

Combating Defamation of Religions

Liaquat Ali Khan

A new value is emerging in the realm of the peoples' rights. Now two years in a row, the United Nations General Assembly has passed a resolution called, *Combating Defamation of Religions*.¹ Although the Defamation Resolution applies to all religions, it highlights "the negative projection of Islam in the media and the introduction and enforcement of laws that specifically discriminate against and target Muslims." The Defamation Resolution, first introduced in the 60th Session (2005) of the General Assembly,² however, has failed to gain universal approval. The West is particularly opposed to the Defamation Resolution. In the 61st Session held in December 2006, the Defamation Resolution gathered slightly more support than before. Still, the opposition persists.

The General Assembly resolutions may contain soft international law. With the passage of time and compliant state behavior, some resolutions pave the way for the formation of a multilateral treaty or customary international law. In almost all cases, these resolutions reflect the international community's views, which cannot be dismissed as mere opinions. These views, even when they fall short of *opinio juris*, influence multilateral relations and compose the sociology of international law. This article briefly examines the Defamation Resolution's contents and the voting pattern to highlight the differing ideological viewpoints that inform the defamation debate.

Contents of Defamation Resolution

Taking into account the negative stereotyping of religions that exist in various regions of the world, the Defamation Resolution proclaims that defamation of religions causes social disharmony and leads to violations of human rights. The Resolution notes that in the aftermath of the September 11 attacks on the United States, Islam has been frequently and wrongly associated with terrorism, and the ethnic and religious profiling of Muslim minorities is becoming more and more acceptable. The Defamation Resolution deplores the use of print and electronic media to incite xenophobia against Islam or any other religion. It also condemns physical attacks on places of worship and religious symbols.

Furthermore, the Defamation Resolution urges states to prevent political institutions and organizations from fomenting discrimination, hostility, and violence against religious groups. It also urges states to complement their legal systems with intellectual and moral strategies to combat religious hatred and intolerance. The Resolution calls upon the international community to initiate a global dialogue between civilizations to promote a culture of tolerance and an awareness of religious diversity.

Global events support the urgency of the Defamation Resolution, and the focus on Islam is far from arbitrary. In the United States, for example, politicians, journalists, and even university professors associate Islam and Muslims with gratuitous violence and barbarism.³ It is becoming fashionable in the media and politics to associate Islamic Puritanism with fascism and to insinuate that Islam is evil. Although some elected officials warn against stereotyping Islam and Muslims, others do the opposite. Recently, a Congressman from Virginia proposed a ban on legal immigration from Muslim countries. This xenophobic proposal was made in reaction to the election of the first Muslim to the House of Representatives.⁴

Fanned by politicians and journalists, the popular views of Islam are becoming increasingly negative. Six in ten Americans believe that Islam is violent, and one in four admits to having prejudice against Muslims.⁵ The negative images of Islam, freely disseminated through movies, radio talk shows, and even some church pulpits, are hardly new; they are deeply etched in Western memories. Karen Armstrong traces them back to the 11th century Crusades.⁶ In Europe, Muslim immigrants from North Africa, South Asia, and the Middle East are caricatured to recast ancient prejudices in fresh language. Though hundreds of Europeans and Americans are embracing Islam as their religion of choice, the passions against Islam are steely and combustible.

How the Nations Voted

The voting pattern on the Defamation Resolution reveals that a clear majority of states in the world supports the value of combating defamation of religions. In 2006, 58% member states of the United Nations (192 states) voted for the Resolution, 28% opposed it, and 14% were non-committed.

1. **Supportive States:** In 2005, 101 states voted for the Defamation Resolution. In 2006, the Resolution gained ten more states, bringing the total to 111. All Middle Eastern states except Israel, an overwhelming majority of states from Asia, Africa, and South America voted for the Resolution. Russia and China, the two permanent members of the UN Security Council also voted for the Resolution.
2. **Opposition States:** In 2005, 53 states voted against the Defamation Resolution. In 2006, the opposition gained one more state, South Korea, bringing the total to 54. The opposition consists of predominantly Western states, including all members of the European Union, Australia, New Zealand, Canada, and the United States. Except for Japan and South Korea, no other Asian state opposes the Resolution. So far, not a single

state from Africa or South America has voted against the Defamation Resolution.

3. **Non-Committed States:** In 2005, 37 states from Asia, Africa, and South America did not commit themselves to or against the Defamation Resolution. Some of these states abstained from voting, the others did not show up. In 2006, 10 of these states switched to supporting the Resolution and only one, South Korea, crossed over to the opposition bloc. There are still 27 non-committed states. A few of these states are members of the Organization of Islamic Conference, and they are most likely to support the Resolution in the coming years. The most important state still not committed to the Defamation Resolution is India, which has the second largest Muslim population after Indonesia.

Geopolitical Background

The voting pattern on the Defamation Resolution, discussed above, rejects the thesis that Islam and Christianity have locked horns for the domination of the world. The overwhelming support for the Defamation Resolution among scores of Christian states, including the Latin American States, Russia, and the Philippines, belies any such thesis. It is also remarkable that most Catholic states in the world supported the Defamation Resolution, notwithstanding German Pope Benedict's unfortunate (and hopefully unintended) comments that associated Islam with evil and violence.

If the Defamation Resolution is symptomatic of any grand struggle in the world, it appears to be between the West and the rest of the world, a struggle that may be explained in several distinct ways.

