

The OIC and the UN: Islamophobia and ‘defamation of religion’

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Editorial comment: The following provides an analysis of the events which led to the adoption of a ‘defamation of religions’ resolution by the U.N. Human Rights Council and to the ‘Outcome Document’ of the Durban Review Conference,¹ both of which took place in April 2009. In the process the U.N. Human Rights Council ignored a mass petition signed by over 180 non-governmental organisations opposing the resolution.² While this opinion piece has been written before the adoption of the resolutions, the background information and analysis it provides, are still valuable.

Abstract

The Universal Human Rights Declarations protects the fundamental rights of human beings, e.g. of individuals. The Organisation of Islam Conference has for years pushed for the United Nations Human Rights Council to change its covenants to protect religions instead of individuals. This can be regarded as an attempt to make defamation of Islam or the incitement of Islamophobia a punishable offence. As earlier efforts along these lines have stalled, the OIC is seeking to legitimise the defamation of religions issue by re-casting it as an issue of incitement to religious discrimination, hatred and violence, which poses a serious threat to public order, national security and human rights.

Key words Organisation of Islam Conference, United Nations, UNHRC, Islamophobia, defamation of religion, Durban II.

Durban I – the UN’s first World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance – which was held in Durban, South Africa, in early September 2001 ended with a walkout over its virulent anti-Semitism. Yet sadly it now seems clear that the Durban Review Conference (or Durban II), which will be held in Geneva in April 2009, is shaping up to be even worse.

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¹ www.un.org/durbanreview2009/index.shtml.

² www.becketfund.org/index.php/article/991.html; [www.bucer.org/138.html?&tx_ttnews\[tt_news\]=1106&tx_ttnews\[backPid\]=45&cHash=3de72cdf57](http://www.bucer.org/138.html?&tx_ttnews[tt_news]=1106&tx_ttnews[backPid]=45&cHash=3de72cdf57).

As a prelude to Durban II, a Second Preparatory Session of the 20-state Preparatory Committee – of which Libya has been elected chair with Cuba, Pakistan and Iran as vice-chairs – was held in Geneva from 6 to 17 October 2008. The resulting ‘Draft Outcome Document for the Durban Review Conference 2009’ was available on the United Nations Human Rights Council (UNHRC) website (Draft 2008).

It is clear from the draft document, as well as from reports emanating from the subsequent 63rd UN General Assembly meeting held in Geneva during the first week of November, that a central focus of Durban II will be ‘Islamophobia,’ which is being presented as ‘a new form of racism.’

Muslims, the draft declaration asserts, are at dire risk of a racial ‘holocaust’ due to ‘a new form of racism’ – ‘Islamophobia’ – which is incited through ‘defamation of Islam.’

The draft declaration recommends that local, national and international laws and human rights covenants be reviewed and amended as necessary so that “defamation of Islam” is made a criminal offence, losing the protection it has long enjoyed under the ‘pretext’ of ‘freedom of expression, counter terrorism or national security.’ It recommends that legal instruments be established to punish offenders – that is, those who ‘defame’ Islam by associating it with violence, human rights abuses or terrorism.

Anne Bayefsky, a York University professor and human rights lawyer who attended the Second Preparatory Session in Geneva, warns:

This is the new dimension of Durban 2, which in many ways makes it a greater threat than Durban 1. It’s really setting up a war of ideas, that has rough implications, between Islamic states and everybody else □ Durban 1 was called an assault on Israel; a demonisation of Israel as racist and analogous to Apartheid South Africa. But in addition, Durban 2 is an assault on freedom of expression and other essential democratic rights and freedoms. (Libin 2008)

The draft declaration has built on the 17 August 2007 report by Mr Doudou Diene, the then UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the OIC’s Observatory of Islamophobia. The OIC is the Organisation of Islamic Conference.³

³ For background see: Elizabeth Kendal, UN Human Rights Council: Watershed

Canada and Israel have already pulled out of Durban II while several other Western states have threatened to boycott – most notably Denmark. As reported by Jette Elbaek Maressa in *Jyllands-Posten* (28 Oct 2008), Danish foreign minister Per Stig Moller told his Arab partners during a round trip to the Middle East that if the Organisation of Islamic Conference did not withdraw its proposal to make criticism of religion equivalent to racism, then Western countries will stay away from Durban II. "If the OIC pushes through this draft resolution, they shall not expect European or Western countries to be present at the table," he said (Maressa 2008).

The Non-Government Organisation 'UN Watch' has released a paper on the Durban II Draft Declaration. Entitled 'Shattering the Red Lines: The Durban II Draft Declaration,' it examines a "small selection of the 646 provisions of the Durban II draft declaration, highlighting several that breach the EU's red lines (I.e. the lines the EU determined should not be crossed).

