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INTERNATIONAL TUG OF WAR OVER THE DEFAMATION OF RELIGION (1999 – 2009)

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Within the framework of democracies in which freedom of speech is on an equal footing with freedom of religion and conscience, it is difficult to circumscribe the right of respect for religious convictions. At the same time pluralism demands that ways and means are found for the peaceful and tolerant co-existence between believing and non-believing people living in one and the same democratic society. In several European States there are laws involving penalties which (to a greater or lesser extent) protect religions from blasphemy and insult. However, little recourse has been made to these laws in past years and the European States have confined themselves to “tangible” questions, such as the denial of the murder of Jews in the Third Reich, racism and discrimination on the grounds of religious convictions. The European Court of Justice has also made rulings in various countries whereby freedom of speech is to be curtailed when unbridled remarks are particularly wounding to people’s feelings.

It would appear that these regulations were not sufficient to ensure the appropriate “treatment” by the democracies and the media of questions regarding respect for religious feelings. When the shock of the London terrorist attacks in July was closely followed by the Muhammad cartoons published in the autumn of 2005, originally in a Danish newspaper and subsequently by other European publications - amongst which was the French satirical weekly publication *Charlie Hebdo* - there was a predictable uproar. From the viewpoint of some militant human rights organisations, such as the International Human Rights Federation of Helsinki⁹² or the Muslim States united under the banner of the Organisation of the Islamic Conference (OIC),⁹³ this affair clearly confirmed what these organisations had

92 The March 2005 report can be accessed on <http://www.bladi.net/forum/37563-lintolerance-envers-musulmans-europe-rapport-accablant>

93 The OIC was founded in 1969 at the initiative of Saudi Arabia, the Secretariat for which has been based in Jeddah since 1971. Its membership comprises 57 Member States, representing more than a billion Muslims (the total number in the world is 1.6 billion). The goal, as formulated in the founding Charter, is: “to speak with one voice

long been criticizing, namely the open discrimination of the Muslim population group in Europe and the distorted picture drawn of them and their religion by the media⁹⁴. For the commentators and public opinion, however, this affair had an air of inevitability and was a sure indication of the lively activity of Muslim fundamentalists against democracy and the holy grail of freedom of opinion.

The Organisation of the Islamic Conference (OIC), a group of States in the Human Rights Commission of the United Nations - which was changed to the Human Rights Council in March 2006 - has been waging a campaign against the "Defamation of Religions and in particular of Islam". This juristically not quite conclusive formulation encompasses blasphemy, violation of religious sensibilities, the inciting of racist and religious hatred and social and legal discrimination on religious grounds. The OIC has achieved that not only the Human Rights Commission (otherwise Human Rights Council) but, subsequently, the General Assembly of the United Nations have also passed resolutions condemning the so-called defamation of Islam, all this before the cartoon incident. Thereafter the United Nations, again under pressure from the OIC, decided on stronger action. They proposed that the "defamation of religion" becomes a criminal offence on the basis of Article 20 (paragraph 2) of the International Covenant on Civil and Political Rights: *"Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."*

to safeguard the interest and ensure the progress and well-being of their peoples and those of other Muslims the world over". In other words: economic, political, social and cultural cooperation among Member States is to be strengthened. The unanimous decisions of the Organisation of Islamic Conference taken at the Summit and Meeting of (Foreign) Ministers of the Organisation of Islamic Conference are morally binding upon Member States. The ten-year action plan adopted at an extraordinary summit meeting in December 2005 was intended to "restructure the organisation, to give it a new name and to revise its charter and activities." It proposes a method for compliance with the resolutions. Secretary-General of the Organisation, Ekmeleddin Işhanoglu, is Turkish. The official website of the organisation can be found at: <http://www.oic-oci.org/home.asp>. In Mecca in 2005, the OIC founded an institute to monitor Islamophobia, which published its first report at the IX. Summit of the Organisation in March 2008 in Dakar. (<http://www.oic-oci.org/is11/French>) (<http://www.oic-oci.org/is11/french/IsLamophobie-Fr.pdf>). The second report was submitted in May 2009 at the Extraordinary Meeting of the Council of Foreign Ministers of the OIC in Syria. It is only available in English and Arabic. (http://www.oic-un.org/document_report/Islamophobia_rep_May_23_25_2009.pdf).

94 The French Association Collectif contre l'Islamophobia en France was founded in 2003, when the wearing the Islamic headscarf in schools was being vigorously contested. It presented its first report on the subject in 2004. See: http://www.islamophobie.net/user-res/fichiers/bilan_ccif_2003_2005.pdf. A further report from 2008 may be found on their website [islamophobie.net](http://www.islamophobie.net).

This demand for a statutory prohibition in 2008 led to the quickly discarded suggestion that an international convention on the subject be called.

We want to examine more closely the vehement actions of the OIC, together with the Resolutions and Procedures which this group of States were able to push through at the United Nations, particularly after the cartoon incident of 2005. Thereby we will discover that these have led to exactly the opposite reactions and opinions on the part of the Western States.⁹⁵ The media had painted the spectre of blasphemy on the walls and demanded its abolition in those States in which it still exists. This is exactly the opposite of what the OIC demanded, which was its reinstatement. The same media warned against a return of religious censorship and, together with public opinion, defended freedom of conscience as an endangered foundational principle of democracy. The European and North American governments jointly refused to pass the resolutions resulting from the campaigning of the OIC and were not prepared to give in to their demands in any shape or form. After an intense examination of the legal interpretation of the terms defamation, discrimination and racism, they came to the conclusion that there can be no such a thing as “defamation of religion” in the normative logic of human rights.⁹⁶

In its parliamentary sessions the Council of Europe has formulated a very comprehensive reply to the theme “Defamation of Religions”. This also deals with any attempts to repress opinions which are contrary to that of a religion, so long as they do not constitute a direct insult or are a deliberate incitement to discrimination, hatred, violence or worse. The French media, for instance, have defended freedom of expression, secularism and the freedom of conscience even more heatedly, including the freedom to express opinions in the form of satire or caricature which may shock, annoy or offend. The right to this freedom was subsequently granted following the proceedings by the Paris Mosque versus the magazine *Charlie Hebdo*.

95 Teyssier, J.-P.: „Médias et religions: jusqu’où le respect?“, in : *Gaz. Pal.*, 31 May 2006 ; Larcher, L. : « Heurs et malheurs de l’islam cathodique », in : *La Croix*, 15/16 November 2008, p. 17-18.

96 Fellous, G./Prasquier, R.: „Droits humains fragilisés. L’extension de la notion ‘diffamation des religions’ ... », in : *Le Monde*, 19 December 2008 ; Flauss, J.-F. : « La diffamation religieuse en droit international », in : *Petites affiches*, 23.Juli 2002, p. 5-17 ; Flauss, J.-F. : « La diffamation religieuse », in : *La protection internationale de la liberté religieuse*, Bruylant 2003 ; Harscher, Guy : « La liberté d’expression, blasphème, racisme : Essai d’analyse philosophique et comparée », Part 1 in: *Panotica*, Vitoria, 1. Jg., No. 9 July – August 2007, p. 22-53; Evenhuis, Angela: *Blasphemous Matter. Blasphemy, Defamation of Religion and Human Rights*, Magenta Foundation 2008, p. 8; Temperman, Jeroen: “The Emerging Counter-Diffamation of Religion Discourse: A Critical Analysis”, in: *Annuaire Droit et Religion 2009-2010*, PUAM, Vol. 4, p. 553-559.

