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## **Freedom to change religion in UN documents and influence of Islamic states on wording and practice. Search for an unchangeable basis**

*Abstract:* In the paper the author deals with the issue of religious freedom in the documents of the United Nations Organization (UN) and in the acts of other important international organizations that are active in the field of protecting humans rights and fundamental freedoms. This universal legal view is primarily directed to the freedom to change religion or ideological conviction. Especially in the drafting process of UN declarations, conventions and resolutions, one can notice the endeavours of the member states of the Organisation of the Islamic Conference (OIC) that the freedom to change religion should not be clearly and explicitly defined.

The endeavours of OIC have a double effect. An empty and grammatically vague formulation of a right or a duty cannot have a foreseeable legal effect. This especially applies to international law where, as a rule, no higher authorities exist above the state level, which could – like in an internal legal system – enforce the carrying out of legal regulations. Thus, in the international community the carrying out of a legal norm largely depends on the agreement of its addressees. On the other hand, the drafting process itself of a legal regulation is very important for its interpretation before the legal and arbitration bodies. If a conflict arises concerning the scope of rights and duties, also the legislator's intention is an important issue in accordance with international civil and common law. And the legislator's intention can best be seen by analyzing the drafting process of the legal regulation, especially by examining the suggestions, standpoints and negotiation bases of the states involved.

The author pays special attention to the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the African Charter on Human and Peoples' Rights, numerous resolutions of the United Nations General Assembly and to the work of individual UN councils and commissions active in the field of protection of human rights and fundamental freedoms. In this respect the author also deals with the issue of the relation or possible collision between the right of free speech and the aspect of religious freedom prohibiting insult to religious feelings and derision of religion.

*Key words:* religious freedom, freedom to change religion, insult to religious feelings, freedom of speech, United Nations Organization, Organisation of the Islamic Conference, international law

*Povzetek:* Pravica do zamenjave veroizpovedi v dokumentih ZN in vpliv islamskih držav na besedilo in prakso. Iskanje nespremenljive osnove

Avtor v prispevku obravnava vprašanje svobode vere v dokumentih Organizacije Združenih narodov (OZN) in v aktih drugih pomembnejših mednarodnih organizacij, ki delujejo na področju varovanja človekovih pravic in temeljnih svoboščin. Ta univerzalni pravni pogled je v prvi vrsti usmerjen v svobodo spremeniti vero oziroma svetovnonazorsko prepričanje. Zlasti v procesu nastajanja deklaracij, konvencij in resolucij OZN je opaziti prizadevanja držav članic Organizacije islamske konference (OIC), da svoboda spremeniti vero v mednarodnem pogodbenem pravu ne bi bila jasno in izrecno opredeljena.

Prizadevanje OIC ima dvojni učinek. Vsebinsko izvotljena in gramatično neprecizna formulacija pravice ali dolžnosti namreč ne more imeti predvidljivega pravnega učinka. To zlasti velja za mednarodno pravo, v katerem nad ravno države praviloma ni navzočih hierarhično nadrejenih oblasti, ki bi mogle po vzoru notranje pravne ureditve skrbeti za prisilno izpolnjevanje določb pravnih predpisov. Izpolnitev pravne norme je v mednarodni skupnosti zato v največji meri odvisna od soglasja v razumevanju naslovnikov predpisa. Po drugi strani pa ima že sam proces nastajanja pravnega predpisa velik pomen za njegovo interpretacijo pred dogovorjenimi sodnimi in arbitražnimi tribunali. Ob morebitnem sporu o obsegu pravic in dolžnosti je v skladu z mednarodnim pogodbenim in običajnim pravom treba izhajati tudi iz namena zakonodajalca. Namen zakonodajalca pa je pogosto najbolje razviden prav iz analize postopka nastanka pravnega predpisa, zlasti iz pregleda pobud, stališč in pogajalskih izhodišč vpletenih držav.

V skladu z navedenim konceptom avtor pozornost usmeri v Splošno deklaracijo Združenih narodov o človekovih pravicah (UDHR), v Ameriško deklaracijo o pravicah in dolžnostih človeka (ACHR), v Afriško listino o človekovih in državljan-skih pravicah, v številne resolucije Generalne skupščine ZN in v delo posameznih komisij in svetov ZN, ki delujejo na področju varovanja človekovih pravic in temeljnih svoboščin. V tem pogledu avtor svojo pozornost usmeri tudi na vprašanje odnosa oziroma eventualno kolizijo med pravico do svobode govora in vidikom verske svobode, ki prepoveduje žaljenje verskih čustev in zasramovanje religije.

*Ključne besede:* svoboda vere, pravica spremeniti vero, žalitev verskih čustev, svoboda govora, Organizacija Združenih narodov, Organizacija islamske konference, mednarodno pravo

The United Nations in its different bodies has passed numerous documents and resolutions on religious freedom and the freedom of expression. However, we can see that the wording has not always been the same. In this article I will chronologically focus on the wordings on religious freedom compared to the freedom of expression in several documents adopted in different bodies of the United Nations, i.e. General Assembly, Third Committee, Human Rights Committee, Commission on Human Rights, which has now been replaced by the Human Rights Council, and others. I will focus on the wording regarding the freedom to change one's religion and the freedom of expression and will examine if Islamic states, gathered in the Organization of Islamic Conference (OIC), are successful in

influencing the wording – particularly on the right to change one’s religion, and if they try to impose limits on the freedom of expression.

In this article I will argue that such tension clearly exists and that it is demonstrated through certain resolutions. At the same time I will argue that the OIC states have so far not been successful in inserting its ideas into resolutions that would be universally recognized. We will see that in the resolutions on *Elimination of all forms of religious intolerance* the wording on the »change of one’s religion« became more and more vague and blurred, but also that the original phrase was reinserted after a certain period of time.

In this article I will argue that in the process of drafting United Nations documents, Muslim countries favour formulations that restrain the right to change one’s religion while neglecting the Quran verse that »there shall be no compulsion in religion« (Quran 2:256). I will also show that in the last two decades Muslim countries have been trying to include in international documents direct Sharia law where the change of one’s religion is forbidden and often punished by death. At the same time they want to impose formulations that would protect the Islamic religion as an institution and consequently, in the context of the defamation of religions, limit the freedom of expression. I will argue that the attempt is conducted via the Durban process, in which certain OIC countries would like to equate the defamation of religions with racial hatred and in the further stage level religion with race. The most important part of research will be focused on the resolution on the defamation of religions and with it on the search by certain Islamic countries for a solid, unchangeable base that would be inherited in every person and would therefore be the basis for their claim that religion is unchangeable. Thus the change of religion would represent an unforgivable act – punishable by death. In this regard we will see how important the connection between the freedom of expression and religious freedom is. I will also argue that such an attempt does not represent a serious threat since in the long run it is contradictory in itself and as an idea therefore not sustainable.