In its opening summary, UN Watch charges that the draft declaration seeks "to distort human rights laws for the purposes of Islamic censorship" by "inserting a prohibition against 'defamation of religion' designed to restrict free speech and impose the censorship of Islamic anti-blasphemy laws."

UN Watch's paper provides a clear, thorough and yet concise overview and analysis of the most contentious elements of the Durban II draft declaration. It is recommended reading (UN Watch 2008).

days, WEA RLC News & Analysis, 18 Sept 2007. Available online: <http://www.worldevangelicals.org/commissions/rlc/reports/articles.htm?id=1411>.

This posting gives a thorough critique of Doudou Diene's August 2007 report and considers its implications in terms of the Islamisation of international human rights. Also see: Elizabeth Kendal, OIC: Eliminating 'defamation' of Islam. WEA RLC News & Analysis, 25 March 2008. Available online: <http://www.worldevangelicals.org/commissions/rlc/reports/articles.htm?id=1725>. This posting analyses the OIC's Observatory of Islamophobia which was launched at the OIC Dakar Summit in March 2008. The Observatory of Islamophobia, which is built on Doudou Diene's August 2007 report to the UNHRC, must be seen in the context of the OIC's 'Ten Year Program of Action' through which it aims to address the most "prominent challenges facing the Muslim world today". This posting also presents scenarios and means through which the OIC might fulfil its goal of establishing international instruments to punish – under the pretext of peace and human rights – those whom they charge with inciting Islamophobia through 'defamation' of Islam.

63rd UN General Assembly

Reliefweb has published a report on the 63rd General Assembly that was held in Geneva subsequent to the Durban Review Conference Second Preparatory Session (UN General Assembly 2008).

The report describes representatives from Egypt, Sudan, Libya and Pakistan all expressing great concern over the threat posed by this ‘new form of racism’ – Islamophobia – which is incited by ‘defamation of religion.’ According to the Libyan representative, freedom of speech is not the issue – at issue is the ‘misuse’ of that right.

The representative from Iran told the assembly that modern-day racism is no longer based on supposed inequality between races, but is based on culture, nationality or religion. He claimed that xenophobic acts against migrants, refugees and asylum seekers; defamation of religions; religious intolerance and racial profiling are all expressions of this new form of racism which seeks legitimacy and protection under various pretexts such as combating terrorism.

According to the representative from Saudi Arabia, Islam rejects all forms of discrimination and so in Saudi Arabia there are legal provisions to protect all the rights of all persons regardless of race, religion, status or gender.

Various free, multi-racial Western democracies (a minority in the UN) denounced racism while making strong and clear defences of human rights including religious liberty and freedom of expression.

The representative from France (speaking on behalf of the European Union [EU]) reminded the assembly that the EU had supported the organisation of a Review Conference as long as certain conditions were met and certain lines not crossed. He said that the primary goal should be the full implementation of existing normative framework and that new norms should only be drawn up if they were deemed necessary, were subject to a broad consensus and did not go back on universal achievements by restricting the current scope of human rights.

He expressed the European Union’s concern that the ‘thought process’ on the possible creation of complementary norms was moving in a direction that could reduce the level of human rights

promotion and protection. According to Reliefweb, the representative from France said the EU would “not allow the United Nations principles to be undermined” and would work in accordance with the principles that had been set out in the Universal Declaration of Human Rights. He said the Review Conference should concentrate on the implementation of the existing framework without restricting any human rights, establishing any hierarchy among victims, or excluding any one group. As well, the review conference should show how promoting human rights, especially the freedom of speech, could play an important role in fighting racism.

The representative from the USA expressed concern at the trend of conflating issues of racism and religion which he said were two distinct issues. He likewise asserted that the cure for intolerance is more dialogue, not less.

The representative from Israel regretted that alliances had trumped ideals and warned that nations with a genuine desire to promote peace should guard against the co-opting of legitimate language and ideas by racist demagogues. He expressed concern that Durban II risked becoming itself a platform of racial incitement, and he feared that words might quickly turn to actions.

The OIC formulated its Ten Year Program of Action (TYPOA) in Makkah in December 2005. Item VI on the TYPOA is ‘Combating Islamophobia.’ The OIC determined to do this by means of: 1) establishing an Observatory on Islamophobia tasked with monitoring Islamophobia and ‘defamation’ of Islam and issuing annual reports; 2) getting the UN to adopt an international resolution on Islamophobia, and call on all States to enact laws to counter it; and 3) establishing international legal instruments to enforce anti-defamation laws and deliver deterrent punishments to those charged with inciting Islamophobia through defamation of Islam.