In the final analysis, Western governments and prevailing public opinion rejected the idea that a religion and its devotees needed to be protected from critical, satirical or antagonistic opinion, and for this reason no change to legislation was required.

The positions in this unfinished debate could not be more opposite. On the one hand people in Europe are outraged over Islamic fundamentalism and energetically defend the freedom of speech. The OIC and other groups, however, see this and other freedoms as contempt of Islam and a discrimination against Muslims. Although the repercussions of this argument are fierce, the debate has made developments. It would appear that somehow during this dispute the irreconcilable positions, although they continue to clash, have progressed somewhat.

I. History of the term “Defamation of Religions”

A. An Initiative by the Organisation of Islamic Conference

The term “Defamation of Religions” first appeared in 1999 in the first Resolution of the United Nations Human Rights Commission. This was passed in April without a vote. It was initiated by Pakistan, the representative of the Organisation of Islamic Conference.⁹⁷ Initially the title was “Defamation of Islam”. After a debate, the revised wording was given the generalised title of “Defamation of Religions”. In this Resolution discrimination on the grounds of religion or conviction was denounced, which was acceptable to all. In addition, the Resolution expressed the concern of the Commission that ever more frequently negative stereotypes were being promulgated against religions, particularly Islam, and that they are “frequently and wrongly associated with human rights violations and terrorism”. Thereupon the Commission requested the United Nations General Assembly to also pass a resolution and requested governments to take the necessary steps to counteract “intolerance and religious hatred”, which lead to insults, violence, intimidation and duress in addition to discrimination – in particular discrimination against women and to the desecration of religious sites. The content of the Resolution, therefore, did not pose any problems and the title “Defamation of Religions”, which did not distinguish between religions, had as its aim the awakening of sensibility. Up until 2005 the Commission passed further similar resolutions under the heading “Counteracting the Defamation of Religions”.⁹⁸

97 Human Rights Commission *Resolution on the Defamation of Religions*, 55th Session, E/CN.4/1999.L.40.Rev 1, initiated by Pakistan on behalf of the OIC, Geneva, 30 April 1999. The report is available at:

[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.1999.SR.62.Fr?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.1999.SR.62.Fr?OpenDocument)

98 2000/84 dated 26 April 2000; 2001/4 dated 18 April 2001; 2002/9 dated 15 April

In the meantime the attacks of September 11, the resumption of the Intifada in Israel and the matter of Palestinian territory (one of the goals of the OIC is to create a Palestinian state), as well as the invasion by the Americans of Afghanistan and later of Iraq, had deeply split opinions. The OIC then went about ever more vehemently denouncing the discrimination of Muslims in society and in the media, and accused them of “spreading negative stereotyping” of Muslims and their religion which, for them, represented an indivisible unit. At the end of 2001 the first serious conflict arose with the drafting of the final document at the Conference in Durban. This Conference was about racism, racial discrimination, xenophobia and the related intolerance. This meeting was held in South Africa from 31st August to 7th September in an atmosphere openly hostile to Israel. The occupation of Palestine was sharply criticized. The grounds for the criticism, however, were not clearly defined. The document was only finalised in December and was not signed by all participants. The text contained several references to the Holocaust and connected them to the growing discrimination against Muslims. The opinion was expressed that Muslims see themselves as being exposed to the same danger or threat, i.e. being subjected to similar treatment as hat of the Jews under National Socialism, because ever more frequently attitudes are being exhibited which incite hatred and violence.⁹⁹ In the same section, the position is also taken that the terrible situation of the Palestinian people is the result of racism, xenophobia and intolerance on the part of Israel towards Muslim Arabs.

After Durban, several States - amongst others the United States (who at the time were still members of the Commission), Canada and the countries of the European Union - refused to sign any further resolutions of the Human Rights Commission in connection with the defamation of religions.

B. September 2005 – September 2006: Debate on the Defamation of Religions becomes “explosive”

1. Activities and Resolutions of the United Nations immediately after the publication of the cartoons (September 2005)

The cartoon argument came about in late summer 2005. The first General Resolution on “Discrimination of Religions” by the United Nations basically

2002; 2003/4 dated 14 April 2003; 2004/6 dated 13 April 2004 (containing a decision to prepare a report on the situation of discrimination against Muslims and Arabs in various parts of the world);

2005/3 dated 12 April 2005 and 2005/40 dated 19 April 2005 on the elimination of all forms of intolerance and discrimination based on religion or beliefs.

99 Explanation and Action Plan, Paragraph 57 to 63, http://www.un.org/french/WCAR/durban_fr.pdf

asked for a report on the position of discrimination against Arabs and Muslims worldwide. This was to be compiled by the Rapporteurs of the United Nations on the abolishment of racism and every form of discrimination. This Resolution was put to the vote on 15th August 2005.¹⁰⁰ The General Assembly was uneasy with “*the continuing negative consequences of September 11 on Muslim minorities and societies in non-Muslim countries, the negative image of Islam in the media, as well as the introduction and tightening of laws which particularly discriminate against Muslims*”. Here the negative image of Islam in the media is coupled with the concept of defamation of Islam, and the concept of the defamation of Islam (censure of Islam) are confused with incitement to hatred, violence and “discrimination against Islam”.¹⁰¹

This Resolution was passed with 101 in favour, 53 against and 20 abstentions. A further General Assembly Resolution was passed without a vote at the end of 2005. This concerned itself with the worldwide efforts to completely eradicate racism and racial discrimination, and to find a workable manner of implementing the Declaration and action program from Durban.¹⁰² The Resolution confined itself completely to religious intolerance and denounced, without giving examples, the increase in intolerance, hatred and discrimination on the grounds of religion or conscience and thereby remained within realistically justifiable boundaries. In particular it referred to judicial measures whereby religious groups are institutionally discriminated against, and drew attention to the spreading of hate speeches by the media, especially via the internet. In the text, the words used for this term of hatred were anti-Semitism, Islamophobia and Christianophobia.¹⁰³

100 A/RES/60/150 on the report of the Third Committee of the Human Rights Commission (A/60/509/Add.2 (Part II) 60/150).

101 Introduction, Sections 1 to 10: see the information on the web on the 60th Session, produced by the Department of Publicity and Documentation of the United Nations. <http://www.un.org/Depts/dhl/resguide/r60fr.htm>

102 A/RES/60/166 on the report of the Third Committee (Document A/60/507-II). See also the website mentioned in the previous note: <http://www.un.org/Depts/dhl/resguide/r60fr.htm>

103 5. “... notes with deep concern the rise in the number of cases of intolerance and violence against members of many religious and other communities in different parts of the world. This includes cases of Islamophobia, anti-Semitism and hostility towards Christians;

6. Expressed their concern at the continuing social intolerance and discrimination which many people encounter from Institutions in the name of religion or belief;

7. Condemns any call to religious hatred that constitutes incitement to discrimination, hostility or violence, whether by the press, audiovisual or electronic media or by other means.”

In this Resolution, the General Assembly decided to request the Human Rights Commission on Religion and Freedom of Conscience to submit a special report on religious intolerance.