## 1. The Universal Declaration and ICCPR

I will start with the Universal Declaration of Human Rights (UDHR), where this issue is mentioned in the articles 18 and 19. I will show how Muslim countries as soon as in this declaration started to oppose the wording on the change of one’s religion but they had not developed an alternative idea yet. The wording of the article 18 says:

»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.«

In the process of drafting the UDHR, a group of Muslim countries supported an amendment by Saudi Arabia, which wanted to delete the phrase »freedom to change his religion or belief«. Mr Baroodi from Saudi Arabia argued that the

amendment had the aim to prevent abuses of the rights from missionaries who many times acted as predecessors of political interventions. But the amendment did not directly challenge the right of individuals to change one's religion. The UN Third Committee rejected all amendments on 9 November 1948. The whole paragraph was passed with 38 votes in favour, 3 against and 3 abstentions. At the final vote, the Soviet Union also voted for the article (Eide 1992, 265). This formulation describes what the meaning of the universal right of religious freedom is. The attempt by Saudi Arabia was already aimed at achieving the goal we describe in this article, but at that time Muslim countries were not as numerous as they are today neither had they developed legal and convincing arguments for their claims.

The next document is International Covenant on Civil and Political Rights (ICCPR), which was drafted in 1966 and came into force in 1976. The Covenant in the article 18 talks about religious freedom:

»1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include *freedom to have or to adopt a religion or belief* of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his *freedom to have or to adopt a religion* or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.«

Here the wording does not contain words »to change religion«, but just »to have or adopt a religion«. At first sight this is not a big change, but if we analyse it closely, we can see the difference.

In the UN, there was a lot of discussion during 1960s when the article 18 of the Covenant was drafted. A great deal of the discussion in the UN<sup>1</sup> was focused on the question whether explicit reference to the right of a person to change their religion or belief is required. It was said that the right to change religion was implicitly present in the statement »everyone shall have the right to freedom of thought, conscience and religion« and that there was no need to mention it separately. There was a concern that special reference to the *change* of religion and belief would be interpreted as an act of support for proselytism, missionary activities and mass efforts of propagating anti-religious convictions or encouraging doubts in the minds of believers regarding the truth of their belief. They argued

<sup>1</sup> An expert said that before and in the process of drafting special internationally binding instruments on the freedom of religion and belief consultations with and within different representatives of religions and atheists should be conducted to prepare space and to mobilize broader support regarding the goal and contents of new instruments. To define global ethics is a very sensitive issue, especially in the light of the discussion on universal human rights against cultural relativism. Those who attack universal human rights say that differences exist on cultural, religious and ethnical grounds. Kooijmans argues that it is critical that the discussion take into account the fact that the suppressed do not have a problem with universal human rights. (Kooijmans 1993, 11)

that such a wording could trigger uncertainty and problems for countries where constitutions and basic laws are religious by character or origin. Saudi Arabia suggested that proposed words »freedom to change his religion or belief« be deleted. Western countries defended the original formulation and argued that conversion is suppressed by many religious bodies as well as state laws which recognize one state religion and discriminate other believers. It was also said that the article applies only to individuals and not to other persons. In the end a compromise introduced by Brazil and Philippines was reached, in which the formulation »freedom to have a religion or belief of his choice« was proposed. United Kingdom proposed that after the word »have« also the words »or to adopt« be inserted, which was agreed upon. The addition was necessary because the word »to have« sounds too static. Later a second part which protects against *coercion to convert*, was added to the article (Jayawickrama 2002, 637–48). The next step was protection of the »right to non-belief«. When the Third Committee in 1960s debated the ICCPR, many representatives from countries with catholic background argued that the current formulation was satisfactory since they were not interested in the protection of non-belief. Contrary to this, Scandinavian countries wanted a full mention of the protection of unbelievers and atheism as such. At the end the delegations agreed that the formulation »religion or belief« means theistic, non-theistic and atheistic beliefs. The Human Rights Committee (1993) later issued a broader interpretation.<sup>2</sup> The Declaration now protects polytheistic and animistic beliefs as well (Jong 2000, 25–32). The result is that the ICCPR in the article 18 explains this right broadly and no longer mentions the right to *change* one's religion.

## 2. Other declarations

We can see that the American Declaration of Rights and Duties of Man (1948/92) in article 3 says that »Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private.«

Some conventions preserved the wording on the *change* of religion. *Convention for the Protection of Human Rights and Fundamental Freedoms* (1950) talks of the right to change religion in article 9.<sup>3</sup> American Convention on Human Rights (ACHR; 1969) in article 12 also says: »This right includes freedom to maintain or

<sup>2</sup> »Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms *belief* and *religion* are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.«

<sup>3</sup> »(1) 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 worship, teaching, practice and observance. (2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.«

to *change* one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.«<sup>4</sup>

We could also mention African Charter on Human and People's Rights (1981), which in article 8 says: »Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.«

We can see that the declarations include the right to have or adopt religion as well as to change religion or belief. This is guaranteed unconditionally. Religious freedom, which is the essence of this right, should be distinguished from religious tolerance. Tolerance as a legal concept is established as a precondition that the state has ultimate control upon religion and churches and that the state determines the limits of religious freedom. A basic characteristic of this right is the fact that neither article 18 of the ICCPR nor article 12 of the ACHR can be derogated even in the case of emergency. (Jong 2000, 59)

### 3. The right to change religion

We saw that the greatest difficulty concerning the right to religious freedom is indeed the right to change religion. The ICCPR, for instance, does not explicitly mention the right to change religion. Instead it talks about »freedom to have or to adopt a religion or belief of his choice«. This tiny difference, as we saw, was adopted because of the reservations of certain Islamic countries which opposed the explicit mentioning of the right to change one's religion. Nevertheless, this formulation does not deny the right to choose religion of one's choice, so it implies the change of religion (Koshy 1992, 97). Why is this right so important? During all negotiations at the UN there has been an extensive discussion on the right to change religion. Krishnaswami argues that leaving a religion requires special protection; in particular, if this act leads to the establishment of a new, schismatic church which later competes with the original one. Occasionally it was said that the reference to change was necessary to protect missionaries.