The Observatory of Islamophobia was launched in Dakar in March 2008 and the UN has been passing resolutions against Islamophobia and ‘defamation’ of religion ever since the OIC and Arab League-incited Cartoon Intifada of February 2006. All that is left on the OIC’s agenda for combating Islamophobia is the legitimisation and implementation of national and international laws and legal instruments to punish offenders. It looks like Durban II might be a step in this direction.

Recasting defamation of religions as incitement: Resources and analysis

In June 2008, at the invitation of the Office of the High Commissioner of Human Rights (OHCHR), the European Centre for Law and Justice (ECLJ) submitted an analysis of the concept of ‘Defamation of Religions’ as it is being introduced by the Organisation of Islamic Conference (OIC) to the UN Human Rights Council (UNHRC) and General Assembly.

The paper is available on-line and is essential reading for anyone seeking a clearer understanding of the implications of the resolution ‘Combating Defamation of Religions’ (ECLJ 2008).

Another excellent analysis comes from the Becket Fund for Religious Liberty. They have issued an ‘Issues Brief’ on ‘Defamation of Religions,’ the updated 27 May 2008 condensed version of which can be found online (Becket Fund 2008).

The Becket Fund for Religious Liberty regards the defamation of religions concept as “fundamentally inconsistent with the principles outlined in the United Nation’s founding and legal documents’ as ‘it violates the very foundations of the human rights tradition by protecting ideas rather than the individuals who hold ideas.’”

The Becket Fund notes that anti-defamation measures would “force the state to determine which religious viewpoints may be expressed.”

“‘Defamation of religions’ measures ... are used to protect a set of beliefs, ideas, and philosophies. Yet religions make conflicting truth claims and indeed the diversity of truth claims is exactly what religious freedom as a concept is designed to protect.” It adds: “There is no basis in international or regulatory law for the concept of protection of religious ideas.”

The ECLJ position is clear from its opening paragraphs: “The position of the ECLJ in regards to the issue of ‘defamation of religion’ resolutions, as they have been introduced at the UN Human Rights Council and General Assembly, is that they are in direct violation of international law concerning the rights to freedom of religion and expression. The ‘defamation of religion’ resolutions establish as the primary focus and concern the protection of ideas and religions

generally, rather than protecting the rights of individuals to practise their religion, which is the chief purpose of international religious freedom law ...”

‘Sword and shield’

Because the resolutions on combating defamation of religions are sponsored by the OIC, the ECLJ examines freedom of religion and freedom of expression in OIC states to properly understand the OIC’s philosophy regarding this concept they are advancing. The ECLJ concludes: “The clever thrust of the OIC position uses the concepts of ‘defamation of religion’ and blasphemy as both sword and shield.” In the West it is used as a sword against the media, academics and all critics of Islam, while in Muslim countries “blasphemy laws are used as a shield to protect the dominant religion (Islam) ... silence minority religious believers and prevent Muslims from converting to other faiths, which is still a capital crime in many Muslim countries.”

The ECLJ recommended that the OHCHR and the UN uphold Article 18 of the Universal Declaration of Human Rights (UDHR 1948) and Articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR 1966). (Those articles are copied at the end for your convenience).

Focus shifting from ‘defamation’ to incitement

Concerning the right to freedom of expression – which is outlined in ICCPR Article 19 – ICCPR Article 20 part 2 makes the following provision: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

The ECLJ notes that Article 20 of ICCPR is “at the heart of the debate involving the legal justification of the ‘defamation of religions’ resolutions.” The ECLJ quotes UN Special Rapporteur for Freedom of Religion or Belief, Asma Jahangir: “The threshold of the acts that are referred to in article 20 is relatively high because they have to constitute advocacy of national, racial or religious hatred. Accordingly, the Special Rapporteur is of the opinion that expressions should only be prohibited under article 20 if they constitute incitement

to imminent acts of violence or discrimination against a specific individual or group.”

This is exactly what the OIC is addressing as it seeks now to shift the focus from ‘defamation of religions’ to ‘incitement’ of dangerous Islamophobia.

Consider these words from Mr Githu Muigai’s first address to the UN General Assembly as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (3 November 2008, Geneva):

In the ninth session of the Human Rights Council, I presented my predecessor’s [Mr Doudou Diene’s] report on ‘Combating Defamation of Religion’. The report highlights key issues, including reflecting the state of some forms of religious discrimination including Islamophobia, Anti-Semitism and Christianophobia. The report also makes a central recommendation to Member States, particularly in the context of the Durban Review Process: to move from the concept of ‘defamation of religions’ to the notion of ‘incitement to racial and religious hatred’. In this regard, I was glad to be informed that there seems to be an emerging trend among most Member States in agreeing to this idea, which would help ground the debate on concrete human rights principles and norms. (Muigai 2008)

If the OIC can re-shape the ‘defamation of religions’ issue into one of ‘incitement’ and ‘public order’ – don’t forget, they have already succeeded in making it a human rights issue by re-moulding it as an issue of racism – then those who seek provisions to protect freedom of expression through Articles 19 and 20 of the ICCPR will find that they no longer have a case. In fact, if ‘defamation of religions’ is made an issue of incitement to religious hatred, violence or ‘holocaust,’ then according to Article of ICCPR that incitement/defamation should be prohibited by law.

