense of religious identity (Dan. 3:24-31). Similarly, the texts of the Koran talk of the just punishments waiting the persistently unbelieving: “*He who deliberately opens his heart to lack of faith shall suffer the ire of God doubly and a terrible punishment shall await him*” (Koran, XVI:106).

Thousands of examples could be quoted here. In the Christian tradition this *de rigueur* when it comes to crimes against the faith is expressed as infinite hate against such a “sin” and is also expressed in a practice of “coercive charity” against the sinner, or what is the same thing, as “charitable hatred” which, more than holy violence, manifests itself as a weapon of pastoral theology.

Pastoral theology was always the conceptual instrument of dominant religious identity; and it was from this instrument that inter-confessional hatred and consequently intolerance came about. According to this principle, the individual conscience expressed a malignant and dangerous inclination because it opened

the floodgates to the malign forces that beset it. As expressed by the theologian Christopher Fowler in 1655, to be indulgent with one's individual conscience was "*the last and most desperate designe of the antichrist.*" Imprecations like this, which fill the history of religious persecution in the West, obviously attempted to defend the homogeneity of the group against the individual dissident or minority group. For this reason it is reasonable to maintain that hate and religious defamation were used as discourse to contain social and individual centrifugal forces and restore the "harmony" of order.

Such restoring of order, the first reason behind institutionalized religious hatred, provoked a "professionalization" of repression, always intense and in proportion to the official identification of the religious dissident as a political enemy. This gave rise to a broad and sophisticated culture of defamation, exclusion and hatred. Nevertheless, in spite of all its efficiency, these forms of exclusion possessed by political power were never fully taken on board by the common people. Neither persecution nor hatred, for example, of the Jews and Muslim converts in Spain, nor the hostility manifested towards the Catholics in Britain were the product of hostilities arising in the hearts of the community of common people. On the contrary, religious hatred was usually the expression of political differences which, more than differences over matters of faith, were seen as treason against the monarchies.

Thus it was the monarchies, the sources of political identity through their confession, which set the rules of the game. Their theologians and magistrates defined the common elements and values which were organized into a hierarchical order—seen as natural and harmonious. These values were, in general, the nation (group of persons of same ethnic provenance), the family, the Crown and religion. These were the values which, said the authorities, God had laid down. Thus was it described, for example, by the Bishop and Abbot of Westminster Abbey when he defined the identity of the Kingdom of England: "*One God, one King, one faith, one profession, is fit for one monarchy and commonwealth.*"

Around the same time in Spain a famous Dominican father, Fray Luis de Maluenda, angrily reproached his fellow student, the Hebrew scholar Juan Díaz, who wished to embrace the Lutheran doctrine and take refuge in Nuremberg: "... *because as you well know*"—wrote the Dominican friar—"*love of country and religion are things which must rightfully be put before our own fortune and lives.*"

In the opinion of Maluenda, one could not consult the individual conscience, as Juan Díaz said, because this profaned tradition, culture and lineage. Such disaffection must be responded to with violence—Juan Díaz was murdered with the intermediation of his own brother. In inter-confessional Europe religious hatred and fanaticism were products of the tyranny of the dominant religious identity which was exercised against the individual and minority conscience.

Nevertheless, in that same Europe, pursued by violence and religious hatred,

there were many grey areas and shadows at intermediate social levels, where certain recognition of dissident groups was possible. Confession-based conflicts between republics, kingdoms and monarchies reached these social circles in a somewhat mitigated state. Bob Scribner, an academic on German cultural history, when describing religious hatred in the Holy Roman Empire after the Reformation, reveals many places where religious dissidents created situations of rational and practical tolerance. In these settings the coexistence of different religious identities was possible, without them falling apart. Logically the strength of relations and mutual interests set up solid networks of social interchange, and this dominated over any hate and defamation arising for religious reasons.

The reluctance to denounce religious deviation was so evident that this contrasted greatly with the tactics used by the officials of justice. And it should be said that times of popular violence against other religious minorities were mainly the product of group hysteria which was provoked by official propaganda, manipulating local tensions in its favor. Thus, the instigators of hate managed to create a scapegoat from the natural and internal violence of local groups. This was the pattern of the famous Witch Hunt which culminated in the Little Ice Age in the United Kingdom or the persecution of Jews in Spain, Poland and Russia.

There are many events which present a topology adapted to this pattern. Therefore, it is possible to maintain that Europe, as a confessional area, in spite of so much hatred preached, was almost always in a state of *de facto* truce in its parishes. The great persecutions were not born amongst the people or in the villages of Europe but rather in Europe's churches and royal courts. This was not the case only of the inter-confessional identities which were born with the Reformation, or of Jewish identity, so close to Christian—but also expressed in the circles of Islam.

In Spain, the famous expulsion of the Muslim minority at the start of the seventeenth century was not a struggle of hatred between Christ and Mohammed but the logic of *state-led reasoning* which tirelessly preached an excluding form of constructing history. The sociological process of assimilation which many Muslim converts underwent was not taken into consideration, as was seen in the case of Toledo, mentioned earlier. Many Spanish writers of the time understood this, including Cervantes. In a well-known chapter of *Don Quixote*, Sancho Panza is made to speak in a famous dialogue with his neighbor, the Muslim convert, Ricote, who after the expulsion of his fellow Muslims, returned to La Mancha to collect his belongings which he had hidden away. "I know for a fact," said the Muslim convert "that Ricota, my daughter, and Francisca Ricota, my wife, are Christian Catholics; and although I am not so much, I still have more of Christian than of Moor and beseech God always to open the eyes of understanding and tell me how I must serve him" (*Don Quixote* II, 54).

Christians and Muslim converts lived together in the towns and villages of La Mancha. It is true that the former had more rights than the latter, however

daily business made it necessary for their lives to go on side by side. There were moments of tension but many more of coexistence. Religious hate never grew there, and good people, like the Muslim convert, Ricote, simply wanted to get on with life. This could not be, however, because hatred, as always, welled up on the back of strict laws and hostile gestures of authority which did not recognize the inviolable identity of the individual, since rights were not held by the individual but by the religion understood as a common group. Many years had to pass in the West before the individual and citizen could be a holder of rights, and this is still not the case in many parts of the world.

LEGAL ANALYSIS

Nowadays Western countries live under the rule of law, a very recent victory which has freed their citizens from confessional and lay totalitarianisms. It was under these very totalitarian regimes that hate and religious defamation were propagated for many years. The rule of law, in contrast, has now inverted the pyramid, placing the individual as the first element to be protected.

This is the reason why, from the legal point of view, the notion of “defaming” a religion sounds unfamiliar, as it is a major departure from the traditional understanding of what defamation means.

Traditionally, defamation laws protect individuals from being harmed materially by the dissemination of falsehoods. In English law the figure of defamation, *stricto sensu*, requires that a specific person be harmed, since the law is limited to providing the possibility of going to court to obtain compensation for the harm suffered. In no case is the State attributed with the protection of infringed rights. Rather, it is left up to the private citizen to go to court.

On the contrary, the idea of “defamation of religions” is not about protecting individual believers from damage to their reputation caused by false statements but, rather, about protecting a religion, or some interpretation of it, or the feelings of its followers. That is to say, defamation of religions protects ideas rather than individuals, and makes the State arbiter of which ideas are true. It requires the State to sort out good and bad ideologies, a role that did not correspond to the Rule of Law.

In order to protect religion, the Western World developed what it called “blasphemy laws,” which, in practice, empowered ruling majorities against weak minorities and dissenters. Historically, as we mentioned above, blasphemy laws have been abused to protect religions, and often religious leaders, against legitimate criticism.

Nowadays such laws have been abolished or have long fallen into disuse. In Britain the little-used law against blasphemy dates from 1676. From then onwards only four prosecutions for blasphemy, the last in 1979, were successful. On the basis that rules limiting criticism of religion are incompatible with fundamental

rights, and in view of the existence of international guarantees of freedom of expression, the UK House of Lords voted in March 2008 to abolish the common law crimes of blasphemy and blasphemous libel. The fact that English blasphemy laws only protected the Anglican Church and not other religions made the English law a particular offense against the principles of equality.

Germany has an anti-blasphemy law dating from 1871, last reformed in 1998:

Chapter 11, Section 166, Insulting of Faiths, Religious Societies and Organizations devoted to a Philosophy of Life.

(1) Whoever publicly or through dissemination of writings (Section 11 subsection (3)) insults the content of others' religious faith or faith related to a philosophy of life in a manner that is capable of disturbing the public peace, shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever publicly or through dissemination of writings (Section 11 subsection (3)) insults a church, other religious society, or organization devoted to a philosophy of life located in Germany, or their institutions or customs, in a manner that is capable of disturbing the public peace, shall be similarly punished.

Having been rarely applied in recent decades, this law was successfully used in 1994 to ban a musical comedy that ridiculed the Catholic doctrine of the Immaculate Conception by portraying crucified pigs.

In the case of Italy, the Italian Penal Code provisions underlying “*Vilipendio della religione dello Stato*” or “*Vilification of the State Religion*” highlights the difficult adaptation of past legal figures to present times. Articles 403 and 406 evidence such a statement:

Art. 403: Offences against the State religion by means of vilification of persons

Whoever publicly offends the religion of the State, by means of vilification of one who professes it, shall be punished by up to two years imprisonment.

Imprisonment from one to three years shall be applied to one who offends the religion of the State by means of vilification of a minister of the Catholic faith.

Art. 406. Crimes against faiths admitted in the State.

Whoever commits one of the acts provided by Articles 403, 404, and 405 against a faith admitted in the State, shall be punished in accordance with the designated Articles, but the penalty shall be reduced.

Article 403 has its origins in the Fascist period and is therefore regarded as having been superseded by the new Concord between the Italian State and the Holy See. The Roman Catholic religion is no longer the State religion but is a free religion equal to other faiths admitted by the State. As for the faiths “admitted” in Article 406, the Court of Cassation has held that it is “necessary to as-

certain whether the statute of a religious confession contravenes the Italian legal system, and in particular whether the exercise of a religion violates criminal law relating to matters of public order and protection of the rights of persons.”

The lawsuit resulted in the seventy-seven-year-old author, Oriana Fallaci, being charged with breaking a law that forbids defamatory statements concerning a religion recognized by the Italian State, causing a confrontational debate all over the world.

It was the first time an Italian judge had ordered a trial for defamation of the Islamic faith. But this is not just about defamation. Adel Smith’s complaint wanted the court to recognize that Oriana Fallaci’s book, *The Force of Reason*, was an incitement to religious hatred.

Italian Justice Minister Roberto Castelli, mindful of the distinction between the defamation of a religion and the publication of research into its origin, history and practices, declared, “In Europe we are seeing the birth of a movement that is looking to silence those who do not follow a single mindset, within which it is forbidden to speak ill of Islam... In Fallaci’s book there is very strong criticism but not defamation.”

Although anti-defamation and anti-blasphemy laws can serve an important function, a government should not abuse such laws to unduly restrict freedom of expression.

The United States’ legal system, despite having some State statutes concerning anti-defamation laws, tolerates very few restraints on the freedom of speech and academic freedom.

For example, in 1970, a certain Irving West was fined twenty-five dollars under the following Maryland statute: “If any person...shall blaspheme or curse God...he shall on conviction be fined.” The highest court of Maryland overturned West’s blasphemy conviction on the grounds that the statute violated the *Establishment and Free Exercise Clauses of the First Amendment*. The court explained that “powerful sects or groups could bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal Government would be placed second to the tenets of one or all orthodoxies.”

More problematic to the present analysis are those situations where a belief in one religion could be considered an offense or even a blasphemy in another religion. The evolution of blasphemy laws in other parts of the world has significant implications. Pakistan’s penal code includes a section (Art. 295 and 298) that states that defiling Islam or its prophets is deserving of the death penalty; that defiling, damaging or desecrating the Quran will be punished with life imprisonment; and insulting another’s religious feelings can be punished with 10 years imprisonment.

The Islamic Republic of Iran, following Pakistan’s penal code, is now drafting

a new Penal Code that states that (Art. 225):

1. Any Muslim who clearly announces that she or he has abandoned Islam and declares blasphemy is an Apostate. 2. There are two kinds of apostates: innate and parental. For both figures punishment is death, with a number of exceptions in the case of parental apostate where the parent may be spared the death penalty if, after the final verdict, he/she rejects his or her belief.

Both examples highlight the gravity of the problems with defamation of religions. They are not due to the ways that competing claims to religious truth are expressed or promoted but, rather, because a State has decided that one religious viewpoint is “orthodox” and that non-orthodox beliefs or speech are punishable as civil and/or criminal offenses.

DEFAMATION OF RELIGION IN THE CONTEXT OF UNITED NATIONS INSTRUMENTS

In scarcely eight years, very little time compared with what other subjects within the United Nations system require, defamation of religions has become a mere title with no reference or definition whatsoever in the text of a resolution of the Human Rights Commission. Further, it is considered *in extenso*, within a Resolution of the General Assembly.

UN General Assembly Resolution 62/154 is the latest in a series of similar resolutions involving the concept of “defamation of religion.” The first of these resolutions was introduced by Pakistan, a member of the Organisation of Islamic Conference (OIC), at the UN Commission of Human Rights in 1999 under the title “Defamation of Islam.” That title was later changed to include all religions, although the texts of all subsequent resolutions have continued to single out Islam. The resolutions have been passed by the UN Human Rights Council every year since the first was introduced. In 2005, the delegate from Yemen introduced a similar resolution to the UN General Assembly, and it passed, as it has every year since, with landslide votes in favor.

In such UN Resolutions there are a number of provisions that condemn defamation, underlining the intensification of the campaign of defamation of religions; they stress the connection between defamation of religions and incitement to religious hatred; they mention that defamation of religions could lead to social disharmony and violations of human rights—but there is not one single definition of “defamation of religions.”

It is troubling that nowhere in these resolutions has the term “defamation” been defined. For national and international legislation such resolutions have great implications for established freedoms, including freedom of expression, freedom of conscience and freedom of religion.

International law clearly establishes the right to religious freedom and belief

and the right to freedom of expression and opinion.

The core international regulations on religious freedom were first established in the Universal Declaration of Human Rights (UDHR) in 1948, and codified and reaffirmed in various subsequent covenants and instruments—including the International Covenant on Civil and Political Rights (ICCPR) in 1966 and the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, in 1981. These regulations are best expressed in Article 18 of the UDHR, which is the model of the international religious freedom law.

The chief purpose of legislation that protects religious freedom is to ensure the freedom of religious practice or belief of individuals, and to protect individuals from being subject to hatred or violence from others on the basis of their beliefs. From the human rights viewpoint, religious rights and freedoms are vested in the individual, not the group.

The difficulty in examining the issue of protection of religions or beliefs is that most major religions are based on the belief in a divine authority whose teachings contain the “absolute, complete” truth. Because religions differ in their understanding of divine authority or in the interpretation of various teachings, there are rival claims to holding exclusive truth.

The international community is not competent to decide on matters of truth or belief concerning religious questions. Consequently, the UN cannot be the enforcer of religious laws or penalties.

On the other hand, attempting to restrict freedom of expression on the grounds of defamation, without even defining the term could lead to a permanent conflict of rights.

The UDHR, the ICCPR, the European Convention of Human Rights, and the American Convention of Human Rights all protect freedom of expression, subject to some limitations to protect one’s reputation and freedom of religion. Article 19, Paragraph 3 of the ICCPR stipulates two areas where restrictions can be imposed:

1. Due to respect for the rights or reputations of others;
2. For the protection of national security or public order, or public health or morals.

The limitations on free speech in Article 19 deal solely with the rights or reputations of persons. The only positive duty that international law places on States with regard to limiting freedom of speech is found in Article 20 of the ICCPR. This is why Article 20 is at the heart of the debate involving the legal justification of the “defamation of religions” resolutions:

Any advocacy of national, racial or religious hatred that constitutes incitement to

discrimination, hostility or violence shall be prohibited by law.

The core issue is to determine what speech goes beyond criticism to invoke hatred or violence. On this point the current *UN Special Rapporteur for Freedom of Expression*, Ambeyi Ligabo understands that the bar for limitations on free speech is high and does not consider mere criticism of religious beliefs (A/HRC/7/14):

limitations are not intended to suppress the expression of critical views, controversial opinions or politically incorrect statements.

Originally, he added,

limits on hate speech were put into international agreements in order to prevent war propaganda and incitement of national, racial or religious hatred... They were not designed to provide protection from external or internal criticism.

It is remarkable that a regional human rights court such as the European Court of Human Rights has already recognized that:

freedom of expression is not applicable only to expressions that are favourably received or regarded as inoffensive but also to those that may shock, offend or disturb the state or any sector of population within the limits of Article 10 of the Convention.... Any democratic society must permit open debate on matters relating to religion and beliefs.

No doubt many countries already have laws that prohibit speech that incites hatred or violence against racial or religious groups; however there are still no clear universal guidelines as to how to implement these laws. The last UN Resolution 62/154 on *Combating Defamation of Religions* seems to introduce a new limitation to freedom of speech when it adds, in paragraph 10, the “*respect for religions and beliefs*”, to those found in Article 20 of the ICCPR.

Finally, there is the matter of the attempts to equate any act of defamation of Islam with an act of racism against Muslims. Article 4 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) goes further than Article 20 of the ICCPR because it requires States to forbid not only the advocacy of hatred but also “*all dissemination of ideas based on racial superiority or hatred (...) and the provision of any assistance to racist activities.*”

In this context UN Special Rapporteur, Asma Jahangir, has pointed out the error in confusing the issue with race and why this is legally problematic:

The elements that constitute a racist statement are not the same as those that constitute a statement defaming a religion. To this extent, the legal, and in particular, the criminal measures adopted by national legal systems to fight racism may not necessarily be applicable to defamation of religion.

QUESTIONS AND CONCERNS ARISING FROM THE ENFORCEMENT OF LEGAL PROTECTION FOR RELIGIONS

In theory the concept of defamation of religions protects all religions; however the fact that most UN Resolutions only mention one religion, Islam, by name, and were introduced by Muslim countries would lead us to conclude that the goal is to protect Islam from discrimination or denunciation.

GA Resolution 62/154 “*stresses the need to effectively combat defamation of all religions and incitement to religious hatred, against Islam and Muslims in particular*” and makes a particular link with human rights: “*Islam is frequently and wrongly associated with human rights violations and terrorism.*”

The connection between defamation of religions and violations of human rights is difficult to establish and troubling. “*Defamation is an issue of civil law, not a violation of human rights*” mentioned Asma Jahangir in her last speech to the United Nations NGO Committee on Freedom of Religion or Belief, October 25, 2007. By its very nature, legislation punishing blasphemy is not compatible with the underlying logic of human rights.

Using laws on “defamation of religion,” not to punish acts of hate speech and religious hatred but to curtail civil dissent to one’s political structures, is disconcerting. But what is more worrying to the international community is how the implementation of national laws to combat defamation of religion in many OIC countries works: they silence minority religious believers and prevent Muslims from converting to other’s faiths, acts which still lead to capital punishment in many Muslim countries.

All of the Islamic countries in existence in 1948 signed the UDHR, with the exception of Saudi Arabia, which abstained. Currently 46 of the 56 members of the Organisation of the Islamic Conference are signatories to the ICCPR and all signed the *Cairo Declaration of Human Rights in Islam (CDHRI)* in 1990, which states that all rights are subject to Shariah law and makes the Shariah law the only source of reference for human rights.

Whether or not the *Cairo Declaration* is a challenge to the universality of the UDHR and international laws on human rights and is a threat to the inter-cultural consensus on which the international human rights instruments are based is worth discussing, but we will now focus attention on OIC promotion of the “religious resolutions” as part of a broader agenda to reshape the understanding of human rights.

From the Summit’s final report held in Dakar in March, 2008, we can deduce strong OIC support for a binding international covenant to protect religions from defamation. The Organisation stressed then:

the need to prevent abuse of freedom of expression and the press in order to insult Islam and other divine religions, calling upon member states to take all appropriate

measures to consider all acts, whatever they may be, which defame Islam, as heinous crimes that require punishment.

It would therefore seem as if the OIC members are working on an entire Islamic human rights charter.

Yet, if the goal is to protect Muslims from discrimination, the legal tools already exist. The UN International Covenant on Civil and Political Rights protects against religious discrimination. It ensures the right to freedom of thought, conscience and religion. It also protects against advocacy of religious hatred that would constitute incitement to discrimination, hostility or violence.

One key function of law is to make distinctions and reach a balance between competing rights. An overly broad interpretation of defamation would allow States to own a religion and persecute even their own citizens who challenge any aspect of this ownership. However, in evaluating this issue, distinctions must be drawn between valid criticism of religion or religious practices and “speech” that does not serve any purpose except to offend the sacred beliefs of individuals or religions.

Allowing the current model of “Defamation of Religion” to become the international standard will increase the conflict with the *International Bill of Human Rights*. In consequence, the *Office of the High Commissioner for Human Rights*, the highest representative of the UN charged with upholding human rights, and the UN itself, should propose a suitable framework to consider the issue and develop guidelines for clear enforcement of laws that seek to protect religious beliefs.





DEFAMATION OF RELIGIONS VERSUS FREEDOM OF EXPRESSION: FINDING THE BALANCE

VAUGHN E. JAMES

Vaughn E. James is professor of law and director of the Income Tax Clinic at Texas Tech University School of Law, Lubbock, Texas, United States

I. INTRODUCTION

This year, the Caribbean island-nation of the Commonwealth of Dominica (sometimes referred to as La Dominique, French Dominica or even “La Belle Îlle de La Dominique”) is celebrating its thirtieth anniversary of political independence. As part of this celebration, the island’s residents—as well as its citizens living abroad—are celebrating Reunion 30, a year-long renewal of the citizenry’s commitment to political, social, cultural, and economic progress. To launch the celebration, the Reunion Committee organized a religious service rededicating a cross that had for years stood on Morne Bruce, one of the island-nation’s many hills and mountains. The service was to be led by the Bishop of Roseau, the leader of the island’s Roman Catholics.

On the day that the service was to be conducted, a leader of the island’s Evangelical Movement released a pre-recorded statement to the local media in which he (1) criticized the theology of the Cross, (2) stated dogmatically that for years the Morne Bruce cross had been used for witchcraft and necromancy, (3) ridiculed the Roman Catholic Bishop and the members of the Roman Catholic community on the island for their belief in the holiness and centrality of the cross to their faith, (4) otherwise sought to belittle and ridicule the Roman Catholic Bishop, (5) prophesied that the island-nation would incur the wrath of God because of the rededication service, and (6) urged his listeners to boycott the rededication service.

In the context of the tension between preventing defamation of religions and protecting the right to freedom of expression, this incident raises three questions:

1. Whether the Evangelical leader engaged in the “defamation of a religion;”
2. In the alternative, whether his statement was merely an exercise in freedom of expression; and
3. Whether a balance—a happy medium—exists between the two principles: curtailing or preventing “defamation of religions” and preserving the human right of freedom of expression.

This paper will explore these issues. The paper is divided into five parts. Part II will discuss the concept of “defamation of religions,” defining it, exploring its history, and discussing the implications raised by the current movement in the United Nations (U.N.) to move world leaders to legislate against the “defamation of religions.” Part III will discuss the basic human right of freedom of expression. This Part will survey international law guaranteeing this right, then will discuss the implications of this right and the solemn responsibilities that rest upon the shoulders of all who have been granted this right to freedom of expression. Part IV will discuss the tensions between the curtailment or prohibition of “defamation of religions” and the continued guarantees of the right to freedom of expression. This Part will propose some recommendations for finding a balance between the two competing principles. Part V, the Conclusion, will return to the three questions raised at the start of this paper and will seek to answer them.

II. DEFAMATION OF RELIGIONS

A. HISTORY OF “DEFAMATION OF RELIGIONS”

Prior to 1999, the term “defamation of religions” had hardly been heard of. In that year, Pakistan, acting on behalf of the Organisation of the Islamic Conference (OIC), introduced the term to the U.N. Commission on Human Rights.¹ Under the agenda item of “racism,” the OIC introduced a resolution titled “Defamation of Islam.”² In presenting the draft resolution, Pakistan—on behalf of the OIC—stated that the resolution was intended to have the Commission take a stand against what the OIC saw as a campaign to defame Islam.³ According to the OIC, this defamation campaign could eventually incite great and severe manifestations of intolerance towards Islam, manifestations that would rival the anti-Semitic violence of the past.⁴

Other delegates opined that the resolution was unbalanced in that it focused solely on Islam. In response, the OIC agreed to make the resolution more inclusive of all religions. In its various amended versions, the resolution has been raised in the Commission on Human Rights (now the Human Rights Council) each year since 1999.⁵

In 2005, the resolution was first introduced in the General Assembly when

¹ U.N. Econ. & Soc. Council (ESOSOC), Comm’n on Human Rights, Draft Res.: Racism, Racial Discrimination, Xenophobia and all forms of Discrimination, U.N. Doc. E/CN.4/1999/L.40 (April 20, 1999).

² Id.

³ Comm’n on Human Rights Res., 62nd Meeting, U.N. Doc. E/CN.4/1999/SR.61, ¶¶1-9 (April 30, 1999).

⁴ Id.

⁵ Resolutions on “Combating ‘defamation of religions’” have been tabled and passed by the U.N. annually since 1999. See Comm’n on Human Rights Res. 2000/84, 2001/4, 2002/9, 2003/4, 2004/6, and 2005/3, U.N. Doc. A/HRC/4/L.12, A/HRC/7/L.15.

Yemen, on behalf of the OIC, introduced a “defamation of religions” resolution with almost identical language to the Human Rights Council resolutions.⁶ The resolution passed, and has since been passed each year by landslide votes. Yet, a number of countries have remained in opposition to the resolution, claiming that should States create an offense called “defamation of religions,” the result would be a curtailment of the right to freedom of expression.

B. “DEFAMATION OF RELIGIONS”: THE MANDATES

The “defamation of religions” resolutions call for certain actions by U.N. members. The 2005 Commission for Human Rights resolution is instructive. It:

9. Urges States to take resolute action to prohibit the dissemination through political institutions and organizations of racist and xenophobic ideas and material aimed at any religion or its followers that constitute incitement to discrimination, hostility or violence;

10. Also 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;

11. Urges all States to ensure that all public officials, including members of law enforcement bodies, the military, civil servants and educators, in the course of their official duties, respect different religions and beliefs and do not discriminate on the grounds of religion or belief, and that necessary and appropriate education or training is provided;

...

13. Urges States to ensure equal access to education for all, in law and in practice, including access to free primary education for all children, both girls and boys, and access for adults to lifelong learning and education based upon respect for human rights, diversity and tolerance without discrimination of any kind, and to refrain from any legal or other measures leading to impose racial segregation in access to schooling.⁷

The resolution also:

Calls upon the international community to initiate a global dialogue to promote a culture of tolerance and peace based on respect for hu-

⁶ G.A. Res. 60/150, U.N. Doc. A/Res/60/150 (January 20, 2006).

⁷ Comm’n on Human Rights Res. 2005/3, U.N. Doc. E/CN.4/2005/L.10/Add. 6 (April 12, 2005).

man rights and religious diversity and urges States, non-governmental organizations, religious bodies and the print and electronic media to support and promote such a dialogue.⁸

C. “DEFAMATION OF RELIGIONS”: THE IMPLICATIONS

While various organizations, scholars and observers have branded the “defamation of religions” resolutions as mere instruments to protect Islam from criticism,⁹ the resolutions do—at least on paper—apply to all religions. This writer acknowledges the argument made by several scholars and observers that Islam is the prime beneficiary of the current resolutions. This writer also appreciates the discussion in the current literature which concludes that in light of the nature of U.N. resolutions and the arbitrariness of their enforcement¹⁰ and the opposition the resolutions face from the leading western powers, these resolutions will never amount to more than mere resolutions, and their calls for legislation and education to curb the alleged upsurge in “defamation of religions” will never translate into action. Yet, this writer does believe—and this paper does advocate—that combating “defamation of religions” is a desirable goal, at least as long as the actions taken to achieve this goal are designed to cover all religions: Christianity, Islam, Judaism, Hinduism, Rastafarianism, Buddhism, and every other religious belief known to human beings. Not only that, but people of all faiths must be as vigilant in protecting their respective faiths from defamation as they are in preventing the defamation—by themselves or others—of other faiths.