There were also many arguments against the right to change religion. The opponents argued that explicit reference to the change of religion was neither necessary nor practical; that this right could easily be abused; and that also particular religious doctrines were against it.<sup>5</sup> Nevertheless, the representative of Pakistan

<sup>4</sup> (1) Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private. (2) No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs. (3) Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others. (4) .Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.«

<sup>5</sup> Arab and African countries have often pointed to the activities of missionaries whose efforts to convert people would sometimes have led to »murderous conflicts«. The inclusion of the right to change one's religion might be considered to legitimize such activities. Or at least, it might discriminate against those

had a different view on the matter and agreed to include this right because it would also allow conversion to Islam. It is interesting that often there is discrepancy between a domestic legislation of Muslim countries which tolerates changing religion by Muslims, and refusing the inclusion of specific reference of this kind in international documents. Some Muslim states developed special administrative procedures for a formal change of religion or belief just to prove that they do not deny this right.<sup>6</sup>

Despite the fact that in 1948 many of today's Muslim countries were not independent yet and did not vote for the Universal Declaration, later these new countries raised no reservations on the Universal Declaration.<sup>7</sup> This leads to the conclusion that the freedom to change religion or belief, as recognized in the Universal Declaration, is fully applicable for Muslim countries too, although during the drafting of later documents they often expressed doubts regarding its recognition. As we may recall, in the process of drafting the ICCPR, Brazil and Philippines suggested the formulation »to have or to adopt religion«. The phrase *to have* was too static a concept, while *to adopt* also includes the change of religion. It covers believers and unbelievers who would like to adopt a religion. Muslim countries did not vote against this formulation in the paragraph, although they could have abstained. In the end the article 18 was adopted by consensus. No Muslim country expressed any reservations or interpretative declarations regarding the article. No sooner than in 1993 the Committee on Human Rights (1993) finally managed to issue the opinion that article 18 »necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief.« It is important that the article 18 cannot be derogated even in the time of public emergency (Jong 2000, 34–55). But the existence of international covenants alone cannot ensure religious freedom. This depends on every particular signatory state.

We saw that the Muslim states did not have a clear idea what they could achieve in international institutions regarding their concern on the change of one's religion. They simply opposed it and did not develop alternative ideas. In this opposition they partly succeeded, but did not harm the main idea that a religion can be changed. They did not have any substantial reason to be against it, except that the Islamic doctrine does not permit it. But we will see that they searched for arguments.

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religions that did not seek to convert other people. (Jong 2000, 36) In 1949 the representative of Egypt to the CHR stressed that people many times go to other religion »when they wished to obtain the divorce« (E/CN.4/SR.116, 8). Therefore a direct link was established between the change of one's religion and the regulations, governing one's personal status. (E/CN.4/SR.116, 9) And Muslims were not allowed to change their religion, once adopted or once born into that faith. (E/CN.4/AC.3/SR.5, 8)

<sup>6</sup> In 1951 the Egyptian comment on the draft ICCPR contains the following paragraph: »The freedom to change one's religion or belief is an immutable right in Egypt and is moreover governed by administrative regulations ensuring to those changing their religion full protection against pressure or hasty decisions.« (E/CN.4/515/Add.16, 2) At the Commission for Human Rights Egypt stated that the person who wants to change their religion should have three consecutive conversations with a minister of the religion which he/she wished to renounce. (Jong 2000, 37–38)

<sup>7</sup> In 1989 an Algerian member of the Subcommittee stated that Muslim countries have no problem with the application of the Universal Declaration. (Jong 2000, 36)

#### 4. General Assembly and the Declaration

By looking at various documents we will observe gradual reasoning of the Islamic doctrine on justifications for opposing the notion of changing one's religion. First of all we will see it in slowing down the drafting of the *Declaration on Elimination of all forms of intolerance and discrimination based on religion or belief* and later on a very slow start of the work of the Special Rapporteur and the Subcommission as well as a slow expansion of areas in the resolutions.

In the General Assembly (GA) there has since 1966 been at least one resolution per year dealing with religious intolerance, but for 15 years now they no longer talk about the change of religion. In those resolutions (A/RES/1195 (XXII)) as soon as in 1967, the GA asked the Commission of Human Rights (CHR) to produce the Declaration on Elimination of all forms of intolerance and discrimination based on religion or belief, where the article 18 from the UDHR would be elaborated. It took 15 years before such a declaration was actually produced. This was a very slow procedure – even in terms of the usual pace of work in the United Nations. The resolution from 1978 (A/RES/33/106) notes that »during the thirty years of its existence many portions of the Universal Declaration have been expanded into various international instruments, while article 18 has thus far not been so elaborated.« The General Assembly reminded the CHR on the matter several times and decided to include this item on the agenda of the next year's GA session (1979) with the aim of assessing or adopting the declaration. The GA reminded the CHR of the lack of progress, and did so in the resolutions 3027 (XXVII) from 1972, 3069 (XXVIII) from 30 November 1973, resolution 3267 (XXIX) from 10 December 1974 and in the resolution on Elimination of all forms of intolerance and discrimination based on religion or belief in 1976 (A/RES/31/138), in which the GA requested the CHR to »speed up« its work on the Declaration on Elimination of all forms of intolerance and discrimination based on religion or belief. In the resolution A/RES/32/143 from 1977 the GA reminded the CHR again. In the resolution A/RES/33/106 from 1978, the GA again decided to put the item on the agenda for next year. The same wording repeated in 1979 (A/RES/34/43) and 1980 (A/RES/35/125), but at the same time it was welcomed that the CHR had already started its work. The declaration finally came in 1981 (A/RES/36/55). We can see that in this resolution there is no reference to the change of one's religion. We only have the phrase »freedom to have a religion or whatever belief of his choice«. Article 2 also states: »No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.« This is somewhat promising, but again we miss a more direct address to the right of changing one's religion. The last article (8) in a way ensures that nothing from the Universal Declaration is derogated in this declaration.<sup>8</sup>

Taking into account that the discussion as started by the drafting of the Universal Declaration and the ICCPR continued between western and Muslim countries gathered under the Organization of Islamic Conference, which was establis-

<sup>8</sup> »Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human rights and the International Covenants on Human Rights.« (A/RES/36/55)



hed in 1969 in Morocco and today includes 57 Muslim states, we can understand the difficulty of the negotiations and why no particular reference to the change of religion was made. However, so far we have not seen any Muslim reasons for opposing the change of one's religion but because the Islamic doctrine says so. In spite of this, there is no mention of the change of religion. In the UN the search for consensus requires heavy compromises.