Conflict as a result of ‘pre-occupation with difference’ Meanwhile, yet another interfaith or inter-cultural initiative has come and gone. The Saudi-sponsored, UN-run ‘Culture of Peace’ conference – a follow-up from the Saudi-sponsored Madrid conference – was held in the UN Headquarters in New York 12-13 November.

The President of the UN General Assembly, Miguel d’Escoto Brockmann (a Nicaraguan Catholic priest and foreign minister under

Daniel Ortega) opened the peace conference with these provocative words:

Our world is experiencing an extremely difficult period, the worst since the founding of the United Nations. It is a time of numerous bankruptcies, but the worst is the moral bankruptcy of humankind's self-proclaimed 'more advanced societies', which has spread throughout the world. (Xinhua 2008)

Saudi Arabia's King Abdullah lamented that throughout history conflicts have resulted from mankind's pre-occupation with differences. While King Abdullah's analysis of history is debatable his implication is clear: if we want to live in peace we should refrain from being pre-occupied with our differences (Xinhua 2008; King Abdullah 2008).

Felice Gaer, chairwoman of the US Commission on International Religious Freedom commented that she'd have liked to see the conference held in Saudi Arabia. "The fact that it isn't speaks volumes," she said adding that Saudi Arabia's entrenched and systematic religious discrimination would make the conditions of entrance into the country intolerable for non-Muslim religious leaders.

Reporting on the Saudi-sponsored 'Culture of Peace' conference for Fox News, Jennifer Lawinski writes:

Commission chairwoman Gaer thinks it's more than a public relations move for the Saudi government, it's a cooperative effort between Muslim nations to reinforce the defamation of religion resolution they're sponsoring before the General Assembly this fall.

The resolution, introduced by Pakistan to the UN Human Rights Council in 1999 has been taken up by the General Assembly and passed every year since 2005.

The non-binding Resolution 62/145 adopted in 2007 says it 'notes with deep concern the intensification of the campaign of defamation of religions and the ethnic and religious profiling of Muslim minorities in the aftermath of 11 September 2001.'

It 'stresses the need to effectively combat defamation of all religions and incitement to religious hatred, against Islam and Muslims in particular.'

Gaer said the Saudi-sponsored inter-faith meeting in Madrid, like the UN resolution, was part of an attempt to legitimise sharia law by making attendees sign a declaration that said the participants would

encourage ‘respecting heavenly religions, preserving their high status, condemning any insult to their symbols.’

‘This was a Madrid declaration calling for or affirming the idea of the global blasphemy law in slightly moderated language,’ she said. ‘This would give them the freedom to declare anything from cartoons to incitement to a whole range of things to be defamation.’

Twenty-two members of the Council of the League of Arab States adopted the declaration and asked the UN and UNESCO to do so as well.

The defamation of religions resolution has been criticised for acting as a shield for countries that persecute any insult to Islam and intimidate Western nations that may attempt to criticise them.

‘The problem is that this particular conference will legitimise the Saudis as somehow the leaders [of the anti-religious defamation movement] when they are the promoters of a particularly intolerant form of their own religions practice,’ Gaer said. ‘It will promote this idea of defamation which puts severe restrictions on freedom of expression and turns the whole concept of human rights on its head.’ (Lawinski 2008)

The Culture of Peace conference's unanimously approved resolution “(r)ecognises the commitment of all religions to peace” (Culture of Peace Resolution 2008). The problems caused by some believing that ‘peace’ is achieved through the elimination of dissent and difference, or through enforced submission, conformity or bland uniformity was not addressed. Rather, leaders were repeatedly encouraged to accept the myth that while creeds may vary considerably, faith leads us to common (presumably noble) values.

The reality is however, that our diverse creeds and faiths give rise to diverse, sometimes conflicting values. The question remains: what should be protected – state-proscribed creeds or the fundamental rights of human beings?

The OIC will seek to legitimise the defamation of religions issue by re-casting it (using the language of the ICCPR) as an issue of incitement to religious discrimination, hatred and violence, which poses a serious threat to public order, national security and human rights.

Important Documents

UDHR Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

ICCPR Article 19

1. Everyone shall have the right to hold opinions without interference.
2. 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.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

ICCPR Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

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