2. The Founding of the Human Rights Council and the Report of the Special Rapporteurs Regarding the Eradication of all Forms of Racism in Year 2006

a) The End of the Human Rights Commission

At precisely the same time as the question arose regarding the defamation of Islam and the rise of religious intolerance in general, the Human Rights Commission was transformed into the Human Rights Council. This was decided on 15th March 2006.¹⁰⁴ The first elections for the new Council took place on 9th May 2006 and convened on 19th June 2006 for the first time. The 47 new members were elected according to geographical location and 36% of the member States belonged to the OIC (i.e. 17 members in the Council and 57 in the United Nations General Assembly). The following political calculation can be made: when the members of OIC unite with those of the Arab League and the non-aligned States, they represent the majority in the Council. In one of the first Resolutions regarding the defamation of religion the new Human Rights Council requested - again at the behest of the OIC - that a report be prepared on incitement to racism and religious hatred and on the promotion of tolerance.¹⁰⁵ Not all voted in favour of this Resolution. Twelve countries rejected it because the content of the text did not provide exact definitions for the terms defamation of religion and incitement to racism, and religious hatred,¹⁰⁶ but gave both equal importance. As a result the Resolution requested that Article 20, Paragraph 2, of the International Covenant on Civil and Political Rights must also be applied to the defamation of religions.

b) Chronology of the Reports

Doudou Diene, the Special Rapporteur on the eradication of all forms of racism, received a mandate from the United Nations General Assembly, as decided in December 2005, to report (a Special Report) on the situation of the Arab and

104 Resolution 69/251 dated 15 March 2006.

105 29 June, implemented on 30 June 2006. Resolution 1107 on *Incitement to Racial and Religious Hatred and the Promotion of Tolerance*, introduced by Algeria, Jordan, Pakistan, Morocco and Tunisia. Although not themselves members of the Human Rights Council, Iran, Qatar, Sudan, Oman, Lebanon and Malaysia as observers also supported the proposal.

106 Canada, the Czech Republic, Finland, France, Germany, Japan, the Netherlands, Poland, Romania, Switzerland, Ukraine and the United Kingdom.

Muslim population groups in different parts of the world. The report was drawn up in February 2006 and was publicly introduced on the second anniversary of the Human Rights Council.¹⁰⁷ It was also Diene's task to compile the normal report on the eradication of all forms of racism, which was presented in January 2007 (A/RES/60/251).¹⁰⁸ He should also submit a report requested by the new Human Rights Council on incitement to racist and religious hatred and the promotion of tolerance. To avoid parallel versions, the latter was included in the Report which the Special Rapporteur on Religious Freedom was to provide along the same lines, as had been requested in another General Assembly Resolution in December 2005 (A RES/60/166). This report, to which both Rapporteurs contributed, was presented in September 2006 on the second anniversary of the Human Rights Council.¹⁰⁹

c) Content of the Reports

The reports are quite comprehensive, but nevertheless we will attempt to summarise the main theme, which is the defamation of Islam. What exactly is to be understood by the term defamation of Islam is not clearly formulated in the reports; instead defamation is confused with incitement to religious and racial hatred and seen as a new form of racism, which must be forbidden in the same fashion as anti-Semitic comments.

1. One of the most important consequences of the fight against terrorism was the marginalisation of the anti-racist processes of Durban.
2. Racism is not taken seriously in Western countries; this is particularly clear from the official agendas of many political parties. Nowadays racism hides behind "Criticism of Islam".
3. Islamophobia is a particular form of racism, which has something to do with the cultural feeling of superiority of the West, which reaches as far back as its history. One example for this attitude, but assuredly not the last, is the Danish cartoons.

107 In March 2004, Doudou Diene had already submitted a report on this subject (E/CN.4/2004/18 and Add.1 to 4), in which he had found that "red warning lights were flashing". The 2006 Report on the situation of discrimination against Muslims (E/CN.4/2006/17) is available at:

<http://daccessdds.un.org/doc/UNDOC/GEN/G06/107/33/PDF/G0610733.pdf?OpenElement>

108 HRC/4/19, 12 Januar 2007. http://www.cran.ch/04_PageCentrale/01_Documents/References/Rapport%20general%20Doudou%20Diene%20A%20HRC-4-19_Fr.pdf

109 *Diffamation des religions et incitation à la haine religieuse et raciale comme manifestations contemporaines de racisme, de discrimination raciale, de xénophobie et d'intolérance relative*, A/HRC/2/3. <http://www2.ohchr.org/english/bodies/chr/special/docs/statements/hrc6thsession/A-HRC-6-6Dieneracism.pdf>

“No Mosques on Trento Ground”
North League Party
Poster, Trento, Italy,
August.

*Photo: Wikipedia
Commons/Paolo Masso*



4. Muslims suffer under this discrimination, which is being progressively legalised.
5. The defamation of Islam, as is currently manifested in the discrimination against Muslim societies, the association of Islam with terrorism and the dissemination of Islamophobic opinion via the media, must be prohibited as a particularly serious form of incitement to religious hatred, completely in accordance with Article 20 of the International Covenant on civil and political rights of 1966:

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

This statement is expanded upon in the joint Report of September 2006 and in the Annual Report of January 2007.

In her section, the Rapporteur on Religious Freedom views this problem from a different angle, and this is the view to which Western countries subscribe. Asma Jahangir reminds us that it is often the States themselves which malign and discriminate against their minorities. She cites, in particular, information on the defamation of particular groups by member nations, which has been brought to her attention. This aggression is often directed at groups which are numerically insignificant and therefore more vulnerable. The nations must ensure their Civil Servants (particularly those in Education) show respect to the different religions, because religious animosity practiced by Civil Servants leads to the possibility of serious consequences.

Defamation of religion by non-governmental sources creates an even more serious situation. One must differentiate between pure theological analysis of religious content and the extreme forms of incitement to violence against a religion, which can provoke the most serious forms of religious aggression. Between these two extremes lies a vast array of possibilities of expression on religious themes, which include satire or negative comments. The right to freedom of religion and conscience is first and foremost to protect the individual and, to a certain extent, the collective rights of communities with religious or other convictions. The point of Human Rights Legislation is not religion per se, but it gives men and women the right to enjoy religious freedom. However, this right does not mean anyone has the privilege of a religion immune from all or any analysis, criticism or satire.

Asma Jahangir admits, however, that although critical attitudes may be admissible, they are not always justifiable. Objectionable comments are not a direct contravention of human rights, but can lead to stigmatization of followers of the targeted religion and promote a climate of intolerance. The answer cannot be the promulgation of more laws which curtail the right of freedom of speech. Preferably, measures should be taken to create an atmosphere of tolerance where religions can be practiced without discrimination or stigmatization.

In conclusion, both Rapporteurs suggested that the Human Rights Council should consider whether additional standards need to be created to govern the relationship between freedom of expression, religious freedom and non-discrimination. In particular there should be a general commentary on Article 20 of the International Covenant on Civil and Political Rights. To our knowledge, this commentary has not been written.