III. FREEDOM OF EXPRESSION

Although an end to “defamation of religions” is indeed a desirable goal, a tension exists between the attainment of that goal and the preservation of the human right to freedom of expression. This Part will discuss the right and all that

⁸Id. at ¶ 14.

⁹See, e.g., Becket Fund for Religious Liberty, Combating Defamation of Religions, Issues Brief Submitted to the UN Office of the High Commissioner for Human Rights, June 2, 2008; Jeanne Favret-Saada, UN: Towards an Offence of “Defamation of Religions,” posted at <http://www.siawi.org/article97.html>, May 1, 2007 (last visited June 26, 2008); Liaquat Ali Khan, Combating Defamation of Religions, THE AMERICAN MUSLIM, JANUARY 1, 2007 [Stating that “Although the Defamation Resolution applies to all religions, it highlights ‘the negative projection of Islam in the media and the introduction and enforcement of laws that specifically discriminate against and target Muslims.’” (Citation not provided)].

¹⁰E.g., Jeanne Favret-Saada opines: “It is indeed uneasy to interpret a UN resolution: scores of them are being passed every year which will remain a dead letter; during the same session, one resolution is incompatible with several others; the wording of decisions proper are often so vague that it is impossible to translate them into action.” As regards the “defamation of religions” resolutions, Favret-Saada states: “If we could trust our governments and international bodies we would not pay attention to the inept resolutions of 2006 and 2007.” Jeanne Favret-Saada, UN: Towards an Offence of “Defamation of Religions,” posted at <http://siawi.org/article97.html>, May 1, 2007 (last visited June 26, 2008).

it entails, beginning with a survey of international law on freedom of expression, then moving on to a discussion of the implications and responsibilities associated with this right.

A. INTERNATIONAL LAW ON FREEDOM OF EXPRESSION

Currently, five bodies of international law protect freedom of expression—subject to certain limitations to protect people’s reputation and their right to freedom of religion. These five bodies of law are: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the European Convention on Human Rights, and the American Convention of Human Rights.

1. UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights (originally adopted by the U.N. in 1948 as the Fundamental Declaration of Human Rights) grants everyone the fundamental right to “freedom of opinion and expression,” subject to limitations determined by law “for the purpose of securing due recognition and respect for the rights of freedom of others and of meeting the just requirements of morality, public order and the general welfare in democratic society.”¹¹

2. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights (ICCPR) also speaks to the issue of freedom of expression. ICCPR Article 18 ensures people the “right to freedom of thought, conscience and religion” and freedom “to manifest [their] religion or belief in worship, observance, practice and teaching.”¹² ICCPR Article 19(1) states, “Everyone shall have the right to hold opinions without interference.”¹³ Article 19(2) states:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.¹⁴

The ICCPR also addresses the issues of defamation, discrimination, hostility, and violence. According to ICCPR Article 19(3), a State may limit freedom of expression for “respect of the rights or reputation of others” and, according to Article 20, a State must limit freedom of expression to disallow advocacy of “reli-

¹¹ Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3rd Sess., 183d plen. mtg. Arts. 19, 29, U.N. Doc. A/810, at 71 (1948).

¹² International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., 1498th plen. mtg., Art. 18, U.N. Doc. A/6316 (1966) [hereinafter ICCPR].

¹³ Id. Art. 19(1).

¹⁴ Id. Art. 19(2).

gious hatred that constitutes incitement to discrimination, hostility or violence.”¹⁵

3. INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), is, as its name suggests, more concerned with racial discrimination than freedom of expression. The ICERD requires States to forbid not only the advocacy of hatred, but also “all dissemination of ideas based on racial superiority or hatred, and the provision of any assistance to racist activities.”¹⁶ Similar to the Universal Declaration of Human Rights (UDHR), the ICERD does not give freedom of expression greater protection than other fundamental rights. However, the Committee on Elimination of Racial Discrimination has called for a balance to be struck between the States’ obligation to forbid racial hatred and the right of citizens to freedom of expression, with “due regard” being given to the principles embodied in the UDHR.¹⁷

4. EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 10 of the European Convention on Human Rights (ECHR) states that the right to freedom of expression “carries with it duties and responsibilities [and] may be subject to such . . . restrictions as are . . . necessary in democratic society . . . for the protection of the reputation and the rights of others.”¹⁸ As regards this balancing, the European Court of Human Rights has ruled that a State’s interference with the freedom of expression is legitimate if it is (1) prescribed by law, (2) in pursuit of a legitimate aim set out in Article 10(2) of the ECHR, and (3) necessary in a democratic society.¹⁹

5. AMERICAN CONVENTION OF HUMAN RIGHTS

According to Article 13(1) of the American Convention of Human Rights (ACHR), “[e]veryone has the right to freedom of thought and expression.”²⁰ However, Article 13(2) limits that right “to the extent necessary to ensure . . . respect for the rights and reputation of others.”²¹ This requirement of necessity is similar to that contained in the ECHR.

¹⁵ Id. Arts. 19(3), 20.

¹⁶ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106(XX), U.N. GAOR, 20th Sess., 1406 plen. mtg., Supp. No. 14, at 47, U.N. Doc. A/6014 (1965).

¹⁷ See Stephanie Farrior, The Historical and Theoretical Foundations of International Law Concerning Hate Speech, 14 BERKLEY J. INT’L L. 3, 50 (1996).

¹⁸ European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, Art. 10(2), available at <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm> (last visited June 29, 2008).

¹⁹ See *Aksoy v. Turkey*, App. No. 28635/95 34 Eur. H.R. Rep. 1388, 1401 (2002).

²⁰ American Convention on Human Rights and Fundamental Freedoms, Art. 13, 25, Nov. 22, 1969, 1144 U.N.T.S. 123.

²¹ Id.

B. FREEDOM OF EXPRESSION: IMPLICATIONS AND RESPONSIBILITIES

The right to “freedom of expression” carries serious implications and heavy responsibilities. Carried to its extremes, freedom of expression can be devastating. Under the guise of freedom of expression, people could commit slander, libel and defamation, utter profanities, ridicule others, and make treasonable statements, all with impunity. With total freedom of expression, anything and everything would be fair game for society to write, sing or talk about.

But this is not the reality. Notwithstanding the principle of freedom of expression, as this paper has already discussed, society has developed laws protecting individuals from slander, libel and defamation, and has established certain rules whereby some words and expressions are not used in polite conversations and interactions. Society has somehow developed a balance between freedom of expression and protecting the dignity, character and reputation of all individuals.

Two examples of this balancing act are seen in rulings by the European Court of Human Rights on Article 10 of the ECHR and the position taken by the Inter-American Commission on Human Rights on “desacato” laws—laws that punish offensive speech aimed at public officials.

1. EUROPEAN COURT OF HUMAN RIGHTS

On at least three occasions, the European Court of Human Rights has used Article 10 of the ECHR to speak on the issue of limitations on political expression in matters of public importance.²² In *Elk v. Turkey*, the Court overruled Turkish courts that had convicted and sentenced a lawyer to jail for publishing a book and an article criticizing Turkish policy towards Kurds.²³ According to Turkey, the publications contained the words “Kurds” and “Kurdistan,” words which constituted separatist propaganda.²⁴

Although the Court acknowledged Turkey’s right to discourage terrorism, it also recognized that the ECHR Article 10 limitations on freedom of expression did not apply to political expression or debate on matters of public interest.²⁵ The Court explained that freedom of expression constituted one of the essential foundations of a democratic society.²⁶ Accordingly, even expressions that offend, shock, or disturb are protected.²⁷

According to the Court, Turkish authorities had failed to demonstrate sufficient regard for the public’s interest to be informed of a different perspective

²² See *Aksoy v. Turkey*, App. No. 28635/95 34 Eur. H.R. Rep. 1388, 1401 (2002); *Elk v. Turkey*, App. No. 28496/95, 35 Eur. H.R. Rep. 1344 (2002).

²³ 35 Eur. H.R. Rep. at 1355-1358.

²⁴ *Id.*

²⁵ *Id.* at 1369.

²⁶ *Id.*

²⁷ *Id.*

on Turkish policies towards the Kurdish people.²⁸ Further, the Court stated, it was irrelevant that such perspectives were not in accord with Turkey's policies.²⁹ Consequently, the Court held that such a restriction on speech was not necessary in a democratic society.³⁰

In *Otto-Preminger Institute v. Austria*, the Court deferred to domestic laws in the context of restrictions on religious satire.³¹ Here, the Austrian government had seized a satirical film that allegedly investigated "the relationship between religious beliefs and worldly mechanisms of oppression."³² The film portrayed God as a senile old man "prostrating himself before the devil" and the Virgin Mary as manifesting "a degree of erotic tension" with the devil.³³

The Austrian court that heard the case ruled that because the expression in the film was intended to be provocative, was aimed at the Church, and constituted "wholesale derision of religious feelings," the feelings of those offended outweighed the filmmaker's right to freedom of expression.³⁴

The European Court of Human Rights sustained the judgment below, reasoning that the film did not contribute to any form of public debate and was not capable of "furthering progress in human affairs."³⁵

The dissent argued that States should not be allowed to decide whether a particular statement was "capable of contributing to any form of public debate capable of furthering progress in human affairs," because States would have too much leeway in protecting interests of a powerful group or groups.³⁶ Furthermore, the dissent maintained, freedom of religion did not include protection of religious feelings, because freedom of religion included the right to express views critical of the religious opinions of others.³⁷

Both the majority opinion and the dissent in *Otto-Preminger* illustrate the tension between freedom of expression on the one hand and the goals of the "defamation of religions" resolutions on the other. The same tension is seen in the way the Inter-American Commission on Human Rights has responded to the "desacato" laws.

²⁸ Id. at 1374.

²⁹ Id.

³⁰ Id.; see also 34 Eur. H.R. Rep. at 1388, 1406 [stating that the purpose of democracy is to permit a proposal and discussion of diverse political ideas, even those that questioned the current organization of a State].

³¹ App. No. 13470/87, 19 Eur. H.R. Rep. (ser. A) 34 (1994).

³² Id. at 37.

³³ Id. at 41.

³⁴ Id. at 39.

³⁵ Id. at 57.

³⁶ Id. at 61.

³⁷ Id.

2. THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Ostensibly, “desacato” laws punish offensive speech aimed at public officials. For some time, the question remained whether these laws were valid. In 1994, the Inter-American Commission on Human Rights decided that these laws did not qualify for the ACHR Article 13(2) necessity exception.³⁸

According to the Commission, even laws that provided for the defense of truth were not suitable, because a rule requiring that someone who made a defamatory political statement prove its truth could suppress good-faith criticism of a government. Indeed, the Commission stated, a government’s restriction on freedom of speech was necessary only if the government could demonstrate that it could not achieve a lawful goal through any other legitimate means. This necessity, the Commission stated, implied the existence of a “pressing social need.”³⁹ Accordingly, the “desacato” laws were unnecessary because political and public figures must be more, not less, open to scrutiny and criticism in democratic societies.⁴⁰

The statement by the Commission illustrates the high value placed on freedom of expression. Although such freedom needs to be balanced by considerations of protecting people’s reputations and other human rights, this freedom does exist as a basic human right. A troubling question therefore arises when freedom of expression is threatened by the need to protect another basic human freedom—freedom of religion. If both rights are to be protected, society must find a way to balance them.

IV. DEFAMATION OF RELIGIONS AND FREEDOM OF EXPRESSION: THE BALANCING ACT

Certainly, although anti-defamation and anti-blaspemy laws such as those being proposed by the “defamation of religions” resolutions can serve an important function, States should not use these laws to unduly restrict freedom of expression. In the United States, the case of *Maryland v. West*⁴¹ is instructive. Irving West was fined twenty-five dollars under a Maryland statute that read in relevant part: “[I]f any person . . . shall blaspheme or curse God . . . he shall on conviction be fined.”⁴² The highest court of Maryland overturned West’s blasphemy conviction on the ground that the statute violated the Establishment and Free

³⁸ Report on the Compatibility of “Desacato” Laws with The American Convention on Human Rights, Inter-Am. C.H.R. 199, OAS/scr. L?V/II. 88, doc. 9 rev. (1994), available at <http://www.cidh.org/annualrep/94eng/chap.5.htm> (last visited June 29, 2008).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ 263 A.2d 602 (Md. 1970).

⁴² *Id.* at 602-603.

Exercise Clauses of the First Amendment to the United States Constitution.⁴³ The court explained that “powerful sects or groups [could] bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal Government would be placed behind the tenets of one or of all orthodoxies.”⁴⁴

What the *West* court sought to do was maintain the separation of Church and State. This should also be the goal of any “defamation of religions” resolutions and/or eventual legislation. It is a goal well-articulated by the United States Delegation to the 61st Session of the U.N. Commission on Human Rights:

The United States was founded on the principle of freedom of religion. We believe that a country must not only recognize, but protect as well, the right of each of its citizens to choose a religion, to change his or her religion, and to worship freely. This, of course, means that countries must not discriminate against individuals who choose a particular religion. But, it also means, that countries must not close their eyes to attacks that occur against individuals because of their religion. Countries must have a legal framework of worship without fear of persecution.⁴⁵

Two years later, Roy W. Brown of the International Humanist and Ethical Union, in his statement to the Human Rights Council, expressed the following opinion:

[N]o one has a duty to respect any religion. Furthermore, lack of respect for a belief should not be confused with hatred of the believer. It is the believer that merits protection, not the belief.⁴⁶

With these two statements in mind, this writer maintains that any “defamation of religions” legislation should (1) be inclusive of all religions, and (2) seek to protect religious adherents rather than religious thought. Accordingly, “defamation of religions” legislation should not prevent religious adherents from proselytizing wherever their faith may lead them to, or from extolling the virtues of their particular sets of beliefs. While it is true that the dialogue among religious adherents needs to become more civilized, this civility will be a function, not of laws and resolutions forbidding the criticism of aspects of any particular system

⁴³ Id. at 605. The Establishment Clause forbids governmental entities from establishing a religion or from favoring one religion over another; the Free Exercise Clause guarantees Americans the right to freely practice their religious beliefs without governmental interference. U.S. Const. Amend. I.

⁴⁴ Id. at 604-605 (quoting *Sch. Dist. Of Abington v. Schempp*, 374 U.S. 203, 222 (1963)).

⁴⁵ U.S. Dept. Of State, Explanation of Vote on Resolution About Combating Defamation of Religions, 61st Comm’n on Human Rights, April 12, 2005, available at <http://www.state.gov/p/io/44578.htm> (last visited June 26, 2008).

⁴⁶ Roy W. Brown, Defamation of Religions, INTERNATIONAL HUMANIST AND ETHICAL UNION, March 29, 2007, available at <http://www.iheu.org/node/2804> (last visited June 26, 2008) (statement delivered by Roy W. Brown to the Human Rights Council on March 29, 2007).

of beliefs, but rather of individuals developing love, compassion and respect for their fellow human beings whereby they will appreciate the different views and beliefs of others, disagree with them if they must, but do so without resorting to unkind words, hateful acts, violence, or terrorism.

To that end, this paper adopts and expands upon the recommendations put forth by the Becket Fund for Religious Liberty in its brief to the U.N. High Commissioner for Human Rights regarding the final draft of the “defamation of religions” resolution:⁴⁷

1. The “defamation of religions” resolution should be changed to “The Protection of Religious Sensibilities” in order to avoid confusion with the legal term “defamation.”
2. The resolution should affirm the already existing standards protecting freedom of thought, conscience, and belief, as enshrined in the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the European Convention on Human Rights, and the American Convention of Human Rights.
3. The resolution should draw further on the educational efforts of the High Commissioner for Human Rights and Special Mandate holders to promote peaceful religious expression.
4. The resolution should make a distinction between “defamation of religions” measures and traditional defamation laws, in order to emphasize the protection of individuals rather than ideologies.
5. The resolution should address religious intolerance as it applies to all religions, not just Islam.
6. The resolution should clearly distinguish between the use of religion to justify or incite violence and hatred, and the use of peaceful religious speech that may offend the listener.
7. The resolution—and any legislation arising therefrom—must encourage all nations to devote intellectual and moral resources to teaching children and adults respect for the diversity of religions, even as they encourage valid criticisms of religious practices.

V. CONCLUSION

Let us return to where we started: the controversy in the Commonwealth of Dominica (or La Dominique, French Dominica, or La Belle Îlle de La Domi-

⁴⁷ See THE BECKET FUND FOR RELIGIOUS LIBERTY, Issues Brief for Office of the High Comm’r for Human Rights on “Defamation on Religions,” June 2, 2008.

nique) about the rededication of a cross on Morne Bruce. The rededication ceremony was to be led by the Roman Catholic Bishop; a leader of the Evangelical Movement on the island objected and issued a recorded statement to the press questioning the theological significance of the cross, asserting that the cross was a symbol of necromancy and witchcraft, castigating the Roman Catholic Bishop for his beliefs and his involvement in the ceremony, belittling the Bishop, both in his role as the leader of the island-nation's Roman Catholics and as an individual Christian, and finally, calling upon Dominicans to "not follow the Bishop" in this sinful act that would bring shame, disgrace and God's wrath upon the island-nation.

Adopting the new language recommended in Part IV of this paper, the question remains: did the Evangelical leader offend the religious sensibilities of the Roman Catholics or the Bishop of Roseau, or did he merely engage in freedom of expression?

To the extent the leader criticized the theology of the Cross, he did not offend any religious sensibilities. After all, it is quite fine for someone to criticize a religious dogma. His criticism will not prevent me—or any other person who believes in the power of the Cross—from singing lustily:

*In the Cross of Christ I glory
Towering o'er the rest of time
All the light of sacred story
Gathers round its head sublime;*

Or:

*In the Cross, In the Cross
Be my glory ever
Til my raptured soul shall find
Rest beyond the river;*

Or yet this good old favorite:

*So I'll cherish the old rugged Cross
Til my trophies at last I lay down
I will cling to the old rugged Cross
And exchange it someday for a crown.*

Yes; it is okay for the Evangelical leader—or anybody, for that matter—to criticize my beliefs in the Cross. This criticism is a mere exercise in freedom of expression protected under international law.

However, when the leader unfairly, incorrectly, and without basis in fact criticized the Bishop of Roseau and sought to belittle the Bishop as a person, his words crossed the line from freedom of expression to offending the religious sensibilities of not only the Bishop of Roseau and the many Roman Catholics

who call the Commonwealth of Dominica home, but the sensibilities also of non-Catholics like myself and religious people of all faiths. In fact, come to think of it, even the atheists and humanists should have been offended by the Evangelical leader's tirade. Such outbursts—and those of a more serious nature that lead to violence—are the ones that should be targeted by resolutions and legislation seeking to curb what the U.N. has termed “defamation of religions.”

Now, I am not advocating that the Evangelical leader or people who behave as he did should be hauled to criminal court, tried and sentenced; neither am I advocating that the Evangelical leader should be hauled to civil court and be found civilly liable to the Bishop of Roseau or the Diocese of Roseau. No, this is not what I am saying. Rather, what I envisage is a system whereby men, women and children would separate the discussion of theological issues and disagreements over these issues from the making of negative statements about the people who subscribe to one theological viewpoint or another. The former type of discussion is an exercise of freedom of expression; the latter is unacceptable. Whether we term the latter “defamation of religions” (a term I do not particularly like) or something else, it is something we as a people must aspire to eradicate.

I recommend this sentiment to the Panel of Experts of the International Religious Liberty Association.





LIVING WITH OUR DEEPEST DIFFERENCES: FREEDOM OF EXPRESSION IN A RELIGIOUSLY DIVERSE WORLD

CHARLES C. HAYNES

Dr. Charles Haynes is the senior scholar at the First Amendment Center. He writes and speaks extensively on religious liberty and religion in American public life.

In the fall of 2008, the United Nations General Assembly adopted a non-binding resolution calling on all countries to pass laws prohibiting “defamation of religion.” Introduced by a number of Islamic states with support from nations like Venezuela and Belarus, the statement passed 85-50 with 42 abstentions.

On March 26, 2009, the same resolution was adopted by the U.N. Human Rights Council by a vote of 23 to 11 with 13 nations abstaining.

The irony, of course, is that the chief sponsors of this resolution are the very governments with anti-blasphemy laws that protect only the majority faith and ban all religious dissent. Hillel Neuer of UN Watch, an independent human rights group, charges that the resolution legitimizes “the criminalization of free speech in countries like Sudan, Egypt, Pakistan, and Saudi Arabia.”

In my view, U.N. resolutions like this one as well as ongoing efforts within European nations to prohibit “hate speech” are Orwellian signs that human rights are being redefined on the world stage to permit violations of human rights. As Neuer points out, “human rights were designed to protect individuals—to guarantee every person free speech and free exercise of religion—but most certainly not to shield any set of beliefs, religion included.”

At the heart of this debate in the United States and Europe (where I will focus my discussion) is a simple, but profound question:

Can we live with our deepest differences in a democratic society—especially our religious differences—while simultaneously upholding robust freedom of expression?

Or, to put it in sharper language, to what extent, if any, does freedom of expression—specifically free speech and a free press—include the right to offend deeply-held religious convictions?

For some religious and political leaders in Europe and the United States, the answer is clear: When free expression crosses the line and becomes highly offensive to religion (as in the now infamous case of the Danish cartoons mocking the

Prophet Mohammad published in 2006), the state can and should intervene.

This understanding of free expression and its limits is, of course, rooted in a long tradition in Europe of state establishment of religion. Even though such establishments are mostly a shadow of their former strength, blasphemy laws and other protections for religion (or at least the favored religions) persist. Of course, where secularism is established—in France, for example—controls on free expression are meant to serve the interests of the state—which include controls on religion and speech about religion.

Denmark itself, ground zero for the cartoon conflict, has a blasphemy statute that calls for a fine and up to four months in prison for demeaning a “recognized religious community.” A few years ago, one Mogens Glistrup was imprisoned for 20 days for comparing Turks to rabbits. (Note that the publishers of the cartoons escaped prosecution under the same law.)

Although such laws are rarely enforced, the Danish cartoon controversy reignited an old debate about their necessity—and their impact on freedom of expression.

Instead of eliminating blasphemy laws, some European nations have revised them—or expanded their application—in order to account for religious pluralism. Thus the old concern about blasphemy against the state religion has been replaced by a new concern about hate speech against religions.

You may recall that before her death several years ago, Italian journalist Oriana Fallaci faced trial for her outspoken views about Islam. She was charged with violating Italy’s “outrage to religion” law as well as with inciting inter-religious hatred.

Meanwhile in the United Kingdom, a 2007 “incitement to religious hatred” law would also appear to place new limits on free expression. Although it is supposed to be narrowly drawn (thanks to the insistence of the House of Lords, no less) to only cover threatening expression that sparks hate and violence, it remains to be seen how and when the government will determine when strong speech against a religious group becomes hateful.

We got some indication of how this might play out last month when British authorities deported Dutch lawmaker Geert Wilders, declaring him a danger to “public security.” Wilders’ offense is that he offends. He stirs outrage by comparing the Quran to *Mein Kampf*—and disseminating his film that suggests Islam is an inherently violent religion. Although invited to the U.K. by a member of the House of Lords to screen his screed, Wilders is apparently too hot for Britain to handle. Meanwhile back home in Amsterdam, the Court of Appeals has decided to prosecute Wilders for “hate speech.”

Like many assaults on free speech, the actions of the British government and Dutch courts get a pass in many quarters because Geert Wilders is such an unsavory target. Many Europeans find his message crude and dangerous—and view

him as little more than an attention-seeking bigot.

British officials defend the deportation of Wilders by appealing to public safety. And given the violent protests after the Danish cartoon controversy several years ago, they have reason to worry. But in my view, the answer is to protect the speaker and prosecute the lawbreakers—not to allow a heckler’s veto.

If these examples of censorship and repression of speech were isolated incidents, then I might be less alarmed. But they come at a time when freedom of speech is losing ground in nations across the globe, most disturbingly in the democracies of Europe.

Many of my European friends—and some of my American—argue that religious freedom itself depends on state protection of religion from hate speech that targets religious symbols and beliefs. But for believers in Europe (or in America) who may be tempted to embrace new blasphemy laws in hate speech guise, be warned: What may serve to protect sacred symbols and beliefs from satire or attack today can be used to limit religious speech tomorrow. Remember Pastor Ake Green? A few years ago, he was convicted in Sweden of “hate speech” for preaching a sermon against homosexuality. Although Green was ultimately acquitted by the Swedish Supreme Court in 2005 (after he explained that he was attacking the practice, not the persons), his trial should give pause to religious leaders who push for more state power to control “offensive speech.”

Europe, of course, has a long history of invoking state power to limit free expression in the name of protecting people from offensive ideas and speech. To cite the most widespread contemporary example, Germany, France and eight other European nations have laws that make denying the Holocaust punishable by prison and fines. A couple of years ago, the lower house of the French Parliament added to the list of forbidden speech by passing a law that would make it a crime to deny the Armenian genocide. I would argue that sliding down this slippery slope of state censorship not only threatens free expression, it gives power to the views it seeks to suppress.

Turning now to the United States, we pride ourselves on not being European when it comes to matters of free expression. Much to the consternation (but sometimes grudging admiration) of many Europeans, we are heirs to what King Charles II famously described as a “lively experiment” when he chartered Rhode Island in 1663.

To some great extent, that pride is justified. After all, we have a First Amendment and they don’t. As we saw during the Danish cartoon controversy, the American arrangement often serves us well. Few American newspapers published the cartoons—restrained not by fear or intimidation—at least not from what I have gathered by talking with editors—but rather because of judgment calls based on long-standing policies about what is and isn’t appropriate in such cases.

When a few papers made a different judgment about what coverage of the

story required—and published the cartoons—the reaction said a great deal about how much our culture is shaped by a commitment to free expression: Leading Muslim American organizations criticized the newspapers, but simultaneously expressed support for the values of a free press and freedom of speech. Moreover, no protest in America turned violent.

Although the rhetoric of our culture-wars sometimes makes our public square a hostile place, we tend to forget how well we have managed for more than 200 years to negotiate our deep religious and ideological differences mostly without going for the jugular. Unlike many European nations, where free expression is sometimes viewed as potential threat to religion, the United States, on its best days, is a place where free expression is not only a friend to religion, but the necessary condition for full religious freedom. In fact, free expression and religious freedom in America were joined at the hip at birth—and remain inseparable today.

To understand how this happened, let's look for a moment at that “lively experiment” in Rhode Island where it all began more than 370 years ago. It should be remembered that Roger Williams, the colony's founder, was not banished from this town for failing to be a Puritan—he was banished for being too much of a Puritan. Contrary to contemporary misappropriation of his reputation, he was no political reformer—and he did not start the first chapter of the ACLU.

Instead, Williams was motivated by deep religious convictions that inspired him to preach against what he saw as the corrupt churches of Massachusetts Bay—and to demand what he called a “wall of separation” between the state and church in order to guard the “garden of the church” from the “wilderness of the world.”

During his trial, Williams assured his banishment by condemning the colony's leaders for denying what he believed God required: Religious freedom—what Williams called “soul liberty”—for every person. As he would later write to his nemesis John Cotton:

It is the will and command of God that since the coming of His Son, the Lord Jesus, a permission of the most paganish, Jewish, Turkish, or anti-Christian consciences and worships, be granted to all men in all nations and countries; and they are only to be fought against with that sword which is only in soul matters able to conquer, to wit, the sword of God's spirit, the Word of God.

