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**SUBMISSION BY THE
INTERNATIONAL HUMANIST AND ETHICAL UNION
(IHEU)
JOINTLY WITH THE (UK) NATIONAL SECULAR
SOCIETY TO THE
UNITED NATIONS COMMISSION FOR HUMAN
RIGHTS
ON THE IMPLEMENTATION OF 'COMBATING
DEFAMATION OF RELIGIONS' RESOLUTION OF 27
MARCH 2008**

SUBMISSION DATED 2 JUNE 2008



We make this Submission in response to the invitation by the UN Commissioner on Human Rights dated 29 April 2008 in respect of the implementation of UN Resolution 7/19 on 27 March 2008 resolution entitled '**Combating Defamation of Religions**' which passed with 24 countries in favour, 14 against and 9 abstentions.

We thank the office of the High Commission for the consideration it has shown in inviting this Submission.

We note, for sake of completeness, the resolution to which this Submission relates: "16. *Requests* the High Commissioner for Human Rights to report on the implementation of the present resolution and to submit a study compiling relevant existing legislations and jurisprudence concerning defamation of and contempt for religions to the Council at its ninth session."

Our Organisation

The International Humanist and Ethical Union (IHEU) is an international NGO in special consultative status with ECOSOC. It is the world umbrella organisation for Humanism. Its membership includes more than 100 Humanist, Rationalist, Secular and Ethical Culture organisations from over 40 countries and from all continents. IHEU does not claim to represent formally or speak for the non-religious, the religiously non-concerned, and indeed those affected (often adversely) by the actions and proposed actions of those acting or claiming to act from a religious perspective or motivation. Nevertheless, such people are largely without a formal voice whereas the representations of those speaking from a religious perspective are strong. We aim to go some way to remedy that imbalance. IHEU absolutely supports all Human Rights, including freedom of religion

Recommendations

We recommend that:

- 1. the study requested in the resolution should include existing blasphemy legislation, as that also constitutes 'defamation of religions'. and the treatment of those accused of blasphemy, whether illegal or not, with particular reference to the implications for their human rights**

- 2. An assessment is made of the likely implications for Human Rights of defamation of religion legislation and included in the study. In particular we are concerned about the impact on freedom of expression and of freedom of religion, including those who do not practise the predominant religion in a member state.**

- 3. If our proposed assessment of the likely implications for Human Rights of defamation of religion legislation identifies grave dangers to Human Rights, to recommend to the General Assembly (as appropriate) either that:
a) implementation is on balance not in the interests of Human Rights as a whole, or
b) specified safeguards require to be built in as part of the implementation.**

- 4. A resolution be tabled to call on the states where blasphemy is a capital offence to remove the death sentence as a penalty. Such capital offences are an abuse of human rights, including freedom of thought and conscience.**

A. PRINCIPLE CONCERNS

We are deeply concerned that the present exercise to combat 'defamation of religions' through the UN and through national and international legislation has grave implications for established freedoms including freedom of expression, freedom of



conscience and freedom of religion - the last of which the sponsors of the resolution at the Human Rights Council are apparently aiming to protect.

We find these resolutions to be both unnecessary and deeply flawed.

1. Protection of individuals, not ideas

Within the context of human rights, the very concept of 'defamation of religion' is flawed, since it is individuals, both believers and non-believers alike, who have rights, not religions. Any legislation limiting freedom of expression relating to religious matters should be directed to combating the incitement to hatred of persons based on their religion and the protection of public order, rather than protecting beliefs themselves. Ideas and beliefs do not merit protection because, unlike human beings, beliefs are not living beings, cannot suffer pain or humiliation when attacked or insulted, and do not therefore merit the kind of protection accorded to human beings or some other living things.

During the second reading of the Racial and Religious Hatred Bill in the UK Parliament, this point was made: 'We believe that the law should protect the believer; the belief should be strong enough and confident enough to fight for itself (...)
Individual religions have to be robust enough to argue on their own behalf.'¹

2. Lack of definition of defamation.

Furthermore the lack of a definition of the term 'defamation' leaves these resolutions open to abuse. The idea implied in unqualified defamation of religion legislation is that every aspect of every religion deserves respect without qualification. This is not only unsupportable but very dangerous – as the tenets or practises of some religions are themselves breaches of human rights.² This would mean that the fight against those abuses should be curtailed because respect for belief must take precedence.