3. Resolution of the Human Rights Council of 30th March 2007 (submitted by Pakistan in the name of the Organisation of Islamic Conference)

In view of the differing positions taken in the jointly presented report - one party was in favour of introducing new legislation condemning the "defamation

of Islam” (an amplification of Defamation of Religions) as a form of incitement to religious hatred or discrimination, whereas the other party highlighted the distinctly counter-productive aspects of such an action and gave preference to prevention and to education towards mutual respect within the framework of stringent laws against discrimination and incitement to hatred. The Human Rights Council decided on a new Resolution to combat the Defamation of Religions in March 2007. The Resolution once more takes up the above mentioned topics.¹¹⁰

The Defamation of Religions - as before, the term continues to remain nonspecific - is one of the main reasons for social unrest and leads to human rights violations. According to this Resolution there is an increase in the number of “declarations”, particularly in forums, in which religions, in particular Islam and Muslims, are attacked. Ever more frequently there are instances of negative stereotypes, religious intolerance and discrimination on religious grounds. Subsequent to September 11, the “defamation campaign against religions and the ethnic profiling of religious minorities” has become increasingly fierce. An extremely serious consequence is that the fight against terrorism contributes to the fact that the basic rights and freedoms of target groups are called into question, and they are being excluded both economically and socially. The control exercised over Arab and Muslim population groups by the authorities exacerbates the discrimination.¹¹¹

C. Resistance by Western Countries against “Defamation of Religions”

1. Reaction of Western Nations to the Human Rights Council Resolution A/HRC/4/L.12 of 2007¹¹²

In general, the grounds for the draft Resolution brought by the Pakistani representative on behalf of the OIC appeared to be sensible, despite confusing

110 A/HRC/4/L.12, verbal augmentation. <http://daccessdds.un.org/doc/UNDOC/LTD/G07/121/33/PDF/G0712133.pdf?OpenElement>. This resolution was followed by Resolution A/HRC/4/L.13 (2007) on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. This second resolution was adopted without a vote.

111 The resolution was adopted with 24 votes in favour, 14 against and 9 abstentions. Votes in favour were (24): South Africa, Algeria, Saudi Arabia, Azerbaijan, Bahrain, Bangladesh, Cameroon, China, Cuba, Djibouti, the Russian Federation, Gabon, Indonesia, Jordan, Malaysia, Mali, Mauritius, Morocco, Mexico, Pakistan, the Philippines, Senegal, Sri Lanka and Tunisia. Votes against (14): Germany, Canada, Finland, France, Guatemala, Japan, the Netherlands, Poland, the Republic of Korea, the Czech Republic, Romania, the United Kingdom, Switzerland and Ukraine. Abstentions were (9): Argentina, Brazil, Ecuador, Ghana, India, Nigeria, Peru, Uruguay and Zambia.

112 http://www.aidh.org/ONU_GE/conseilddh/07/resol-religion.htm

the term “defamation of Islam” with anti-Islamic remarks. Tehima Janjua explained that the draft Resolution was nothing new and she would like to have it accepted without a vote. She emphasized that advance consultations and bilateral discussions had been held with the Delegations, requesting their comments. She pointed out that this Resolution concerned the Defamation of Religions, and in particular that of Islam. That this phenomenon exists was unequivocally demonstrated and proved by the Special Rapporteurs. She condemned the fact that in non-Muslim countries Muslims are subject to face recognition controls and denounced this practice as racist and therefore a violation of human rights.

Amongst the delegates who requested permission to speak against the Resolution was the representative from Germany, Maria Siefker-Eberle. She spoke on behalf of the European Union. She reinforced the position of the Union and the determination of its member States to combat the phenomenon of discrimination on religious grounds. She pointed out that religious discrimination is not limited to Islam, but also affects Jews, Christians and Asian religions, as well as people with no religion at all. Doudou Diene had also made this conclusion in his report. She stressed that it is problematical to separate discrimination on religious grounds from other forms of discrimination. Furthermore, she brought to mind the fact that promotion of religious tolerance was already incorporated in the Human Rights Charter and the Universal Declaration of Human Rights. For this reason the term defamation is counter-productive, and it would be better to use wording which kept strictly to the protection of freedom of religion and of conscience. She assured the OIC that the European Union was prepared for dialogue and requested that a vote be taken on the Resolution. The European Union would be voting against it.

Paul Meyer, the Canadian Representative, agreed with the position of Ms Siefker-Eberle. He wanted the Council to start a new initiative to look at the problem of religious intolerance, but in a totally different fashion. This initiative must be transparent and be based on dialogue. He voiced his concern that the Resolution did not mention the right to join a religion. In addition, it must not be reserved for one particular religion only. Finally, Meyer was of the opinion that the link made in the Resolution between discrimination on religious grounds and racism was not clear.

2. Reactions to Report 21/08/2007 by Doudou Diene on “Incidents of defamation of religions and in particular regarding the serious results of Islamophobia on the enjoyment of all rights”

From 2007 onwards it may be seen that the States who rejected the term “Defamation of Religions” stood by their decision. When Doudou Diene tabled his report in August 2007¹¹³, which was followed by the Report of the High Commissioner

113 “Report of the Special Rapporteur on contemporary forms of racism, racial discrimination,

on the same topic on 25th September, the reactions of this group remained the same. Gonçalo Sillvestre, the Portuguese representative, on behalf of the European Union declared that the Union found it problematical to place the term defamation on the same level as that of discrimination. He was not prepared to regard criticism of a religion as being on the same level as racism. There was no necessity for specific protection against criticism of any religion within the framework of Human Rights Legislation.¹¹⁴

D. The European Parliament rejects the term “Defamation of Religions” and advocates support for the protection and defence of freedom of opinion

This attitude is also expressed in the resolutions and recommendations of the European Parliamentary Assembly during the same year. In October 2005, immediately after the outbreak of the media arguments regarding the Muhammad cartoons, the European Council commissioned their first report. This report, entitled “Blasphemy, Religious Insults and Incitement to Religious Hatred”, was finally and belatedly tabled in June 2007¹¹⁵ and was supplemented by a (provisional) report of the Venice Commission. The final report was presented in 2008.¹¹⁶ In the meantime the Culture Committee asked the same Rapporteur, the Finn Sinikka Hursainen, to prepare a further report on Freedom of Expression and Respect for Religious Beliefs.

1. Authorised text of the European Parliamentary Assembly

a) Resolution 1510 (June 2006) Freedom of Expression and Respect for Religious Beliefs¹¹⁷

On 28th June 2006 the Parliamentary Assembly passed Resolution 1510 (2006) entitled “Freedom of Expression and Respect for Religious Beliefs”. The text

xenophobia and related intolerance on the manifestation of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights”. A/HRC/6/6 dated 21 August 2007, presented on 14 September 2007 at the 6th Anniversary of the Human Rights Council.

114 “Members of the council who belong to the European Union and other countries have warned against placing the criticism of religion and racism on the same level. In our view, these are two completely different things. Religions require no special protection under the International Human Rights law”.

115 Doc.11296 dated 8 June 2007, “Blasphemy, Religious Insults and Incitement to Religious Hatred”. Report of the Committee on Culture, Science and Education. Rapporteur: Hursainen Sinikka, Finland, Socialist Group.

116 [http://www.venice.coe.int/docs/2008/CDL-AD\(2008\)026-f.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)026-f.pdf)

117 <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/FRes1510.htm>

emphasized that freedom of speech, as well as freedom of opinion, conscience and religion constitute crucial elements of a democratic society. He also emphasized that there is cultural and religious diversity within the member States and added that this diversity should be “a source of mutual enrichment and not of tension”, and should form the basis for open intercultural dialogue, as well as mutual understanding and respect (Paragraph 5).