In other words, God requires that people be fully free to choose in matters of faith—free to follow the dictates of conscience in what they believe, say or write about religion. To deny this freedom, Williams argued, is “rape of the soul.”

Even the Quakers (considered by Williams himself to be deeply wrong and highly dangerous)? Yes. Even the Roman Catholics (barred from mass and viewed

by the Puritans as not only wrong, but working for the other side)? Yes. Even the atheists (John Locke, who wrote years later, did not go that far)? Yes.

Williams didn't like or approve of any of the above. But as he might put it, everyone has a God-given right to be wrong.

True to his vision of what he believed God required, Williams broke with the precedents of history and founded Rhode Island—the first place in history (that I can find) with no established faith and full freedom to practice any faith or no faith at all—on the twin principles of religious liberty in America that became the “no establishment” and “free exercise” provisions of the First Amendment.

Williams called this place “a haven for the cause of conscience.”

This birth of religious freedom—the American idea of religious freedom—is also the birth of free expression in this part of the world. Once the state lid was off, what could not be said was said—what could not be published was published—what could not be heard or read elsewhere in the New World or in the Old was heard and read in that tiny place.

As you can imagine, this was not well-received in the other colonies. When, for example, New Amsterdam refused entry to a shipload of Quakers in 1657, the Dutch Reformed clergy were asked where the Quakers went. “We suppose they sailed to Rhode Island,” they replied, “for that is the receptacle of all sorts of riffraff people, and is nothing less than the sewer of New England. All the cranks of New England retire thither. They are not tolerated in any other place.”

The scorn of the Dutch clergy could well describe what a growing number of people—at home and broad—believe about the United States today. Free expression, in this view, has created a sewer of offensive, blasphemous and destructive speech that is harmful to religion. The lively experiment, the argument goes, is now far too lively for our own good.

Polls suggest that Americans are increasingly intolerant of offensive speech, especially when it concerns religion. According to a survey conducted by the First Amendment Center last fall, an astonishing 43% of Americans do not think people should be allowed to say things in public that *might* be offensive to religious groups.

This concern about “offensive speech” comes from both ends of the political and religious spectrum:

On the right, many religious traditionalists such as Bill Donahue of the Catholic League for Religious and Civil Rights are fed up—and deeply offended—by the treatment of their religious faith in the culture (think South Park) and in the media (think Oliphant's cartoons about the sex abuse scandal). These concerns have led to calls for more regulation of the media—especially cable television. Although popular culture is viewed as the chief offender, leading newspapers and network news programs are also viewed by many as hostile to religious people. That may partly explain why our poll finds that 40% of Americans believe that

the press has too much freedom.

Meanwhile, on the left, a growing number of people—especially in the academy—argue for limits on offensive speech about race, religion, ethnicity, sexual orientation and more. According to the Foundation for Individual Rights in Education, more than 73% of public universities maintain unconstitutional speech codes, despite numerous federal court decisions striking down similar policies. Overall, 68% of colleges and universities surveyed have policies that restrict freedom of speech.

What people on both ends of the spectrum would do well to keep in mind is this: Yes, freedom is messy—here I need only mention the Rev. Fred Phelps—but the protection for religious liberty is ultimately tied to a strong guarantee of free speech and a free press. Just as censorship in the history of the Western world is rooted in efforts to sustain state establishments of religion, so freedom of expression in America was born of a determination to end state enforcement of religious conformity.

As tempting as it might be these days to use the engine of government to protect religion from offense, religious groups must keep in mind that the state power that may protect them today could be used against them tomorrow. What is blasphemous to one is a religious conviction to another. The danger lies in giving government the power to decide who is right.

As Roger Williams understood well, full religious liberty requires the right to offend. Without it, no religious group—except perhaps for those in the vast majority at any given time and place—is safe from censorship or persecution.

That does not mean, of course, that we should sit back and do nothing to address concerns about speech that deeply offend people of faith. If speech codes or other government regulations are not the answer, what is? What must we do to sustain—and even expand—this lively experiment in freedom while simultaneously taking seriously our civic responsibility to encourage a civil and respectful public square?

I will limit myself to one modest suggestion: Education, not censorship, is the key to creating societies with high levels of mutual respect and understanding. At present, most Americans and Europeans know little or nothing about the religions and beliefs of others (and sometimes precious little about their own). In a world where religion is at the heart of our most difficult challenges, this illiteracy can be dangerous.

In 2007, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE) issued a compelling wake-up call to citizens of all 56 member states—including the United States—about the dangers of ignoring religion in public schools. Titled the *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools*, after the Spanish city where the initial drafting took place, the report urges nations to take religion

seriously in education and provides a human rights framework for including fair, accurate study about religions and beliefs in the classroom. I had the privilege of serving on the drafting committee.

When Western Europe—with some of the most secular nations on earth—supports guidelines for putting more study about religion in state schools it is truly a Nixon-goes-to-China moment. But many Europeans, like many Americans, are finally beginning to understand that ignorance about religions in religiously diverse societies is a root cause of intolerance and discrimination. Confronted with a resurgence of anti-Semitism, outbreaks of Islamophobia, and growing religious diversity, OSCE nations are scrambling for ways to help their citizens live with one another. When religious differences are involved, ignorance is far from bliss.

Until recently, many politicians and educators on both sides of the Atlantic shrugged off “teaching about religions” as an inconvenient add-on—or avoided it as a subject too hot to handle. True, in recent years there has been some progress toward inclusion of religion in the curriculum, especially in the United States and Great Britain. But most schools across the OSCE countries continue to ignore the academic study of religion and beliefs.

Now changing demographics in a post-9/11 world have put religion front and center in nations worried about exploding religious diversity, alienated youths, skinheads and homegrown terrorists. Learning about what your neighbors believe and practice won’t answer all of these challenges overnight—but it can go a long way toward creating more social cohesion and support for religious freedom.

Enter the Toledo Guiding Principles. The document promotes teaching about religions and beliefs “in ways that are fair, accurate and based on sound scholarship,” an approach entirely consistent with how religion must be treated in American public schools under the First Amendment. And it provides a road map for implementing study about religions with sound teacher preparation, high-quality curriculum development and protection for the rights of students and parents.

What sets this document apart from other reports and guidelines on this issue is the strong emphasis on promoting religious freedom and other universal human rights as a central aim of study about religions and beliefs in public schools. Even the phrase “religions and beliefs” is meant to affirm inclusion of all people—including those without a religious affiliation. *How* we teach about religious differences is as important as *what* we teach.

Of course, there are a host of good educational reasons for learning about religions and beliefs. Much of history, art, music and literature—not to mention the age-old struggle to answer the “big questions” of human existence—is lost on those who are religiously illiterate.

In public schools, however, teaching about religions and beliefs also advances the not-so-hidden agenda of promoting understanding across differences in a so-

ciety committed to religious freedom. As the report puts it: “Teaching about religions and beliefs is most effective when combined with efforts to instill respect for the rights of others, even when there is disagreement about religions or beliefs.”

As someone who has been banging the teach-about-religion drum in the United States for more than 20 years, I’m well aware of just how tough a sell this could be in many OSCE nations. But in a world torn by religious conflicts, people may finally see this as an idea whose time has come.

Education about religion won’t be enough to ensure inter-religious understanding—that’s a task for faith communities and all sectors of society. But more study about religions could bring about a climate change in schools and communities that might lower the temperature of religious conflict and division.

The long-simmering tensions and anxieties—in Europe and the United States—about the impact of robust free expression on religious values can no longer be ignored. It is simply not enough for one side to proclaim “free speech” or “free press” and for the other to cry “blasphemy” or “hate speech.” We must listen to one another—and find, where possible, a way to negotiate our deep differences while simultaneously upholding a shared commitment to the fundamental rights of free expression and religious liberty.

Is it messy? Yes. Is it sometimes offensive? Yes.

But what a glorious mess.

With all of our faults and weaknesses, America and Europe are daring experiments in freedom—freedom of speech, press and religion. What some see as the “sewer of the world,” I see as “a haven for the cause of conscience.”





MUTING THE SEARCH FOR TRUTH: AN OVERVIEW OF DEFAMATION OF RELIGIONS

L. BENNETT GRAHAM

L. Bennett Graham is the Legislative and International Programs Officer at The Becket Fund for Religious Liberty

“One man’s vulgarity is another’s lyric.”¹

Human beings have always disagreed about the answers to the fundamental questions of life: Where did we come from? What is the purpose of life? What happens after death? The search for ultimate truth is one of the few common denominators of virtually every person’s life. Such is the essence of human dignity, which includes the ability to seek and subscribe to truth claims about subjects as high and lofty as God or the lack thereof. The Universal Declaration of Human Rights explains that this is the starting point of human rights in Article 1: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”² Governments often recognize human dignity by affirming the right to freedom of conscience and expression.

However, the recognition of human dignity has not led to a greater role for government in religious matters. In fact, the evolution of political theory has led to a proliferation of the disestablishment of religion. Most governments remain in the business of philosophy, but have left theology to the monks, gurus, priests, and skeptics. And rightly so, because it is important for governments to understand who people are and to be able to protect the essence of human dignity, but it is a dangerous game to encourage governments also to define the nature of God.³

For the past ten years, the United Nations has been calling on governments to do just that—protect particular theologies and beliefs in the name of cultural sensitivity.⁴ Indeed, the effort to combat the “defamation of religions” has resulted in governments elevating the protection of ideas and beliefs over the persons who hold those ideas and beliefs. This paper calls on governments to re-focus on pro-

¹ U.S. Supreme Court, *Cohen v. California*, 403 U.S. 15 (1971) (Harlan, J. dissenting).

² Universal Declaration of Human Rights (1948), Art. 1.

³ Kevin Hasson, *The Right to Be Wrong*, Encounter Books, 2005.

⁴ For a more in depth history of the resolution, please see *Defamation of Religions*, Issues Brief for UNHCHR, Becket Fund for Religious Liberty, June 2, 2008 or L. Bennett Graham, “Defamation of Religions: The End of Pluralism?,” *Emory International Law Review*, Vol. 23, Issue 1, 2009.

protecting robust religious debate and dialogue instead of attempting to limit speech in the name of tolerance and sensitivity.

THE CRUCIBLE OF THE UNITED NATIONS

The “defamation of religions” issue first began in 1999, when the Organisation of the Islamic Conference (OIC)—a collection of fifty-six Muslim-majority countries—proposed a UN resolution entitled “Defamation of Islam.” Every year since then, the United Nations has passed a resolution combating the “defamation of religions.” Upon first reading, the resolution reads as a declaration of respect and tolerance, but upon further study and legal analysis, it is clear that this resolution is meant to serve as an international anti-blasphemy law, rather than as a handbook for religious sensitivity.

The passage of this resolution did not take place in a vacuum. While the first resolutions passed unanimously, the terrorist attacks of September 11, 2001 changed the tenor of the debate over treatment of the stereotyping of religions. As a result, the “defamation of religions” resolution became a controversial vote at the United Nations. International flashpoints like the murder of Theo van Gogh, the Danish cartoons depicting the Prophet Mohammed, and the production of the movie *Fitna* by Dutch parliamentarian Geert Wilders have all contributed to the debate over limitations on religious speech in the public square. Additionally, the global “War on Terror,” including military action in the Middle East and South Asia, has heightened tensions between Western countries and the Muslim World.

In spite of high-profile anti-blasphemy cases involving Islam, it would be misleading to characterize the “defamation of religions” issue as solely a Muslim issue. Although the UN resolution is sponsored by the OIC, the concept of anti-blasphemy laws is replicated across the globe. In Russia, lawsuits have been filed in order to censor television shows deemed blasphemous to Christians.⁵ In India, Hindu-backed anti-conversion laws criminalize “threats of divine displeasure.”⁶ In Ireland, one can face high fines for stating anything considered “grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion.”⁷ And in Pakistan, Article 295 of the Penal Code delivers a maximum penalty of capital punishment for blasphemous statements against Islam, the Prophet Mohammed, or the Koran.⁸ In Sudan, a British schoolteacher was deported for naming a

⁵ Nico Hines, Russian Prosecutors in Bid to Ban South Park, TimesOnline, Sept. 8, 2008, <http://www.timesonline.co.uk/tol/news/world/Europe/article4704089.ece>.

⁶ Orissa Freedom of Religion Act, No. 21, Art. 3 (1967) (India).

⁷ Defamation Bill 2006 (Passed July 2009). Available at <http://oireachtas.ie/documents/bills28/bills/2006/4306/b43d06s.pdf>.

⁸ Pak. Pen. Code § 295 (1860).

teddy bear after a student named Mohammed.⁹

WHAT'S THE PROBLEM?

What is the real problem at work behind these blasphemy laws, and why is silencing expression not the way to fix it?

The OIC has stated that its main complaint is the stereotyping of Muslims around the world, especially post-9/11. Although the grievance of harmful stereotyping of Muslims as ideological extremists is sincere and factual, the current effort by the OIC to alleviate religious stereotyping with an international legal protection against the “defamation of religions” is misplaced and counter-productive.

Conceptually, the claim of “defamation of religions” is inadequate as a legal cause of action. Traditional defamation laws are meant to protect individuals from false truth claims and do not extend to the protection of ideas, philosophies, or religions.

Therefore, “defamation of religions” turns the purpose of defamation laws on its head. Human rights are also meant to protect individual persons only. Not only do “defamation of religions” laws fail to *protect* individuals, but they are also used to *harass* individuals. Unfortunately, the vague notion of “defamation of religions” laws allows government to use such laws to suppress minority religious individuals and voices of dissent.

Although the complaint of the OIC in regard to societal stereotyping is not contestable in law, religious discrimination, on the other hand, is a very real problem around the world and is established as a legal concept. Religious people constantly face discrimination around the world, for reasons as various as their unique religious attire, different worship schedule, or conscientious objection to military service. Sincerely held religious beliefs often compel believers to undertake certain practices and subscribe to particular outward displays of inward faith.

In some countries, religion as a whole is restricted as a perceived threat to the state (in countries like North Korea and China). For Muslims, the dominance of certain extremist interpretations of Islam in the public's view has created a backlash, sometimes amounting to discrimination, against both immigrant and native Muslim populations in Western countries.

Discrimination laws already exist in most countries, especially in the economic sector where business owners can neither hire employees nor deny service to patrons based on race or religion. Such laws directly prosecute unequal treatment of minorities and provide clear delineations for offenses.

In light of the conceptual problems with “defamation of religions” and the presence of existing legal standards for religious discrimination, the High

⁹Teddy Row Teacher Leaves Sudan, CNN, Dec. 3, 2007, <http://www.cnn.com/2007/WORLD/africa/12/03/sudan.teacher/index.html>.

Commissioner for Human Rights has confirmed that there is no international consensus on the concept of “defamation of religions.”¹⁰ And so, although resolutions have continued to pass at the United Nations, there is no legal standard for “defamation of religions.” Nonetheless, certain advocates of the concept have expressed their aim to codify “defamation of religions” as part of customary international law, either through an addendum to existing hate speech law or as a part of existing laws against “incitement to discrimination, hostility, or violence.”¹¹

INTERNATIONAL LEGAL TOOLS

OIC supporters of “defamation of religions” have turned to two different legal instruments as potential tools to combat speech that they would consider blasphemous or overly offensive to particular religions: the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Covenant on Civil and Political Rights (ICCPR).

In 2007, the United Nations Human Rights Council mandated the Ad Hoc Committee on the Elaboration of Complementary Standards to identify gaps in the ICERD and to provide recommendations as to how to fill them.¹² Accordingly, the chairperson of the Ad Hoc Committee, the Ambassador Idriss Jazairi from Algeria, took it upon himself to draft a white paper advocating for an optional protocol to the ICERD, which would mandate states to crack down on speech that could be considered “defamation of religions.”¹³

The most recent resolutions on “defamation of religions” have increasingly referred not only to “defamation of religions,” but to “defamation of religions and incitement to religious hatred,” as if the two acts were synonymous or related.¹⁴ Indeed, more attention has recently been given to Article 20 of the ICCPR, which states that:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.¹⁵

¹⁰ Report of the High Commissioner for Human Rights to the Durban Review Conference on the implementation of the Durban Declaration and Programme of Action and proposals for its enhancement, Navi Pillay, 23 Jan. 2009.

¹¹ ICCPR, Art. 20; Statement of Mr. Ekmelmedin Ihsanoglu, OIC Secretary General, UN Human Rights Council, 4th Sess. (March 12, 2007); First OIC Observatory Report on Islamophobia, May 2007-March 2008, Org. Of the Islamic Conference, p. 8 (March 2008).

¹² For a more in depth history of the Ad Hoc Committee on the Elaboration of Complementary Standards, see <http://www2.ohchr.org/english/issues/racism/AdHocCommittee.htm>.

¹³ Letter from Amb. Idriss Jazairi, President of the ad hoc Committee on complementary standard, re: Non Paper on complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects (Dec. 5, 2008).

¹⁴ HRC Res. 10/22, at 78, U.N. Doc. A/HRC/10/L.11 (Mar. 26, 2009).

¹⁵ ICCPR, Art. 20.

Because it is rarely invoked and has sparse jurisprudential precedence, some international experts have even called for an explanation of the meaning of Article 20 in a General Comment (an explanatory note issued by the expert body known as the UN Human Rights Committee).¹⁶ The Human Rights Committee has already begun a similar general comment on Article 19, which addresses freedom of expression, including situations in which this freedom is subject to restrictions.

While incitement laws exist around the world and are properly implemented to deter acts of imminent danger against vulnerable groups, the international community must be careful not to lower the threshold for speech that amounts to incitement. Incitement is necessarily limited to speech that encourages a second party to commit crimes against a third party. It does not include insulting speech that may motivate a second party to commit crimes out of retaliation for the perceived offense. UN Special Rapporteurs have also recognized the problematic vague language included in Article 20 which refers to incitement to “hostility”:

Defining which expression may fall under the categories of incitement to commit genocide, violence or discrimination may be an easier task than to determine which expressions amount to incitement to hostility... The notion of incitement to hostility may, however, be more prone to subjective approaches, very much depending on the perspective taken.¹⁷

SO WHAT IS THE SOLUTION?

As a first step governments must recall the positive right that the law exists to protect—the ability to seek and express truth claims in a safe environment. Often, this right to express conscience is carried out in a pluralistic public square; thus, it is inevitable that truth claims will conflict with one another and debates, even arguments, will unfold. But international law does not grant the right not to be offended, nor does it ensure any individual that he or she will not be challenged on the basis of his or her beliefs.

Second, we should recall that existing legal instruments properly address discrimination, personal defamation, and incitement to violence. These laws are written to address specific situations that threaten the safety of the free exchange

¹⁶ Asma Jahangir, Special Rapporteur on freedom of religion or belief, has suggested on several occasions that a general comment on Article 20 of the ICCPR could be helpful in clarifying its interpretation.

¹⁷ “Freedom of expression and incitement to racial or religious hatred,” Joint statement by Mr. Githu Muigai, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Ms. Asma Jahangir, Special Rapporteur on freedom of religion or belief; and Mr. Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, OHCHR side event during the Durban Review Conference, Geneva, 22 April 2009.

of thought, conscience and belief. They should be enforced more efficiently and equitably, but they do not need to be interpreted in an overbroad manner that would lend to their abuse by malicious government officials.

Finally, the international community must not rely so heavily on the law. Rule of law is an essential aspect of good governance and democracy, but it is complemented by an active civil society. Societal trends of discrimination and stereotyping must be countered with education and public diplomacy. Fostering respect requires the understanding that people with different beliefs are endowed with a human dignity that grants them the right to believe and the right to express those beliefs. Unless governments value that dignity over their own political expediency, religious freedom will be in danger from Islamabad to Beijing to Paris.





STATEMENT OF CONCERN ABOUT PROPOSALS REGARDING DEFAMATION OF RELIGIONS

IRLA PANEL OF EXPERTS

The International Religious Liberty Association Panel of Experts studied the issue of defamation of religions at its 2008 and 2009 meetings and issued this consensus statement on September 3, 2009.

INTRODUCTION

The issue of defamation of religions¹ has been of great concern to those involved with the protection of human rights and especially religious freedom. Religious individuals and groups around the world find themselves the subject of hostile accusations and insults, which at times precede intimidation and violent attacks.

Recognizing the link between certain forms of hateful expression and harmful actions, international, regional and national institutions, as well as non-governmental organizations, have sought to address the real concerns that such expression can cause. These have been addressed in a number of ways, from increased prosecution of those that target religious individuals and groups, to the passage of special laws increasing the penalties for crimes motivated by religious animus.

Another suggested approach is the regulation and prohibition of what is often called “defamation of religions.” The experts recognize that situations exist when expression constitutes incitement to discrimination or violence. Such speech may be limited according to existing international human rights law.² But the experts are concerned that some proposals addressing this issue will not solve the underlying problem of crimes against person or property motivated by religious hatred, but will instead increase religious intolerance and infringe the equally fundamental human rights of freedom of expression and religion, which allow for the critique of religious beliefs and practices.

EXAMPLES OF PROBLEMATIC PROPOSALS

Particularly problematic have been resolutions and other documents ap-

¹In this document, “defamation of religions” is used to describe proposals, such as those supported by UN resolutions in recent years, to protect religious beliefs, scriptures, symbols, and leaders, living or dead, from adverse comment or critique, that could offend the religious feelings and sensibilities of believers. The phrase does not include standard defamation laws that protect the reputational interests of persons or institutions, religious or otherwise, from factually erroneous and demonstrably damaging statements.

²See International Covenant on Civil and Political Rights (ICCPR) Sections 18, 19, and 20.

proved or being considered in the United Nations settings that call upon States to take resolute action to prohibit the dissemination of ideas and material aimed at any religion or its followers that constitute incitement to racial and religious hatred, hostility, or violence.³

REASONS FOR CONCERN

The experts find themselves in agreement with certain *goals* of many of these proposals, to prevent religiously based discrimination and violence. However, the proposed *methods* are troubling for several reasons, and will likely exacerbate rather than resolve tensions between religions in society and the world.

The experts are concerned that the proposed restrictions on the defamation of religions:

1. *will interfere with the core religious right of evaluating, comparing, and exchanging religious beliefs and practices.* This right is fundamental for developing a free and informed conscientious choice regarding matters of religion and belief. This would not only limit media coverage and advocacy, but also scholarship concerning religious issues and the teaching or honest debate of competing religious philosophies.
2. *will interfere with the freedom of speech and expression.* Regulating speech beyond existing international human rights law is a troubling enterprise at best, and often produces results opposite from those intended. Defamation of religions initiatives may even threaten the use of their own scriptures or other sacred texts by some religious traditions. The experts believe that the right to religion and belief, and the right to free expression are mutually interconnected. They agree 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.”⁴

³The issue of defamation of religions was first presented to the U.N. Human Rights Commission in a draft resolution submitted by Pakistan in 1999 on behalf of the Organisation of the Islamic Conference. U.N. Econ. & Soc. Council [ESOSOC], Comm’n on Human Rights, Draft Res.: Racism, Racial Discrimination, Xenophobia and all Forms of Discrimination, U.N. Doc. E/CN.4/1999/L.40 (April 20, 1999). Similar resolutions were adopted every year by the Human Rights Commission from 1999-2005. Comm’n on Human Rights Res. 2000/84 of 26 April 2000; 2001/4 of 18 April 2001; 2002/9 of 15 April 2002; 2003/4 of 14 April 2003; 2004/6 of 13 April 2004; 2005/3 of 12 April 2005. Thereafter, resolutions on this topic have been adopted by the Human Rights Council. HRC Res. 4/9 of 30 March 2007; HRC Res. 7/19 of 27 March 2008. Commencing in 2005, the U.N. General Assembly began adopting similar resolutions. G.A. Res. 60/150 of 16 December 2005; G.A. Res. 61/164 of 19 December 2006; G.A. Res. 62/154 of 18 December 2007; G.A. Res. 63/171 of 18 December 2008.

⁴Asma Jahangir, the Special Rapporteur on Freedom of Religion or Belief, and Doudou Diene, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Joint Report, U.N. Doc. A/HRC/2/3 (20 September 2006), para. 36.

3. *can be used by dominant groups to repress the rights of vulnerable individuals and groups.* Dominant groups in society will generally have greater access to and influence with the courts and state agencies that enforce these laws. It will often be the dominant groups' interests that are best represented, while the less powerful may lack effective access to justice, and may even fear to assert their rights. Such laws may be especially inhospitable to local or indigenous religions or to newly introduced faiths or beliefs.
4. *may also impair the rights of all religious groups by strengthening the power of the State to interfere in religious matters.* All too often defamation of religions initiatives can be used by States to control, manage, or marginalize any or all religious groups. They can open a door for governments to exploit religious groups for political purposes.
5. *will suffer from vagueness and a lack of enforceable standards.* The experts note the lack of any universally acceptable definition of defamation of religions. Further, we fear that any definition will be vague, unduly subjective, and susceptible to varying interpretations and applications. This will all too often result in arbitrary state enforcement and preference for dominant religions.

RECOMMENDATIONS:

The IRLA Group of Experts makes the following recommendations:

1. Proposals for laws relating to the defamation of religions or analogous concepts should be rejected. The experts believe that current national, regional, and international laws and standards are sufficient to protect against speech that results in discrimination or violence.
2. Where laws pertaining to defamation of religions have already been passed, their implementation should be closely monitored to gain a better understanding of their impact, problems in their application, their effectiveness in deterring violence and discrimination, and any counterproductive consequences.
3. Laws pertaining to incitement to violence or discrimination against religions and beliefs should contain concrete and measurable standards. Further, they should assure that all religious groups are protected, and be neutral among religions and beliefs, both in their drafting and in their application.
4. The United Nations should continue to support dialogue on this issue with as wide a group of interested parties as possible, including representatives from States, religious bodies, non-governmental organizations and other interested parties. Specific methodologies should be developed

to bridge differing cultural approaches to religious disagreements and insensitivities.

5. Government, educational, civic, media, religious and other leaders should promote and encourage via education and other means, understanding, tolerance, respect, and friendship. They should communicate a message of ethical responsibility, reminding all people that not everything that can lawfully be said should be said. We endorse the view of the Special Rapporteur on Freedom of Religion or Belief, that we should “focus on creating a tolerant and inclusive environment in which all religions and beliefs may be exercised free of discrimination or stigmatization, within reasonable limits. The situation will not be remedied by preventing ideas about religions from being expressed.”⁵



⁵ *Id.*, para. 66.

FIDES ET LIBERTAS



PART TWO: GENERAL ARTICLES



RELIGIOUS FREEDOM AND THE DECLARATION OF HUMAN RIGHTS

FRANCISCO PAREDES

Francisco Paredes is the Director General of Religious Affairs, office of the Secretary of State for Education, Dominican Republic.

The Universal Declaration of Human Rights recognizes religious freedom as a universal right. Religious freedom is the fundamental right of every human being to freely choose a religion, or to have no religion, and to pursue that belief publicly, without being a victim of oppression or discrimination. This concept goes beyond mere religious tolerance. It should certainly allow non-official religions under a confessional State such as mine.

The Roman Catholic view of religious freedom is that “all men should be immune from coercion on the part of both individuals and social groups or any human power, and this so that, in religious matters, no one is compelled to act against their conscience” (Vatican II, *Dignitatis Humanae*, 7 December, 1965). Truly “the right to freedom of religion is really based on the very dignity of the human person” and therefore “has to be recognized in the laws of society, so they become a civil right.”

In my view, the religious phenomenon is something inherent in human nature. Social scientists claim to have not found any human society without the phenomenon of religion. If we understand society as a group of individuals living together within a certain territory, under the same laws and under the same government, united and identified with each other culturally—having the same values, traditions and customs—then we must say that religion, along with the family, education, economics and politics is a basic institution of society.