This section will be expanded below in part H2.

3. Defamation Laws will reinforce punitive blasphemy laws

Defamation of religion legislation amounts to extending the scope of blasphemy laws. We will give examples of the abuse arising from blasphemy laws from the capital

¹ Racial & Religious Hatred Bill, Second reading, Point 17.(11.10.05)

² For example the following story from The Guardian in the UK: 17-year-old student Rand Abdel-Qader was beaten to death by her father after becoming infatuated with a British soldier in Basra.. Abdel-Qader, 46, a government employee, was initially arrested but released after two hours; he remains a free man, despite having stamped on, suffocated and then stabbed his student daughter to death. Her shrouded corpse was then tossed into a makeshift grave without ceremony as her uncles spat on it in disgust

'That girl was a mistake in my life. I know God is blessing me for what I did,' he said. Homosexuality is punishable by death, a sentence Abdel-Qader approves of with a passion. 'I have alerted my two sons. They will have the same end [as Rand] if they become contaminated with any gay relationship. These crimes deserve death - death in the name of God,' he said.

Rand's mother, 41, remains in hiding after divorcing her husband in the immediate aftermath of the killing, living in fear of retribution from his family. She also still bears the scars of the severe beating he inflicted on her, breaking her arm in the process, when she told him she was going.

<http://www.guardian.co.uk/world/2008/may/11/iraq.humanrights>



offence to the extra-judicial cruelties seen in, for example, Pakistan where there is no fair trial and the likelihood of murder in prison that seem inseparable from it. We will point out that defamation laws will encourage even greater abuses of human rights. Limits to freedom of expression are already defined in the ICCPR (article 19) as are the permitted punishments for abuse (article 20). The claim that there is a need for further limiting freedom of expression in a purely religious context is unjustified given existing limits.

4. Defamation is unworkable in a society with global communications

As the world's religions are largely mutually exclusive, they are to a large extent mutually blasphemous of each other. To the extent they reject each others' claims and deny the divinity of each others' gods, while asserting the supremacy of their own god or gods, teachings and morality.

B. FREEDOM OF EXPRESSION

We are convinced that defamation legislation will materially reduce freedom of expression. The Universal Declaration of Human Rights (1948) confirms that all individuals have 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.'

Free expression is a human right that is being all but ignored in item 10 of the 1997 resolution, which says 'exercise of these rights carries with it special duties and responsibilities and may therefore be subject to limitations as are provided for by law and are necessary for respect of...and respect for religions and beliefs'

Open freedom of expression is a pragmatic way of resolving differences without violence, without which differences fester and erupt in violence and those expressing extreme views are heard without counter-argument, so it will also be used by extremists to silence moderates. It will therefore be counter-productive in controlling terrorism.

The Special Rapporteur on Freedom of Religion and Belief has commented: "respect for the right to freedom of expression, as articulated in article 19 of ICCPR, constitutes a pillar of democracy and reflects a country's standard of justice and fairness (...)Furthermore, inter-religious and intra-religious dialogue is vital for the prevention of conflicts."³

The International Covenant on Civil and Political Rights (ICCPR) in its Article 19(1-2) provides that '[e]veryone shall have the right to hold opinions without interference' and 'the right to freedom of expression' According to 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 'religious hatred that constitutes incitement to discrimination, hostility or violence'

³ Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development - Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir. For full text, see Appendix 1.



As the scholar Maxim Grinberg has pointed out, Eleanor Roosevelt, when speaking for the United States, opposed the Article 20 of the ICCPR on the ground that it would allow governments to silence all criticism "under the guise of protecting against religious . . . hostility," rendering other basic rights guaranteed by the ICCPR "null and void."