In view of these and other associated considerations, the Resolution states that an “open discussion on questions of religion and beliefs forms part” of freedom of both conscience and expression in a democratic society. This freedom also applies to opinions that may shock, offend or disturb the State or any other sector of society (subject to Article 10 of the European Human Rights Convention, paragraph 1). The Resolution also states that “attacks on individuals on the grounds of religion or race are to be prosecuted, but blasphemy laws are not to be applied as in this manner the freedom of opinion and conscience are curtailed. The freedom to express thoughts and opinions must be permitted in a democratic society in order to exchange religious and ideological views” (Paragraph 3). It is to be remembered that historically, laws which punish criticism of religious practices and dogmas have often had negative consequences on scientific and social progress (Paragraph 7), whereas “critical dispute” and artistic licence have a long tradition in Europe and are viewed as being positive, even necessary, for individual and collective progress (Paragraph 9). *“Critical dispute, satire, humour and artistic expression should, therefore, enjoy a wider degree of freedom of expression and recourse to exaggeration should not be seen as provocation.”* (Paragraph 9)

Paragraph 11 deals with some of the important principles of justice in the relevant decisions by the European Court of Human Rights. It states “In this regard ... there is little scope for restrictions on political speech or on the debate of questions of public interest; a wider margin of appreciation is generally available when regulating freedom of expression in relation to matters liable to offend intimate personal moral convictions or religion.” It states further “What is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place.”

Paragraph 12 of the Resolution picks up the main theme of the text once again. The freedom of expression protected in Article 10 of the European Human Rights Convention *“should not be further restricted to meet increasing sensitivities of certain religious groups. At the same time the Assembly emphasises that hate speech against any religious group is not compatible with the fundamental rights and freedoms guaranteed by the European Convention on Human Rights and the case law of the European Court of Human Rights”.*

In this Resolution the Parliamentary Assembly of the Council of Europe calls upon member States and players in civil society to “develop a common understanding and

a code of conduct for religious tolerance” (Paragraph 14). It recommends that media professionals and their occupational organisations discuss media ethics with regard to religious beliefs and sensitivities. In addition, it encourages the creation of “press complaints bodies, media ombudspersons or other self-regulatory bodies where such bodies do not yet exist, which should discuss possible remedies for offences to religious persuasions” (Paragraph 15). In addition, the Parliamentary Assembly encourages intercultural and inter-religious dialogue based on universal human rights, involving - on the basis of equality and mutual respect - civil society, as well as the media, with a view to promoting tolerance, trust and mutual understanding (Paragraph 16). The Assembly encourages the various bodies of the Council of Europe to “work actively on the prevention of hate speech directed to different religious and ethnic groups” (Paragraph 17). The Resolution closes with the declaration that the Assembly has resolved to return to this issue (Paragraph 18).

b. Recommendation 1805 on blasphemy, religious insult and hate speech against individuals on the grounds of their religion (29th June 2007)¹¹⁸

Apart from Resolution 1535 on 25th January 2007 regarding the threats to the life and freedom of opinion of journalists, particularly by religious fundamentalism,¹¹⁹ the Parliamentary Assembly passed a new resolution in June 2008 regarding the problem of blasphemy, religious insult and hate speeches on religious grounds. This resolution is oriented

- ▶ on the position taken by the Venice Commission of the Council of Europe in their provisional report of March 2007 on blasphemy and religious insults in the legislation of the individual States. The Report was adopted on 16-17 March 2007.¹²⁰
- ▶ on the Report presented by the Committee on Culture, Science and Education tabled on 8th June 2007 on the same theme.¹²¹

118 <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/FRES1805.htm>

119 <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/FRES1535.htm>

120 [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)006_f.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)006_f.asp) The report is very balanced, in that in paragraph 40 he arrives at the following conclusion: “The Commission recalls at the outset that in a democratic society religious groups must tolerate, as other groups must, critical public statements and debate about their activities, teachings and beliefs, provided that such criticism does not amount to intentional and gratuitous insult and does not constitute incitement to disturb the public peace or to discriminate against adherents of a particular religion.”

121 <http://www.droitdesreligions.net/rddr/europe/conseildeleurope.htm> Rapporteur: Hursainen Sinikka, Finland, Socialist Group, Doc. 11296: 65. At the level of the United Nations, the concept of “defamation of religions” was recently used in a report of the UN High Commissioner for Human Rights (A/HRC/4/50 of 1 March 2007) and a Resolution by the UN Human Rights Council (Resolution 4/9 of 30 March 2007 on combating

Muslim believers at “salāt” (prayer) towards Mecca Umayyad Mosque, Damascus, Syria.

Photo: Wikipedia/
Antonio Melina



- ▶ on the Declaration of the Human Rights Commissioner of the Council of Europe on 11th June 2007 on the subject “Do not criminalise critical remarks against religions”.¹²²

The recommendation links these positions together. In her report, Sinikka Hursainen reached the conclusion that in terms of Article 4 of the International Convention on the Elimination of all Forms of Racial Discrimination, participating States were required to eliminate the dissemination of ideas based on racial superiority or racial hatred, and that any incitement to racial discrimination and any violent acts or incitement to violence against any race or group of persons of different skin colour or ethnicity was an offence. However, *religious insult or the defamation of religions according to the norms of the United Nations does not constitute*

defamations of religions). This resolution was appropriately criticised by many human rights and media organisations. Such a concept clearly violates freedom of expression (...). 68. Arguing in favour of freedom of expression, this report should not be understood in any sense as condoning insulting expressions in a religious context. We wish to defend the principle of freedom of expression. We should also wish to uphold such notions as decency and respect for the holding of religious beliefs, and underline the importance of the religious dimension in intercultural dialogue.”

*a criminal act (...). In this statement, the Assembly takes the view that in a democratic society only such comments of religious content are punishable which intentionally and seriously disturb public order and incite public violence.*¹²³

To reconfirm this statement, in its Resolution in paragraph 17.2.4 the Parliamentary Assembly calls for the revision of European legislation in order not to “treat blasphemy as an insult to a religion and a criminal act” any longer. They thus responded immediately to the statements of the Secretary General and on the report presented some days earlier by the Legal Committee on the issue of non-criminalization of defamation in general.¹²⁴

II. The Climax of the Debate and the Return to Peace since 2008

A. September 2007 to November 2008: The positions in frontal collision

As if in answer to the attitude of the Council of Europe, as well as the media and Courts in Europe, the initiatives of the OIC at the United Nations against defamation of religions, and the violent reactions thereto, appear to virtually “explode”. The following is a condensed compilation of the events:

- ▶ In September 2007, after Doudou Diene had submitted his report on all forms of defamation of religions, in particular on the serious implications of Islamophobia and the enjoyment of all rights (A/HRC/6/6), on 25th September 2007, the same day on which the High Commissioner presented his report on defamation of religions, the Ambassador for Pakistan, Masood Khan, on behalf of the OIC, proposed an international convention on the defamation of religions.¹²⁵

123 On the same day the Parliamentary Assembly also decided on a recommendation on “State, Religion, Secularity and Human Rights”, calling attention to the underlying principles of “Separation of Church and State” and of neutrality under democracy and the rule of law.
<http://assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc07/FDOC11452.htm>

124 Doc. 11305, 25 June 2007, “Towards Decriminalisation of Defamation”, Report of the Committee on Legal Affairs and Human Rights. Rapporteur: Mr Jaume Bartumeu Cassany, Andorra, Socialist Group.
<http://assembly.coe.int/Mainf.asp?link=/Documents/workingDocs/Doc07/FDOC11305.htm>

125 The OIC eventually dropped this idea when the Majlis al-Sura, the Consultative Assembly of Saudi Arabia and the largest funder of the OIC, pointed out that such a convention would basically mean that non-Islamic religions would enjoy identical protection in Saudi territory.