For example, it might be argued that the voting pattern has little to do with particulars of the Defamation Resolution and everything to do with a broader and deeper geopolitical and economic struggle between the West and the non-West. The non-Western world is loosely organized through a group called the Non-Aligned Movement (NAM).⁷ Most members of the NAM supported the Defamation Resolution; and, perhaps as importantly, not a single NAM member opposed it. This voting pattern emerges from a shared understanding in the NAM world that the West uses the law of human rights as a political tool to single out countries for condemnation and that its commitment to human rights is at best duplicitous.⁸ China and Russia voted for the Defamation Resolution as part of a strategic interest in the grand struggle. These two permanent members of the Security Council often vote for NAM initiatives to cultivate better ties with the NAM and to expose, and perhaps even to promote, the West's increasing moral alienation from the rest of the world.

From a Western viewpoint, the grand struggle might also be explained in terms of a fundamental rift between liberal and non-liberal worlds. According to this viewpoint, the West and the Western-leaning states, such as Japan and South Korea, represent a liberal world in which property rights, free markets, democratic accountability, and individual freedoms are cherished and protected. By contrast, the non-liberal world pays lip service to democracy and human rights but it is fundamentally inclined toward authoritarian controls of markets and citizens.

There is an element of truth in the Western viewpoint, at least to the extent that many NAM countries, and Russia and China that support the NAM, are not liberal, democratic states. The human rights records of numerous NAM states are tainted. This viewpoint, however, must be taken with a grain of doubt since India and the post-apartheid South Africa, both vibrant democracies, are active members and leaders of the NAM.

Ideological Viewpoints

In addition to disclosing the geopolitical struggle, the voting pattern on the Defamation Resolution is also ideological, which discloses conflicting views on free speech and criticisms of religious practices.

The Resolution does not define defamation. Traditionally, defamation applies to reputational injury to individuals. Group defamation is a problematic concept as it can stifle free speech and furnish undeserved protection to decadent customs and practices. The defamation of religions falls even beyond the concept of group defamation, since it may even prohibit the defamation of religious ideas and doctrines.

In the absence of a legally sustainable definition of defamation of religions, the Defamation Resolution will be taken in the West as an infringement upon free speech, a fundamental civil and political right deeply embedded in numerous human rights treaties and national constitutions. The United States Constitution tolerates very few constraints on the freedom of press, political speech, and academic freedom. The advocates of free speech will therefore have little use for a resolution that urges states to use the coercive power of law to prevent defamation of religions. In secular legal systems, the protection of religious sensibilities at the cost of sacrificing artistic liberty and political rhetoric is considered a bad bargain.

Furthermore, some critics argue that the Defamation Resolution fails to distinguish between the dignity of religion, which must be protected, and valid criticisms of certain religious practices. The right to adopt a religion without coercion is a fundamental human right recognized in numerous human rights treaties.⁹ Muslim countries do not actively proselytize but they welcome non-Muslims to embrace Islam. However, some Muslim countries impose harsh

punishments, including death penalty, if a Muslim converts to another religion. Many critics see these practices as a double standard. The International Humanist and Ethical Union, a non-governmental organization, while expressing its views before the UN Commission on Human Rights, was accused of attacking Islam when it “raised the issue of the treatment of those accused of apostasy in some Islamic countries.”¹⁰

The idea of combating the defamation of religions, though morally sound, is difficult from a legislative viewpoint and will pose serious drafting challenges. The idea, however, poses no greater problems than prohibiting hate speech against racial, ethnic, or religious groups---a law adopted in almost all countries of the world except the United States.¹¹ One key function of law is to make distinctions and draw balance between competing rights. In the complex realm of human affairs, no right is absolute, not even free speech or the dignity of religion. Accordingly, the law against defamation of religions may be constructed in a way that does not abridge legitimate speech including artistic freedom and yet protects the dignity of religion.

Conclusion

An overly broad interpretation of defamation would allow states to own a religion and persecute even their own citizens who challenge any aspect of this ownership. Valid criticisms of religious practices must not constitute actionable defamation. However, all nations must devote intellectual and moral resources to teach children and adults respect for the diversity of religions. A legal system in which religions are respected rather than trashed will not be a blemish on human civilization.

Ali Khan is a professor of law at Washburn University School of Law in Topeka, Kansas.

¹ UN General Assembly Res. A/RES/61/164 (December, 2006).

² UN General Assembly Res. A/RES/60/150 (December, 2005).

³ Ali Khan, *The Essentialist Terrorist*, 45 Washburn Law Journal 47 (2005); also available at http://works.bepress.com/abu_kashif/11

⁴ Zachary A. Goldfarb, *Va. Lawmaker's Remarks on Muslims Criticized*, The Washington Post, A11 (December 21, 2006).

⁵ Jon Cohen, *Poll: Americans Skeptical of Islam and Arabs*, ABC News (March 8, 2006).

⁶ Karen Armstrong, *We cannot afford to maintain these ancient prejudices against Islam*, The Guardian (September 18, 2006).

⁷ There are 113 member states of the Non-Aligned Movement. The NAM is not an inter-governmental organization and lacks a formal constitution and organizational structure. The NAM heads of states meet every three years to coordinate action at the world stage. The NAM was brought into existence in 1961 to prevent member states from engaging in the cold war rivalries of the United States and the Soviet Union.

The NAM has continued its mission even after the collapse of the Soviet Union. The mission of the organization is to resist the domination of the West. See <www.nam.gov.za/>

⁸ GENERAL ASSEMBLY ADOPTS 46 THIRD COMMITTEE TEXTS ON HUMAN RIGHTS ISSUES, REFUGEES, SELF-DETERMINATION, RACISM, SOCIAL DEVELOPMENT, A/61/PV.81 (19 December 2006) GA/10562

⁹ See, e.g., International Covenant on Civil and Political Rights, Art. 18.

¹⁰ Statement of Roy Brown, available online at <www.iheu.org/node/1303> (2004)

¹¹ Michael J. Polelle, Proposed Model Statute on Group Defamation, 110 Penn State Law Review 717 (2006).