We at IHEU fear that this is exactly what is happening now and this was why IHEU's Main Representative Roy Brown intervened at the UN Human Rights Commission during its 60th session (15 March – 23 April 2004), asking the Commission to be:

"mindful of the distinction between defamation of a religion, and the publication of academic research into its origins, history and practices. We all deplore defamation and falsehood. But it would be a tragedy if concerns about defamation were allowed to stifle honest inquiry and the publication and expression of factual data. We would also urge all states to recognise that with so many differing beliefs current in the world, genuine differences will arise. *The honest belief of one man should not be treated as defamation of his religion by another.*

C. CRITICISM BECOMES HATE SPEECH

There is an increasing tendency to frame every criticism of religion as hate speech, especially in the case of Islam. 'Islamophobia' is being increasingly used as a blanket term to cover both criticism of Islam and hatred of Muslims. It is used by Muslim leaders to demonise even those who express legitimate concerns about any aspect of Islamic practice, such as the stoning of women for adultery, by equating such criticism with hatred of Muslims.

As UN Special Rapporteur Prof. Abdulfateh Amor said in April 2004 to the Commission on Human Rights "There are two problems – when religion is the property of the state, and when the state is the property of religion."

In many states that have an official religion, freedom of expression, freedom of religion and freedom of conscience are severely restricted.

The situation has become further complicated by the conflation of race and religion, particularly in the case of Islam, so that criticism is labelled not only Islamophobic but racist. Potential critics of religion are therefore doubly silenced.

D. FREEDOM OF RELIGION AND FREEDOM OF CONSCIENCE

The current attempts to 'combat defamation of religions' at the UN are in fact attempts to apply internationally, and in a different form, the blasphemy laws that are in force in many of the countries which are pushing forward this resolution.

The IHEU believes that the increasing currency given to the misleading notion of 'defamation of religion' will lead to a great threat to both freedom of religion and freedom of conscience. As IHEU said at the 2004 Human Rights Commission "...we would urge those states whose laws are based on their understanding of God's law, not to treat calls for the change or repeal of any law as defamation of their religion, or



worse, as blasphemy or as evidence of apostasy". **We recommend that a resolution be tabled to call on the states where blasphemy is a capital offence to remove the death sentence as a penalty. It is an abuse of human rights, including freedom of thoughts and conscience.**

We are concerned that in the context of the various moves to combat defamation of religion, the UN has not been able to provide leadership by protecting the freedoms enshrined in the 1948 Universal Declaration of Human Rights. We are however heartened that the architect of the European Convention on Human Rights, the Council of Europe, has recently come to the defence of freedom of expression and recommended that religious groups accept that their beliefs cannot be protected from criticism. The Council of Europe recommended the repeal of blasphemy laws to its member countries:

Freedom of expression is not only applicable 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 Convention⁴. Any democratic society must permit open debate on matters relating to religion and beliefs.

IHEU commends this to the UN bodies considering the question of 'Defamation of Religion'.

E. CONFLICTING RIGHTS

It is often suggested that freedom of expression must accommodate people's sensibilities and sensitivities, but a freedom that cannot be freely exercised can hardly be considered a freedom. While we should all draw back from giving gratuitous offense, it should be for the good sense of every individual as to how best to express oneself, in a way that minimizes conflict in society.

Defenders of the freedom of religion need to accept that whilst it includes the freedom to freely practise one's religion, it does not include the right not to have one's religious feelings or beliefs challenged or criticized. Freedom of religion implies the right to criticize one's own or another's religion, a freedom that is at the heart of religious reform and social progress. Freedom of expression is a fundamental human right and is the freedom that underpins many other freedoms.

All too frequently denial of freedom of expression results in deprivation of other substantial human freedoms and liberties. We do not accept that the freedom of religion takes precedence over the freedom of expression.

In fact the debate over conflicting rights is based on a false premise. **There is no freedom not to be offended.**

⁴ Item 10 of the 1997 resolution emphasizes that everyone has the right to hold opinions without interference and the right to freedom of expression, and that the exercise of these rights carries with it special duties and responsibilities and may therefore be subject to limitations as are provided for by law and are necessary for respect of the rights or reputations of others, protection of national security or of public order, public health or morals and respect for religions and beliefs.



F. A COVER FOR DISCRIMINATION

It would be unacceptable for concerns over 'Defamation of Religion' and 'Islamophobia' to lead us astray from Human Rights discourse, and for them to become a shield against criticism for states that fall short of their obligations under the various international human rights covenants and conventions.

For instance, while Pakistan was the sponsor of the 2002 Resolution on 'Combating Defamation of Religions' which applied the resolution to all religions rather than Islam alone, under Pakistan's own domestic legislation, different religions receive different levels of protection from the state in cases of blasphemy.