- ▶ Three days later, the Human Rights Council called for a resolution to amend the International Agreement on the Elimination of all Forms of Racial Discrimination to international norms, so that Islamophobia is classed on a par with anti-Semitism as a special form of incitement to religious hatred.
- ▶ On 10th December 2007, the Secretary General of the OIC, Ekmeleddin Işhanoglu, Professor of History and Islamic culture in Ankara, in his speech at the opening ceremony of the first international conference on Islamophobia, organised by the Union of NGOs of the Islamic World and held in Istanbul¹²⁶, declared that they were willing to prepare a Human Rights Charter especially for the OIC.¹²⁷
- ▶ In February 2008, Doudou Diene, the Special Rapporteur on the elimination of all forms of racism, presented a new report.¹²⁸ The report is fairly balanced, but the concept of defamation of religions is largely identical to the long description of Islamophobia. Resolution A/HRC.7/L.14 of the Human Rights Council of 27 March 2008 on “combating defamation of religions” is by far the longest and sharpest resolution on this subject ever decided upon.¹²⁹ Once again the European Union countries denied their approval because, as stated by their spokesman, the Slovenian Andrej Logar, the concept of defamation of religions is not compatible with human rights and that there was a risk that some governments might deny their minorities freedom, citing this concept.
- ▶ Another point of contention is the surprise adoption of an amendment in March 2008 (29 in favour, 15 against, 3 abstentions) in respect to the mandate of the Rapporteur on Freedom of Expression.¹³⁰ This request was supported by Egypt (on behalf of African countries), Pakistan (on behalf of the OIC) and Palestine (observer on behalf of the Group of Arab States). The aim was to summarize, under Article 20 of the International Covenant on Civil and Political Rights, those cases of abuse of freedom of expression which are to be considered

http://www.gulfnews.com/news/gulf/saudi_arabia/10198648.htm

126 http://www.oic-oci.org/topic_detail.asp?t_id=707

127 “For this reason the General Secretariat of the OIC considered establishing a permanent body to promote human rights in the Member States in accordance with the Cairo Declaration of Human Rights in Islam and to formulate an OIC Human Rights Charter. The OIC also committed itself to encourage their Member States to strengthen their national legislation and regulations to ensure strict respect for human rights.”

128 A/HRC/7/19, <http://daccessdds.un.org/doc/UNDOC/GEN/G08/107/32/PDF/G0810732.pdf?OpenElement>

129 http://ap.ohchr.org/documents/F/HRC/resolutions/A_HRC_RES_7_19.pdf

130 28 March 2008, A/HRC/7/L.24, <http://daccessdds.un.org/doc/UNDOC/LTD/G08/120/37/PDF/G0812037.pdf?OpenElement>

as racial and religious discrimination. The reaction by the *Reporters Without Borders*, the *World Association of Newspapers* and *World Editors Forum* to these changes were extremely critical.¹³¹ Forty press and human rights organisations filed a petition.¹³²

- ▶ Twelve States opposed the amendment, including Canada, which had initiated the resolution when the mandate was established. On behalf of the European Union, Slovenia accused the OIC of distorting the mandate on freedom of expression and introducing provisions that run contrary to its goal. The Rapporteur on Freedom of Expression had, in fact, just submitted a report in which he criticized the dangerous consequences of the media-led denunciation campaign to certain religions, but had also stated that the existing restrictions on incitement to hatred should not be strengthened and that critical views, even where they are questionable or politically incorrect, should not be banned.¹³³

B. The Relative Calm as from February 2008

The “defamation saga”, as it was called by Jeroen Temperman, appears to have reached its heights in March. Since then a number of measures have been taken in Europe, which indicate that the mobilization of the OIC against the discrimination of Muslims and the negative portrayal of the Muslim religion in the media, including cultural disregard by Europe, can no longer be seen as being totally without foundation.

1. The Birth of the Alliance of Civilizations

The Alliance of Civilizations, one of the organisations brought to life by the United Nations, is the first and most direct answer.¹³⁴ In the first instance its effect is of a symbolic nature and is directed at the media. It is commendable that it exists and that it already radiates a certain appealing aura. It serves to provide institutional networks, educational programs for the peaceful coexistence of religions and creates space for dialogue. It was preceded in 2001 by the project “Dialogue of Civilizations”, proposed by the then Iranian President, Mohammad Khatami, which was not carried forward. The Alliance of Civilizations is a European initiative, proceeding from the Council of Europe at the end of 2004. The proposal at the United Nations was

131 <http://www.wan-press.org/article16875.html>

132 <http://www.article19.org/pdfs/press/petition-hrc-french.pdf>

133 Special Report of the Special Rapporteur on Freedom of Expression, Ambeyi Ligabo, 28 February 2008 A/HRC/7/14.

134 <http://www.unaoc.org/>

symbolically introduced by Spain (J. Zapatero), the country with three monotheistic cultures, and Turkey (R. Erdogan) - a secular state that has emerged from a multi-religious empire, governed by a moderate Islamic party and hoping for membership in the European Union.

The formation of the Alliance is due to the desire to improve the relationship “between the West and the Islamic World”, more precisely the situation of Muslim communities in Europe and the fear that their massive rejection in society could drive them to radicalisation. The London bombings and the cartoon controversy have thus somewhat delayed its formation. In April 2007, Ban Ki-Moon appointed none other than Jorge Sampaio, former President of Portugal, as the first Secretary of the Alliance.

A group of eighteen high-ranking personalities have been selected by the Secretariat of the United Nations for the development of an action plan, together with principles on which the Alliance is to be based¹³⁵. The members of the group come from different cultures and three professional categories. In the first category are former well-known political representatives who have made names for themselves through their intellectual abilities and their contribution to cultural development. For instance, Mohammad Khatami, former Director General of UNESCO, Federico Mayor, former French Foreign Minister, Hubert Védrine, former Prime Minister of Senegal, Mustafa Niasse and others.

The second category includes freelance intellectuals or persons who hold no high administrative office: Karen Armstrong, an English writer who writes about religion (to whom we owe several works on this topic, particularly on Islam); the American Islamic expert John Esposito, who leads the centre for Muslim-Christian Understanding at Georgetown University and also publishes the Oxford Encyclopedia of the Islamic World; the Russian Vitaly Naumkin, a professor at the University of Moscow, Chairman of the Center for Strategic and Political Studies and Director of the Centre for Arab Studies at the Institute of Oriental Studies of the Russian Academy of Sciences.