The relationship between these social institutions is logical and a natural organic activity. There is a social significance to religion. It is symbiotically linked with almost every conceivable human activity. It finds expression in systems of values, morals and ethics. It interacts with the family, marriage, economics, law and politics, entering the realm of medicine, science and technology. Religion stirs people to action: it has inspired rebellions and wars, and sublime works of art.

When talking about religious freedom or freedom of worship we must also examine it in the context of the government of a specific State. Concepts of nation, homeland and country are of course linked with the Universal Declaration of Human Rights and the full range of liberties that its supports. According to Professor Juan Bosch: “The nation exists naturally, is related to birth, race, physical or human ethics common to the group.” All their shared activities and viewpoints, he says, their music, their dances, their landscapes, is the sum of all that expresses their real-

ity—territorial and human, social and historical, in reference to the group.

The concept of nation refers to a geographical area, a politically independent entity that defines the territory inhabited by a particular social group. The State is the political organization of a nation that arises from the willingness of its citizens to express their independence and their own sovereignty. It is a body empowered to make use of power and coercion, composed of experts or specialists in order and public welfare. It consists of all the laws and habits that govern life in a society and the apparatus of power that obliges the society to comply with this set of laws.

Each State responds to historical, political and social needs that explain the origin of their nation and their patriotic feelings. Therefore, not all States see religious freedom from the same cultural vantage point. There are the States that legally enshrine total religious freedom for all, while giving a special status to a particular church as the official religion of the country. In Latin America there are a number of States whose constitutions declare freedom of religion but who confer a special status on the Catholic Church. Such is the case with Argentina, Nicaragua, Peru, Dominican Republic and Venezuela.

Western society has been on a long journey from polytheism to monotheism. Christianity has become the central faith viewpoint. But there is a background of Greek in culture, thought and vision in the world. The systems of Socrates, Plato and Aristotle were a starting point of Western thought. When linked with Christianity, especially in the works of figures like St. Augustine and Thomas Aquinas, it became the scholasticism that pervaded the Middle Ages and whose criterion of truth was authority and not individual enquiry. Thus was formed an ideology of monarchical absolutism, which only recognized freedoms and privileges for the small group of nobility.

Thus the Platonic and Aristotelian systems were crucial for shaping the patristic viewpoint (Greek and Latin) and the scholastics of the Middle Ages, and led to the ideological absolutism of that time. They gave the ideological basis for the configuration of power and sovereignty. There was a concentration of all power, an unpleasant state of injustice, and violation of the most basic individual rights.

For St. Thomas, the State is the image of God and is subordinate to the church, which it must always obey. According to Thomas Aquinas, a State that resists the Church is not legitimate. The representative of the Divine Power had the right to punish the sovereign and could release subjects from their duty of obedience to the State.

The answer to this conception was the Ghibelline theory that excludes the intrusion of the State in the affairs of the Church. It introduces the doctrine of the social contract—State power is to be the emanation of the people.

In the modern age the rationalist philosophy of Descartes served as the starting point for liberalism in France, England and Germany, which recommended the sovereign power of the people against monarchical absolutism.

An immediate example of this new concept of sovereignty was the revolution led by Oliver Cromwell in England against the monarchy of Charles I, and the installation of a Republican administration (1649-1653), with a constitution that met the current requirements of that concept of sovereignty. Another is the American Declaration of Independence. Then I would cite the French Revolution, with its Declaration of the Rights of Man and Citizen. And of course, we must note the progressive transformation of American colonialism into a modern, independent nation-state. The thoughts of Locke, Montesquieu and Rousseau were certainly a determining influence in that process.

John Locke maintained that the absolute rights of human beings are inalienable. He argued the principle of separation of powers, noting its limitations and checks through a written and legislated constitution.

Charles Louis de Secondat (Lord of Brede and Baron de Montesquieu 1689-1755) was the father of so-called enlightened constitutionalism, becoming renowned for his work, *The Spirit of the Laws* (1748). He identified three forms of government: republic, monarchy and despotism, each having a principle or driving force, namely virtue, honor and fear, consecutively. After studying the English Constitution, he conceived of a State divided into legislative, executive and judicial spheres, and argued that these powers should be independent of each other.

Jean Jacques Rousseau (1712-1778) was marked by a deep sensitivity, a constant enthusiasm for the ideal of justice and in general a very acute awareness of the discrepancy between what man should be, and how he acts. Two of his most important works relevant to the topic at hand were *Discours sur l'Origine et les Fondements de l'Inégalité Parmi les Hommes* (1753) and *The Social Contract* (1763).

Rousseau developed the theory that men were originally free and equal, living with extreme simplicity. At that time, man had not yet been corrupted by the degeneration of civilization. He was good, because man was born good and happy. He tried to explain how this state of happiness was lost.

Rousseau noted that since early happiness was the enjoyment of freedom and equality, we must restore to civilized man the enjoyment of these natural rights. He restated the idea of a social contract, which must have a precise and specific content and should represent an ideal form of association, in which membership in a political body does not destroy the freedom of individuals.

Such Enlightenment views changed the political landscape—absolutism and the philosophical criteria that sustained it were left behind.

The French Revolution ended with the drafting of the Declaration of the Rights of Man and Citizen. This document consists of seventeen items that contain a list of human rights. It was a synthesis of the thought of Locke, Rousseau and Montesquieu. It contained concepts soon to be practically universal in all the constitutions of the States that were created in the Americas after their nations achieved independence. It is the direct antecedent of the fundamental human rights embod-

ied in the Universal Declaration of Human Rights—enunciated after humanity had been shaken by two ruthless and irrational world wars.

Among the natural and inalienable rights of man in this French document are: the right to be born free and remain free, right to liberty, property, security and resistance to oppression, the right to sovereignty, political freedom of expression and thought. It included in Article X: “No men should be harassed because of their opinions, even of their religious beliefs.”

The nation states of the Americas during the nineteenth century developed within the context of these understandings of freedom and religious rights. In the Dominicans, we created two independent states. The first of these states was initiated by José Núñez de Cáceres in 1821. The second was the work of Juan Pablo Duarte Diez and his colleagues in the Secret Trinitarian Society through the Manifesto of January 16, 1844. The first Dominican Constitution, based on it, was written on November 6 of that year.

It should be noted that Dominica is a signatory of the Universal Declaration of Human Rights. The fundamental rights of human beings are guaranteed conceptually in the Dominican constitution. Freedom of religion and worship is, of course, included. This right is embodied in the Universal Declaration of Human Rights, adopted and proclaimed by General Assembly Resolution No. 217 of December 10, 1948. Article 18 says, “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change religion or belief and freedom to manifest religion or belief, individually and collectively, both in public and in private, teaching, practice, worship and observance.”

The Constitution of the Dominican Republic clearly supports the UN Declaration, most particularly in its recent reforms. The Constitution presently under development will strongly affirm the right to religious freedom.

Here in the Dominican Republic all religious denominations are free to exercise their ministries without any coercion from the authorities. There are laws of protection and penalties prescribed for failure to comply. The government of the United States of America in its 2008 Annual Report on Religious Freedom recognizes that the government of Dominica respects religious freedom. I quote from the summary report: “The Constitution provides for freedom of religion, and other laws and policies contributed to the generally free practice of religion. At all levels, the law protects this right in full against abuse, either from government actors or private actors. The Government generally respects religious freedom in practice. There was no change in the status of respect for religious freedom by the Government during the reporting period. There were no reports of abuses or discrimination based on social affiliation, belief or religious practice.”





RELIGIOUS LIBERTY: THE LATIN AMERICAN EXPERIENCE, A PRACTICAL PERSPECTIVE

SCOTT E. ISAACSON

Scott E. Isaacson is an attorney and a legal advisor to The Church of Jesus Christ of Latter-day Saints for Latin America and the Caribbean.¹

Religion and freedom of religion or conscience are topics so broad and at the same time so deep and profound that they could be analyzed in innumerable ways—from the philosophical, sociological, historical and legal points of view, to name a few. Given my experience, I wish to treat the theme of religious liberty in the Latin American experience from a more humble and practical point of view—that of a practicing attorney for a religious organization in Latin America. Eleven years ago, I was hired by the Church of Jesus Christ of Latter-day Saints to serve as a legal advisor in South America and the Caribbean. Over the ensuing years, I have had a great deal of practical experience with the legal needs and operations of a minority religious group in Latin America.

This practical experience can add a valuable perspective on religious liberty in Latin America by answering the question: What is the legal and practical reality for religions in Latin America, particularly minority or new religious groups?

BACKGROUND: THE CATHOLIC CHURCH

One cannot speak of religion in Latin America without speaking, of course, about the Catholic Church. The historical relationship between the Catholic Church and the countries of Latin America is long, complex, and different in every country. Mexico has a particularly unique history of Church-State relations when compared to the rest of Latin America, and many of the observations that I will make do not apply to Mexico. The relationship between the Catholic Church and the Latin American nations is the theme of countless books and academic studies. I am not qualified to discuss this topic in great detail. However, I will review some general observations with respect to the Catholic Church in Latin America from the point of view of an attorney for a minority church which is relatively new in the region.

The Catholic Church has a unique relationship with the national govern-

¹ He is also the Executive Director for Latin America of the Brigham Young University International Center for Law and Religion Studies. The views expressed in this essay are his personal views and not official views of the LDS Church or the BYU Center. This essay is based on a presentation given at the IRLA conference in Santo Domingo, Dominican Republic, April 28, 2009, on “Religious Liberty: The Latin American Experience.”

ments of the countries of the Latin American world. The Catholic Church existed before the formation of the current national states of Latin America and exists as a legal entity independent of the civil governments. The Church does not depend on the State with regard to its legal personality or legal status.

The relationship between the State and the Catholic Church is not like that of a state and citizen, but more like that of two sovereign nations. In many, but not all, Latin American countries, the relationship between the Catholic Church and the State is reflected in *concordats*, which are more like a type of treaty between countries than traditional national laws.

Historically, the Catholic Church and Latin American states had an interdependent relationship. The State trusted and used the Church to help maintain public order, especially in the years immediately following the formation of modern states. In turn, the Church relied on and used the State to finance its operations and help maintain its legitimacy and religious monopoly.

In comparison, the founders of the United States created a basic separation between the state and religion, but in Latin America, the State and the Church were seen as partners in the formation and the development of civil society.

I want to be very clear; I am not criticizing the Catholic Church. The Catholic Church has been a positive influence in the lives of millions of Latin Americans—an influence that has helped to develop civilization and in many cases support basic human rights. The point I wish to make is technical: the Catholic Church has a *legal* relationship with the State that is unique in the majority of countries in Latin America. It is a relationship very different from the relationship that exists between the State and religion in the United States and between the State and non-Catholic religions in Latin America.

What does the fact that there is a unique relationship between the Catholic Church and the Latin American states mean for non-Catholic religious organizations operating under the legal systems of Latin America?

WE ARE NOT ALL CATHOLICS.

In response to this question the first observation that I wish to make is very obvious, but it is essential: We are not all Catholics. There was a time in Latin American history in which nearly every Latin American was a Catholic. But, little by little, and with more and more acceleration, the religious identity of the societies of Latin America has changed. In most countries, this change began with immigrants ascribing to different religions, and eventually, some citizens began to leave the religions of their fathers and adopt other beliefs. Today there are a good number of citizens in each country of Latin America who are not Catholics.

A personal aside: There are people who think that it is sad that we are not all from the same religion. I don't believe in this view. I do not believe that the Lord intends that all of his children believe and think the same. This idea is supported

in the Koran, verse 13 of chapter 49: “*We have created you of a male and a female, and made you tribes and families that you may know each other.*” The New Testament teaches: “*And hath made of one blood all nations of men for to dwell on all the face of the earth, and hath determined the times before appointed, and the bounds of their habitation.*”² The Book of Mormon contains a similar teaching: “*Know ye not that there are more nations than one? Know ye not that I, the Lord your God, have created all men, and that I remember those who are upon the isles of the sea; and that I rule in the heavens above and in the earth beneath; and I bring forth my word unto the children of men, yea, even upon all the nations of the earth.*”³

It seems to me that if God wanted to arrange the world so that we all belonged to the same race, religion and country, He would have created the world in that way. But, He didn’t do it. Why? I think the reason is because there are essential things God wants us, His children, to experience and learn that are only possible when we learn to love and accept those who differ from ourselves.

It is usually easy to love our own family and those close to us ethnically and culturally, but often difficult to learn to love those who are different from us. If we were all the same, I don’t think that we would have the opportunity to develop into the type of people who God wants us to become: full of charity, love and compassion for *others*.

We could debate whether religious diversity is good or bad, but nevertheless, we have to accept the reality that in Latin America, there is a growing variety of religious beliefs and distinct religions.

THE LEGAL VACUUM

Given this reality, and because of the history of the unique relationship between the Catholic Church and governments of Latin America, my next observation is that there exists a *legal void* in relation to laws governing religious organizations.

Given that in the past the great majority of citizens have been Catholics, and that the relationship between the Catholic Church and the States was governed by *concordats* or other special relationships, historically, there simply was no need to develop common laws to deal with the necessities of other religious organizations.

THE FIRST STEP: CONSTITUTIONS

The first step to fill this legal void with respect to other religions in Latin America was to recognize the fundamental right of other religions to exist at all. The Catholic Church was recognized as the only religion or the official religion of the State in many of the early constitutions of the countries of Latin America. Constitutions of some countries prohibited the practice of any religion that was

² Bible, Acts 17:26 King James Version

³ Book of Mormon, 2 Nephi 29:7.

not Catholic.

But this has changed. The constitution of every Latin American country now guarantees basic freedom of religious belief to its citizens.⁴ With the exception of Cuba, the citizens of all Latin American countries enjoy, in practice, basic freedom of conscience—freedom to believe or not to believe as a person desires. The constitutions recognize the possibility that citizens can belong to churches other than the Catholic Church. There is no doubt that the exercise of this right, to belong to a church other than the Catholic Church, can bring social and practical consequences, but there are no legal consequences, or at least, there shouldn't be any legal consequences.

Along with the individual right of freedom of conscience or belief, the constitutions of Latin America generally allow for the existence of religious organizations other than the Catholic Church.⁵

With this in mind, the first generation of religious liberty was established in Latin America. I do not want to minimize this achievement; it was a very important advance. Nevertheless, it was the achievement of our fathers, the past generation.

THE LEGAL STEP

So, the constitutions of the countries of Latin America guarantee freedom of religious belief. What then is the legal void that I referred to above?

It simply is not sufficient on a practical level that a constitution states that religious liberty exists in a country. Without something more, those are just pretty words in the constitution that do not yield real consequences. All Latin American countries follow the civil law tradition, not the common law tradition of the United Kingdom and its former colonies. Under the civil law system abstract constitutional concepts of religious liberty have little practical effect unless they are implemented through regulations or legislation.

Specifically, the declaration of religious liberty in a constitution is not effective if legal norms do not recognize the capacity of religious groups to form legal entities and practice all aspects of their religion. The second step, therefore, to fill the legal void is to construct systems of law that correspond to the real and practical legal necessities of all religious organizations.

As Professor Cole Durham explained:

A country's law and practice regarding religious entities constitutes a crucial test of its performance in facilitating freedom of religion or belief. This may seem surprising. The intricacies of the law of religious associations are clearly not the first issues that come to mind when one thinks of freedom or belief. One is more likely to think

⁴See Facilitating Freedom of Religion or Belief: A Deskbook, "Facilitating Freedom of Religion or Belief Through Religious Association Laws", W. Cole Durham, Jr., p. 344 and footnote 120 (2004)

⁵Id. Page 345.

of overt religious persecution, issues of conscientious objection in the military or other fields, restrictions on worship, constraints on religious speech and persuasion, interference with prescribed religious observances such as days of work or types of clothing, issues of religion and education, discrimination in employment, and so forth.

But on closer reflection, it is obvious that the law governing the creation, recognition and registration of appropriate legal entities is vital for the life of most religious communities in a modern legal setting.

Legal entity status is vital because, as a practical matter, a religious organization of any appreciable magnitude cannot operate effectively and efficiently without such status. A contemporary religious community needs to interact with the secular legal order in countless ways in order to carry out its affairs.⁶

We see advances in various Latin American countries in this regard. Nevertheless, we cannot conclude that the laws correspond to the reality and to the necessity of the religious organizations in Latin America in various aspects.

LEGAL STATUS OF RELIGIOUS ORGANIZATIONS

In all Latin American countries⁷, religious organizations have the opportunity to obtain some form of basic legal recognition, or at least to form legal entities that have legal personality, to conduct their basic needs, i.e., buying land for places of worship, entering into contracts, employing employees, opening bank accounts in the name of the Church, etc. What is the problem, then?

In simple terms, the problem is this: When a religious organization seeks legal status, the organization has to go to the government and form a type of legal entity that has been established under the State's legislation. In most countries, only specific types of legal entities are available, such as non-profit corporations, foundations or civil associations that could possibly be used by a religious group. These are all types of nonprofit legal entities that can usually be formed for various purposes, such as education, culture and religion. The basic problem is that none of the existing forms of legal entities in most of the countries of Latin America match the needs of a religion. A religion is not a non-profit corporation or a foundation or a civil association—it is a religion.

For example, let's take a civil association, probably the most common form of legal entity actually used by religious organizations in Latin America. A civil association is a type of nonprofit organization created and provided for under the civil codes of most Latin American countries. It basically is a kind of club. A group of people agree to contribute resources or services for some public good,

⁶Id. At page 321-22.

⁷With the exception of Cuba.

including educational, cultural or religious purposes, and no profit can ever be distributed to the members of the association. It is an association of usually a minimal number of members who elect a board of directors and have rights of control over the activities of the association. Normally, religious organizations can form civil associations with religious purposes to have a legal entity through which they can act.

However, many, if not most, religions are not associations. For doctrinal reasons or only because they prefer, many churches, like the one to which I belong, are not organized in the form of an association. Members of the church do not have the same rights as members of a civil association created under the civil code. There is no board of directors; there is no assembly of members, or anything like it. It can be confusing. People are members of the church in all religious aspects, but they may or may not be members of the church's civil association. It is normally not practical to extend association membership status to all the people who join a church because of the legal requirement to hold members' meetings and vote on certain issues, such as designating directors.

If association membership status is extended to all who join a church, in practical terms it may become impossible to convene a quorum of the members under the law. At best, it can be said that the association *represents* the church, the religious organization, but it certainly *is not* the "church" in the sense of the religious organization to which believers belong.

In my church, there are bishops, presidents, apostles and an internal religious structure that for us is revealed by God. But when we go to the government to receive legal recognition, they say that we have to have an association with members, directors, etc.; that we have to have an organization that complies with the requirements for legal associations in the civil code. To be recognized as a legal personality, we have to form a legal entity that in one sense is fictitious, because it doesn't correspond to the reality of the religion and its actual organization.

There are many religions for which creating a legal association is not the most adequate entity form for their organization. For many churches, the internal organization of the church is more important than just a preference; it's a mandate based on the doctrine of the church. For this reason, religious liberty does not exist if the State obligates a church to be organized in a certain manner in order to have legal recognition. And since the Catholic Church is not obligated in any Latin American country to adopt some form of State-mandated and controlled legal entity in order to have legal personality, equality under the law also does not exist if all other religious organizations have this obligation.

Specifically, what the legal systems of Latin America need is a process by which a religion can obtain legal personality in order to operate, without the obligation of adopting a form of organization that doesn't correspond with the reality and the needs of the religion. The State shouldn't interfere with the in-

ternal organization of religion, and shouldn't impose any particular structure on religious organizations.

Additionally, a civil association, a non-profit corporation or a foundation are all entities of *private law*,⁸ subject to the controls and requirements of the State for legal entities. Therefore, a religious entity has to present itself to the State and ask for permission to organize itself as a legal entity and has the obligation to comply with the normal requirements for these types of legal entities.

On the other hand, the Catholic Church is an entity of *public law*,⁹ with all of the rights that this implies. The differences between entities of *private law* and entities of *public law* are profound, but this is a concept that does not really have a parallel in the legal system of the United States. Entities of public law, like the Catholic Church in Latin America, exist as independent legal entities apart from the States in which they are located. They do not go to the State to obtain legal recognition and, in theory at least, the State could not dissolve them as legal entities. Entities of private law, on the other hand, are legal entities that in one sense are created by the State, exist under the control and supervision of the State, and can be dissolved by the State.

A common corporation in the United States would be an example of an entity of private law. It can only have legal existence if the founders go to a state, submit proper documentation, and receive a charter from the state allowing it to operate as a corporation. Thereafter, the corporation must comply with annual filing requirements and other restrictions. Civil associations, foundations and nonprofit corporations—the legal vehicles available for non-Catholic religious organizations in Latin America, as discussed above—are all entities of private law.

Until recently, the Catholic Church has generally been the only religious entity of public law in Latin American countries. However, in recent years there has been progress in this area. Recognizing the inequality of having one form of legal recognition for the Catholic Church and another quite distinct form of legal recognition for most other religious groups, some countries have adopted legislation attempting to deal with this basic inequality.

Chile is celebrating ten years since the adoption of Chile's Law of Religions in 1999.¹⁰ This law is the only one I am aware of in Latin America that clearly addresses the distinction between entities of private law and entities of public law and extends to all religious organizations that register the status of an entity of public law, the same legal status enjoyed by the Catholic Church. Congratulations to Chile! I think that the 1999 Law of Religions of Chile represents an impor-

⁸In Spanish, "entidades de derecho privado." Could also be translated as "entities of public right."

⁹"Entidad de derecho publico."

¹⁰See "A Practical Comparison of the Laws of Religion of Colombia and Chile" by Scott E. Isaacson, in *The International Journal of Not-for-Profit Law*, Volume 6, Issue 1 (2003) available online at: http://www.icnl.org/KNOWLEDGE/ijnl/vol6iss1/special_3.htm

tant advance in addressing the practical needs of religious organizations and the establishment of the equality of religious organizations. Other countries have also addressed the issue. For example, Colombia adopted a Law of Religions in 1994 which extends to religious organizations registering under its provisions a special status, which is not fully an entity of public law like the Catholic Church, but which provides other religious organizations many of the same protections. For example, Colombian law does not impose any kind of outside legal structure on the registering religious organization. The group has to describe its organization to the state as part of the registration process, but it does not have to adopt any particular form of organization.¹¹ As discussed above, this is an improvement under the law.

In review, there exists a legal form for a religious organization to do what it needs to do in all Latin American countries with the exception of Cuba. Therefore, in practical terms, new religious organizations can exist and can perform basic legal functions. However, the laws governing religious organizations in most countries do not satisfy the practical and real needs of the religious organizations, nor can we say that other religious organizations are equal with the dominant church in its legal status, with the exception of Chile.

TAX ASPECTS

Another area where there exists a legal void regarding religious organizations in Latin America involves taxation. I recognize that a state probably has a right to impose taxes on anyone that it chooses, and that the state probably does not have any obligation to exempt anyone. The state normally has the right to exempt only those entities meeting the legal requirements for exemptions. Nevertheless, if the state is going to give tax exemptions to one religion, I believe that it is necessary under the nation's constitution and international norms that the state grant the same exemption to other religious entities that have the same purposes and meet the same requirements. There are still challenges in this arena in Latin America. This topic is complex and beyond the scope of this essay, but I mention it to highlight an important area where there are still legal challenges for non-Catholic religions in Latin America.

As an example of the problem, I will refer to an unpublished opinion by the Supreme Court of one of the countries of Latin America that I will not identify. In this country, the owners of real property must pay municipal assessments for street repairs or clean up. The law, without mentioning any religion in particular, states that "temples and convents are exempt from these taxes." Nevertheless, in practice only some of the properties of the Catholic Church enjoy this exemption. Given the denial by the municipality after several requests for exemptions, the religious association representing my Church presented a demand alleging

¹¹ Id.

that the situation was a violation of the constitution of the country, which specifically prohibits discrimination on a religious basis. The Supreme Court denied the claim and affirmed the application of the law in this discriminatory fashion on the following terms:

The nature of the appellant as a religious entity is derived from its own status as a legal entity, and without denigrating its character as a religious organization, unlike the Catholic Church which possess a legal personality of public law and has entered into an agreement with the nation, the only thing that qualifies the appellant as a religious organization is the fact that its articles of association mention an ecclesiastical purpose.¹²

In other words, because the Catholic Church is an entity of public right and the other religious confessions are not, the other religious confessions have to pay these taxes. Although it is not entirely clear, the Court seems to be implying that because other religious organizations are entities of private law, in theory they could change their stated purposes, and because of this possibility, they do not qualify for the tax exemption. Because the religious nature of other religious organizations is found only in their organizational documents, and not independently, as is the case for the Catholic Church, a different tax treatment is justified.

This is an example of the type of practical challenges facing religious organizations in Latin America: these organizations have basic rights to exist and to function, but do not yet have full and equal protection under the law.

OTHER CHALLENGES

There are other areas where in practice there exists a legal void with regard to legal protections for religious organizations in Latin America. I will only mention them briefly. For example, religious education in public schools, the role of religion in politics, religion in the military, problems with real property, zoning and religious use of property, internal autonomy for religious organizations, religious employers under highly protective labor codes, etc. Each topic merits its own in-depth analysis.

CONCLUSION

The path to achieving the protection of individual and institutional religious liberty and freedom of conscience is a long road, filled with obstacles, not only material but fundamentally human.

These are interesting times for religions in the world. Europe, once the center of Christianity, seems to be losing its religion. It seems to me that the worldwide center of Christianity has moved from Europe towards the countries of the South, towards South America, Africa, and Southern Asia. I believe there

¹² Opinion in author's possession. Translation by author.

is something fundamental occurring, a spiritual re-birth. I consider that it is something important in the spiritual life of humanity, and it is a privilege to be a witness to these changes.

My basic observation is that just as we see a spiritual re-birth among the people of Latin America, the laws applicable to religious organizations also need to grow and be amplified in order to be effective and just. The legal void that, for historical reasons, exists in the laws of many Latin American countries with regard to religion needs to be filled by reasonable and fair laws that facilitate and meet the needs of all religious organizations. Groups of people of good faith, working together with others of other traditions that nevertheless share fundamental values, will contribute an important aspect to the growth of liberty and equality for religion in Latin America.





RELIGIOUS FREEDOM IN THE OBAMA ADMINISTRATION: SEEKING THE COMMON GROUND

BARRY W. BUSSEY

Barry W. Bussey is the Director of Legislative Affairs for the General Conference of Seventh-day Adventists.

I. INTRODUCTION

The coming to power of an African-American in the US Presidency has been a watershed moment—not only for the US but for the world. The US is justifiably proud of the accomplishment. The world has met the development with a great sense of optimism. Barack Hussein Obama exudes charisma that the world has not seen in an American president since the time John F. Kennedy took the oath of office. The American body politic has invested a great deal of emotion into the expectation that the slogan “Yes We Can!” will result in substantive changes that will better a very fractious society that has become polarized between the political left and the political right.

I present a short analysis of the first eight months of this new administration’s treatment of religious freedom. Obviously one has to be careful about making definitive statements about the administration’s long term effect. However, one can observe what has been done to date to at least give an educated guess at the long term effect of the new administration’s handling of this important portfolio.

There can be no doubting the obvious—President Obama’s approach has been to seek conversation on the common ground. This is not only evident on the matter of religion, and religious freedom—it is evident in all his dealings with the broad array of public policy. He is trying to avoid the duality—the left and the right; the conservative and the liberal; the believer and the non-believer; the “us” and the “them”. However, the jury is still out as to what exactly the end game is for this conversation. Is it to forge a new consensus where everyone is to agree on the new opinion? Or, is it to work on the common ground amongst the opposing parties while still respecting the right of the parties to hold opposing views?

Indeed, there is much positive that can be said about avoiding the pitfalls of opposing ideology and forging a new consensus that respects opposing views on the subject at hand. Certainly, if he is successful in birthing a new way forward away from the fractious politics of our age, he will be remembered as “Obama the Great.” But what if he fails? What if the opposing factions remain as entrenched as ever—committed to their intransigence and refusing to bend to the common opinion? What then? Will the promised hope of “Yes We Can!” become

only another failed slogan on the ash heap of the embers of yet another partisan fire?