To continue our search in the UN documents, we can see that in the following years there were repeated calls by the GA to the CHR to implement the *Declaration on Elimination of all forms of intolerance and discrimination based on religion or belief*. Such is the case in the resolution from 1982 (A/RES/37/187). Next year, in the A/RES/38/110, the GA noted some progress towards establishing an institute of Special Rapporteur on religious intolerance, and there was a seminar as a preparation for it. The A/RES/39/131 recognizes and welcomes more activities of the ECOSOC and CHR in connection with the implementation of the Declaration.<sup>9</sup> But there is still a strong demand to implement the Declaration, which is the reason why the appeal was also repeated next year and in almost all following resolutions. In the A/RES/40/109 concerns are expressed that the Special Rapporteur from the Sub-Commission on Prevention of Discrimination and Protection of Minorities has not yet been given »sufficiently relevant or detailed information to discharge her tasks effectively«. The Rapporteur was authorised to prepare a study on the current dimensions of the problems of intolerance and discrimination on grounds of religion or belief. In the next years it seems that this was resolved since the call in the A/RES/41/112 and A/RES/42/97 was not repeated. In 1986 the institute of Special Rapporteur entitled for religious intolerance was finally established. Since then the mandate of the Special Rapporteur has always been prolonged for one, two or three years.<sup>10</sup>

We can clearly see that at this stage the resolutions on religion are becoming longer, which signals that the Sub-commission on Prevention of Discrimination and Protection of Minorities and the Special Rapporteur on religious intolerance started working and that there is some progress and results. The longer the resolution is, the more topics there are that the states are in agreement upon. The resolution A/RES/44/131 welcomes actions and engagement of NGOs and has for three years constantly been repeating the need to translate resolutions in national languages as well as stressing the importance of education and promotion of tolerance on this matter since the legislation alone is clearly not enough. It is remarkable that in 1992, 1993, 1994 and later (A/RES/46/131; A/RES/47/129; A/RES/48/128) the Declaration was still not disseminated in all UN documentation centres and in all official UN languages. It is possible to imply from the text that

<sup>9</sup> »Welcoming Economic and Social Council resolution 1984/39 of 24 May 1984, in which the Council authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to entrust its Special Rapporteur with the preparation of a study, in accordance with the terms of Sub-Commission resolution 1983/31 of 6 September 1983, on the current dimensions of the problems of intolerance and of discrimination based on religion or belief.« (A/RES/39/131)

<sup>10</sup> The United Nations Commission on Human Rights in the resolution 1986/20 appointed a Special Rapporteur on religious intolerance. In 2000, the Commission on Human Rights decided to change the mandate title to Special Rapporteur on freedom of religion or belief, which was subsequently endorsed by the ECOSOC decision 2000/261 and welcomed by the General Assembly resolution 55/97.

there were certain difficulties with its translation into all official UN languages. In the A/RES/45/136 (1990) there is also a request to commemorate the following year's 10<sup>th</sup> anniversary of the Declaration. The A/RES/46/131 reminds governments of »the right of all persons to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes.«

The resolution from 1995 (A/RES/49/188) was expanded with some findings of the Special Rapporteur (where reference is made to the SR), namely certain cruel practices, coercion and torture in connection with the freedom of religion and attacks on religious shrines. Some words from the opinion of the Human Rights Committee on the freedom of religion and from the Vienna Conference with regard to religiously related violence against women were also included. It is becoming more and more emphasized that states should do more to guarantee this freedom.

The wording of the resolutions more or less stabilized in mid 1990s and did not expand drastically in further resolutions.<sup>11</sup> It brought perhaps one new notion per year. In the A/RES/54/159 from 2000 the encouragement for the Durban conference on racism was added. It is also notable that the resolution from 2001 (A/RES/56/157) does not even mention the Durban conference, which was hijacked by Islamic countries and their state-sponsored NGOs (2001) and unfortunately over-occupied with Israel. The conference is, however, mentioned in the resolution from next year, but the CHR just *notes* that the conference took place, and makes reference to the promotion and protection of religious freedom.<sup>12</sup> The resolution from 2001<sup>13</sup> also brings attention to the discrimination of women. A very interesting novelty in the resolution from 2004 is its mentioning of Islamophobia – together with anti-Semitism and Christianophobia.<sup>14</sup> From the fact that Islamophobia is mentioned in the first place we can assume that the principal goal was to include this particular word and that Western countries also insisted on including anti-Semitism and Christianophobia. In spite of this the Islamic countries were not satisfied with the resolution.<sup>15</sup>

<sup>11</sup> A/RES/50/183, A/RES/51/93, A/RES/52/122, A/RES/53/140, A/RES/54/159, A/RES/55/97, A/RES/56/157, A/RES/57/208, A/RES/58/184, A/RES/59/199, A/RES/60/166, A/RES/61/161.

<sup>12</sup> A/RES/57/208: »*Noting* the provisions of the Durban Declaration and Programme of Action adopted by the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, from 31 August to 8 September 2001, aimed at combating religious intolerance.«  
»*Believing* that intensified efforts are therefore required to promote and protect the right to freedom of thought, conscience, religion and belief and to eliminate all forms of hatred, intolerance and discrimination based on religion or belief, as also emphasized at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.«

<sup>13</sup> A/RES/55/157, par. 4: »... to devote particular attention to practices which violate the human rights of women and discriminate against women.«

<sup>14</sup> A/RES/59/199, par. 9: »*Recognizes with deep concern* the overall rise in instances of intolerance and violence directed against members of many religious communities in various parts of the world, including cases motivated by Islamophobia, anti-Semitism and Christianophobia.«

<sup>15</sup> We can see that from the list of countries that voted against the resolution: Algeria, Bahrain, Bangladesh, Brazil, Brunei, Darussalam, Comoros, Costa Rica, Côte d'Ivoire, Djibouti, Egypt, Indonesia, Iran (Islamic Republic of), Kuwait, Lebanon, Libyan Arab Jamahiriya, Malaysia, Mali, Mauritania, Morocco, Niger, Oman, Pakistan, Qatar, Saudi Arabia, Senegal, Somalia, South Africa, Sudan, Syrian Arab Republic, Togo, Turkmenistan, Uganda, United Arab Emirates, Yemen, Zimbabwe.

In 2005 the resolution was given a new name: *Elimination of all forms of intolerance and of discrimination based on religion or belief*. It became differently structured and really extensive – kind of a Christmas tree for all sorts of different things. It is also interesting to note that the wording from the first paragraph of the resolution: »Reaffirms that freedom of thought, conscience, religion or belief is a human right derived from the inherent dignity of the human person and guaranteed to all without discrimination ...« has disappeared from the resolutions since 2005.<sup>16</sup> The word »dignity« still appears in the preamble paragraph referring to the Dialogue among civilizations,<sup>17</sup> and *condemning all forms of intolerance and discrimination based on religion or belief* in the operative paragraph 2. It is also interesting to see that in the paragraph 1 in 2005 the GA *welcomes* the work and the report on freedom of religion or belief by the Special Rapporteur of the Commission on Human Rights, but next year it *takes note with appreciation* and in 2007 it only *takes note* on certain report, but again *welcomes* other report and *the work* of the Special Rapporteur.