In the third category, authoritative figures in the field of religion are represented, such as Archbishop Desmond Tutu of South Africa and the American Rabbi Arthur Shneier. This group will meet regularly and determine the philosophy of the Alliance. The first major forum of the Alliance of Civilizations took place in January 2008 in Madrid, and the second in April 2009 in Istanbul. The work of the Alliance is still in its infancy and it remains to be seen what kind of reception it will have in Europe and the Islamic countries.

2. European Union Concessions

On the whole, in the years under discussion, the European Union played a major role in the struggle against discrimination, with the subject enjoying political

¹³⁵ <http://www.unaoc.org/content/view/160/197/lang.english/>

priority. In the spring of 2007, Member States had already agreed to the adoption of a Framework Decision on combating racism and xenophobia¹³⁶, which had been under negotiation since 2001. This Framework Decision provides for a very basic harmonization of provisions in criminal law to combat racism and xenophobia within the European Union.

This Framework Decision makes no mention of critical or hostile “statements” about a religion, but it does give particular emphasis to the respect for freedom of expression and to a precise definition of the prohibition to the incitement of hatred. The first report of the European Union Agency for Fundamental Rights (FRA - Fundamental Rights Agency), which has its headquarters in Vienna and was founded on 15th February 2007¹³⁷, also places special emphasis on the fight against racism and various forms of religious intolerance, particularly against Muslims.

The Agency report evaluates the statistical data collected in each member State under the RAXEN National Focus Points (European Information Network on Racism and Xenophobia) and introduces “best practices”. From the report it is clear that racial violence and discriminatory practices are to be found all over the Continent. In the report, the States are urged to abide by legal requirements. In many States neither their own laws nor those framed by the Union are observed.

In the report, States are urged to abide by these laws. Meanwhile, on 28th February 2008, the Council of Europe set the Agency nine priorities for action in the next five years, but primarily: 1. Combating racism and xenophobia; 2. Discrimination on the basis of gender, race or ethnicity, religion or philosophy, a disability, age or sexual orientation and the discrimination of dependents of minorities, as well as all or any combinations of these grounds (multiple discrimination).

In January 2008 there was a second meeting between the Secretary General of the OIC and the European Commissioner for Foreign Affairs, where it was agreed to have a permanent representative of the OIC in Brussels. The Secretary General of the OIC met with the Chairman of the Foreign Affairs Committee of the European Parliament and participated in a parliamentary discussion on the topic of discrimination and intolerance against Muslims in Europe.¹³⁸

136 http://www.eu2007.de/fr/News/Press_Releases/April/0420BMJRassismus.html

137 This agency replaced the European Monitoring Centre on Racism and Xenophobia (EUMC), and its main role since 1998 has been to collect objective, reliable and comparable information on the phenomena of racism, xenophobia and anti-Semitism in Europe. In 2006, the EUMC produced its first, very comprehensive, report on discrimination against Muslims. *Muslims in the European Union: Discrimination and Islamophobia, 2006*. http://1001nights.free.fr/textes/Manifestations_FR.pdf

138 Source: Website of the OIC. http://www.oic-oci.org/topic_detail.asp?t_id=776&x_key=

The 1849 cartoon
“The Naughty
Children”.

The inscriptions read:
“Freedom of the
press”, “freedom
of petition”, “freedom
of assembly”,
“freedom of speech”
and “freedom
of association”.

The map
in the background
bears the headline
“Prussia”.

Photo: Wikipedia Commons



On another level, from 2006 to 2009, the European Commission funded a large-scale research project called REDCo (Religion in Education: A Contribution to Dialogue or a Factor of Conflict in Transforming Societies of European Countries). This comparative European research project examined the perceptions of young people about religion and religious diversity, and what opportunities for dialogue arise from them. The interaction in the classroom and the corresponding reactions of the teacher were also investigated. REDCo is the first scientific educational project on religious diversity financed by the European Commission, for several years stretching from 2006 to 2009. In particular, the project examined in what way and how strongly religion influenced the general and everyday school life of pupils aged 14 to 16. The studies were conducted in eight countries (Germany, England, Spain, Estonia, France, Norway, Netherlands and Russia). The report by REDCo was released in March 2009 and was sent to all institutions of the European Union, the Council of Europe, the United Nations, the Education Ministers of the countries of the European Union, NGOs, religious organisations and universities.¹³⁹

3. Council of Europe Concessions

Although the Parliamentary Assembly of the Council of Europe had taken up a clear position in their resolutions and recommendations on the topic

139 http://www.iesr.ephe.sorbonne.fr/docannexe/file/5699/redco_recommandations_politique_publique.pdf

of defamation of religions, they continued to deal with the question of cultural diversity in society throughout the “defamation saga”, for instance at the Third Summit of Heads of State and Government (Warsaw, May 2005) and at the conference for Ministers of Education at Faro (Portugal, October 2005). These were followed by further conferences, such as those on “Dialogue, Tolerance and Education” (Kazan, 22nd to 23rd February 2006) and “Dialogue of Cultures and Intercultural Cooperation” (Nizhny Novgorod, 7th to 8th September 2006). The “Declaration of the Volga Forum”, which was adopted at the last-mentioned meeting, greatly influenced the discussions at the follow-up conference of San Marino (April 2007).

At this meeting, where the Ministers of Education of member States of the Council of Europe came together, the closing session on the project regarding intercultural and interreligious dialogue, which began in 2002, took place. A joint declaration by the Ministers of Education in the countries of the Council of Europe was formulated.¹⁴⁰ Article 8 of the San Marino declaration reads: *“In this perspective, the religious dimension of our cultures should be reflected in an appropriate manner in education systems and public debates, including in the media, in societies respecting freedom of expression as guaranteed by Article 10 of the European Convention for Human Rights”*.

In addition, the Council of Europe and its Directorate General for Culture and Education have commissioned an expert group to develop a cross-cultural manual for use in schools. In this manual, published in 2007, the question of religious diversity is dealt with in detail.¹⁴¹ In addition, the Directorate General for Culture and Education of the Council of Europe held a meeting in April 2008 on the topic of religious education in schools.¹⁴² In total, this has led to the publication of a White Paper on Intercultural Dialogue by the Council of Europe (July 2008). This was actuated in May 2008 by the Foreign Affairs Ministers of the member States of the Council of Europe.¹⁴³

The Venice Commission was the last to present its final report on the relationship between freedom of expression and freedom of religion: Legal Regulations and the

140 *San Marino Final Declaration of the European Conference on “The Religious Dimension of Intercultural Dialogue”*, 23. und 24. April 2007. http://www.coe.int/t/dg4/intercultural/Source/sanmarinofinal_EN.doc

141 *Religious Diversity in Intercultural Education*, A reference Book for Schools, pub. by John Keast, Straßburg, Published for the Council of Europe, 224 p.

142 The Expert Group on Religious Freedom of the OSCE-ODIHR has also published a guide on the subject: *Toledo Guiding Principles on Teaching About Religions and Beliefs in Public Schools*, 2007, 127 p.

143 http://www.coe.int/t/dg4/intercultural/Source/White%20Paper_final_revised_Ef.pdf

Prohibition of Blasphemy, Religious Insults and Incitement to Religious Hatred.¹⁴⁴ States are advised to base their policies on the rules of morality and “good behaviour” when balancing religious sensibilities against freedom of expression.