Religion is a phenomenon that has outlasted social and political movements before. The communist countries have learned that reality despite the Marxist theories that religion would only exist in certain economic contexts. John Lennon loudly proclaimed that Christianity was dead since he was more popular than Christ. The point is that religion—and its beliefs—have been around for millennia despite the passing socio-political movements that challenge those beliefs. Some beliefs are simply non-negotiable for particular religious communities. If those “non-negotiables” are in the political crosshairs, then society will have a very difficult time if the majority opinion requires such beliefs to change.

This paper suggests that it is yet to be seen where Obama is on this matter—whether he is seeking the common ground to change belief for a common opinion; or whether he respects the right of religious groups to maintain differing beliefs at odds with the common view.

To set the context we will first review Obama’s views on religion before he became president.

II. RELIGION ACCORDING TO THEN-SENATOR OBAMA

Obama has not been shy in speaking about his view of religion and the role of religion in public policy. In a June 2006 speech he said:

Democracy demands that the religiously motivated translate their concerns into universal, rather than religion-specific, values. It requires that their proposals be subject to argument, and amenable to reason. I may be opposed to abortion for religious reasons, but if I seek to pass a law banning the practice, I cannot simply point to the teachings of my church or evoke God’s will. I have to explain why abortion violates some principle that is accessible to people of all faiths, including those with no faith at all.

Now this is going to be difficult for some who believe in the inerrancy of the Bible, as many evangelicals do. But in a pluralistic democracy, we have no choice. Politics depends on our ability to persuade each other of common aims based on a common reality. It involves the compromise, the art of what’s possible. At some fundamental level, religion does not allow for compromise. It’s the art of the impossible. If God has spoken, then followers are expected to live up to God’s edicts, regardless of the consequences. To base one’s life on such uncompromising commitments may be sublime, but to base our policy making on

such commitments would be a dangerous thing.¹

This view expressed by Obama is not new. It has been the considered opinion of the legal academy for some time. John Rawls, by far the most influential person in recent times to have advocated this position, maintains that in a liberal society appeals to a “comprehensive view,” whether religious, philosophical, or moral, cannot be used for the interpretation of the political relationship—that of the state and the individual. “Citizens realize that they cannot reach agreement or even approach mutual understanding on the basis of their irreconcilable comprehensive doctrines.”²

Rawls argues for the use of “public reason” to solve the dilemma of how citizens communicate their political ideas. Public reason provides “the basic moral and political values that are to determine a constitutional democratic government’s relation to its citizens and their relation to one another.”³ It specifically applies to those actors in the “public forum”—the judiciary; the government officials—especially the chief executives and legislators—and to those candidates running for public office. It is the reasoning of free and equal citizens concerning the issues of fundamental political justice.

The ideal of public reason is obtained when the public actors “act from and follow the idea of public reason and explain to other citizens their reasons for supporting fundamental political positions in terms of the political conception of justice they regard as the most reasonable.”⁴

Rawls allows for an ‘overlapping consensus’ of political beliefs among those with different comprehensive views. There is naturally some common ground between religious, moral, and political views that is to be expected; however their justification is not to be based on those views but rather on:

presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial As far as possible, the knowledge and ways of reasoning that ground our affirming the principles of justice... are to rest on the plain truths now widely accepted, or available, to citizens generally.⁵

The reformulation of liberalism to “political liberalism” by Rawls generated a significant amount of criticism—especially the idea of eliminating those with “comprehensive views” from being involved in the political debate. Later Rawls

¹ Barack Obama, “Call to Renewal Keynote Address,” Washington, DC, June 28, 2006. Found at: http://www.barackobama.com/2006/06/28/call_to_renewal_keynote_address.php

² John Rawls, “The Idea of Public Reason Revisited,” (Summer 1997) 64 U. Chi. L. Rev. 765-766.

³ Rawls, “The Idea of Public Reason Revisited,” at 766.

⁴ Rawls, “The Idea of Public Reason Revisited,” at 769.

⁵ Rawls, *Political Liberalism*, p. 224-5, as quoted by Ahdar & Leigh, at 48.

revised his thinking somewhat to allow “comprehensive views” some involvement in the public discussions of political ideas—however he made a proviso that such participation was on the understanding that they present a ‘secular’ reason for the position they take:

reasonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussion at any time, provided that in due course proper political reasons—and not reasons given solely by comprehensive—are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support.⁶

The Rawls compromise has been labeled by some as an “inclusive” view.⁷ It is very similar to that of Greenawalt⁸ and Audi⁹ who see the exclusive position of silencing religious advocates in the public square as discriminatory and counter-productive.¹⁰ However, it can be seen that the inclusiveness has a limit—no such limit is required of the rational arguments.

Greenawalt argues that “citizens of extremely diverse religious views can build principles of political order and social justice that do not depend on particular religious beliefs.”¹¹ Thus the religious arguments are exposed to the policy makers, the politicians, and judges, but they are not relied upon for the decisions made—the non-religious or secular arguments would still be conclusive.

On the other hand, others maintain that the only way to protect modern liberal democracy from the destabilizing forces of religious conflict is to secularize politics and privatize religion—“keeping religion out of politics and politics out of religion.”¹² As a result religiously based arguments, while permitted, are

⁶ Rawls, “The Idea of Public Reason Revisited,” at 783-84.

⁷ Jonathon Chaplin, “Beyond Liberal Restraint: Defending Religiously Based Arguments in Law and Public Policy,” (2000) 33 U.B.C. Law Rev. 616.

⁸ Kent Greenawalt, “Religious Convictions and Lawmaking” (1985) Michigan Law Review, Vol. 84 at 352; Religious Convictions and Political Choice (New York: Oxford University Press, 1988); “Religious Convictions and Political Choice: Some Further Thoughts” (1990) DePaul L. Rev. Vol. 39 at 1019; “The Role of Religion in a Liberal Democracy: Dilemmas and Possible Resolutions” (1993b) J Church State Vol. 35 at 503; Private Consciences and Public Reasons (New York: Oxford University Press, 1995); “1996 Siebenthaler Lecture: Religious Liberty and Democratic Politics” (1996a) N Ky L. Rev. Vol. 23 at 629; “Religious Expression in the Public Square – The Building Blocks for an Intermediate Position” (1996b) Loy. L.A. L. Rev. Vol. 29 at 1411.

⁹ R. Audi, N. Wolterstorff, Religion in the Public Square: The Place of Religious Convictions in Political Debate (Lanham: Rowman & Littlefield, 1997); Robert Audi, “The Separation of Church and State and the Obligations of Citizenship,” Philosophy and Public Affairs, Vol. 18 (1989), pp. 259-308; “Religion and the Ethics of Political Participation,” Ethics, Vol. 100 (1990), pp. 386-97; “The Place of Religious Argument in a Free and Democratic Society,” San Diego Law Review, Vol. 30 (1993), pp. 677-702.

¹⁰ Chaplin at 616.

¹¹ Greenawalt (1993b: 513) as quoted by Peach, at 98.

¹² Chaplin at 626.

not an acceptable basis for public policy. Religion is thus removed from the public sphere—it has no place—only “secular,” “common,” “reasonable,” arguments can be made.

It would be bad taste, according to Richard Rorty, “to bring religion into discussions of public policy.”¹³ “We shall not be able to keep a democratic political community going,” he argues, “unless the religious believers remain willing to trade privatization for a guarantee of religious liberty.”¹⁴

Obama’s administration has been willing to broach the very thorny issue of religion and public policy with an openness and candor reaching out as far as possible. The pragmatic concerns of office demanded nothing less. As President he is to date carrying out exactly what he advocated in June 2006.

III. INAUGURATION

The inauguration saw a wide religious participation. In Washington, D.C.’s inauguration festivities Obama invited V. Gene Robinson, the first openly gay Episcopal bishop, to pray. Robinson’s words were sharp:

Bless this nation with anger: anger at discrimination at home and abroad, against refugees and immigrants, women, people of color, gay, lesbian, bisexual, and transgender people.¹⁵

For the inaugural invocation Obama chose the popular Rev. Rick Warren, an Evangelical who campaigned against gay marriage. Obama aroused the ire of the religious right for his choice of Robinson and the ire of the left for the choice of Warren. Obama managed to bring both ends of the spectrum together during the inauguration.

Charles Haynes, a scholar at the First Amendment Center in Washington, saw this as positive. “Rick Warren and Gene Robinson are symbols and represent large constituencies—and were in that sense daring choices,” he said. “But I think the mood of the country is to say: This is what we want. People want to see the president trying to represent the country as a whole. If there ever was a moment when we have to have a cease-fire in the cultural wars, it’s now. Given the nature of the problem the country faces, we cannot afford to demonize each other, to tear each other down.”¹⁶

Certainly the cultural war was raging during the election as was evident in California. An amendment to the California constitution was proposed—known as “Proposition 8”—to define marriage as the union between one man and one

¹³ R. Rorty, *Philosophy and Social Hope* (London: Penguin, 2000) at 169 as quoted by Chaplin at 626.

¹⁴ *Philosophy and Social Hope*, at 170 as quoted by Chaplin at 627.

¹⁵ Gail Russell Chaddock, “The Role of Religion under Obama,” *The Christian Science Monitor* (January 22, 2009), see <http://www.csmonitor.com/2009/0122/p01s02-usgn.html>

¹⁶ *Ibid.*

woman. Various religious communities publicly supported the proposed amendment. However, the media and the gay rights community went on the offensive—a commercial that got significant airing involved two missionaries from the Church of Jesus Christ of Latter Day Saints—it portrayed the missionaries barging through the home of a lesbian couple searching for their marriage certificate. Once found, the missionaries tore up the certificate over the protest of the lesbian couple. The commercial closed with the missionaries saying, “That was too easy. What other rights can we take away next?” as they gave each other a “high five”.¹⁷

“President Obama, like most presidents, is a coalition-builder, but this president sees a broader end product,” says John Green, senior fellow at the Pew Forum on Religion and Public Life. “Obama seems to have a more inclusive view of religion than some people on the right and some people on the left. This is a very productive place to be but a very difficult place to be in a pluralistic society,” he continues. “It is often difficult to recognize the authentic spirituality of different faiths without bringing them into conflict with each other.”¹⁸

The Inaugural speech was peppered with scriptural references:

We remain a young nation, but in the words of Scripture, the time has come to set aside childish things. The time has come to reaffirm our enduring spirit; to choose our better history; to carry forward that precious gift, that noble idea, passed on from generation to generation: the God-given promise that all are equal, all are free, and all deserve a chance to pursue their full measure of happiness.

For we know that our patchwork heritage is a strength, not a weakness. We are a nation of Christians and Muslims, Jews and Hindus—and non-believers. We are shaped by every language and culture, drawn from every end of this Earth; and because we have tasted the bitter swill of civil war and segregation, and emerged from that dark chapter stronger and more united, we cannot help but believe that the old hatreds shall someday pass; that the lines of tribe shall soon dissolve; that as the world grows smaller, our common humanity shall reveal itself; and that America must play its role in ushering in a new era of peace.

This is the source of our confidence—the knowledge that God calls on us to shape an uncertain destiny.

Let it be said by our children’s children that when we were tested we refused to let this journey end, that we did not turn back nor did we falter; and with eyes fixed on the horizon and God’s grace upon us, we

¹⁷ “Home Invasion,” commercial can be viewed at: <http://www.youtube.com/watch?v=q28UwAyzUkE>

¹⁸ <http://www.csmonitor.com/2009/0122/p01s02-usgn.html>

carried forth that great gift of freedom and delivered it safely to future generations.

Thank you. God bless you and God bless the United States of America.¹⁹

IV. ABORTION

Within days of taking office President Obama signed an executive order allowing funding to foreign aid groups that perform or promote abortion. Such funding has been a political football with the changing of administrations. Clinton reversed the Reagan/Bush policy only to have G.W. Bush reinstitute the ban, and now Obama has followed Clinton's example, allowing the money to flow yet again.

Obama noted that the so-called Mexico City policy had "undermined efforts to promote safe and effective voluntary family planning in developing countries." At the same time he was quick to state that there needs to be some common ground with the pro-life groups. "For too long, international family planning assistance has been used as a political wedge issue, the subject of a back-and-forth debate that has served only to divide us. I have no desire to continue this stale and fruitless debate."²⁰

It is of interest to note that at the National Prayer Breakfast Obama stated, "But no matter what we choose to believe, let us remember that there is no religion whose central tenet is hate. There is no God who condones taking the life of an innocent human being. This much we know." Many citizens view his reopening of funds for abortion in the Third World as, in fact, "taking the life of an innocent human being."

Subsequently when asked at a press conference at the White House about his position on abortion, he reiterated that he is "pro choice" because he is of the view that women who are faced with abortion are in the best position to deal with the moral and ethical dilemma. "I would like to reduce the number of unwanted pregnancies," Obama noted, "that result in women feeling compelled to get an abortion or at least considering getting an abortion, particularly if we can reduce the number of teen pregnancies..." He has brought together those from both sides to discuss ways to limit the number of unwanted pregnancies, thereby eliminating the need for abortion.²¹ "I believe that women should have the right to choose," he said, "but I think that the most important thing we can do to tamp down some of the anger surrounding this issue is to focus on those areas that we can agree on. And that's where I'm going to focus."

¹⁹ <http://www.whitehouse.gov/blog/inaugural-address/>

²⁰ <http://www.washingtontimes.com/news/2009/jan/24/obama-reverses-abortion-aid-ban/>

²¹ **News Conference By The President**, April 29, 2009, see: http://www.whitehouse.gov/the_press_office/News-Conference-by-the-President-4/29/2009/

“Areas that we can agree on”—it is that focus that finds its way in not only the abortion file.

V. FAITH-BASED DISCRIMINATION

On February 5, President Obama signed an executive order creating the White House Office of Faith-based and Neighborhood Partnerships. At the annual National Prayer Breakfast he stated that “The goal of this office will not be to favor one religious group over another—or even religious groups over secular groups.” Rather it will work with any organization that wants to work on behalf of communities, “and to do so without blurring the line that our founders wisely drew between church and state.”

Of particular interest will be how this new office will deal with the thorny issue of religion-based hiring. During the election campaign Obama was unequivocal—faith-based organizations that received federal grants would not discriminate in their hiring practices should he become President:

Now, make no mistake, as someone who used to teach constitutional law, I believe deeply in the separation of church and state, but I don’t believe this partnership will endanger that idea—so long as we follow a few basic principles. First, if you get a federal grant, you can’t use that grant money to proselytize to the people you help and you can’t discriminate against them—or against the people you hire—on the basis of their religion. Second, federal dollars that go directly to churches, temples, and mosques can only be used on secular programs. And we’ll also ensure that taxpayer dollars only go to those programs that actually work.²²

The Bush administration did not require the faith-based community to maintain non-discriminatory hiring practices though using government funds. A church-run operation could hire only those employees who were members or who were willing to follow a moral conduct code (as determined by the entity). While all religious groups—Christian and non-Christian were entitled to funding, it appears that by far the majority of religious groups receiving funding were Christian. In fact, David Kuo claims in his book *Tempting Faith: An Inside Story of Political Seduction*, that many applications from non-Christian groups were discarded. Kuo reported being told by one grant reviewer, “When I saw one of those non-Christian groups on the set I was reviewing, I just stopped looking at them and gave them a zero. A lot of us did.”²³

²² <http://www.usnews.com/blogs/god-and-country/2009/02/05/president-barack-obamas-speech-at-national-prayer-breakfast.html>

²³ Americans United Press Release, October 12, 2006, as quoted by Derek Davis, The University of Mary Hardin-Baylor Center for Religious Liberty, Feb 7, 2009.

There is much debate about the rights and wrongs of either approach—Obama’s or Bush’s. On the one hand is the recognition that “He who pays the piper plays the tune.” If it is government money, the argument goes, the government, as representative of the people (religious and the non-religious), should have the final say on how and where those funds are used. If a private group—church or otherwise—wishes to partner with the government in fulfilling government objectives, then they do so on government terms. Indeed, the legal requirement of government non-involvement with religion is part and parcel of the First Amendment. Further, once a religious community gets involved in “secular” pursuits (schools, hospitals, nursing homes, food banks)—away from the religious core (running church services and the like)—then it must follow the broad public policy, not its narrow parochial interests.

The counter-argument is that church members are taxpayers. They have every right to expect that government assist them in fulfilling their religious mission if there is an overlapping consensus between the two. The fact that an inner city mission seeks not only to feed the poor physically but spiritually should not bar government involvement in helping with the costs of the food. Government is not violating the constitution, the argument goes, since it is not establishing a religion when all it is doing is assisting the “secular” side of the religious program. To force a religious community to hire those not in keeping with all aspects of its mission is to deny the faith group its identity and freedom to associate as it wishes. It fails to recognize that religious organizations do not see the secular/religious divide—all of life is viewed as a consistent whole. The Christian is not only a Christian when she attends church but when she works in the nursing home or teaches at school. The church mission to help is an extension of its religious mission, not an unrelated appendage.

The legal team at the White House is currently scouring their texts on constitutional jurisprudence to determine the exact line of demarcation of what faith-based communities can and cannot do when using federal money. In meetings with White House officials I have gotten the understanding that the Obama administration will not necessarily come up with a broad written policy with respect to discrimination on hiring. The position appears to be “wait and see”—they will consider such issues on a “case by case basis.” Thus it is conceivable that church groups who discriminate in their hiring policies would continue to do so.

It is my view that there will always be some overlap between government and religious communities—nothing new there. Caring for those who need help—whether the sick or the uneducated—crosses many lines. Throughout history government and religion have followed parallel tracks in this regard, and occasionally there is overlap.

Church communities that accept government money must always recognize that governments change. When new rules are implemented that require a

church to forego its principles to maintain the funding—the church is vulnerable. To accept funds under such circumstances would render it impotent—no longer a witness of Christ but a puppet of Caesar.

VI. THE PROVIDER REFUSAL RULE

It took the Bush administration eight years to implement “The Provider Refusal Rule.” It came into force on January 20, 2009—the very day Barack Obama began his presidency. The rule expanded for health-care professionals the thirty-year protection already in place from being forced to perform abortions against their conscience. The expansion gave protection to all workers in healthcare from performing services and giving information or advice to patients in areas such as contraception, family planning, blood transfusions and even vaccine counselling against their conscience.

CNN reported an Obama official saying, “We recognize and understand that some providers have objections to providing abortions. We want to ensure that current law protects them. But we do not want to impose new limitations on services that would allow providers to refuse to provide to women and their families services like family planning and contraception that would actually help prevent the need for an abortion in the first place.”²⁴

We have yet to see the new rules. It appears the Obama administration has no problem allowing individuals to excuse themselves from abortion procedures due to conscience—but that is where the line may be drawn. The problem, of course, is much messier than that. It always is. How can any person or group but the individual concerned know what ought to be a matter of conscience? Surely we are at the point where we can allow another person with a conscientious conviction to be accommodated even if we think such a stand is ludicrous.

VII. UNITED NATIONS

I spoke with officials in Nancy Pelosi’s office about the new administration’s position on international agencies such as the United Nations. Obama not only seeks to push the “reset” button on the US relationship with countries such as Iran and North Korea but also on its commitment to the international agencies. Obama is also slated to do what no other US President has ever done—chair the meeting of the UN Security Council in September. This decision has not gone without controversy; nevertheless it emphasizes the dramatic change in philosophical view of his administration toward the UN. For example, he reinstated the US ambassador to the UN as one having a seat in his Cabinet.

The Bush administration boycotted the Human Rights Council due to what it felt was the Council’s lack of effectiveness. However, that position was criticized as short sighted. Not being a player meant the US lost its ability to influence the

²⁴<http://www.cnn.com/2009/POLITICS/02/27/conscience.rollback/>

Council in constructive ways. The new administration announced that the US has full membership in the Council.²⁵ Up until then the US had only maintained observer status.

It was evident that the US was taking a more aggressive role on the issue of the Defamation of Religions resolution at the HRC.

I must admit my previous views were naïve on what other parts of the world thought on religious freedom. My Western bias was in tow—freedom of individuals to choose for themselves what faith they would belong to is a positive good. Would not everyone agree to such a concept? The struggles of centuries past have given us a freedom available to no other generation previous—surely the world agrees?

Not so. The world is far from agreement. It became exceedingly evident that the movers and shakers at the UN have no grandiose concept of freedom of the individual to express views on matters of religion. Instead the countries leading the rush—Pakistan and Egypt, as members of the Organisation of Islamic Countries (OIC) are not at all at ease with the concept of religious freedom for the individual. The HRC is again considering a Pakistan-led effort to pass the defamation of religion resolution.

Pakistan's delegate chaired the “informal meeting” (a meeting outside the HRC in a side room open to the public) and argued that his country's proposed resolution was necessary due to the backlash against Islamic followers since the 9/11 terrorist attacks. That is problematic when you consider that the first resolution was introduced in 1999 (some two years before the 2001 attack in the US). Nevertheless, he maintained that it was not his country's intention to cut back freedom of expression—which he said was “fundamental”—that they are in favor of cultural diversity and dialogue.

The Danish delegation challenged the chair, stating that each year that this resolution comes forward it is criticized for the same reasons—it mixes a range of elements such as race and religious hatred, it seeks to protect religion and symbols rather than individuals, it limits freedom of expression, and it is specific to the one religion—Islam.

To which the chair responded by noting that it is not protecting ideologies but protecting sacredly held beliefs that should not be insulted. There would be no apologies for calling for restrictions on speech—that is normal. There is no unfettered freedom of speech—the debate is over where the limit should be.

As I listened I could not but conclude that the debate was simply passing over each person. The one was not getting the point of the other. Their respective conceptual frameworks did not allow for harmony—instead there was dissonance. On the one side of the debate we have the OIC countries led aggressively by

²⁵ See <http://usun.state.gov/briefing/statements/2009/may/128514.htm>

Pakistan and Egypt and supported by Russia, China, and South Africa—each with their own spheres of influence. On the other is the European Union, the United States, Canada, and Switzerland amongst the other Western countries.

The UN Human Rights Council adopted the 2009 “defamations of religions” resolution by a vote of 23 yes, 11 no, 13 abstentions. However, there is a silver lining—again we see that there were more combined “no” votes and “abstention” votes than “yes” votes. It is further evidence that the world is waking up to the problem that this resolution is causing. The US, under the new administration, led the charge against the defamation of religions resolution. Though at that point still only an observer, the US was robust in its opposition, correctly noting that the resolution was an attack on freedom of expression. As the official in Pelosi’s office had told me earlier—the new administration has changed policy.

VIII. THE STIMULUS PACKAGE

Within the first month of his Presidency Obama was able to convince Congress to pass a stimulus package amounting to about one trillion dollars. It seems not that long ago that when under President Reagan the US total debt, passed the one trillion mark—it was huge news. The Republic took over 200 years to amass such a debt and it took only 30 days for Obama to add another trillion. His budget for 2010 proposes to spend the astronomical figure of \$3.6 trillion—raising the overall government spending to approximately 40 percent of Gross Domestic Product—33 percent more than in 2000.

Part of the overall plan of the new administration is to enlarge government regulation in the economy into healthcare and education. Remember his inaugural speech—the question is not whether there is too much government—rather, for Obama, the proper question is “Does government work?” Far different approach than that of Reagan, who stated, “In this present crisis, government is not the solution to our problem; government is the problem.”²⁶

The religious communities are concerned with just how far government will go in crowding out religious institutions in such areas as healthcare. Throughout Europe and Canada, for example, when government got into healthcare it eliminated the role of church institutions. So much so that government soon saw churches as a hindrance and nationalized the hospitals. Will the same happen in the US as government expands?

The stimulus spending is evidence of the new administration’s philosophy of the role of government. It is to be seen how large government will grow under Obama, but it is obvious that we have entered a new era of bigger and more interventionist government.

In a recent study of 33 countries by Anthony Gill and Erik Lundsgaarde,

²⁶ Ronald Reagan, Inaugural Address, January 20, 1981, found at: <http://www.presidency.ucsb.edu/ws/index.php?pid=43130>

“State Welfare Spending and Religiosity,”²⁷ the authors discovered that the more a government spent on welfare programs the less religious the population became.

They state, “...we argue and empirically demonstrate that state welfare spending has a detrimental, albeit unintended, effect on long-term religious participation and overall religiosity.” The United States has long prided itself as one of the countries with the highest church attendance and religious sentiment. Should Gill and Lundsgaarde’s findings also hold true for the US, bigger government may not be the best prescription for maintaining spiritual health.

IX. AVOIDING DUALITIES TO SEEK THE COMMON GROUND

President Obama has expressed a consistent theme in his addresses to the American people and to the world—it is time to avoid dualities. The pro-life and pro-choice positions have become stale. The East versus the West—unproductive. The fight over religious positions of the Christian versus the Islamic—destructive. He has sought to find a “common ground”—to avoid the name calling, the slurs and innuendos. Instead his rhetoric calls upon the opposing sides of the issues to reach across the divide and find the commonality. Nowhere was this most pronounced than in his speeches to the graduates at the University of Notre Dame and to the Muslim world at Cairo.

SPEECH AT UNIVERSITY OF NOTRE DAME, MAY 17, 2009

As the President began his speech, he suffered what has become a common occurrence in this presidency, harassment from a heckler. Undeterred, Obama gave one of his most intriguing speeches, reminding the audience of the need to “... find a way to reconcile our ever-shrinking world with its ever-growing diversity—diversity of thought, diversity of culture, and diversity of belief. In short, we must find a way to live together as one human family.”

After listing a number of challenges facing the world that the new graduates were about to enter, the President noted that “... no one person, or religion, or nation can meet these challenges alone. Our very survival has never required greater cooperation and greater understanding among all people from all places than at this moment in history.” He continued,

Unfortunately, finding that common ground—recognizing that our fates are tied up, as Dr. King said, in a “single garment of destiny”—is not easy. And part of the problem, of course, lies in the imperfections of man—our selfishness, our pride, our stubbornness, our acquisitiveness, our insecurities, our egos; all the cruelties large and small

²⁷ Anthony Gill and Erik Lundsgaarde, “State Welfare Spending and Religiosity, Rationality and Society,” 16(4) , p. 399-436. See: <http://faculty.washington.edu/tgill/Gill%20Lundsgaarde%20Welfare%20Religion.pdf>

that those of us in the Christian tradition understand to be rooted in original sin. We too often seek advantage over others. We cling to outworn prejudice and fear those who are unfamiliar... And so, for all our technology and scientific advances, we see here in this country and around the globe violence and want and strife that would seem sadly familiar to those in ancient times.

The problems facing the world have different people offering different solutions. For instance,

The gay activist and the evangelical pastor may both deplore the ravages of HIV/AIDS, but find themselves unable to bridge the cultural divide that might unite their efforts. Those who speak out against stem cell research may be rooted in an admirable conviction about the sacredness of life, but so are the parents of a child with juvenile diabetes who are convinced that their son's or daughter's hardships can be relieved.

The question, then, is how do we work through these conflicts? Is it possible for us to join hands in common effort? As citizens of a vibrant and varied democracy, how do we engage in vigorous debate? How does each of us remain firm in our principles, and fight for what we consider right, without, as Father John said, demonizing those with just as strongly held convictions on the other side?

Indeed this appears to be the common theme of this President—let each person be true to his or her faith—and face the challenges—bringing the faith perspective to the table and seeking the common ground. As he noted,

In this world of competing claims about what is right and what is true, have confidence in the values with which you've been raised and educated. Be unafraid to speak your mind when those values are at stake. Hold firm to your faith and allow it to guide you on your journey. In other words, stand as a lighthouse.

But then there is the caveat that one has to be open to the possibility that one can be at a crossroads of faith. Faith that "admits doubt."