These formulations allow us to see that certain states systematically put obstacles to a clear wording on religious freedom. The voting showed that Islamic states voted against the resolution, which confirms their aim to change the wording in the resolutions. We saw that the OIC countries were not successful in radically changing the wording of the resolutions on religious intolerance. Even more: the wording has actually improved since 2005.

## 5. The return of »change one's religion«

In the operative paragraph of the 4a A/RES/60/166 (2005) a promising factor appeared with the wording on the change of religion.<sup>18</sup> It refers to »the right to change one's religion or belief«. This is indeed surprising and the wording is also repeated in the resolutions of the following years (A/RES/61/161, A/RES/62/157, A/RES/63/181, A/RES/64/164). The resolution from 2007 became even stronger since it »*Emphasizes* that freedom of religion or belief and freedom of expression are interdependent, interrelated and mutually reinforcing ...« (A/RES/62/157). The resolution from 2008 (A/RES/63/181) in its preamble paragraphs managed to add the wording from the ICRC, which goes as follows: »freedom to have or adopt a religion or belief of one's choice.«<sup>19</sup>

<sup>16</sup> For the last time it was in the resolution A/RES/59/199 (2004). Next year it was replaced by: »*Takes note with appreciation* of the work and the report of the Special Rapporteur of the Commission on Human Rights on freedom of religion or belief.«

<sup>17</sup> »*Acknowledging* that in order to be effective, such a dialogue should be based on respect for the dignity of adherents of religions and beliefs, as well as respect for diversity and the universal promotion and protection of human rights.« (A/RES/60/166)

<sup>18</sup> »4. *Urges* States: (a) To ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, inter alia, by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, or the right to practise freely one's religion, including the right to change one's religion or belief, is violated.« (A/RES/60/166)

One would ask themselves why resolutions on Elimination of all forms of intolerance and discrimination based on religion or belief were in most cases passed with consensus and, as we will see later, resolutions on Combating defamation of religions in most cases with an unfavourable vote by western countries. The answer is that the resolutions on defamation want to impose new ideas and unacceptable rules in international documents, and that the one on intolerance is carefully drafted within existing universal consensually adopted documents which were also supported by Muslim countries. They simply cannot constantly oppose such resolutions even if they do not like them. Nevertheless, the OIC countries voted against the resolution on intolerance in 2004. It is interesting that next year they did not oppose the resolution on religious intolerance with more or less the same wording, but they tabled a resolution on the defamation of religions which was highly controversial. We will examine this closely at a later stage.

## 6. Other resolutions which mention religion

Before we analyze resolutions from the Commission on Human Rights and the Human Rights Council, let us also take a short look at some other GA resolutions which mention religion, but do not touch the issue of the change of religion. In 1994 (A/RES/48/138) came the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*. It means extension of the topics related to religion. It talks about protecting inter alia religious minorities. This is important for us since in terms of human rights the apostates from Islam are often considered as a religious minority.

In the following years we get resolutions<sup>19</sup> entitled: *Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*. They rarely single out just religious minorities. The A/RES/50/180 quotes a CHR resolution where it establishes a working group »to promote rights of persons belonging to national or ethnic, religious and linguistic minorities«.

In 2001 the GA presents a brand new resolution on *Protection of religious sites* (A/RES/55/254), where it »condemns all acts or threats of violence, destruction, damage or endangerment, directed against religious sites as such, that continue to occur in the world ...« and »Calls upon all States to exert their utmost efforts to ensure that religious sites are fully respected and protected in conformity with international standards and in accordance with their national legislation.« There is no mention of the change of religion. The resolution on *Global agenda for dialogue among civilization* (A/RES/56/6) from 2001 does not single out religion from sex, race and language either.

In 2003 the GA introduced a resolution on *Promotion of religious and cultural understanding, harmony and cooperation* (A/RES/58/128), where we cannot find anything on changing religion, either. This is also the case in resolutions on Pro-

<sup>19</sup> A/RES/49/192, A/RES-50-180, A/RES/51/91, A/RES/52/123, A/RES/54/162, A/RES56/162, A/RES/58/182, A/RES/60/160, A/RES/63/174.

*motion of interreligious dialogue (A/RES/59/23; 2004), on Promotion of religious and cultural understanding, harmony and cooperation (A/RES/59/142; 2004), on Global Agenda for Dialogue among Civilizations (A/RES/60/4, 2005), on Promotion of religious and cultural understanding, harmony and cooperation (A/RES/60/11, 2005) and Promotion of interreligious dialogue and cooperation for peace (A/RES/60/10, 2005; A/RES/61/221, 2006; A/RES/62/90, 2007; A/RES/63/22, 2008; A/RES/64/81, 2009).*

## 7. Commission on Human Rights and Human Rights Council

As was demonstrated, in the GA Muslim states did try to change the wording in the resolutions on religious intolerance, but they did not succeed. As we will see later, they passed their own resolutions on defamation, but only once with western support, which does not count in the forum of the UN. What counts here are resolutions adopted with consensus or at least with mixed support by states from all continents and cultural or religious backgrounds.

The situation in the CHR was different. Not all UN members had the right to vote – it was only the elected members who did.<sup>20</sup> But among these, Muslim countries got their majority also with the support of Non-aligned countries led by Cuba.

The CHR drafted the *Declaration on the Elimination of all forms of intolerance and of discrimination based on religion or belief* (1981), and since then some resolutions on religious freedom were adopted. As the online archive has been accessible since 1993, we will analyze resolutions starting there.

Every year there were two resolutions which included religious freedom: *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* and *Right to freedom of opinion and expression*. Regarding the first one we can easily see its similarities in language with the GA resolution on Elimination of all forms of religious intolerance. This is understandable since the GA in most cases followed the resolutions of the CHR with some emphasis of its own. The resolution on the freedom of expression only mentions religion a few times and never in relation to the change of religion. The resolution is important since it collides with the resolutions on the defamation of religions, and in 2008 it was hijacked by the OIC states.

We can note that resolutions on religion are more or less the same until 1997<sup>21</sup> and that they were repeated in the GA resolutions. So we will not repeat what we have already seen before in relation to the GA resolutions. Nevertheless we can see how satisfaction with the work of the Special Rapporteur on religious intole-

<sup>20</sup> The Commission consisted of representatives drawn from 53 member states, elected by the members of ECOSOC. There were no permanent members; each year (usually in May) approximately a third of the seats of the Commission would come up for election, and the representatives were appointed for a three-year term. Seats on the Commission were apportioned generally by region.