In theocratic states the charge of apostasy is a constant threat to religious dissenters and the free exercise of both freedom of religion and freedom of conscience is severely impeded. These states will now have the added weapon of these UN resolutions to further limit these freedoms. The current discussions about 'Defamation of Religion' have not adequately recognized the rights of individuals to choose, to change or to abandon their religions.

G. UNNECESSARY, FLAWED AND MORALLY WRONG

1. Unnecessary

We believe that as Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination already 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', new resolutions and new legislations are unnecessary. We also note with concern that during the debates on defamation of religions, the focus has been almost entirely on Islam. There is a tendency to ignore anti-Semitism for example.

2. Flawed

Equally troubling is the fact that nowhere in these resolutions has the term 'defamation' been defined. Attempting to restrict freedom of expression on the grounds of defamation without even defining the term is wrong in principle and bad in law. It could lead, for example to justifying the criminalization of apostasy on the grounds that it constitutes defamation of the favoured religion.

We believe that the pursuit of undefined catch-all defamation of religion legislation is systematically undermining the rights of freedom of expression. In this respect the UNHRC took an unprecedentedly retrograde step by amending the mandate of the Special Rapporteur on Freedom of Expression on 28 March 2008: "To report on instances in which the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination ..."

The UN Special Rapporteur on Freedom of Expression will now be required to report on the 'abuse' of this most cherished freedom by anyone who, for example, dares speak out against Sharia laws that require women to be stoned to death for adultery or young men to be hanged for being gay, or against the marriage of girls as young as nine, as in Iran.

We even raise concerns for freedom of expression within the proceedings of the HRC itself. After a courageous group of NGOs spoke out against the above amendment, we understand it has been mooted that NGOs should be permitted to intervene only with the permission of their own Governments. Clearly the more repressive regimes are



and the more they have to hide, the more likely they would be to seek to muzzle the NGOs from their country.

For the first time in the 60 year history of UN Human Rights bodies, a fundamental human right has been limited simply because of the possible violent reaction by the enemies of human rights.

3. Morally Wrong

Attempts to protect religions from 'defamation' are really seeking to protect religion from critical evaluation, and aiming to stifle religious dissent, and would therefore constitute a violation of the principles of the UN Charter and a disavowal of the freedoms of individuals in favour of those who deny them in the name of group rights.

There are deeper moral issues because a religion that needs the power of a state and the threat of punishment for criticism loses its persuasiveness and its moral character. We should progress towards a universal civilization that will flourish on the free exchange of ideas and the critical examination of each other's beliefs in a true celebration of our common humanity.

The current exercise in 'combating defamation of religion' is doing quite the opposite.

APPENDIX 1

PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir NB PLEASE FIND EXACT DATE FROM UNHRC WEBSITE!!!!!!!!!!!!!!!!!!!!!!

1. Freedom of expression including questions related to religious conflicts, religious intolerance and extremism

Para 38 (part)

"38. ... In response to the offensive publication of representations of the Prophet Muhammad by the media in some countries starting in late 2005, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur for the promotion and protection of the right to freedom of opinion and expression as well as the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related

Intolerance ... also recalled that respect for the right to freedom of expression, as articulated in article 19 of ICCPR, constitutes a pillar of democracy and reflects a country's standard of justice and fairness. Peaceful expression of opinions and ideas, either orally, through

the press or other media, should always be tolerated. The press must enjoy large editorial freedom to promote a free flow of news and information, within and across national borders, thus

providing an arena for debate and dialogue. Nevertheless, the use of stereotypes and labelling

that insult deep-rooted religious feelings do not contribute to the creation of an environment conducive to constructive and peaceful dialogue among different communities."

[final Conclusion and recommendation]:



“52. Furthermore, inter-religious and intra-religious dialogue is vital for the prevention of conflicts. Religions may examine ways of managing the expression of their own internal diversity while at the same time incorporating a genuinely pluralist culture. Inter-religious and intra-religious dialogue should not only include religious leaders but could also involve initiatives at the grassroots level. In this regard, it may be useful to take into account the perspectives of believers who are dispassionate about their faith and of non-believers. Teachers, children and students could also benefit from voluntary opportunities of meetings and exchanges with their counterparts of different religions or beliefs, either in their home country or abroad. Consequently, States should be encouraged to consider promoting regional or international cultural exchanges in the field of education, for example by concluding agreements relating to such exchange programmes and by providing funding for related grassroots activities.”