It's the belief in things not seen. It's beyond our capacity as human beings to know with certainty what God has planned for us or what He asks of us. And those of us who believe must trust that His wisdom is greater than our own.

...this doubt should not push us away our faith... it should humble us. It should temper our passions, cause us to be wary of too much self-righteousness. It should compel us to remain open and curious and

eager to continue the spiritual and moral debate... this doubt should remind us even as we cling to our faith to persuade through reason, through an appeal whenever we can to universal rather than parochial principles, and most of all through an abiding example of good works and charity and kindness and service that moves hearts and minds.

Thus he calls for an appeal to the “universal rather than parochial principles.” The greatest of those universal principles common in most faiths is “... the Golden Rule—the call to treat one another as we wish to be treated. The call to love. The call to serve. To do what we can to make a difference in the lives of those with whom we share the same brief moment on this Earth.”²⁸

THE NEW BEGINNING: SPEECH AT CAIRO JUNE 4, 2009

In Cairo President Obama sought to bring about reconciliation between Islam and the Christian West. He noted,

But I am convinced that in order to move forward, we must say openly to each other the things we hold in our hearts and that too often are said only behind closed doors. There must be a sustained effort to listen to each other; to learn from each other; to respect one another; and to seek common ground. As the Holy Koran tells us, “Be conscious of God and speak always the truth.” [Applause.] That is what I will try to do today—to speak the truth as best I can, humbled by the task before us, and firm in my belief that the interests we share as human beings are far more powerful than the forces that drive us apart.

He raised the issue of religious freedom to the Egyptian audience—noting that there are a lot of “common aspirations” in the diverse religious communities: “to live in peace and security; to get an education and to work with dignity; to love our families, our communities, and our God. These things we share. This is the hope of all humanity.” While in the past religions had subjugated others in the pursuit of their own interests,

Yet in this new age, such attitudes are self-defeating. Given our interdependence, any world order that elevates one nation or group of people over another will inevitably fail. So whatever we think of the past, we must not be prisoners to it. Our problems must be dealt with through partnership; our progress must be shared.

He reminded his listeners that the sources of tensions should not be ignored but they must be confronted together.

²⁸ http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Notre-Dame-Commencement/

On the matter of religious freedom:

People in every country should be free to choose and live their faith based upon the persuasion of the mind and the heart and the soul... The richness of religious diversity must be upheld—whether it is for Maronites in Lebanon or the Copts in Egypt... Freedom of religion is central to the ability of peoples to live together. We must always examine the ways in which we protect it.

He called upon the Western countries to allow Muslim citizens to practice their religion including the freedom to wear their clothes as they see fit.

We can't disguise hostility towards any religion behind the pretense of liberalism... In fact, faith should bring us together.

[We only] ... share this world for but a brief moment in time. The question is whether we spend that time focused on what pushes us apart, or whether we commit ourselves to an effort—a sustained effort—to find common ground, to focus on the future we seek for our children, and to respect the dignity of all human beings.

There's one rule that lies at the heart of every religion, that we do unto others as we would have them do unto us. This truth transcends nations and peoples—a belief that isn't new; that isn't black or white or brown; that isn't Christian or Muslim or Jew. It's a belief that pulsed in the cradle of civilization, and that still beats in the hearts of billions around the world. It's a faith in other people, and it's what brought me here today.²⁹

X. CONCLUSION

The Obama administration has taken a giant-size bite in public policy issues and will have a major impact on religious freedom for years to come. No part of American life will be the same. There is some cause for cautious optimism and some cause for concern. The optimistic side says we should be pleased that we have a new attempt to find some common ground on the sticky issues of public policy such as abortion; however it is a high stakes game. With the polarization of society there is little margin for error—failure to bring compromise may well make things worse in the long run. The overall secular approach toward religion and religious institutions may present further pressure points—in such areas as the running of church institutions like hospitals and schools.

It is yet to be seen whether the administration supports dialogue amongst the various factions in an attempt to forge a new consensus that everyone must then

²⁹ http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09/

accept, or whether this is an attempt to allow each religious group and individual the latitude to be parochial in their beliefs and practices—not in keeping with any new orthodoxy but with a great realization that it is in everyone’s interest that we accept the “other” even if we do not agree with it.

Will American society continue with a cacophony of dissonant notes from the increasingly diverse cultures living in America? Or will it demand—or will the Obama administration demand—greater harmony on the issues even though such “harmony” may violate the specific religious beliefs of the group or the individual?

Perhaps the greatest example of forced harmony is France. France’s government has decided that all religious clothing in public schools is unacceptable—the consensus of society is that religious garb has no public space—this despite the clear violation of the religious practices of the Islamic French citizenry.

Would it be any different if the Obama administration or the American public in general came to a similar conclusion on such controversial issues as, for example, abortion or gay marriage? If, for argument sake, ninety percent of society at large decided that gay marriage is a must and that no religious group could practice discrimination in that regard—are we then saying that for the sake of consensus or common ground, the ten percent must fall into line with the ninety percent? That is what remains to be seen.





JOHN CALVIN: A PIONEER OF RELIGIOUS FREEDOM?¹

THOMAS DOMANYI

Thomas Domanyi is professor of Ethics and Social Theology at the Theological College in Friedensau near Burg, Saxony-Anhalt, Germany.

This year the reformed world celebrates the 500th birthday of its co-founder and spiritual leader, John Calvin. Almost 80 million believers commemorate the life and work of a person whose enormous charisma changed both the Church and the political order in Europe. To quote Karl Barth: “John Calvin made Protestantism sustainable.” The Calvin researcher Waldemar Besson is no less affirmative: “Without Calvinism and liberalism the commencement of the liberal state would be unthinkable.”

However, by using the name John Calvin in conjunction with the terms “tolerance” and “religious freedom,” any historian of note is automatically reminded of the case of Michael Servetus. This incident, like no other, casts a dark shadow on the work of the Geneva reformer.² If one concurs with the verdict of the cultural historian from Basel, Jacob Burckhardt, a passing reference to the execution of a non-conformist at the instigation of Calvin does not suffice. “*The tyranny of a single person who not only makes his personal subjectivity general law and subjugates or expels all other beliefs, . . . but subjects everyone to daily insults regarding the most innocent matters of taste, has never been taken to such extremes as was done by Calvin.*”³

In other words, the enforced profession of faith and the strict moral code which Calvin—as the head of the Church and with government backing—rigorously pursued and imposed not only on the parish but on the entire civil society, made for a situation of systemic conflict. At the slightest deviation from the moral code, citizens were at variance with both the Church and the civil authorities. Because Calvin’s perception of individual freedom of faith and conscience affected different areas of his thoughts and actions—theological, political-legal and social—illumination from all angles is necessary for appropriate evaluation. However, the attributes subsequently accorded to Calvin through the adoption of his theology or certain statements in his theology serve to complete the picture. In this article, our attention is drawn to the procedures and arguments in connection with the case of Servetus, as well as the results of the intensified and accelerated

¹ We are grateful for the assistance of Karel Nowak, editor of *Conscience et Liberté*, in making this article available.

² Cf. Willem F. Dankbaar, Calvin, Hamburg (2nd Edition) 1966, 105, 119.

³ See W. Kaegi, Jacob Burckhardt, Vol. 5, 1973, 90.

debate on tolerance brought about by Calvin.⁴

THE EXECUTION OF MICHAEL SERVETUS

On October 27, 1553, the Spanish doctor, lawyer and theologian Michael Servetus was burnt alive as a heretic at the Plateau of Champel, the place of execution at the gates of Geneva, the accusation being that he was an Anabaptist and anti-Trinitarian. The execution bore all the hallmarks of the inquisition.⁵

Servetus was a proponent of the anti-Trinitarian movement that took place concurrently with the Reformation. He invited the wrath of both the Catholic and Evangelical churches by publishing the book *De Trinitas erroribus* (*Errors regarding the Trinity*) in 1531. In the book, he confined the Trinity to God's three spheres of action, as did the monarchists of the old churches.⁶

Beginning in 1546, Servetus and Calvin had a tension-filled correspondence. In 1553, Servetus again published another "heretical" work. The title alone *Restitutio Christianismi* (*The Restitution of Christendom*) stirred the wrath of Calvin. Servetus believed that Christianity had been distorted by both the Roman Catholic Church and the Reformation. This opinion led to his arrest in Vienna. However, he was released shortly thereafter. In the meantime, Calvin provided new evidence against him, which led to a second arrest. This time, he was to face the Inquisition. Servetus attempted to escape the threat by leaving Vienna for Italy; but strangely, he took the road through Geneva. He was recognized, and Calvin immediately had him arrested.

In the first instance, Calvin was the complainant. However, he then passed the complaint to the municipal authorities and acted in the capacity of theological adviser. In addition, he requested the Inquisition of Vienna to provide further damaging evidence.

Calvin's uncompromising attitude towards Servetus was bolstered by his (Calvin's) bitter wrangling with the anti-Calvinistic Party of old Genevans, who supported Servetus. Calvin believed that the quickest way to overcome the conflict with his opponents was to get rid of Servetus. Whilst Servetus languished in pitiful conditions in the dungeon, he was repeatedly urged to recant his heretical statements. On the morning of October 27, 1553, Calvin and Farel visited him to bring him the death sentence. They pressured him to recant from his errors for

⁴ According to H. R. Guggisberg and other published research work, religious tolerance towards non-conforming individuals was already under discussion by the representatives of the first generation reformers; compare. Hans R. Guggisberg, *Sebastian Castellio 1515-1563 – Humanist and Defender of Religious Tolerance in the Confessional Era*, Göttingen 1997.

⁵ H. R. Guggisberg, loc.cit., 79.

⁶ There are not three persons in the Godhead, but three forces or spheres of God's actions: the Father, the Son and the Holy Ghost. Servetus was not a strict Unitarian (who categorically denied the threefold nature of God). His ideas were more in line with Sabellius, who had already been condemned as a heretic by the old Church. Dankbaar, loc. cit, 106

the sake of his eternal soul. Servetus was willing to accept Christ as the Saviour and the Son of God, but not as God himself. This attitude caused the lower Council to pass the death sentence on October 26, 1553, thus condemning Servetus to be burnt at the stake.

THE QUESTION OF CALVIN'S CULPABILITY

Was Calvin fully aware of his actions towards Servetus? Was his fight to eradicate the heretic an over-hasty reaction, a form of accidental collateral damage during Calvin's reformatory work, or are we to believe that because the non-conformist Servetus did not fit into Calvin's ideas his demise was deliberate? While many of Calvin's supporters deny that he was complicit in the arrest of Servetus, source materials such as Calvin's own letters prove otherwise.

Calvin's intention to get rid of Servetus was already evident in 1546, when he realized whom he was up against. At that time, Calvin wrote to Farel: "Recently Servetus wrote to me and enclosed a thick book containing his absurdities, with the arrogant boast that I should see something astonishing and unheard of. He offers to come here, if it be agreeable to me. But I am not prepared to take responsibility for him. If he should come here, then, as far as I am able, I will never permit him to depart alive."⁷ Dankbaar states that "in any case Calvin ... did not view Servetus as a fellow believer but as a dangerous heretic who did not deserve to stay alive."⁸

Servetus was apprehended by the Geneva authorities on August 13, 1553. One week later Calvin wrote to Farel: "I hope that the verdict calls for the death penalty, but it is my wish that the cruelty of the execution should be ameliorated."⁹

The controversy surrounding the execution of heretics began shortly after the arrest of Servetus in Geneva and accompanied the entire course of events (contrary to the version of Theodor Beza, who was a colleague of Calvin). Even before the reports Calvin requested from Zurich, Bern, Schaffhausen and Basel arrived in Geneva—prior to the manifestation of the general support of the reformed Swiss churches in favor of Calvin and against Servetus—voices arose in the Confederations criticizing the methods of Geneva church leaders. The sharpest criticism came from Basel.

Calvin himself admitted in his September 9th letter to Simon Sulzer, the Antistes of the church in Basel, that he had Servetus arrested and that he, Calvin, even informed Servetus of the accusation of heresy against him, what steps had already been taken against him and what steps he still intended to undertake.¹⁰

⁷ Corpus Reformatorum (CR) XII, ep. 767 (13 February 1576); from: Dankbaar, loc. cit., 107.

⁸ Dankbaar, loc. cit., 107, 108.

⁹ Dankbaar, loc. cit., 113.

¹⁰ CR XIV, 614f; cf. Guggisberg, loc. cit., 80f.

The particulars of this letter caused indignation and revulsion not only among the political and religious leadership but also amongst religious refugees, humanists and publishers. Many refugees must have felt particularly affected, as they too were critical of the Trinity teaching, although they were not totally opposed to it. Their sympathies were with both religious individuality and minorities. Some leant towards the teaching of baptism. They had come to Basel to escape religious persecution and to find religious freedom. Their agitation was understandable. Nobody could guarantee that the events occurring in Geneva would not occur in other Swiss towns.¹¹

On September 28, Sulzer informed Heinrich Bullinger, his colleague in Zurich, that many people in Basel were extremely critical of the conduct of Calvin and the Geneva authorities in the Servetus affair. The first to raise his voice in opposition was David Joris. At the beginning of October, he wrote a letter to the evangelical branches of the Confederation in which he expressed the misgivings that had arisen regarding the persecution of Servetus. He did not defend the teaching of the Spaniard, but he spoke out against executing anyone expressing heretical opinions, as this would in effect set in motion further persecution and condemnation. If Servetus were really a heretic, or stubborn person, one should not do him any harm but warn him in a friendly manner; and as a last resort, he should be banned if his teachings were causing turmoil. The imposition and execution of the death sentence would precipitate religious persecution and cause the forcible suppression of minority groups. It is not known if this letter was ever translated and disseminated.¹²

This letter does, however, bear evidence of the dawn of a movement towards tolerance in Basel prior to the execution of Servetus. This tolerance movement spread rapidly along with a parallel rise in criticism of Calvin. In Zurich, Graubünden and Neuchâtel, people were perturbed about the problems of tolerance in Basel.

Pierre Toussain, a reformer in the earldom of Montbéliard, wrote to Farel that he had received terrible news about the occurrences in Geneva and that he believed that nobody should be executed because of their religion, as long as it was not associated with public disorder or other very serious circumstances. This statement reached Pierre Viret in Lausanne, and Calvin.

By the beginning of October, Calvin must have realized that even some of his friends were having misgivings.¹³ However, even these misgivings did not prevent him from pressing to secure the execution of Servetus.

When the tidings of Servetus' burning reached Basel in November, once again general consternation arose. In particular, Calvin's critics claimed that

¹¹ Cf. Guggisberg, loc. cit., 81.

¹² Cf. Guggisberg, loc. cit., 82.

¹³ Cf. Guggisberg, *ibid.*

worldly authorities in a Christian State were not entitled to impose a penalty such as Servetus suffered.¹⁴

Towards the end of 1553, the “*Historia de morte Servetusi*” emerged. This document summarized the occurrences around the Spanish heretic and made clear exactly how much the people in Basel had learned within a short time.¹⁵ Apart from the main text of the short document, the final section, in which is set forth why the “many pious” perceived the persecution and execution of Servetus as “*scandalum scandalorum*,” is revealing. The consternation was expressed as follows:

A person has been killed because of his religion, which according to the parable of the tares amongst the wheat was contrary to the will of God. When Calvin pointed out that he, Calvin, was supported by other reformed Swiss churches, “the pious” remonstrated that these were party to the deed as Servetus had also accused them. Besides this, he, Calvin, had openly opposed Zwingli and Oecolampadius in the matter of the communion service. Calvin had not merely allowed the death of Servetus but had consciously and willfully promoted it in that he had the accusation made by a follower “from his kitchen” who knew absolutely nothing about Servetus or the questions concerning him. The gruesomeness of the execution raised the suspicion that “the Genevans wanted to regain the favor of the Pope.” The killing of Servetus appeared to be a plot between the Evangelicals and the Papists. This is confirmed by the fact that Servetus was burned together with his books. Rightly, one is reminded that had Calvin’s teaching regarding predestination and unconditional election been true, he need not have feared that Servetus could cause an elected person to depart from the true faith.¹⁶

Particularly striking amongst these allegations are those that imply that both the Church and government authorities in Geneva used the methods of the Inquisition against the heretic Servetus. It is fairly obvious that in protestant-humanistic circles there was a high level of sensitivity to the concept that physical force had no place in the areas of religious belief and conscience. Was the Geneva reformer not also a protestant and a humanist?

CALVIN’S DEFENSE FOR THE KILLING OF HERETICS

Calvin very quickly discovered the extent of the outrage in Basel over Servetus’ fiery death. The news must have influenced him because he decided to counter his critics on the Rhine. Thus, the “*Defensio orthodoxae fidei de sacra trinitate contra prodigiosos errores Michaelis Servetusi Hispani*” came about. It appeared in print in February 1554 proclaiming his considered theoretical views,

¹⁴ Cf. Guggisberg, loc. cit., 83.

¹⁵ Cf. Guggisberg, *ibid.*

¹⁶ Cf. Plath, Calvin and Basel, 92f; also Guggisberg, loc. cit., 84.

which were above any self-critical doubts regarding the elimination of heretics.¹⁷

Calvin argued without compromise. Not only was he concerned with defending his own actions, but he also wanted to refute the false doctrines of the heretics, which were still shared by certain other people. Not only had Servetus, driven by Satan, preached iniquitous false doctrines, but Servetus had also found followers who were still perpetrating these “absurd fantasies” after his death.¹⁸

Calvin posed the question of whether Christian authorities were permitted to punish heretics. Amongst other things, his answer argued that it is a mistake to assume that the Church becomes tyrannical when not every individual is permitted to go public with personal opinions. However, it is preferable to drive these beliefs out of the hearts of people rather than to punish those who cause them to doubt.¹⁹

Although it was true that the papists persecuted the “true believers,” this did not mean that other “Christian authorities” had no right to put to the sword those apostates who called for defection from the true faith, thereby destroying the peace of the Church and tearing apart the very fabric of pious unanimity—“*pietatis consensus*.”²⁰ Admittedly, the kingdom of Christ does not survive by strength of arms but by the preaching of the gospel. However, the church itself is to be protected, even if no one can be coerced into believing.²¹

This is where Calvin sees the core responsibility of the Christian State. “Therefore, the pious authorities watch over the piety of the teachings, not so much in order to force the less willing into believing, but rather that Christ be not driven from His own territory.” The State dare not allow Christ to be mocked. The godless should not be given the freedom to cause mischief so that the weak, which the State is required by God to protect, are not plunged into destruction.²²

Calvin then turned to the biblical passages quoted by the opponents of the elimination of heretics, in particular the passage regarding the tares amongst the wheat and Gamaliel’s verdict in respect to the apostle. He rejected the arguments in favor of tolerance derived from these sources. He countered with his own opinion that although God acts in defense of His own deeds, He needs people as His servants.²³ It is absurd to believe that one can rely on God alone to look after His vineyard. The goal of the Christian community is to maintain the rule of law amongst the people. This is always endangered when the “*ordo pietatis*” is neglected.²⁴

¹⁷ Cf. Guggisberg, loc. cit., 85.

¹⁸ Cf. CR VIII, 461 also Guggisberg, *ibid*.

¹⁹ CR VIII, 464; cf. Guggisberg, loc. cit., 86.

²⁰ CR VIII, 467f.

²¹ *Ibid*; cf. Guggisberg, loc. cit., 86.

²² CR VIII, 477; cf. Guggisberg, loc. cit., 86f.

²³ CR VIII, 472f; cf. Guggisberg, loc. cit., 87.

²⁴ CR VIII, 472f; cf. Guggisberg, loc. cit., 87.

The worldly authorities need not punish every single aberration with death. Such a solution should only be applied in extreme cases. There are proponents of erroneous teachings who can be treated with forbearance and, if necessary, temperate punishment should be meted out. However, when religion is shaken to its foundations, when God is blasphemed in an abhorrent manner, when souls are plunged into destruction by godless and pernicious teachings and when open apostasy from God and His teachings threatens—then it is necessary that the ultimate cure must be applied in order to prevent the deadly poison from spreading.²⁵

Finally, Calvin repudiated the accusation that he had supported the Catholic authorities in France and Italy. Admittedly, he had lodged the accusation against Servetus in Geneva, but he had done this to bring the Spaniard to his senses. “Had his errors been curable, then the danger of the ultimate penalty would not have threatened.”²⁶

In closing, Calvin repeated his main thesis that particular strictness must be applied to the originators of false teachings when they remain stubborn and the godlessness of their false doctrines can be borne no longer. Both applied in the case of Servetus.²⁷

Calvin’s writings spread swiftly. Within a month of publication, they had reached Zurich, Tübingen and Basel. The opinions of his contemporaries were divided. Even Calvin’s most faithful adherents were restrained in their comments and were of the opinion that he should not have taken to the pen in the matter of the punishment of heretics.²⁸

THE EXISTENTIAL CORE OF THE CALVIN – SERVETUS PROBLEM

Calvin’s rebuttal was not able to stem the tide of journalistic reaction by his critics in Basel. By March 1554, the humanist Sebastian Castellio, a former co-worker of Calvin, had already published the book *Da haereticis an sint persequendi* (*whether heretics should be persecuted*), which would enter the annals of history as the touchstone for tolerance and religious freedom.

An equally uncomfortable question, which remains unanswered, arises when researching Calvin’s work.²⁹ Why did Calvin pursue the physical annihilation of a defenseless non-conformist in such an unforgiving and uncompromising manner? Why did he disregard the misgivings of his friends as well as the enlightening arguments of his opponents against the execution of Servetus? Reference to his Biblicism or his attachment to the theocracy of the Old Testament does not

²⁵ CR VIII, 477; cf. Guggisberg, loc. cit., 87.

²⁶ CR VIII, 480; cf. Guggisberg, loc. cit., 88.

²⁷ CR VIII, 480f; cf. Guggisberg, loc. cit., 88.

²⁸ The sharpest criticism came from Nikolaus Zurkinden, the Council scrivener, who pointed out that one could not pay the Papists a greater compliment than to follow their example. – CR XV, 21 (10th February 1554); cf. Guggisberg, loc. cit., 88.

²⁹ cf. Guggisberg, loc. cit., 89.

answer this question. Calvin was a good enough theologian to know that biblical truth is absolute and cannot be changed to support the various whims of mankind. One has the impression that Calvin's biblical references served the purpose of confirming his actions, as opposed to dictating them.

Weighing Calvin's arguments as stated above, one inevitably comes up against the ideology of "order pietatis—consensus pietatis", meaning that this was not a theological concept at stake, but the realization of Calvin's own personal work in the renewal of the church in the Republic of Geneva. In other words, had Servetus' "false teachings" touched only theological matters, one could have left it at that and been satisfied with the excommunication of the non-conformist. However, by then Calvin's truth had already enjoyed multifarious consolidation into a well-organized church institution and had mutated from a set of dogmatic teachings into a collective identity, a very real corporate body with a high level of public capital—in short, a property that had to be looked after and administered. Therefore, in this case—Calvin implied—as a statutory public body was at stake, Servetus with his heretical views was a subversive element for the sake of both order and salvation that could not be tolerated.

In addition, Calvin, as an intellectual genius, was already in a completely different biographical context to Servetus. Unlike the Spaniard, Calvin was neither the petitioner nor the representative of an opinion but had a position to maintain. In contrast to himself 20 years earlier, Calvin was an official with responsibilities. He had more to lose than his opponent.

What gives substance to this biographical difference between Calvin and Servetus is the fact that the young Calvin, as a non-conformist in his own homeland and a member of a persecuted minority, had been just as vehement in Basel against the killing of heretics as were the defenders of Servetus. Not by chance does Castellio, in his work referred to above, use a quote that positions Calvin as an opponent of killing heretics. The quotation used came from the first edition of *Institutio Christianae Religionis*, printed in Basel in 1536, where a young Calvin demanded that clemency be shown to those excommunicated, as well as to Turks and Saracens.³⁰

However, Calvin must have abandoned this position fairly quickly because this sentence did not appear in any of the later editions of the *Institutio*.³¹ Bearing in mind that Calvin commenced revisions for the second edition soon after his arrival in Strasbourg in 1538, one can assume that his original opinion regarding the attitude towards heretics had undergone a restrictive modification following his calling to Geneva and his experiences there with the non-conforming Anabaptists. In all probability, his youthful tolerant attitude had fallen victim to this

³⁰ Sebastian Castellio, *De haereticis an sint persequendi*, 107; CR XIV, 293f; cf. Guggisberg, loc. cit., 90f.

³¹ Cf. Guggisberg, loc. cit., 90f, Anm. 38.

paradigm shift.

After all, this is a basic existential situation in which a person finds himself, either as an individual or as part of a group, during the natural progression through various roles within the community in the process of his development. “Bearing office causes change”—be it one of responsibility or one of power. The danger is not in the office per se, but develops from the increasingly one-sided perspective that occurs as one disregards one’s own earlier biographical contextualization. Had Calvin not lost sight of his own development as a reformer, he would have been spared the dark day of the burning of Servetus. The divided opinion regarding his action remains to this day. As H.R. Guggisberg defines it: “For the first time, the principle differences between Calvin, the reformer who fought for the renewal of the Church as a bastion of new spiritual unity, and Castellio, the humanistic critic who fought against the suppression of individual spiritual and religious freedom.”³²

CALVIN AND RELIGIOUS FREEDOM FROM THE PERSPECTIVE OF HISTORICAL IMPACT

This résumé is very significant because Calvin was well aware of the integral dangers of unifying Church and State. As did Luther, Calvin cherished particular sympathy for the Anabaptists’ understanding of a free church. For many years, he battled for *Libertas Ecclesiae* in the face of State aggression on the part of the Genevan authorities. Although Calvin could be tolerant towards other churches away from his own area of activity, in his own particular sphere of influence, the entitlement to individual religious and cultural freedom was denied, both in theory and in practice. As far as he was concerned, *Ordo Pietatis* was the State rationale.

It must also be remembered that the renewal of the church realized by Calvin had already exceeded the boundaries of his immediate area of activity, both in space and time. If one wants to see the whole picture of “Calvin—Pioneer of Religious Freedom,” the focus of the investigation needs to be upon the results that Calvin’s work produced and, by way of various detours, upon the reception it eventually enjoyed. This has to do with the fact that at times the reformer’s disciples interpreted and implemented his teachings in ways other than those their teacher would have used. This is borne out by Calvin’s understanding regarding the unalterable workings of the Holy Spirit, which, for him, served to explain his teaching on predestination, but which to his followers stood as a bastion against coercion in matters of religion and conscience.

Calvin reasoned that unlimited sovereignty belonged to the nature of God. This is a distinguishing feature of Divine Salvation. It therefore follows that the election of a person to salvation is decided solely by God. Through His working in Word and Spirit, God binds that person exclusively to Himself and thereby

³² Guggisberg, loc. cit., 86.

frees that person from all other ties and authorities. “Because the believing conscience has been granted the privilege of freedom, it has, through the grace of Christ, attained freedom in those areas in which, according to God’s will, it must be free and cannot be caught up in the snares of any other obligations.”³³

When this statement is followed to its logical conclusion, the demand for freedom of religion and conscience is unavoidable. Admittedly, as Calvin was still under the spell of the dawning of the new era of absolutism, he was not willing to translate this radical consequence of his theology into action in either the community or the State. This historical breakthrough was achieved by Roger Williams, one of Calvin’s followers, who was the first person in recent history to gain legal recognition for freedom of religion and conscience in the 1663 Constitution of Rhode Island.³⁴

Williams based his historical deed on the understanding that in matters of election and the new birth, the workings of the Holy Spirit require complete religious freedom. When one considers how concerned the founding fathers were one hundred years later to anchor freedom of religion and conscience in the American Constitution, then the observation of Waldemar Besson must be concurred with, in that “without Calvinism and liberalism the beginnings of the liberal state would have been unthinkable.”³⁵

CONCLUSION

John Calvin was not an immediate pioneer of individual religious freedom. Thanks to his successful fight for the renewal of the Church, he rose to become a responsible office-holder in a religious-political federation. He was not willing to sacrifice the retention and integrity of this federation for individual freedom of religion and conscience. In this he maintained an attitude that was widely accepted within the context of the reformation, and this attitude obscured his vision in respect to the rights of non-conformists. Despite this, his work had a positive influence on the development of religious freedom in that his followers later drew from his theology support for the ideals of freedom of religion and conscience. Thus in somewhat the same way that parents, by establishing a family, become grandparents through their children, Calvin became a contributor to positive development in the area of religious liberty.