<sup>21</sup> E/CN.4/RES/1993/25, E/CN.4/RES/1994/18, E/CN.4/RES/1995/23, E/CN.4/RES/1996/23.

rance evolves. From 1993 until 1995 the CHR *expresses its thanks* to him, but in the resolutions since 1996 the CHR just *takes note* of his report. Usually Rapporteurs are highly skilled and OIC countries were not fully satisfied with their honest work which was carried out in accordance with international documents and their mandate enshrined in the resolutions. But resolutions since 1999 again *welcome* reports of the Special Rapporteur or at least *take note with appreciation*.

The resolution from 1997 has a new, shorter form which resembles the GA resolutions since 2005, but the wording is not so determined. The resolution from 1999 (E/CN.4/RES/1999/39, par. 4a), is the first where wording on the right to *change one's religion* appears. It continues to stay there in the next resolutions.<sup>22</sup> The GA does not follow that wording until 2005. Why so? One reason is that in 1999 the OIC in the CHR for the first time presented a resolution on defamation of religions (E/CN.4/RES/1999/82). As a result, western nations emphasized and inserted a more direct language which had however been adopted in the Universal Declaration. This is still a great achievement and again it confirms my thesis that the wording on the change of one's religion does not become weaker in the UN documents.

In the HRC the first resolution on *Elimination of all forms of intolerance and of discrimination based on religion or belief* came at its 4<sup>th</sup> session in 2007. The resolution is very brief, it only mentions the ICCPR and UDCHR and decides that a larger resolution will follow at the 6<sup>th</sup> session. It actually came in December 2007 (A/HRC/RES/6/37). It firstly *welcomes* the work of the Special Rapporteur and contains the previous formulation on the *change of one's religion*. However, the wording from the ICCPR: »freedom to have or adopt a religion or belief of one's choice«, which was inserted in the GA resolutions since 2008, did not enter in the resolutions by the CHR neither in the first resolution of the HRC. In A/HRC/RES/6/37 at least in the operative paragraph 8, the 18<sup>th</sup> paragraph of the ICCPR is mentioned.<sup>23</sup> Before, it was mentioned only in preamble paragraphs. Nevertheless, the recent resolution on the renewal of the mandate of the Special Rapporteur on freedom of religion or belief from 2010 (A/HRC/RES/14/11) repeats the wording from the ICCPR »freedom to have or adopt a religion or belief of one's choice«, which is a promising development. Again we can notice that the text did not worsen but stayed in line with the Universal Declaration and eventually even improved in regard to direct wording.

## 8. Defamation of religions

A special problem is posed by resolutions on Combating defamation of religions. In this chapter we will follow the development of the OIC states regarding their reasoning in the search for a solid base in which they could anchor their

<sup>22</sup> E/CN.4/RES/2000/33, E/CN.4/RES/2001/42, E/CN.4/RES/2002/40, E/CN.4/RES/2003/54, E/CN.4/RES/2004/36; E/CN.4/RES/2005/40.

<sup>23</sup> »8. *Emphasizes* that promoting tolerance and acceptance by the public of and its respect for diversity and combating all forms of intolerance and of discrimination based on religion and belief are substantial elements in creating an environment conducive to the full enjoyment by all of the right to freedom of thought, conscience and religion, as enshrined in article 18 of the International Covenant on Civil and Political Rights.« (A/HRC/RES/6/37)

claim that the right to change one's religion is not justified. The first resolution on the defamation of religions in the CHR was presented in 1999 under the agenda item of »racism« by Pakistan on behalf of the OIC and was initially entitled »Defamation of Islam«. As we can see from the records from the session, in the presentation of the draft resolution Pakistan said that it was intended to have the CHR stand up against what the OIC felt was a campaign to defame Islam, which they argued could incite increasing manifestations of intolerance towards Muslims to a degree similar to anti-Semitic violence of the past (E/CN.4/1999/SR.61). The impetus for a resolution combating the »defamation of religions« was reinvigorated after the September 11, 2001 terrorist attacks.<sup>24</sup> The murder of the Dutch anti-immigration film director Theo van Gogh, the 2005 publishing of cartoons parodying the Prophet Mohammad in a Danish newspaper and the production of the Dutch film *Fitna* have only intensified this debate. Other delegates at the 61st session of the CHR were of the opinion that this resolution was unbalanced since it was focused solely on Islam. The OIC later agreed to make it more inclusive for all religions, although the text continued to focus primarily on Islam (E.CN.4.1999.SR.61).

The resolution from 1999 does not contain a very grave language. Still it expresses its wish to address religions as that they should have certain rights. It »expresses deep concern at negative stereotyping of religions«, »also expresses deep concern that Islam is frequently and wrongly associated with human rights violations and with terrorism« and attacks media.<sup>25</sup> The resolution passed with no vote and this also explains why the language is not so grave although the EU states made reservations on the legal explanation of »defamation«. This is also the case of the resolution in 2000, where the language was the same. In 2001 the resolution was adopted after voting.<sup>26</sup> We can see that this resolution makes reference to »the increasing acts of racism and xenophobia« and to the World Conference against Racism (Durban Conference),<sup>27</sup> which is something new for a resolution on religion. For western countries trying to connect such different notions as religion and race was not something they could support.

The resolution from 2002 (E/CN.4/2002/200) became even more ambitious. It contains concerns about how media »are used to incite acts of violence, xenophobia or related intolerance and discrimination towards Islam and any other religion«. It states that even some governments support groups which defame religions. Similar wording is contained in the resolution from 2003 (E/CN.4/RES/2003/4). The CHR resolution gained favourable votes in 2002<sup>28</sup> and 2003<sup>29</sup>, lost some in

<sup>24</sup> E/CN.4/2003/23 (January 2003) and the follow-up report E/CN.4/2005/18/Add.4 (December 2004).

<sup>25</sup> »Expresses its concern at any role in which the print, audiovisual or electronic media or any other means is used to incite acts of violence, xenophobia or related intolerance and discrimination towards Islam and any other religion.« (E/CN.4/RES/1999/82)

<sup>26</sup> 28 to 15, with 9 abstentions; CHR Res., 61st Meeting, 2001/4 (April 18, 2001).

<sup>27</sup> CHR Res., 61st Meeting, 2001/4 (April 18, 2001).

<sup>28</sup> 30 votes to 15, with 8 abstentions (E/CN.4/RES/2002/9).

<sup>29</sup> 32 votes to 14, with 7 abstentions (E/CN.4/RES/2003/4).