APPENDIX 2 History of ‘Defamation of Religion’ resolutions

- In 1999 the United Nations Commission on Human Rights (UNCHR) received a draft resolution titled 'Defamation of Islam'. After some amendments this text was adopted by the UNCHR under the title 'Defamation of Religion' and is a non-binding resolution of the UNCHR. (Resolution 1999/82 of 30 April 1999).
- Following adoption of similar resolutions in 2000, 2001, 2002, 2003, 2004, 2005. 2006 and 2007, the phrase 'Defamation of Religion' has gained currency at the UN, to the extent that on 8 September 2006, when the UN GA adopted a global counter-terrorism strategy, it contained the phrase, "and to promote mutual respect for, and prevent defamation of, religions." The UN returned to this theme in August last year with Item 9 of the provisional agenda of the General Assembly's 6th session⁵.
- The first 'Defamation of Religion' resolution was adopted in 1999, before the terrorist attacks on civilian population in the US on 11 September 2001. Those who perpetrated these terrorist acts did so by invoking their god and wanted to be martyrs for their religion. The various versions of the resolution adopted post-2001 do not contain an unequivocal denouncement of such use of religion to justify, or incite any form of, violence or hatred.
- In 1999, the very year in which this controversial resolution was first introduced by Pakistan at the UN Commission on Human Rights, the then UN Special Rapporteur on Religious Intolerance Professor Abdelfattah Amor pointed out in his 23-page report to the UN General Assembly that religious extremism was on the rise all over the world. Significantly, he stated: "No religion is free from extremism".

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<http://domino.un.org/UNISPAL.nsf/3822b5e39951876a85256b6e0058a478/e218497a128230aa8525734f0049ba57!OpenDocument>



- In April 2007, the new avatar of the UN Commission on Human Rights, the 47-member Human Rights Council, adopted the resolution 'Combating Defamation of Religions' with 24 countries in favour, 14 against and 9 abstentions. Non-Islamic countries Russia, Cuba and China voted in favour of preventing the "negative stereotyping" of religions and "attempts to identify Islam with terrorism." With this broad-based support, the resolution has assumed a seriousness which requires reasoned analysis.

In March 2008 the UNHRC (formerly the UNCHR) introduced a draft resolution combating defamation of religion (A/HRC/7/L15). It was adopted by 21 votes to 10 (14 abstentions). A similar resolution with a similar voting pattern was also passed in April 07 (24 in favour, 14 against and 9 abstentions).

APPENDIX 3

More information about IHEU as an NGO and its commitment to freedom of religion

As an NGO that represents Humanist organisations engaged in the task of defending and promoting Freedom of Expression, and as an organization that has historically allied itself with those working for human freedoms, human values and human emancipation, *IHEU and its member organizations affirm that Freedom of Religion is an inalienable right of every human being*, and that each individual should be absolutely free to form, hold or change his or her beliefs about metaphysical and spiritual matters. We also affirm that the right of all individuals to hold their views should be respected, and that they are entitled to protection from the state when these freedoms are endangered. IHEU also affirms that religious rights and freedoms, like all human rights, are vested in the individual, not the group. It is this affirmation that forms one of the cornerstones of our rejection of defamation legislation.

IHEU has unequivocally condemned in the past, and still condemns, any attempts at stereotyping of religions, racial profiling of individuals, and any and all calls for violence in the name of a religion or a god. It is logical that those who seek the protection of the law for their freedom of religion should also be accountable to it for their free exercise thereof.

Thus, from the outset, we wish to make it clear that while we are in favour of Free Speech, we accept and support reasonable limitations on Free Speech such as those addressing incitement to violence and the incitement to hatred where the reasonable person accepts that this is likely to lead to violence, or the breakdown of public order. The precise limitations are a complex discussion not within the scope of this submission. We are convinced, however, that the restrictions on Freedom Of Speech proposed by the UNHCR's draft resolution do not fulfil any of these limited exclusionary criteria.

The secular position affirms freedom of religion as long as it is privately practiced and is not, as some would imply, seeking to bring an end to religion of any kind.