³³ Calvin, *Institutio*, III, 19., 14; see also *Institutio* I, 7., 4; III, 2., 33

³⁴ See Joachim Staedtke, *Calvins Genf und die Entstehung politischer Freiheit*, in: *Staat und Kirche im Wandel der Jahrhunderte. Geschichte und Gegenwart*, Walther Peter Fuchs Hr., Stuttgart 1966, 101

³⁵ Waldemar Besson, *Die christlichen Kirchen und die moderne Demokratie*, in: Walther Peter Fuchs, loc. cit., 204.

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PART THREE:
BOOK REVIEW



THE INS AND OUTS OF RELIGIOUS FREEDOM ADVOCACY¹

JUDD BIRDSALL

Judd Birdsall serves in the U.S. Department of State Office of International Religious Freedom and is coordinator of the interagency Working Group on Religion & Global Affairs.

A Review of H. Knox Thames, Chris Seiple, Amy Rowe, *International Religious Freedom Advocacy: A Guide to Organizations, Law, and NGOs* (Waco, TX: Baylor University Press, 2009) 262 pp.

The world is witness to a glaring disparity between international standards and national policies on religious freedom. Instead of accommodating their religious diversity, far too many governments manipulate their religious majorities and marginalize their minorities, thus fueling societal tension and discrimination. Fortunately for religious groups, international law is on their side. From the 1948 Universal Declaration of Human Rights onward, a host of international and multilateral documents have enshrined the rights necessary for the full enjoyment of robust religious freedom. The challenge for advocates is to access the available recourse by navigating the dauntingly complex web of covenants, councils, high commissioners, special rapporteurs, and ambassadors at large.

With would-be advocates in mind, leading religious freedom legal expert Knox Thames has provided a “user-friendly, straightforward tool” for effective multilateral lobbying on behalf of those whose rights are violated. Without rhetorical flourish or extensive commentary, *International Religious Freedom Advocacy: A Guide to Organizations, Law, and NGOs* lucidly shows readers “the path from their homes to the international stage” (2).

This is a path Thames knows well. Equipped with a J.D. and an M.A. in International Affairs, Thames has served at the U.S. Helsinki Commission, the State Department’s Office of International Religious Freedom, and is at time of writing the acting executive director of the U.S. Commission on International Religious Freedom, an independent watchdog group. He has spent years leveraging the influence of the U.S. Government and multilateral bodies to advance respect for religious freedom around the world. In this book he shares his wealth of first-hand knowledge of these institutions with others who would join him in the cause.

An opening chapter provides with a crash course in “Advocacy 101.” Thames examines the various avenues for advocacy, the corpus of international law on re-

¹The views expressed in this article are those of the writer and not necessarily those of the State Department or the U.S. Government.

religious freedom, and the common forms of governmental restrictions on religious activity. In an effort to control some or all religious communities, governments may enact “specially designed religion laws creating convoluted requirements to place communities in a perpetual catch-22” between following lousy laws and operating illegally (12). Others may invoke national security or social harmony as justification for banning certain religious practices or religious speech such as proselytism or critiques of other faiths. When faced with restrictions on their religious freedom, groups and their allies can petition the United Nations, a regional body, or the countries which have diplomatic relations with the offending government. With international pressure, abuses can be brought to light and abusers brought to justice.

Building on this helpful and hopeful introduction, Thames spends much of the book surveying relevant multilateral organizations: the United Nations, the European Union, the Council of Europe, the Organization for Security and Co-operation in Europe, the Organization of American States, and the African Union. Also included is a chapter on the numerous U.S. Government mechanisms to address international religious freedom issues. Each chapter provides a brief history of the organization, a summary of its religious freedom commitments and complaints recourse mechanisms, as well as advocacy suggestions and even contact information.

An additional chapter on religious freedom NGOs and a case study on Vietnam are provided by the Institute for Global Engagement (IGE)’s Chris Seiple and Amy Rowe. Respectively the current president and former country programs director of IGE, Seiple and Rowe make their case for the importance of NGOs in the struggle for religious freedom, and survey the value added by different types of NGO activity—reporting, lobbying, assisting, and mediating (full disclosure: I worked with Seiple and Rowe at IGE and with Thames at the State Department).

The Vietnam case study tells the story of IGE’s constructive and transparent engagement with U.S. and Vietnamese governments in “fashioning a win-win-win solution” (142). In 2004 the State Department designated Vietnam a “Country of Particular Concern” (CPC) for serious violations of religious freedom, including church closings and forced renunciations on a massive scale. Recognizing that Vietnam’s problems with facilitating religious practice and with attracting foreign investment were both symptoms of a deficient legal system, IGE “articulated its agenda for religious freedom in terms of a rule-of-law progression that served the long-term interest of Vietnam” (143). The effort paid off. IGE reinforced the State Department’s intensive diplomatic engagement with Vietnam, leading to significant improvements in the country’s treatment of religious groups and the lifting of CPC in 2006. Today Vietnam continues to make incremental, albeit uneven, progress on religious freedom.

The inclusion of IGE's material alongside Thames' chapters raises intriguing questions about how religious freedom advocates should view their role. To their credit, all three authors affirm the value of multiple governmental and non-governmental approaches working synergistically. And yet synergy is difficult to achieve in the rough and tumble of advocacy because, in part, institutions and groups employ competing tactics. "Name and shame" and "quiet diplomacy," to use two generalized approaches, are difficult to synergize and often undermine each other. The same goes for overt and covert attempts to provide aid to suffering believers.

The Thames-IGE juxtaposition is illustrative of the debate within the religious freedom movement over how to speak about the issue. Is it more effective to frame the argument in terms of international norms or national interests? Religious freedom is, of course, both a human right and social good, but which concept is more compelling? For Thames, "advocates should frame their arguments within the international standards guaranteeing religious freedom" (7). In the multilateral universe of charters, declarations, resolutions, and the commissions established to monitor their implementation, "rights talk" is certainly essential. It can also be valuable when lobbying democratic governments that take their international commitments seriously.

On the other hand, "many countries that repress religious freedom," argue Seiple and Rowe, "do not have a well-developed legal system and tradition of rule of law. As a result, laws and treaties protecting religious freedom are sometimes ignored or arbitrarily interpreted in whatever way officials choose, often in accordance with security concerns or cultural biases" (131). Actions speak louder than words. By flagrantly abusing the rights of its own people a persecutory government belies any stated commitment to international standards. For IGE, "persuasion must appeal to some aspect of governmental self-interest" (131). If a country is preoccupied with economic development, advocates can argue that religious freedom empowers religious groups to advance the common good by, for instance, establishing charitable and educational institutions and by teaching values of hard work and honesty. If the dominant interest is social stability, offer that religious freedom engenders a sense of enfranchisement and loyalty whereas repression hardens resentment against the state and can lead to some violent extremism. Is Thames wrong to emphasize rights? No, it's a matter of audience. References to norms and interests both have their place. Advocates must become "multilingual," developing the sophistication to speak the language of the institutions they seek to influence.

One must also consider which audience is more conducive to his goals. Given the limited time and resources of advocacy groups, should they concentrate on lobbying international organizations or national governments? Here again Thames and IGE have differing, yet perhaps not ultimately conflicting, emphases.

For Thames, because “it is difficult for individuals and NGOs to convince governments to change policies...advocates should therefore concentrate on engaging international institutions and mobilizing their political leverage towards a government that is violating religious freedom” (5). In a case study on Turkmenistan, Thames demonstrates how an array of NGOs successfully lobbied the U.S. Government and European Union to work together through UN bodies to put pressure on the regime of late President Saparmurat Niyazov. The effort resulted in tangible improvements in religious freedom. Yet the case of Turkmenistan may be more an exception than a rule. The country’s membership in the Organization for Co-operation and Security in Europe meant that highly cohesive European regional mechanisms could exert effective influence.

Unfortunately, most of the world’s most egregious violators of religious freedom are located in less cohesive regions. Just as they willfully dismiss international norms, repressive regimes such as Iran, Burma, and North Korea have demonstrated a high tolerance for international censure. Seiple and Rowe note, “pressure applied to a country via governmental mechanisms will sometimes be insufficient if NGOs are not simultaneously working creatively through channels of civil society in that nation to create the conditions needed to sustain religious freedom” (139). In the case of Vietnam, IGE did not issue condemnatory press releases or call any government to denounce abuses. But they effectively leveraged the existing international NGO and U.S. Government pressure to position themselves as a good cop able to engage Vietnamese authorities in a friendly way. IGE’s method appropriates the environmental slogan “think globally, act locally” to the field of international religious freedom promotion. While cognizant of international norms, actors, and political dynamics, advocates can also look for opportunities to engage at levels closest to the scene of abuses.

Despite giving different emphases to the international and domestic aspects of religious freedom advocacy, Thames and the IGE authors are in unequivocal agreement when it comes to how to speak about cases of abuse. Both stress the necessity of using credible information and balanced language. “Advocates must be very careful about the facts,” says Thames. “If they are found to exaggerate or misrepresent, or to be ill informed, then they will have a difficult time persuading persons of power and influence.” (6) The State Department’s former Ambassador at Large for International Religious Freedom, Robert Seiple (Chris’ father) has called shoddy anecdotal reporting the “Achilles heel” of the religious freedom movement.

Two of the most frequent problems with religious freedom reporting involve overstating the religious dimension of a given conflict with authorities or understating a religious community’s own role in starting or fueling the conflict. Because by law the U.S. Government can apply the CPC tool (which can come with sanctions) only for religious freedom reasons and for no other human rights

concerns, advocates lobbying the U.S. are tempted to “religionize” their descriptions of human rights abuses that have little or nothing to do with religion. Savvy NGOs will recognize that poor reporting falls on deaf ears and will play the role of gatekeeper between the grassroots and the halls of power. “A religious freedom NGO risks its own credibility,” say Seiple and Rowe, “by perpetuating [false or exaggerated] claims, whether intentionally or through carelessness” (128).

Thames urges special caution regarding the term “persecution.” The common use of “persecution” to refer to any abuse of religious freedom “only cheapens the term,” he argues, “and lessens the impact when describing an actual situation of persecution, hindering the advocate’s effectiveness” (6). The word should be reserved for “the most violent, egregious, and extreme repression of religion” (11). But others would contend there is an appropriate general use of the term. For example, from the Christian perspective held by many religious freedom advocacy groups, persecution can connote any form of suffering on account of religious belief, affiliation, or practice. As Ronald Boyd-MacMillan notes in his book *Faith that Endures*, “the New Testament calls a very wide range of actions ‘persecution’ and does not limit the word to extreme physical suffering” (*FTE*, 114). Religious groups can use and define terms however they like. But Thames’ point is practical, not theological. For the policy institutions that advocates seek to mobilize, “persecution” is a highly charged and narrowly defined term, not unlike genocide, holocaust, or torture. Careless usage trivializes the term and tarnishes the advocate’s reputation.

Practical insights like this make *International Religious Freedom Advocacy* a go-to resource for new or aspiring practitioners. While the book does not fully reconcile every method of engagement, it does expose readers to a plethora of advocacy avenues and NGO activities, with real-life case studies demonstrating how governmental and nongovernmental approaches can work in tandem to bring much needed improvements. Like a successful investor who shares his trade secrets, Thames and his colleagues at IGE impart their collective knowledge and experience to other religious freedom advocates who will labor to narrow the gap between universal principles and national practice.



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PART FOUR: REPORT OF IRLA ACTIVITIES



A CALL TO ACTION: BUILDING GRASSROOTS SUPPORT THROUGH FESTIVALS OF RELIGIOUS FREEDOM

JOHN GRAZ

Dr. John Graz is the secretary-general of the International Religious Liberty Association and the director of the Public Affairs and Religious Liberty Department of the General Conference of Seventh-day Adventists.

Promoting religious freedom is not an easy task, but there is no alternative for those who believe in human dignity. Religious freedom is a human right, but it must be promoted and defended to be maintained. The International Religious Liberty Association (IRLA) has advocated for religious freedom since 1893, but in recent years a new dimension has been added with the advent of the Festivals of Religious Freedom.

When I began my work as the new IRLA secretary-general in 1995, I was invited to participate in a forum in a European capital city. Having been invited often to speak on various issues in front of hundreds and sometimes thousands of people, I expected a similar attendance, but no more than 50 people came. The panelists were excellent and the topic was very interesting. When I asked why only 50 people came, the answer was, “Religious freedom is not a very popular topic!” I was shocked and at the same time convinced that we could bring thousands of people to meetings on religious freedom.

Every year the IRLA initiates international congresses, symposiums, and forums. My colleagues and I are invited to speak in universities, in churches, and in various meetings before hundreds of students, religious leaders, and lawyers, but we miss those who are not directly interested because the masses don’t feel part of these special groups. So I pondered how to reach the masses. I was very happy to have 600 attendees at the Sixth IRLA World Congress in Cape Town in 2007. It was the largest of all our world congress. I was also happy to have a similar number of people attend some international congresses and forums. But how could we attract more—especially the young people?

My answer was to organize a Festival of Religious Freedom. We did it and it worked. The first one, in 1997 in Rio de Janeiro, attracted about 800 people. The church was full and the program included musicians, singers and speakers. The second was in Manila in 2002. As with the first festival, this one followed a World Congress. About 4,000 people filled the auditorium in Manila. The festival concept was not yet fully developed, but something was sure: Thousands of people attended a meeting on religious freedom. The promotion of religious freedom can be done before a large public audience, and not just before a few hundred

experts and religious leaders. Other festivals, organized in Trinidad and other Caribbean islands, drew thousands of people too. But something was still missing. We needed to give a strong message of religious freedom within the context of a beautiful concert—and not just provide entertainment.

Travelling around the world for several years, I have learned to appreciate the religious freedom that exists in some countries, but not others. Imagine what your life would be like as a believer or member of a religious minority if you lived in North Korea or in any of the other 10 countries of the world where there is no religious freedom at all. You would be persecuted, discriminated against, and humiliated. Your children would be taken from you so you couldn't train them according to your own religious beliefs. What would happen if you decided to change your religion? If you were a woman and you decided to have a religion other than that of your husband or your family, you could be tortured and assassinated. This could happen for the simple reason that you had chosen to follow your conscience. Religious freedom is a fabulous gift and those who have the privilege of living in a free country are very often not aware of the gift. There are three questions I ask every time I promote the concept of the Festival of Religious Freedom:

1. What did you do to get this gift? Most people have done nothing. Religious freedom was incorporated in the constitution of their country. But how did it happen? Some people made sacrifices for us to be free today. They sometimes gave their lives for the freedom we enjoy now.
2. What do we do when we receive a gift? The answer is simple: We say thank you!
3. Have you said thank you to God and to your country for the religious freedom you have? I don't mean a little thank you, or a hidden thank you, but a big public thank you!

There are more than 150 countries in the world where religious freedom is protected by law. In every one of these countries we should say a big and public thank you. We should celebrate this freedom we love. The officials should be impressed and get the message: We love religious freedom and we want to keep it!

In 2006, when I shared this idea with the IRLA secretary-general for South America, Williams Costa, he was very interested. I said to him, "My goal is to gather 10,000 people in a stadium to celebrate religious freedom. Do you think we could do this in Brazil in 2009?" He looked at me with a smile, and said: "Why should we wait until 2009?"

I expected that he might reply, "It will be a challenge. That is too many people. Nobody is interested in religious freedom, and it won't work!" Instead, he said, "We can do that in three months!" A few months later we had our first

mega festival of religious freedom in Sao Paulo. The indoor stadium was full with 12,000 people. According to the police, 20,000 unhappy people were outside because there was no room for them in the stadium. This was in June 2006.

In September 2006, Viorel Dima the secretary-general of the Romanian Association, Conscience and Liberty, organized the first Festival of Religious Freedom in Europe with 4,500 people attending the meeting in Bucharest. In both Sao Paulo and Bucharest, the programs were excellent and very professional. In both cases the officials attended and were very impressed. We were received by the Governor of the State of Sao Paulo who brought his support. Since this time we have held a succession of international, regional, and local festivals.

In Africa, we had the first festival in Accra, Ghana in 2006. Then we had a festival in Cape Town, South Africa in 2007 with 4,000 attendees. In 2008 the religious liberty associations of South Africa and Angola held the largest festival to date with 40,000 attendees and 10,000 people marching through the streets in promotion of religious freedom.

Places where festivals were organized include Trinidad and Tobago, Guyana, Surinam, Kenya, South Africa, Mexico, Russia, Hawaii, and Brazil. On May 2, 2009, the IRLA President for the Dominican Republic, Pastor Cesario Acevedo, organized with the support of the IRLA secretary-general for Inter-America, Roberto Herrera, the First Religious Freedom Festival in Inter-America. The Palacio del Sportes was totally full with 13,000 people. The program was excellent. It was a follow up of the First Inter-American Congress on religious freedom held April 27-30 in the Dominican Republic. In Sao Paulo and in Cape Town, youth made up the majority of the attendees. The promotion of religious freedom through the festivals reaches those who have traditionally not been reached by symposiums and congresses. Young people are the key.

The largest event we have planned to date, the First World Festival of Religious Freedom, took place on June 13, 2009 in Lima, Peru. Lima was chosen because it had been the capital of the regional inquisition for more than a century. If the festival were successful, it could become the world capital of religious freedom. On my way to Lima I spent a few days in Sao Paulo where the Brazilian Association had organized a program which included several lectures in full auditoriums. Four symposiums were held in Cozco and Trujillo, and two were held in Lima. The South America IRLA secretary-general, Edson Rosa, was my guide.

The festival was the climax of a week of promotion for religious freedom. More than 10,000 people participated in a march for religious equality that was organized by Evangelicals and included the IRLA. On Saturday evening, June 13, at 6 pm, the First World Festival began. Pastors Samuel Sandovan and Orlando Ramos led a great team. It was a perfect meeting. When I asked people in the National Stadium to say: *Gracias por la Libertà Religiosa*, the stadium was full with more than 40,000 participants. Two Ministers of the government attended

the Lima Festival, and the President of the Supreme Court made a very supportive speech. They were given awards for their support of religious freedom.

A few weeks after Lima, I was in Jerusalem for the first Festival of Religious Freedom in the Middle East. It was not held in a stadium, but at the YMCA Auditorium. About 300 Christians and Jews attended.

In September and October 2009, festivals were held in Seoul, South Korea; Caracas, Venezuela; Bogota, Colombia; and Chiapas, Mexico. There is no limitation to saying thank you for religious freedom. Those who believe in religious freedom should join us, and together we should express in many different venues our love for religious freedom. It is the best answer to religious intolerance and fanaticism. This is why the story of the festival has just begun. From 40,000 people in Luanda and Lima, we will gather 50,000 and then more. Why not dream of a gigantic festival with 100,000 people from all religions and beliefs saying thank you to God and to our country for religious freedom? People with many accents will raise their voices and send a message of hope to those who are persecuted.





INTERNATIONAL RELIGIOUS LIBERTY ASSOCIATION NEWS

RELIGIOUS FREEDOM ASSOCIATION FORMING IN MONGOLIA

SUPPORTERS URGE IMPLEMENTATION OF CONSTITUTION'S RELIGIOUS FREEDOM GUARANTEE

18 September 2009, Ulaanbaatar, Mongolia—Religious freedom supporters in Mongolia this month moved to form a national chapter of the International Religious Liberty Association (IRLA), a step they hope will encourage the government to implement greater principles of freedom of belief.

If officially approved, the new Mongolian Religious Liberty Association—comprised of religious, government and academia members—will encourage a more literal interpretation of the nation's constitutional guarantee of religious freedom. While the government has increasingly adopted democratic principles, some experts say strict control of churches still exists in wake of the country's recent communist past.

"We hope Mongolia will follow the United Nations recommendations for religious freedom and that every religion and believer will live at peace and be respected," said John Graz, IRLA secretary-general.

The possible Mongolia IRLA was suggested at this month's symposium on religious freedom in Mongolia's capital, Ulaanbaatar, on September 9. Among the 50 participants were representatives from academic and government institutions and religious faiths, including Baptists, Buddhists, Catholics, Mormons and Seventh-day Adventists.

"This is an important step in the development of religious liberty in Mongolia," said Paul Kotanko, director of the Adventist Church's Mongolia Mission and local IRLA representative.

Kotanko says Mongolians have a "deep desire for social harmony," yet traditional religions of Buddhism and Shamanism are vying for influence. Some are still wary of new religions or faiths not native to Mongolia, he said.

Every church and local congregation is required to register each year with local authorities. If a registration decision is delayed, the church can be temporarily or permanently shut down, Kotanko said.

Local authorities throughout the country have varying attitudes toward religions, according to Kotanko. Some jurisdictions have prohibited outreach activities, he reported.

Mongolia is home to some 3 million people, 50 percent of whom are Buddhist. About 40 percent claim no religion.

Established in 1893, the IRLA is present in some 80 countries and is the world's oldest non-sectarian forum dedicated to religious freedom.

Ansel Oliver/ANN with Glenn Mitchell

REJECT DEFAMATION OF RELIGIONS LAWS, PANEL OF EXPERTS ADVISES

HATE SPEECH LEGISLATION COULD BE ENFORCED UNEQUALLY

8 September 2009, Silver Spring, Maryland, United States—Addressing the scope of proposed legislation against hate speech, members of the International Religious Liberty Association's Panel of Experts drafted a statement deeming defamation of religions laws unnecessary last week during the group's 11th annual meeting.

Existing international human rights law is a sufficient means of protecting faith groups against hate speech that may result in discrimination or violence, members agreed during September 1 to 3 talks at the Seventh-day Adventist world church headquarters and locations in Washington, D.C.

The statement comes as international bodies such as the United Nations advocate specific laws targeting hate speech in an effort to preempt crimes fueled by religious hatred.

While experts agreed with the motivation behind such laws, they said enforcement could backfire, infringing upon individual freedoms of expression, which include the right to criticize religious beliefs and practices.

"While there are laws that already guarantee religious liberty, if I'm offended, I can appeal to this other law that overrides the first," said Robert Seiple, former United States ambassador for International Religious Freedom, hypothesizing on the moral conundrum he and other panel members say defamation of religions laws can create.

"Good laws and great lawyers don't guarantee good behavior," he added.

The statement reiterates conclusions panel members made when they first met to discuss the issue of defamation of religions last fall in Bucharest, Romania. Without a universally accepted definition of defamation of religions, experts worried that laws seeking to eliminate hate speech might be enforced arbitrarily and unequally.

While panel members such as Rosa Maria Martinez de Codes, a professor at Spain's Universidad Complutense in Madrid, agreed that there must be a "margin of respect" for differing beliefs, the panel concluded that dialogue and education, rather than legislation, can best cultivate such an attitude.

Among several suggestions, the statement proposes that government, educational and religious leaders encourage "understanding, tolerance, respect and friendship" among members of various faith communities.

"We must elevate our thinking beyond the common denominator of basic tolerance to true understanding," Seiple said.

The statement also calls for human rights advocates to "closely monitor" the enforcement of defamation of religions laws already passed to guard against any "counterproductive consequences."

Members hope that in addition to human rights experts and the United Nations, the statement will reach heads of state and wide-reaching non-governmental organizations.

Elizabeth Lechleitner/ANN

RUSSIAN EXPERTS EXAMINE NEW RESTRICTIONS ON FREEDOM OF RELIGION

GOVERNMENT OFFICIALS IGNORE CONSTITUTIONAL PROVISIONS WHICH PROTECT RELIGIOUS FREEDOM

2 July 2009 Moscow, Russia—A conference entitled "Urgent Problems in Realizing Freedom of Conscience in Contemporary Russia," organized jointly by All-Russian Public Organization for Protecting Religious Freedom, International Religious Liberty Association (IRLA), and the Center for Religious Studies of the Russian State Humanitarian University, was held in Moscow on July 2, 2009. Leading religious studies experts and representatives of various religious organizations took part in this conference. State employees were also invited to present the viewpoints of their respective offices.

The participants of the conference expressed deep concern about the decision of governmental bodies to enlarge the powers vested in the Council of Experts for Religious Studies under the Ministry of Justice of the Russian Federation, and allow this Council to exercise control over the activities of religious associations. They believe that this is a violation of Article 4, paragraph 4 of the law, "On the Freedom of Conscience and Religious Associations," which forbids governmental officials, persons employed by other public agencies and local authorities, and members of the armed forces, to abuse their office in favoring a religious belief.

As a result of this decision, membership of the Council was radically changed to include mainly governmental and church functionaries not having any experience of religious studies outside the scope of their own confession.

According to the experts, the decision of the Ministry of Justice demonstrated the nature of the policies they would like to pursue and their likely unwillingness to implement the constitutional provisions that separate church and state. The experts believe that the actions of the Ministry of Justice represent gross violations of the constitutional provisions, according to which the Russian Federation is considered a secular state. All religious associations should be independent of the state and equal before the law.

There have been recent examples of restrictions being imposed on the rights of religious believers in the country. In the Belgorod Region, Baptists appealed to the Russian Federation's ombudsman about a ban imposed by regional authorities on the distribution of the Holy Scripture in healthcare, educational, penal and other institutions. According to the applicants, they were told to secure the consent of the head of the regional eparchy of the Russian Orthodox Church. Similar advice was given to members of other confessions and religious organizations in response to their official applications. (Numerous specific cases were presented.) The experts noted that the constitutional rights of believers to disseminate their religious views have been infringed without any chance of appeal.

The group also expressed concern about the classification of religions in contemporary Russia as "traditional" and "non-traditional," a practice called forth by a faulty interpretation of the preamble to the federal law "On the Freedom of Conscience and Religious Associations," in which the religions "that are constituting the inalienable part of the historical heritage of Russia's people," are listed. Consequently, the concept of "non-traditional religion" has been arbitrarily identified with the concept of "sect," the latter being a non-legal term with a negative connotation. Without relying on the Russian Constitution or current laws, the standard regulations and press releases of the state and local authorities contain such terms as "sect" or "destructive cult," which are arbitrarily and maliciously applied to characterize certain confessions, thus having unfavorable consequences for the affected religious organizations.

The participants in the conference call upon responsible politicians and religious leaders in Russia to eliminate numerous breaches of the constitutional principles regarding church-state relations that are threatening the peace in Russian society. They believe that there is a pressing need to return to the observance of the Constitution, national laws and international commitments of the Russian Federation.

Vladimir Iyevenko, translator

FIRST RELIGIOUS LIBERTY FESTIVAL IN JERUSALEM DRAWS HUNDREDS

FREEDOM OF BELIEF EXPERTS ADDRESS DIVERSITY,
DISCRIMINATION IN REGION

28 July 2009, Jerusalem, Israel—Hundreds of religious liberty proponents from Israel and the Palestinian Territories gathered in Jerusalem Sunday for the symbolic city's first festival of religious freedom.

The event generated a “climate of good understanding” among attendees that organizers hope will spur increased tolerance in the region, said John Graz, secretary-general for the International Religious Liberty Association (IRLA), which sponsors festivals worldwide to encourage freedom of religion.

Hosting the event in a city holy to three major world faiths -- Judaism, Islam and Christianity -- was particularly significant, said Graz, who also directs the Seventh-day Adventist Church's department of Public Affairs and Religious Liberty (PARL).