The Parliamentary Assembly of the Council adopted a recommendation on 15th April 2008, entitled “*European Muslim Communities Confronted with Extremism*”. It deals in more detail about the specific situation of Muslim communities on the continent.¹⁴⁵

This recommendation was prepared by a Preparatory Commission setting out its specific objectives.¹⁴⁶ It was intended to help Muslims in Europe to condemn and stay away from radicalism. Muslim migrants should be supported so that they do not slide into poverty with its resultant discrimination. It should be acknowledged that the phenomenon of Islamophobia exists. The proposal is interesting: the report insists that European countries, in cooperation with the media, should “create a climate in which all religions, without any distinction, as well as no religion at all are respected” and to develop “ethical guidelines” which make it possible to combat Islamophobia in the media. In its recommendation, the Parliamentary Assembly picks up from the report the idea that a “positive image” of Islam and Muslims needs to be drawn and that intercultural dialogue, as well as the concept of pluralism, should be promoted through mutual recognition. In paragraph 5 of the recommendation, the Parliamentary Assembly, based on this report, acknowledges the phenomenon of Islamophobia and emphasizes the need to end it.

4. Adjournment of the proceedings at the United Nations

Apparently, by 2009 the situation had settled down to some degree because the OIC was prepared to remove the topic of Defamation of Religions and of Islam from the draft of its final declaration for the subsequent Conference on Racism (Geneva, April 2009). This was one of the conditions for the participation of the European Union in the Conference. Canada had already announced on 23rd June 2008 that it would not attend the Conference for the same reason.

In a special communication in July 2008 entitled “Elimination of all Forms of Religious Intolerance”, the Secretary General of the United Nations had already introduced the report on religious freedom by Special Rapporteur, Asma Jahangir, at the 63rd Session of the General Assembly. In this report, commissioned

144 17 - 18 October 2008, 20 p. [http://www.venice.coe.int/docs/2008/CDL-AD\(2008\)026_EN.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)026_EN.pdf)

145 <http://assembly.coe.int/mainf.asp?/Link=/documents/adoptedtext/ta08/fres1605.htm>

146 Doc. 11540. 27 March 2008: *Report of the Political Affairs Committee*, Rapporteur João Bosco Mota Amaral, Portugal, Group of European People’s Party (Christian Democrats).

by Resolution A/62/157, the terms “defamation of religions” and “defamation of Islam” are carefully avoided (A/63/161).

In Autumn 2008 the Human Rights organisations dealt extensively with the issue of “defamation of religions” before the last two Resolutions were put to the vote (in the General Assembly and the Human Rights Council) in December 2008 and March 2009. *UN Watch*, the *Becket Fund for Religious Liberty* and 180 other NGOs urgently called on the States to postpone the vote on the resolutions. They warned the United Nations against legitimizing laws against blasphemy through which freedom of religion, opinion and the press would be curtailed and dissidents and religious minorities condemned to silence. The petition of these NGOs was also signed by the American Republican Congressman Trent Franks, one of the Chairmen of the *International Religious Freedom Caucus* in Congress:

“The concept of defamation of religions was represented as a protection for religious practice and tolerance, but in reality it paves the way to intolerance. It gives religious extremists and repressive governments the right to suppress any criticism of the prevailing religion. In many countries that support this concept, defamation, slander and defamation of Islam and blasphemy are punishable offences.

In the end, the penultimate and very long General Assembly resolution on “defamation of religions” was a rather positive surprise: the title under which it was published was both moderate and legally more tangible: “Combating Defamation of Religions”.¹⁴⁷ This resolution contains many extremely conciliatory paragraphs, in contrast to the previously acrimonious statements dealing with this subject, and at the same time calls to mind the protective framework of freedom of expression.

It reads: *“Taking note of the reports of the Special Rapporteur on contemporary forms ostracism, racial discrimination, xenophobia and related intolerance submitted to the Human Rights Council at its fourth and sixth sessions,⁸ which draw attention to the serious nature of the defamation of all religions, and reiterating the call of the*

Special Rapporteur to all States to wage a systematic campaign against incitement to racial and religious hatred by maintaining a careful balance between the defence of secularism and respect for freedom of religion and by acknowledging and respecting the complementarity of all the freedoms embodied in internationally agreed human rights instruments, including the International Covenant on Civil and Political Rights”.

The resolution following on after the above resolution of the Human Rights Council, however, still bears the title “Defamation of Religions”,¹⁴⁸ but was not

147 General Assembly Resolution, adopted on the basis of the Report of the Third Committee (A/63/430/Add.2), A/63/171, 21 December 2008. <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?reldoc=v&docid=49d60a322>

148 A/HRC/10/L.2/Rev.1; a press release on the subject can be found at: http://www.aidh.org/ONU_GE/conseilddh/09/10-resol-diff_relig.htm

adopted with such consensus as was the former. The resolution was adopted by the Council, but for the first time traditional voting blocks began to crumble: there were 23 votes in favour: the Muslim countries, China, Russia, Cuba, South Africa, Bolivia and Nicaragua, 11 against: the countries of the European Union, Switzerland, Canada and Chile, and significantly there were 13 abstentions, including India, Japan, Korea and Argentina.

Conclusion

The mobilisation of the OIC to the phenomenon of Islamophobia continues, despite the official signals of reassurance. The Islamophobic incidents in Europe do not seem to be abating. The Institute for Monitoring Islamophobia, sponsored by the OIC, presented its second report in 2009,¹⁴⁹ and following the murder of young, veiled Egyptian woman in Dresden by the man she had sued for libel, the Union of Islamic Organisations formed a brand new organisation in July 2009 called the “Euro-Islamic Centre on Islamophobia” and also set up a new website.

And finally, on 4th April the former Danish Prime Minister Rasmussen was called to serve as the head of NATO, based on a statement by the new American President, Obama. In this statement, he personally “guaranteed” that a number of obligations to the Muslim world would be kept. The Turkish Prime Minister, Tayyip Erdogan Regip, protested against the appointment of Rasmussen because he had supported the Danish journal which had published the Muhammad cartoons in 2005. On the eve of the opening of the second Forum of the Alliance of Civilizations in Istanbul on 6th April 2009, the Turkish press and journalists around the world waited tensely to see how Rasmussen would react. Although he offered no appropriate apology, he did state that as the Secretary General of NATO “I will pay close attention to the religious and cultural sensibilities of the different communities (...) our dialogue with the Muslim world and our relations will progress further.”

As we can see, the tensions are still far from settled. However, after this long overview of the history of “defamation of Islam”, a topic which has caused mobilisation and reaction amongst international and European institutions in recent years, we can conclude that this initially conflict-prone back and forth has produced positive results. It clarified the legal understanding of the terms defamation, discrimination and racism. The concept of defamation of religions has been found to be inappropriate and incompatible with the philosophy of human rights, but the uneasiness this expresses has been noted.

149 http://www.oic-un.org/document_report/Islamophobia_rep_May_23_25_2009.pdf

This conflict made clear that attacks on religious beliefs in democratic systems are of necessity relatively significant, but it has also been sought to clarify precisely when these attacks turn into incitement to hatred and thereby become liable to prosecution. A balance has been sought and States have been urged to give priority to a policy of non-discrimination, the combating of racism and the creation of pluralistic societies. To this end, a positive portrayal of the different religions in Europe is necessary, together with making understood the value of a multi-cultural society at school level.