2004<sup>30</sup>, but regained most of them in 2005.<sup>31</sup> In the HRC, the resolution appeared for the first time in 2008 and passed although it lost many votes.<sup>32</sup> This vote was significant because the combination of delegations that opposed or abstained outnumbered those supporting the resolution. In 2009<sup>33</sup> it got two more votes but obviously the resolution lost a lot of supporters. In 2010 the resolution on the Durban conference was entitled *From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance* (A/HRC/14/16) and was adopted without a vote. It was focused primarily on the implementation of the Durban Declaration and Programme of Action which was acceptable for western countries since it did not mix religion with race. The resolution does not mention religion at all.

If we have a look the GA, we can observe that the first resolution on defamation there was introduced in 2005 (A/RES/60/150). It was adopted by 101 to 53, with 20 abstentions. Throughout the years the majority stayed more or less the same. That was the first time in the GA that third countries went out and adopted a resolution on religious matters without the support of western countries. It opened a new era of the OIC's self-confidence in the GA which will develop further.

The resolution repeats the wording from the CHR resolutions. It is »*Noting with concern* that defamation of religions is among the causes of social disharmony and leads to violations of human rights.« It also exposes and names Islam as a religion which suffers defamation, intolerance and discrimination via the use of the media.<sup>34</sup> In this way the resolution tries to attack the freedom of expression and to give certain rights to religions. Since human rights are granted only to individuals it represents an attempt to distort international human rights and formulate them according to the OIC's norms. Muslims here show how they understand limits for the right of freedom of expression.<sup>35</sup> This definition of the GA resolution is repeated in the HRC resolution in 2008 (so the GA does not merely repeat CHR and HRC wordings). There is a difference with the definition from the Human Rights Committee<sup>36</sup> by inserting »national security, reputation of others and respect for religions and beliefs«. There is also no mention of limitations being »applied in a manner that does not vitiate the right to freedom of thought,

<sup>30</sup> 29 votes to 16, with 7 abstentions (E/CN.4/RES2004/6).

<sup>31</sup> 31 to 16, with 5 abstentions (E/CN.4/RES/2005/3).

<sup>32</sup> 21 to 10, with 14 abstentions (A/HRC/RES/7/19).

<sup>33</sup> 23 to 11, with 13 abstentions (A/HRC/RES/10/22).

<sup>34</sup> Par. 6: »*Deplores* the use of the print, audio-visual and electronic media, including the Internet, and any other means to incite acts of violence, xenophobia or related intolerance and discrimination against Islam or any other religion.«

<sup>35</sup> » 9. *Emphasizes* that everyone has the right to freedom of expression, which should be exercised with responsibility and may therefore be subject to limitations as provided by law and 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.« (A/RES/61/164)

<sup>36</sup> »14. *Further emphasizes* that, as underlined by the Human Rights Committee, restrictions on the freedom to manifest religion or belief are permitted only if limitations are prescribed by law, are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, and are applied in a manner that does not vitiate the right to freedom of thought, conscience and religion.« (A/RES/60/166)



conscience and religion« (A/RES/60/166) as it stays in the definition of the Committee.

The GA resolution on Elimination of all forms of intolerance from 2007 (A/RES/62/157) answers to the resolution on defamation with paragraph 7 where it »Condemns any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, whether it involves the use of print, audio-visual and electronic media or any other means ...« and paragraph 8 where it »Emphasizes that freedom of religion or belief and freedom of expression are interdependent, interrelated and mutually reinforcing.« It was adopted without a vote.

Muslim states very clearly showed their attempt to link religion with race in the A/RES/64/156 from 2009, where they recognized »the importance of the intersection of religion and race«. <sup>37</sup> It further shows the aim of the Muslim states to impose sharia law into international documents. They would like to interlink the Arab race with Islam, which is counterproductive for any religion that claims to be universal. Since Pakistan as a former chair of the OIC was a fierce promoter of this idea, the other possibility is that they would like to establish a notion of Islamic race. If Islam became a race it would mean something stable which you cannot change. And if Islam as a religion and race was something stable, you could no longer change Islam as a religion since it no longer was just a religion. In this way Muslims would find legitimacy for imposing sharia law on apostates, who are not allowed to leave Islam. The apostates usually face death penalty.

The Special Rapporteur on freedom of religion or belief, Asma Jahangir, also expressed concern that measures against the »defamation of religions« can be a threat to the freedom of expression and religion by promoting an »atmosphere of religious intolerance« where certain peaceful religious expressions are deemed offensive to another religion, and by »stifling legitimate criticism or even research on practices and laws appearing to be in violation of human rights.« <sup>38</sup> Similarly, Amyebi Ligabo, the Special Rapporteur on freedom of expression, expressed concern about the sacrifice of free expression for the sake of religious feelings. <sup>38</sup> The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, has been supportive of the movement to forward measures regarding »defamation of religions.« The OIC has consistently proposed its »defamation of religions« resolutions as a racism agenda item rather than in the agendas on religion or expression. <sup>39</sup>

As it can be seen the resolution continues to be raised in the CHR and later HRC as a racism agenda item every year since 1999. The OIC has indicated its desire

<sup>37</sup> »Recognizing the importance of the intersection of religion and race and that instances can arise of multiple or aggravated forms of discrimination on the basis of religion and other grounds, such as race, colour, descent or national or ethnic origin.« (A/RES/64/156)

<sup>38</sup> In his 2008 report to the UNHRC U.N. Doc.A/HRC/7/14, Mr. Ligabo states that »limitations are not intended to suppress the expression of critical views, controversial opinions or politically incorrect statements... they are not designed to protect belief systems from external or internal criticism.«

<sup>39</sup> The OIC has also consistently challenged Ms. Jahangir's mandate. In December 2007, the OIC opposed a language that would »urge« states to respond positively to the Special Rapporteur's recommendations. The OIC preferred a wording that would ask states to »consider« responding positively. (The Becket Fund for Religious Liberty 2008)

for the adoption of a binding international covenant to protect religions from »defamation«.<sup>40</sup>

