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Protection of human rights and fighting terrorism

**Statement on “defamation of religions” and the protection of human rights**

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Compare against Delivered

Madame Moderator,

We draw the Session’s attention<sup>1</sup> to the “defamation of religions” resolutions<sup>2</sup> that have been voted on by members of the OSCE at the United Nations at the Human Rights Council<sup>3</sup> and the General Assembly. Organisation of Islamic Conference countries, including some of the OSCE delegations here, cite over-zealous anti-terrorism measures and a rise in Islamophobia as justification for the resolution. This disguised international blasphemy law was, however, first proposed in Geneva in 1999, which was long before September 2001 or the 2005 cartoons.

“Defamation of religions” measures claim to protect vulnerable religious communities. However, there are already-existing legal remedies that address assault

<sup>1</sup> See OSCE Human Dimension Implementation Meeting, *Statement of the Becket Fund for Religious Liberty* (12 October 2006), available at <http://www.becketfund.org/files/dd2d4.pdf>; see also OSCE Human Dimension Implementation Meeting, *Statement of the Becket Fund for Religious Liberty* (10 October 2006), available at <http://www.becketfund.org/files/3e70e.pdf>.

<sup>2</sup> See Comm’n on Human Rights Res. 1999/82, 62nd Meeting, U.N. Doc. E/CN.4/1999/SR.61 (April 30, 1999) (“Combating defamation of religion,” originally introduced as “Combating defamation of Islam.”). See also Human Rights Council Res. 7/19 (27 March 2009) (“stressing the need to effectively combat defamation of all religions and incitement to religious hatred in general and against Islam and Muslims in particular”).

<sup>3</sup> Formerly the Committee on Human Rights. See also U.N. Human Rights Council Second Regular Sess., *Statement of the Becket Fund for Religious Liberty* (4 October 2006), available at <http://www.becketfund.org/files/00254.pdf>.

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and battery, murder, false imprisonment, fraud, or actual defamation,<sup>4</sup> but do not unduly restrict free speech. In practice, “defamation of religions” contributes nothing to public security and instead forces states to make theological decisions about what “defames” religions. This works solely to the advantage of religious majorities, and suppresses the very competing truth claims that give us a diversity of religious opinions. Enforcement of the concept, usually in the form of domestic blasphemy laws,<sup>5</sup> is typically left to the unbridled discretion of local officials who are free to act on their own prejudices.<sup>6</sup>

Worse, the very concept of “defamation of religions” empowers the state instead of the individual, and protects ideas instead of human beings.<sup>7</sup> In short, “defamation of

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<sup>4</sup> The legal term “defamation” has traditionally protected persons from false statements that harm their reputations and livelihoods. The appropriate judicial inquiry is a factual one as to whether the statement made was true or false. Truth is therefore a defense in a normal defamations action. In a “defamation of religions” case, a judge would have to make a determination about whether or not something said about a religion is true, which places the state in the position of making theological decisions.

<sup>5</sup> The “defamation of religions” concept also appears in the guise of “anti-conversion” or “anti-vilification” laws.

Anti-conversion laws in seven Indian states prohibit “forced conversion,” which is defined in an over-broad manner that include giving charitable aid, or telling someone that God would be happier if that person followed a different religion.

In Australia, Pastors Danny Nalliah and Daniel Scot had to appeal criminal convictions for violating the a racial and religious “anti-vilification” act in Victoria for criticizing Islam from a Christian theological perspective, and telling their audience to love all Muslims. The plaintiffs in the case argued in court that “truth is not a defense.” For what are we protecting freedom of religion and belief if we are not protecting the right openly to inquire after the truth? The “anti-vilification” law has already been used by local authorities to forbid the reading of the Qur’an in public because, ironically, some Muslims deemed those passages to be defamatory of Islam. *See* The Becket Fund for Religious Liberty, Australia – Criminalizing Religious Speech – Pastors Scot and Nalliah, *available at* <http://www.becketfund.org/index.php/case/101.html> (last visited Sept. 28, 2009).

In Sweden, Pastor Akc Green had to appeal all the way to the Supreme Court before his criminal conviction for hate speech was overturned after he gave a fire and brimstone sermon on sexual immorality and telling his congregation to love and show grace to homosexuals, whom he considered to be sinners.

In these cases, the issue is not whether or not the viewpoints put forth were correct or true—the issue is the freedom to express the viewpoints at all.

<sup>6</sup> The Becket Fund for Religious Liberty believes that religious freedom is best preserved through protection of religious *exercise* of people of *all* faiths, not through restricting the speech of people of *some* faiths. We applaud actions identifying and protecting vulnerable religious minorities, and encouraging civil inter-religious dialogue. In that endeavour, the state should not be the gatekeeper deciding which religious viewpoints may or may not enter the public discourse.

