

**Muting the Search for Truth:
An Overview of the “Defamation of Religions”**
Speech Delivered by Ambassador J. Kenneth Blackwell
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Ladies and Gentlemen,

It is a privilege to be here and to discuss such important and timely topics. As some of you may know, I used to represent the United States as the Ambassador to the United Nations Human Rights Commission in Geneva. And while Geneva may sound like a plush job, I often left the halls of the Palais des Nations with an overwhelming sense of sadness. Mary Ann Glendon is going to talk later this weekend about the abuse of “rights” talk, and that is precisely what I witnessed on a day to day basis. Countries using a human rights mechanism to advance malicious and deceitful aims. I had hoped after my tenure that the reforms that went into place in Geneva might rectify the inefficiencies and abuse, but I am afraid that political expediency still trumps human dignity at the UN. One such issue that has taken the world by storm is the “defamation of religions” issue.

But before we let things get too technical, let’s talk about teddy bears. The daughter of a friend of mine absolutely loved her teddy bear growing up. She actually named it after her little brother and carried it everywhere she went. After a year or two of dragging Bobby the Bear across bathroom floors, school cafeterias, and county fairs, my friend and his wife began to worry that this was not only a health threat for their daughter but was a public health threat for anyone who ever laid eyes on Bobby the Bear. Thus, Bobby the Bear went back to the woods where he came from one Sunday afternoon and lived happily ever after with his Momma Bear and Poppa Bear, or so the little girl was told. She was not so thrilled with Bobby the Bear’s departure.

But the teddy bear is not just a Midwest icon or an American tradition, it is really a comforting object for kids around the world. Parents use teddy bears to hush babies, kids use teddy bears to make imaginary friends on long car trips, and teachers use teddy bears as classroom mascots to create unity and camaraderie. However, in Sudan a couple years ago when a British school teacher tried to name the classroom teddy bear, according to the students’ wishes, after one of the kids in the class, she was thrown in jail. The problem you see, is that the popular kid after whom the teddy bear was named was named Mohammed. Gillian Gibbons was charged with insulting religion, inciting hatred and showing contempt for religious beliefs. She was only found guilty of insulting religion, but could have faced 40 lashes if she had been found guilty of all three charges. She ultimately spent 15 days in prison and was deported, against the wishes of many of the parents of her students.

Now let me switch gears for a moment. I promise this will all come back together here in a second, so stay with me. Who has ever seen the television show The Simpsons? Those who have, know Homer and Bart and Marge, all stereotypes of what the average American may look like. Now, admittedly I do get a laugh out of the Simpsons on occasion. Self-deprecating humor about Americans can usually get a rise out of me. But every now and then, I get offended by the way Homer refers to religious beliefs or stereotypes particular minorities. But I’ve never called the Federal Communications Commission to have them shut down the show. In Russia, however, a lawsuit was recently filed against a television station for airing episodes of the Simpsons on the basis that the show commits blasphemy against Christianity.

Okay, final diversion then we can spin it together. As a Christian, I have grown quite accustomed to being told by church leaders, my wife, and even my children that particular actions of mine are less than Christ-like. It hurts my pride, but I know that they are looking out for my own salvation and seeking to build me up to honor God. But that’s not to say other strongly religious men and women haven’t tried to convince me that Judaism,

Hinduism, or Mormonism is a better way to honor God. I engage them, as I disagree, but I wouldn't sue them for trying to convince me. But in India, there is a proliferation of anti-conversion laws that outlaw any "threats of divine displeasure." So the next time my political opponents tell me to go to hell, maybe I'll point out to them first how deserving of hell I am but then how privileged we are in the United States to be able to have such free exchanges about God and how He views things.

So what do all three of these stories about teddy bears, the Simpsons, and "threats of divine displeasure" have to do with the United Nations? Well, all of these are examples of how the concept of "defamation of religions" is used at the domestic level. There are those who want to mute the public square, to suppress any challenge to their own religious beliefs, and to intimidate disfavored religions with discriminatory legal challenges, sometimes amounting to capital punishment.

But 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."¹ 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.²

However, 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.³ 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.

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-blaspemy 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

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

² Kevin Hasson, *The Right to Be Wrong*, Encounter Books, 2005.

³ 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.

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. I have already mentioned the situations in Russia and India. But even 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.”⁴ 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.⁵

What’s the problem?

So 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 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 UN High Commissioner for Human Rights has confirmed that there is no international consensus on the concept of “defamation of religions.”⁶ 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

⁴ Defamation Bill 2006 (Passed July 2009). Available at <http://oireachtas.ie/documents/bills28/bills/2006/4306/b43d06s.pdf>.

⁵ Pak. Pen. Code § 295 (1860).

⁶ 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.

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.”⁷

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.⁸ Accordingly, the chairperson of the Ad Hoc Committee, the Ambassador Idriss Jazairy 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.”⁹

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.¹⁰ 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.”¹¹

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).¹² 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

⁷ ICCPR, Art. 20; Statement of Mr. Ekmelledin 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).

⁸ 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>.

⁹ Letter from Amb. Idriss Jazairy, 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).

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

¹¹ ICCPR, Art. 20.

¹² 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.

hostility...The notion of incitement to *hostility* may, however, be more prone to subjective approaches, very much depending on the perspective taken.”¹³

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 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.

So why does this all matter to you. It matters because it’s no longer just a UN issue, some cloud in the sky that never quite threatens your island of paradise. It affects the government’s ability to limit our speech, to dictate our theology, to control our television shows, to send me to hell, and to confiscate my teddy bear. Thanks so much for listening and for having me here.

¹³ “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.