While Christians enjoy broad freedoms and are allowed to conduct outreach on a limited basis in largely Orthodox Jewish Israel, treatment of Muslims is a subject of international controversy, according to the Religious Freedom World Report, a PARL publication.

Conservative Jews, who embrace a non-fundamentalist interpretation of the Jewish faith, also face hurdles to religious freedom, said Rabbi Yaacov Lebeau, who spoke at the event. Because of the dominance of Orthodox Judaism, weddings and other ceremonies conducted in Conservative synagogues are not fully recognized, he said.

“It could be very easy to be influenced by extremist groups and fall into exclusivism,” said Richard Elofer, president of the International Religious Liberty Association in Israel. “Given the ‘multi-cultural and multi-region’ makeup of Israel, defending inclusive freedoms is a priority to ensure that doesn’t happen”, he added.

The International Religious Liberty Association in Israel (Haamutah Habenleumit Lechirut Hadat BeIsrael) was established in 1998 at the time of the celebration of the 50th anniversary of the United Nations Universal Declaration of Human Rights. Its objective is to promote, defend and protect religious liberty in Israel.

Some 300 religious liberty advocates from Jewish and Christian communities attended the event.

ANN & IRLA Staff

CONTINUED ACTIVISM URGED AT ANNUAL RELIGIOUS LIBERTY FORUM IN WASHINGTON

CONGRESSMAN CLEAVER CALLS FOR FOCUS ON COMMONALITIES INSTEAD OF DIFFERENCES

19 June 2009, Washington, D.C.—A United States congressman told religious freedom proponents in Washington D.C. yesterday that while much has been done to further religious freedom, more needs to be done.

Emanuel Cleaver II, co-chair of the International Religious Freedom Caucus, said religious liberty violations are often committed unintentionally by governments fearful of losing control and actively exercising power.

“Everyone has the right to freedom of thought, freedom of conscience and freedom of religion, yet persecutions and atrocities are still taking place,” Cleaver told some 300 attendees of a religious freedom forum.

His remarks at the 7th Annual Religious Liberty Dinner in Washington D.C. underscored the case of hundreds of millions of people still mistreated because of their faith now more than 60 years after Universal Declaration of Human Rights. Some experts estimate there are more than 300 million people around the world persecuted for their faith, ranging from prohibition of conversion to cases of workplace discrimination.

“The choice to privately or publicly practice a religious belief or the choice to abstain from a religious belief or the choice to change one’s own religious beliefs is unmistakably fundamental to human rights,” Cleaver said.

Political differences were set aside for the evening. An ordained United Methodist Minister and a democrat, Cleaver implored religious leaders to focus on commonalities instead of differences. He also mentioned that last year’s speaker, Trent Franks, a republican and also a member of the International Religious Freedom Caucus is in Cleaver’s opposing party. But [he] and I are twins when it comes to religious freedom,” Cleaver said.

Other past speakers include Secretary of State Hillary Clinton, who was at the time a senator from New York, as well as Senators John Kerry and John McCain.

The annual event is sponsored by the International Religious Liberty Association, the North American Religious Liberty Association, Liberty Magazine and the Seventh-day Adventist Church. Freedom of conscience supporters use the forum as an opportunity to meet the key people in Washington and those able to influence policy in other countries.

The dinner was also an opportunity for sponsoring organizations to share reports on current religious freedom work. Since 2005, the International Religious Liberty Association (IRLA) has held 20 worldwide festivals to recognize countries

where religious freedom is guaranteed and practiced. The organization's secretary-general, John Graz, said that while true religious freedom is non-existent in too many countries, religious freedom does exist in more than 150 countries.

Several religious liberty proponents were also recognized for their work.

The recipient of the Religious Liberty Dinner's International Award, Denton Lotz, is the former general secretary of the Baptist World Alliance. He currently serves as the IRLA president.

"We're here tonight as coreligionists of all different traditions because we believe that religious freedom is an inherent right for all humanity," Lotz said. "We believe that where religious freedom is denied, all other freedoms are denied."

Rabbi David Saperstein received the National Award for his work as director of the Religious Action Center of Reform Judaism. He also serves on the White House Advisory Council on Faith-based and Neighborhood Partnerships.

This year's A.T. Jones medal was awarded to Alan J. Reinach, president of the North American Religious Liberty Association—West. The attorney and Seventh-day Adventist minister represents employees who have suffered religious discrimination.

Ansel Oliver/ANN

RELIGIOUS FREEDOM FESTIVAL IN PERU RECEIVES NATIONAL ENDORSEMENT

SUPREME COURT PRESIDENT, MINISTER OF DEFENSE ADDRESS 40,000 AT NATIONAL STADIUM

15 June 2009, Lima, Peru—Several of Peru's national leaders praised the country's commitment to religious freedom during a world religious liberty festival that drew some 40,000 supporters, organizers estimated.

Speaking to a crowd of mostly Seventh-day Adventists at Lima's National Stadium, Peru's Supreme Court President Javier Villa Stein quoted Adventist Church co-founder Ellen White, an early promoter of religious freedom, and complimented the church for its commitment to continuing that legacy.

"I'm with you," Stein told the crowd at the Saturday, June 13 event.

The festival was the latest and largest in a series of similar festivals held to thank countries that support religious freedom. Event co-sponsors include the Adventist Church and the International Religious Liberty Association, the world's oldest forum on religious freedom.

The Lima event included a June 12 march through downtown by some 10,000 freedom of conscience supporters representing different faith communities, followed by an evening symposium of 400, including Stein.

Since 2005, the Adventist Church's approach to promoting religious freedom has taken on a celebratory approach, resulting in the liberty festivals.

Within the last few years, festivals have been held around the world, including events in Angola, Brazil and the Dominican Republic. Upcoming 2009 festivals are scheduled for Seoul, South Korea, Jerusalem, Israel, Caracas, Venezuela, Bogota, Colombia and Jakarta, Indonesia.

During his keynote address in Lima Saturday evening, John Graz, secretary-general of the International Religious Liberty Association, said many experts estimate 300 million people around the world are persecuted for their faith. He charged the crowd to defend people who believe differently from them.

"Defending others is also defending yourself," he told the crowd through a Spanish-language interpreter.

Graz also referenced areas of the world without freedom of belief.

"Imagine you are in North Korea," he said. "You cannot have human rights without religious freedom." Graz also mentioned violence in India's eastern Orissa province where Christians have been attacked for their faith.

Peru's Minister of Defense, Ántero Florez Araoz, addressed the audience saying he applauded the work of the Adventist Church.

"You are lucky," Araoz said. "Not only does Peru have a good military defense, but also citizens who believe in the defense of beliefs."

Additional guest speakers included Nidia Vilchez Yucra, minister of women and social development, and the ambassadors from Israel and Palestine.

Graz said the genesis of the festivals can be traced back to 1995 when as a guest speaker at a church, only 25 people showed up on a Saturday afternoon to hear about religious freedom. "After that, I saw that we had to change something," he said.

For Erton Kohler, president of the International Religious Liberty Association in South America, and a team of religious freedom proponents who were involved with the organization of the event, the Lima festival was the latest in a series of initiatives promoting religious liberty across the continent.

Festivalgoers said they attended to support religious freedom, a gift that in some countries is taken for granted. Adventist Church member Ronald Aguilar said the work of religious liberty organizations has contributed to a society where he can spread the gospel in his country without any problem.

In his speech, Graz emphasized that freedom should never go unappreciated. "The time has come to say 'Thank you' for religious freedom," he said.

Ansel Oliver/ANN with Sam Del Pozo and Susana Alemá

TOLERANCE URGED AT DOMINICAN REPUBLIC RELIGIOUS LIBERTY CONGRESS

REGION'S FIRST FESTIVAL OF RELIGIOUS FREEDOM DRAWS THOUSANDS

5 May 2009, Santo Domingo, Dominican Republic—Religious liberty proponents from 13 Latin American countries met in Santo Domingo last week to discuss historical and current religious freedom trends in the region.

The April 28 to 30 International Religious Liberty Association (IRLA) congress preceded the Inter-American region's first Festival of Religious Freedom on May 2, which drew some 13,000 people to the city's sports arena.

John Graz, IRLA secretary-general, applauded the Dominican Republic for valuing freedom of religion.

In a region with a historically dominant religion, Catholicism, regional IRLA president Israel Leito said working to ensure everyone's right to worship freely is vital. "We need to support the person suffering for his religion," he said. "It might be happening to him today, but to me tomorrow."

Religious liberty scholars and activists are expected to meet again in Peru this summer for the first World Festival of Religious Freedom.

ANN Staff

IRELAND'S 'BLASPHEMY LAW' WORRIES RELIGIOUS LIBERTY PROPONENTS

PROPOSED LEGISLATION MAY RESTRICT FREEDOMS OF EXPRESSION

26 May 2009, Dublin, Ireland—A proposed law criminalizing the criticism of religion in Ireland may defy international standards of freedom of speech and indicate a troubling trend toward more state control over religious matters, religious liberty experts say.

Members of the Oireachtas (Parliament) Committee on Justice are considering an amendment to the country's Defamation Bill that will effectively ban "blasphemous libel," making it a fineable offense to publish or utter such speech.

The article would update an older defamation of religion law present in the country's constitution. Such laws, while long "dormant" in Europe, are regaining favor, said John Graz, secretary-general of the International Religious Liberty Association.

Earlier this year, the United Nations Human Rights Council passed a resolution on so-called “defamation of religion” laws. While designed to protect religious groups, such laws can backfire against freedom of expression, Graz said.

“Respect and dialogue should be the way to deal with religious issues and calm tensions,” he added.

The Organization for Security and Co-operation in Europe (OSCE) has warned the Irish government that blasphemy law defies international standards of freedom of speech, the *Irish Times* reported last week.

The OSCE is the world’s largest security-oriented intergovernmental organization, with 56 member nations. The agency’s duties include upholding principles such as fair elections, press freedom and human rights.

ANN Staff

UN ‘DEFAMATION OF RELIGION’ MEASURE TROUBLING, RELIGIOUS LIBERTY EXPERTS SAY

PROTECTIVE MEASURE COULD BACKFIRE AGAINST INDIVIDUAL EXPRESSION

26 March 2009, Geneva, Switzerland—Religious liberty proponents worry a new United Nations resolution that broadly seeks to protect religious ideologies may do so at the expense of individual freedoms of expression.

The non-binding measure, passed by the United Nations Human Rights Council yesterday, is the latest in a series against hate speech and “defamation of religion” that began in 1999 when Pakistan first called for such a resolution.

Pakistan remains the leading sponsor of “defamation of religion” resolutions, International Religious Liberty Association (IRLA) officials said.

Yesterday’s resolution passed by a vote of 23 yes’s, 11 no’s and 13 abstentions, a less enthusiastic endorsement compared to previous years that suggests growing opposition against such measures, IRLA officials said. Several non-governmental agencies, including the IRLA, The Becket Fund and UN Watch, continue to raise awareness of the potential fallout the resolution could have.

“In international law, if a custom is followed long enough it can become a norm,” said Barry Bussey, IRLA board member and executive director of the North American Religious Liberty Association. . “Such norms then become codified and become law.” With their decade-long history, resolutions against “defamation of religions” seemed well on their way to legal entrenchment, Bussey said.

“We are concerned that [the resolution] will limit freedom of expression,” IRLA secretary-general John Graz said from Geneva after the vote.

Most troubling is the resolution’s vagueness, said Bussey.

Last year, IRLA experts met to discuss the emerging issue of hate speech and “defamation of religions.” With no universally acceptable definition of “defamation of religions,” the group concluded that any attempt to enforce the then proposed resolution would be arbitrary and subjective, depending largely on sensitivities of the hearers.

“Who determines when a religion is defamed?” Bussey said after the vote. “[This resolution] is simply too fraught with possibilities of abuse of power,” he added, urging more concerted opposition when the resolution comes up for renewal next year.

ANN & IRLA Staff

IRLA SECRETARY-GENERAL PROMOTES HUMAN RIGHTS ON NATIONAL SWISS RADIO

“RELIGIOUS FREEDOM IS ONE OF THE MOST SENSITIVE HUMAN RIGHTS AND IT IS NOT PROMOTED AND DEFENDED BY THE UN AS IT SHOULD BE.”

13 February 2009, Geneva, Switzerland—Dr John Graz, Secretary-General of the International Religious Liberty Association (IRLA), was interviewed by Serge Carrel from the National Swiss Radio (Radio Suisse Romande) in their radio studio in Geneva.

The interview concerning the United Nations and human rights focused on the issue of religious freedom in the world and the role of the United Nations. Is the UN burying human rights and religious freedom instead of promoting and defending them? Graz acknowledged that 60 years after the Universal Declaration of Human Rights was adopted by the United Nations it is challenged today by some member countries of the UN, including members of the Human Rights Council.

“Religious freedom is one of the most sensitive human rights and it is not promoted and defended by the UN as it should be,” Graz stated. But he underlined the importance of the UN, and especially the Human Rights Council, as an organization which creates a unique space where nations and NGOs can meet and talk about religious freedom and denounce violations by mentioning the names of countries. If a country persecutes its people because they don’t have—according to the government—the right religion or belief, it is in fact condemned by all the fundamental United Nations documents. The UN is a space where human rights are on the top of the agenda. For NGOs like the International Religious Liberty Association, it is the place where they can meet government representatives and talk naturally about human rights and religious freedom.

The United Nations is an image of the nations of the world today. But imagine the world without the UN, without a place where nearly all governments of the world are represented and accessible? “If you speak about religious freedom in the Human Rights Council,” Graz concluded, “you are at home even if you face opposition and political diversion.”

BRAZILIAN CHARTER OF RELIGIOUS LIBERTY LAUNCHED DURING UDHR 60-YEAR COMMEMORATION

CHARTER GALVANIZES FREEDOMS OF BELIEF

25 November 2008, São Paulo, Brazil—Religious freedom proponents in Brazil say the passage this month of the Brazilian Charter of Religious Liberty helps galvanize freedoms of belief already established by the country’s constitution and the Universal Declaration of Human Rights.

Meant to draw attention to the legal defense of civil liberties and human rights in São Paulo, the document was introduced November 10 by the Brazilian Association of Religious Freedom and Citizenship (ABLIRC)—a partner of the International Religious Liberty Association (IRLA).

“This initiative aims to broaden the debate,” said Dr. Alcides Coimbra, ABLIRC secretary-general. It will raise awareness, he added, of the often imperceptible ways in which religious intolerance and discrimination begin to materialize.

São Paulo, with nearly 18 million inhabitants, is Brazil’s largest and one of its most influential cities, said John Graz, IRLA secretary-general. Graz said religious liberty proponents expect other cities to follow in accepting the charter.

“Brazilians are privileged to live in freedom,” Graz, who attended the launch of the charter, told those gathered. With that privilege, he added, comes a responsibility to keep issues of religious liberty at the forefront internationally. “If a nation forgets its freedoms, it can easily lose them.”

Aldir Soriano, a lawyer specializing in religious freedom who in 2006 began drafting the charter, said because some formerly free countries are now tightening religious liberties, nations that maintain strong protections of belief must be wary of slackening their support.

ROMANIA HOSTS 10TH INTERNATIONAL RELIGIOUS LIBERTY ASSOCIATION MEETING OF EXPERTS

DEFAMATION OF RELIGION LAWS WILL INCREASE RELIGIOUS INTOLERANCE

15 September 2008 Bucharest, Romania—Religious liberty experts are voicing concerns over proposals to regulate free speech and establish defamation of religions laws.

Meeting in Bucharest, Romania, September 7-10, the 10th conference of the International Religious Liberty Association Panel of Experts—consisting of academics, practitioners and other international experts in the field of human rights and religion—discussed the emerging issue of hate speech and “defamation of religions.”

Opening the conference, John Graz, Secretary-General of IRLA said the “issues surrounding hate speech and defamation of religions have been at the forefront of those concerned with human rights over the last several years and IRLA is seeking an evaluation of the proposals to bring about new international regulatory measures.”

As religious individuals and groups around the world find themselves the subject of often vitriolic and malicious accusations and insults, hate speech has at times preceded violent attacks and intimidation. Graz, who is also director of the Seventh-day Adventist world church’s department of Public Affairs and Religious Liberty, asked, “What will be the real cost for freedom of expression if such proposals were to be enacted?”

During the final session, the Panel of Experts agreed, according to Graz, “that no specific legislation should be voted, but hate speech should be limited according to the already existing human rights law.”

Several experts spoke of existing situations when speech constitutes incitement to violence or discrimination. Such speech may be limited according to existing international human rights law, but experts were concerned that some proposals addressing the issue will not solve the underlying problem of crimes motivated by religious hatred. It will instead increase religious intolerance and infringe the equally fundamental human right of freedom of expression and religion, which includes the critique of religious ideas, they said.

One concern the experts discussed is the lack of a universally acceptable definition of defamation of religions. The experts also expressed concern that any definition will be vague and susceptible to varying interpretations, especially those based on the sensibilities of the hearers. Without clear guidance as to what constitutes defamation, the proposed standards will be arbitrarily and inequitably enforced, and will harm those they are designed to protect, they said.

Referring to hate speech and defamation of religions as a “matter of great concern,” Professor Rosa Maria Martinez de Codes from Universidad Complutense, in Madrid, Spain, said that in Europe “we need to build bridges among all the different religious confessions, taking into account that we have about 12 to 13 million [adherents] of Islam.

“Hate speech is something that should be eliminated from our vocabulary, education, attitudes, and that means improving public policies that provide the guidelines for schools—public and private—to reinforce a better understanding and respect for the other,” Martinez said.

Professor David Little from Harvard Divinity School warned against being silent regarding proposals to the United Nations by the Organisation of the Islamic Conference, and also some of the UN reports aimed at restricting defamation of religions language.

“If we don’t take a position in opposition of some of those proposals things would be worse,” Little said. “They would be worse because the international organizations, specifically the United Nations, might be inclined to restrict religious speech and thus defeat some of the purposes that we, in this group, believe are enjoyed by allowing more open speech that is criticisms, one religion of another, one religious group within other religious groups, etc., ... If we didn’t allow that kind of speech, it’s more and more likely that the benefits of free speech would be denied and we would all be worse off.”

Professor Cole Durham from Brigham Young University School of Law believes that there “is a real urgency on the hate speech and defamation of religions. For every bridge being built between the Western world, between Christianity and Islam, there are five being burned, and we need to work with incredible speed because it is much harder to build positive relations, many positive relations can be destroyed in an instant by a simple event, the Danish cartoons.

“Destructive events are much easier to come across and they do much more damage and the restoration work is extraordinary difficult,” Durham said.

Durham stated that initiating laws that would prohibit free speech may be aimed at protecting the minority, but actually may be turned against it. Describing it as “the hate speech paradox,” Durham explained that “we often think in the law that if something is bad and we pass a law against it, it will automatically disappear as if the law is a magic wand. In fact, we have to think very carefully because all too often, passing those laws will not really help the minority groups because they will be afraid to invoke them; they are afraid that if they do that will just serve as a lightning rod and they will get all the more attacks, they will get all the more threatening phone calls, there all kinds of ways the social opposition can come out.”

“You get the opposite of what is intended,” Durham added.

Following the meeting, participants of the IRLA conference joined represen-

tatives of Romania's Senate and House of Deputies, including Senate President Nicolae Vacaroiu and President of the Chamber of Deputies Bogdan Olteanu, government and religious leaders and academics in a two-day symposium, September 10-11, on "Inter-confessional Communication in European Union."

Rajmund Dabrowski/ANN

45,000 ANGOLANS GATHER TO CELEBRATE RELIGIOUS FREEDOM

REBUILDING COUNTRY PROMOTES FREEDOM OF BELIEF IN AFTERMATH OF WAR

8 July 2008, Luanda, Angola—Some 45,000 Angolans gathered at a sports stadium in Luanda June 28 to celebrate freedom of religion in their country, which is rebuilding in the aftermath of a 27-year civil war that ended in 2002.

The festival, the largest to date, followed a three-day religious liberty congress co-sponsored by the International Religious Liberty Association (IRLA) and attended by 600 religious liberty proponents, faith leaders and governmental representatives from the southwest African nation and around the world.

In his keynote address, IRLA secretary-general John Graz thanked the government of Angola for promoting and defending religious liberty and singled out those who fought for the freedoms the country currently enjoys. Such festivals, typically held in tandem with IRLA congresses, are an important way of recognizing a country's efforts to ensure freedom of belief, Graz has said.

"The only alternative to religious freedom is intolerance or persecution. The 45,000 people who participated in the Luanda festival made a choice between freedom and persecution," Graz said. "They chose freedom."

The festivals, a three-year initiative of the Seventh-day Adventist world church's department of Public Affairs and Religious Liberty, are meant not only to express gratitude for existing religious liberties and those who've supported them, but also to serve as incentives for public leaders positioned to influence policy to uphold freedom of belief.

The first large-scale religious liberty festival was held in Sao Paulo, Brazil in 2006 and drew some 12,000 attendees. Similar festivals are planned around the world this year and next, with the first World Festival of Religious Freedom scheduled for 2009 in Lima, Peru.

SID Staff/ANN

U.S. CONGRESSMAN FRANKS STRESSES IMPORTANCE OF RELIGIOUS FREEDOM IN FOREIGN POLICY

'CRITICAL' FOR NATIONS TO REAFFIRM FREEDOM OF BELIEF, LEGISLATOR SAYS AT ANNUAL RELIGIOUS LIBERTY EVENT

13 June 2008, Washington, D.C.—International standards of religious freedom must be reinforced, a U.S. legislator said yesterday in a speech marking 10 years since the United States passed the International Religious Freedom Act, a bill recognizing the importance of freedom of belief in foreign policy.

"It's critical that other nations join with us in reaffirming this foundational human right and stand for the freedom of all people to choose their religious beliefs," said Trent Franks, U.S. Congressional representative from the state of Arizona and co-chair of the Congressional Religious Freedom Taskforce.

Speaking to religious freedom proponents in Washington, D.C. on June 12, Franks affirmed congressional staffers, foreign ambassadors, and NGO representatives who advocate for freedom of belief, calling their work "absolutely critical" at a time when more than one half of the world's population lives in countries without "true religious freedom."

"I am convinced that we have to protect religious freedom here at home so that we can project it across the planet," Franks said. His remarks were part of his keynote address to the sixth annual Religious Liberty Dinner, held this year in the Presidential Ballroom at the Capital Hilton Hotel a few blocks from the White House.

The event is sponsored by the International Religious Liberty Association (IRLA), the North American Religious Liberty Association (NARLA), *Liberty Magazine*, and the Seventh-day Adventist Church. Attendees met with 77 members of congress or their staff on Capitol Hill earlier in the day to lobby for the passage of the Workplace Religious Freedom Act, which was introduced in 1996 by Senator John Kerry, keynote speaker for last year's dinner. Other previous keynote speakers at the event promoting religious freedom include Senators John McCain and Hillary Clinton.

"The most significant thing is we're coming together, the NGO community, the diplomatic community and the world of faith community, to focus on religious freedom in a way that's seldom done in this city and in this world," said James Standish, Esq., director of Legislative Affairs for the Adventist Church.

"You might think this is just a dinner, but we've had serious tangible effects from this event throughout the years," Standish said. "We've met with ambassadors from nations that have excluded Adventists and have had some very concrete

and productive conversations. The ambassador from one nation has promised to work with us in a country where we've not been able to work for over three decades. If we can get back in, that's an amazing accomplishment."

During the dinner, which drew some 160 NARLA members from across the United States, several individuals were honored for their commitment to religious liberty.

Mikhail P. Kulakov Sr., director of the Bible Translation Institute at Zaoksky Adventist University in Zaoksky, Tula Region, Russia, received the association's Lifetime Achievement Award. Born in 1927 in Leningrad (now St. Petersburg), Kulakov was arrested for his faith and sentenced to hard labor in the gulag and later exiled in Khazakstan. In 1953 he began an underground journal for ministers and established unofficial courses for the training of ministers. In 1992, he founded the Russian chapter of the International Religious Liberty Association.

Kulakov's father and brother were also arrested for their faith and sent to labor camps. "For one reason—we had a burden on our heart, our desire to share with others the beauty of Jesus and his love and importance to live by faith in this world."

"These are men and women of character and substance," Standish later said of Kulakov and others honored at the event, including Carl Wilkens, the former head of the Adventist Development and Relief Agency International in Rwanda. As the only American aid worker stationed in Rwanda who stayed behind during the 1994 genocide, Wilkens is credited for saving hundreds of lives in Kigali.

"In my judgment, religious liberty and equality have no greater champions today than the Seventh-day Adventist community," said Alan E. Brownstein, Esq., who teaches constitutional law, law and religion and torts at the University of California, Davis School of Law. Brownstein was awarded by the association for his Constitutional scholarship relating to church-state issues and Free Exercise and Establishment Clause doctrine.

"I don't know any other organization in my home state of California that has been as effective in bringing religious communities together to work for religious liberty for everyone as the Seventh-day Adventist Church State Council," Brownstein added.

Ansel Oliver/ANN

MONGOLIA: FIRST RELIGIOUS LIBERTY MEETING DRAWS GOVERNMENT, INTERNATIONAL RELIGIOUS FREEDOM LEADERS

HISTORIC DAY,' SAYS SECRETARY OF COUNCIL ON RELIGIOUS
AFFAIRS

2 June 2008, Ulaanbaatar, Mongolia—International religious liberty leaders joined members of Mongolia's government and major religious communities May 30 for the nation's first religious liberty symposium, meant largely to lay groundwork for a full-scale freedom of religion conference next year.

"This is an historic day for Mongolia in hosting this symposium on increasing religious tolerance," said Samdan Tsedendamba, secretary of the country's Council on Religious Affairs.

"Mongolians enjoy considerable freedom of religion," said John Graz, secretary-general of the International Religious Liberty Association, which jointly sponsored the event with the Northern Asian nation's Council of Religious Affairs. Graz joined more than 50 religious and government leaders for the meeting, which included a review of the United Nation's Documents on Religious Freedom.

Mongolia is home to nearly 3 million people, 50 percent of whom are Buddhist. About 40 percent claim no religion.

The IRLA's representative in Mongolia, Paul Kotanko, was invited to hold a forthcoming similar meeting at the Dashjoilin Buddhist Monastery. Organizers said last week's meeting will also lead to the 3rd Asian Congress on Religious Liberty next September.

Established in 1893, the IRLA is present in some 80 countries and is the world's largest non-sectarian forum dedicated to religious freedom.

ANN Staff





NEW SERIES FIDES ET LIBERTAS SUBMITTING MANUSCRIPTS

Fides et Libertas encourages the submission of manuscripts by any person, regardless of nation or faith perspective, wishing to make a scholarly contribution to the study of international religious freedom. *Fides et Libertas*, as the scholarly publication of the International Religious Liberty Association, seeks to obtain a deeper appreciation for the principles of religious freedom that IRLA has enunciated including the following: religious liberty is a God-given right; separation of church and state; government's role of protecting citizens; inalienable right of freedom of conscience; freedom of religious community; elimination of religious discrimination; and the Golden Rule. *Fides et Libertas* is open to a wide perspective in upholding those principles including

- historical studies;
- articles that deal with theoretical questions of theology and freedom;
- essays on the meaning of such concepts as human rights, and justice;
- works focused on politics and religion; law and religion.

Articles should be accessible to the well-educated professional as well as to the lay person who seeks to know more. It is to be seen as a means of continuing a scholarly conversation of the subject at hand. Therefore it is incumbent on the author to bring a new insight or knowledge to the conversation.

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Barry W. Bussey
Senior Editor
Fides et Libertas
International Religious Liberty Association
12501 Old Columbia Pike
Silver Spring, Maryland
20904-6600 USA
busseyb@irla.org

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Book Review Editor

Fides et Libertas

12501 Old Columbia Pike, Silver Spring, Maryland

20904-6600, USA

Phone: 301.680.6686, Fax: 301.680.6695, Email: fides@irla.org