<sup>7</sup> “Defamation of religion” measures have allowed prosecution for “unreasonable” and “offensive” speech. These standards have been read to include giving charitable aid, criticising a religious belief, or even telling someone that God would be happier if that person followed a different religion. There is no religious believer—including those who promote such laws—who does not value the ability to assert that his or her beliefs about religious truths are not only better, but true. Indeed, freedom of conscience and its expression is rooted in the *truth* of the inherent dignity of the human person, not in the fickle will of the state.

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religions” turns the entire human rights regime on its head.<sup>8</sup> It is in direct contravention of foundational principles already established in the UDHR and ICCPR.<sup>9</sup> Yet the states that support the concept are attempting to make it a part of customary international law, and an accepted part of the human rights vocabulary.

This analysis of the concept of “defamation of religions” should not be news, especially at the OSCE, where member states, including those who are also OIC members, have committed to a very high human rights standard.<sup>10</sup>

**We conducted a comprehensive voting analysis on these resolutions. Ten member states of the OSCE have voted yes to these resolutions every year since they were**

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Defamation of religion laws are an unacceptable – and ineffective – response to inter-religious conflict. All that defamation of religion laws accomplish is to defeat open dialogue, not hatred in the hearts of men.

Further protecting religious sensibilities will be counterproductive unless the states also effectively address the intentional failure of many of the states that proposed these resolutions to protect religious minorities from violence. Otherwise, promotion of religious tolerance, noble in theory, will merely be a pretext for suppressing dissent.

<sup>8</sup> A foundational principle not only of international law on freedom of religion, but of the entire human rights regime itself, is that ideas and religions do not deserve state protection. The people who subscribe to the ideas and religions do.

<sup>9</sup> Religious defamation laws (to be distinguished from advocacy for civility in criticism of other faiths and viewpoints) are in violation of principles outlined in the United Nation’s founding and legal documents. International Covenant on Civil and Political Rights Article 19(1) states, “Everyone shall have the right to hold opinions without interference.” ICCPR Article 19(2) states, “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” ICCPR Article 18(1) states:

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. ICCPR, Article 18(2), states, “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”

International Covenant on Civil and Political Rights (“ICCPR”), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976. *See also* Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948);

<sup>10</sup> Those standards are revisited every year at the HDIM and in supplemental meetings, some of which are dedicated to freedom of expression. Every OSCE member state professes a commitment to protecting free speech, dissent – even heated dissent – over matters of religion, as a fundamental human right. The profession is not merely abstract, but a good amount of time is spent discussing implementation and enforcement. Even in the fight against discrimination, the OSCE rightly privileges the protection of peacefully expressed dissent and diversity over exclusionary regulatory regimes.

Thus, the Ljubljana 2005 Ministerial Council Decision declares that “the OSCE should continue to raise awareness and develop measures to counter prejudice, intolerance and discrimination, while respecting human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for *all*.” OSCE, *Tolerance and Non-Discrimination Promoting Mutual Respect and Understanding*, Decision No. 0/05, MC.DEC/10/05 (6 December 2005) (emphasis added).

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**introduced.** These countries include Belarus, the Maldives, the Russian Federation, Uzbekistan, and OIC members Azerbaijan, Kyrgyzstan, Tajikistan, Turkey, and Turkmenistan. The tenth is the country soon to assume the OSCE chairmanship in 2010, also an OIC member: Kazakhstan. Armenia further enables the resolutions to pass with an abstention.

We must ask why, when the resolution contributes nothing to the realisation of freedom, human rights, or security, 11 of 56 OSCE member states continue to enable the resolution to pass. We ask in particular the OIC delegates here to consider whether their alliance to the OIC on the “defamation of religions” issue is in keeping with their commitments to human rights as members of the OSCE. Further, Armenia, the Maldives, the Russian Federation, and Uzbekistan, with none of the pressures of being part of the OIC voting block, ought to be unequivocal in their rejection of a resolution that in reality harms the cause of human rights *and* security.

At the UNHRC’s 25th meeting, Sudan intervened by saying that religious defamation measures protect against violence resulting from religious intolerance. The example it gave was that the publication of the Danish cartoons lead to “a wave of anger among Muslims.” Being prevented from having feelings of anger is of course not a human right. But the irony here is astounding, because the only physical violence that resulted from the cartoons was perpetrated by the alleged victims.

We therefore ask that states commit to protecting their citizens from physical violence of any sort – including that in response to verbal provocation.

Finally, we respectfully urge Kazakhstan, in advance of assuming the OSCE chairmanship, to set the example by changing its vote to No when the “defamation of religions” comes up for a vote at the UNGA next month.

Thank you Madame Moderator.

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