## 9. Freedom of expression

Perhaps an even more critical case is a resolution on the freedom of expression which has been presented in the CHR by Canada every year. The resolution has been balanced, impartial and adopted without voting. It develops the issue of the freedom of expression as envisaged in the UDHR, ICCPR and other universally accepted documents. However, the OIC countries have always wanted to hijack this resolution and to make it conformable to the Islamic ideas of the freedom of expression. The OIC believes that the freedom of expression should be subordinated to »respect for religions«. They were successful when the CHR transformed into the HRC and the United States became less active (they did not run for the membership of the HRC in the beginning). So in the resolution from 2008, which was on the renewal of the mandate of the Special Rapporteur on the freedom of expression (A/HRC/RES/7/36), the OIC countries managed to insert an amendment to the mandate of the Special Rapporteur on the freedom of expression, who is now requested »to report on instances where the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination.«<sup>41</sup> This was the language that the OIC also tried to insert in the resolution on the freedom of expression itself. For Canada and western countries this was too much. Canada withdrew from the authorship of the resolution. Western countries abstained since they wanted the mandate to be renewed but they did not agree on the wording regarding the definition and tasks of the mandate. The internationally agreed limits for the freedom of expression are detailed in article 19 of the legally binding International Covenant on Civil and Political Rights and were already referred to in the preamble of the resolution. If abuse of freedom of expression infringed anyone's freedom of religion, for example, it would fall within the scope of the Special Rapporteur on Freedom of Religion. To add it here was an unnecessary duplication, and as Canada pointed out at the session: »Requesting the Special Rapporteur to report on abuses of [this right] would turn the mandate on its head. Instead of promoting freedom of expression the Special Rapporteur would be policing its exercise« (Brown 2008). The OIC countries celebrated a brief victory since the Special Rapporteur was obliged to report on the connection between religion and race. However, the Special Rapporteur did not fall in the trap, and said that his scope was enshrined in the ICCPR, so he made the HRC resolution on his mandate relative.<sup>41</sup> The Rapporteur mainly takes into account prejudi-

<sup>40</sup> 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, 8 ( March 2008).

<sup>41</sup> A/HRC/11/4 (30 April 2009), par. 4: »In paragraph 4 (d) of the resolution 7/36, the Council further requests that the Special Rapporteur report on instances in which the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination, taking into account articles 19, paragraphs 3 and 20 of the International Covenant on Civil and Political Rights, and general comment No. 15 of the Committee on the Elimination of All Forms of Racial Discrimination, which stipulates that the

ces on the basis of ethnicity, race, religion or language and did not single out just the connection between race and religion.<sup>42</sup>

## 10. The vision of the OIC and their failure

We have to admit that there is a problem with Islamophobia and the defamation of religions. Islamophobia has even emerged much stronger after 11 September 2001 and it is not disputable.<sup>43</sup> Unfortunately those events gave a new impetus to the idea of the defamation of religions although the idea is of earlier origin. Regarding the defamation of religions there is a problem since the defamation as a legal term could lead to a situation where religions as well as religious persons would gain certain rights. Here some balance should be established.

The Danish caricatures are on the one hand a worrisome phenomenon but on the other hand we cannot limit the freedom of expression. An interesting question remains, namely why was the problem of defamation posed to the countries which do respect human rights. Apart from that we may acknowledge that the spread of new religions poses new problems such as how to define what religion is and what it is not. If religions had certain rights and if criteria for establishing a religion were too low, there would be a danger that anybody could establish their own religion and that they could become untouchable in everything they do or say and that they would hide behind the freedom of speech and inviolability of religion. There is also a danger that the issue of religion would mix with racism. This would be problematic.

From all we have seen in this article it seems that some OIC countries think that the connection between religion and race would create a solid basis for their Islamic opposition to the change of one's religion. This means sharia law would be imposed, which envisages death penalty for apostates. We have shown how the OIC countries would like to interlink (Arab) race and Islam (not just any religion). The other possibility is that they would like to establish the notion of the Islamic race. If Islam became a race, it would mean that this was something stable and inherent to a person, and consequently could not be changed. If Islam as a religion and race was something stable, you could no longer change it as a religion since it no longer was just a religion. With such an equation a religion would become immanent property of a person and could not be changed as we cannot change race. In this way Muslims believe they would achieve legitimacy and a

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prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the freedom of opinion and expression.«

<sup>42</sup> »86. The Special Rapporteur notes and deeply regrets the continuing existence in the world of stereotypes and prejudice against ethnic, racial, linguistic and religious groups that are the result of racism and discrimination or of the erroneous application of national security and anti-terrorism policies. It is essential that this problem be recognized and that it be countered by a developing culture of peace based on intercultural dialogue and tolerance which promotes respect in intercultural relationships.« (A/HRC/14/23, April 2010).

<sup>43</sup> It should still be mentioned together with anti-Semitism and Christianophobia.

legal instrument for imposing sharia law against apostates, who are forbidden from leaving Islam, as well as blasphemers and defamators of Islam. These often face death penalty.

It also seems that some OIC countries have a clear objective in creating a legal instrument to address the defamation of religions via the Durban Conference on racism. So the Durban Conference could mean a potential danger in which certain countries would try to impose changes in the current universal human rights. From the activities of the OIC it seems that Pakistan is the country pushing hardest for equalizing the concepts of the defamation of religion and race, which means the equation of religion and race.

The Becket Fund for Religious Liberty (2008) suggests that the real reason for the resolution lies in justifying Pakistan's enforcement of its Penal Code (No. 295 of 1986), which imposes capital punishment for blasphemy, including the defamation of Islam.

We can see that in the world there is no unified understanding of the freedom of religion. Some countries do not understand that the possibility to change one's religion could also mean others converting to their religion. We saw that in the UDHR and the ICCPR the notion of the religious freedom envisages the change of one's religion. Later the OIC countries tried hard to change that notion but they lacked reasoning and arguments. The wording of the UN resolutions actually became weaker and the wording on the change of one's religion disappeared at all. But in the mid-1990s these notions came back – the wording from the UDHR and the ICCPR was reinserted. In response to that the OIC countries launched an initiative with resolutions on the defamation of religions (defamation of Islam). In this way they got the momentum and tried to establish a solid ground for their notion of religious freedom and the freedom of expression. The purpose was to find a stable basis inherent in a person, to which they would link religion. Consequently a religion would become inherent to a person and therefore unchangeable. They chose race and via the Durban conference on racism they tried to provide a legal basis for inserting changes into international documents. The idea did not work since Islam wants to be a universal religion and so it could not be linked to a single (Arab) race. If we go even further it would be very difficult to say that even race is an unchangeable property of a person. If a person can change sex, and as we saw in some (famous) persons even race, we can no longer speak about unchangeable features in a person. From this point of view the future endeavours of the OIC states are not very promising.

## Abbreviations

**A/HRC** – United Nations. General Assembly.  
Human Rights Council

**A/RES** – United Nations. General Assembly. Resolutions

**ACHR** – American Convention on Human Rights

**CHR** – Commission of Human Rights

**E/CN** – United Nations. Economic and Social  
Council. Commission

**ECOSOC** – United Nations Economic and Social  
Council

GA – General Assembly

HRC – Human Rights Council

ICCPR – International Covenant on Civil and

Political Rights

OIC – Organization of Islamic Conference

UDHR – Universal Declaration of Human Rights

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