

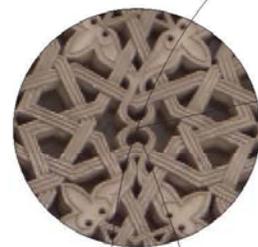


Copenhagen University Islam Lecture Series

Ann Elizabeth Mayer

Promoting the Duty to Combat “Defamation of Religions”: A Subversive Campaign in the UN Human Rights Council

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Promoting the Duty to Combat “Defamation of Religions”: A Subversive Campaign in the UN Human Rights Council

Ann Elizabeth Mayer

Since 1999 the Organization of the Islamic Conference (OIC) has successfully campaigned to win support for resolutions imposing a duty to combat defamation of religions in the UN Human Rights Council. For reasons of diplomacy, although the OIC resolutions do mention specific concerns for Islam and Muslims, they are presented as if they comprised broader concerns, with the language often framing the issue as defamation of all religions. However, the central objective is to combat defamation of Islam, as is proved by ample evidence such as the relevant speeches and statements of OIC officials and representatives of OIC countries. Moreover, the OIC in its charter, as revised in 2008, proclaims in Article 1(12) that it aims to “(p)rotect and defend the true image of Islam, to combat defamation of Islam . . .”

The duty to combat defamation of Islam is a rubric that the OIC has indicated covers the notorious 2005 Danish cartoons. As the OIC campaign gains traction, a country like Denmark that upholds freedom of expression as traditionally understood is exposed to charges of violating international human rights law for failing to carry out what the OIC claims is a binding obligation under international law to censor the cartoons and to punish those involved in their publication.

Headquartered in Saudi Arabia, the OIC represents fifty-seven Muslim majority countries. It enjoys observer status at the UN, where it works to coordinate its members’ strategies on human rights. With its members voting as a bloc and working in tandem with the less democratic governments on the Human Rights Council, the OIC has repeatedly obtained majority backing

for its resolutions, which are actually designed to enfeeble existing protections for freedom of expression. Although it is distressing to see the Human Rights Council act in this fashion, it should not really be surprising, because countries with notoriously bad human rights records have been allowed to serve on the council.

To illuminate the nature of the the OIC's resolutions on the duty to combat defamation of religions, its earlier campaign on behalf of Islamic cultural particularism warrants examination. The OIC's position has been that human rights must be subordinated to Islamic law, which is embodied in the OIC's 1990 Cairo Declaration on Human Rights in Islam. The Cairo Declaration strikingly reduced the number of rights and freedoms afforded by international human rights law, eliminating, for example, freedom of religion and equality in rights for women. It circumscribed the limited rights that it did provide by superimposed Islamic criteria, elevating Islamic cultural particularism above human rights. Thus, in Article 24 it states: "All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah." Although the Cairo Declaration is in fundamental conflict with international law, in some quarters it is treated as a legitimate Islamic counterpart to the UDHR.

In asserting that Muslim countries should be entitled to follow a distinctive Islamic version of human rights that clashes with international human rights law, the OIC put itself at odds with universalism, one of the fundamental premises of the UN human rights system. For example, the 1948 UDHR in its preamble calls for universal respect for human rights, and its proclamation states that it applies as a common standard of achievement for all peoples and all nations. It tells us in Article 2 that "(e)veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind."

In recent years the OIC has significantly altered the way that it presents its position, pretending to support universalism while seeking to rewrite international human rights law to make it incorporate the OIC view that there is a duty to combat defamation of Islam. By harnessing international human rights law, the OIC can give extraterritorial reach to OIC members' domestic policies of denying the right to freedom of expression on Islamic pretexts and invoking state-sponsored Islamic orthodoxy to condemn dissenters and critics. Instead of candidly discussing this objective, the OIC makes repeated, disingenuous assertions that outlawing defamation of Islam is urgently needed to strengthen the effectiveness of existing human rights and to curb nefarious phenomena like racism and discrimination against minorities. However, in actuality, the OIC intends to rewrite international human rights law to accord paramountcy to Islamic concerns in much the same manner as the Cairo Declaration did.

The goals of the OIC resolutions on the duty to combat defamation of religions are best understood in relation to the efforts that were made to extend Islamic criminal law to Europe in the 1989 Rushdie Affair, which is a precursor to the Danish Cartoons controversy. The Cairo Declaration, prepared during a meeting of OIC foreign ministers that was held in Tehran, Iran, in December 1989, had to deal with the international controversy engendered when Iran's leader Ayatollah Khomeini issued a death edict in February 1989 targeting the British novelist Salman Rushdie for allegedly offending Islam in his novel *The Satanic Verses*. Khomeini decided to speak out after popular protests erupted in various parts of the Muslim world over Rushdie's alleged insults to Islam and the Prophet Muhammad and calls for his assassination reverberated. Khomeini pronounced: "I inform the proud Muslim people of the world that the author of 'The Satanic Verses,' a book which is against Islam, the prophet and the Koran, and all those involved in its publication who were aware of its content, are hereby sentenced to death." This edict was

left bare of any supporting reasoning about why fictional accounts of dreamed events in a phantasmagoric fictional universe should be taken as assertions of fact or be deemed to constitute criminal speech warranting imposition of the death penalty. Furthermore, Khomeini offered no theory of extraterritoriality that would justify the extraterritorial reach of Iranian criminal law, or, more specifically, the extension of an Islamic ruling by an Iranian cleric to publications on European soil.

Iran sought the OIC's backing, and, although the OIC did not specifically endorse Khomeini's death edict, without holding any formal hearing, it proclaimed that Rushdie was an apostate, a capital crime in Islamic law. Of course, by labeling Rushdie an apostate in that context, the OIC indirectly legitimized the many calls for assassinating him.

Confronting the Rushdie controversy, the authors of the Cairo Declaration accommodated calls for criminalizing insults to Islam. The limits on freedom of expression in Article 22 are vague:

(a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah. . .

(c) Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical values or disintegrate, corrupt or harm society or weaken its faith.

In putting forth these broad grounds for censorship, the Cairo Declaration effectively embodies the views of Muslim countries where what constitutes speech offensive to Islam is so broadly construed that not only speech with religious implications but also political dissent and criticisms of government policies may wind up being classed as crimes against Islam.

Without expressly stipulating that assassination squads can be sent to kill Western authors, Article 22 (c) can be read as authorizing the demands that were made for punishing Rushdie. Of course, a rule requiring respect for the dignity of Islamic prophets and sanctities and potentially justifying calls for the assassination of a novelist does not logically belong in any human rights declaration. That the OIC incorporated this rule in its central human rights document revealed that its core philosophy was antithetical to human rights.

As it seeks support for its resolutions in the Human Rights Council on the duty to combat defamation of Islam, the OIC is basically still upholding the principles of the Cairo Declaration while dramatically refashioning the way that it characterizes its human rights policies. The wording in the various resolutions is not identical, but by picking any one in the series, it is possible to get a general sense of what is comprised. The 2007 Human Rights Council Resolution 4/9 Combating defamation of religions is offered as an example, with references to the paragraphs in the preambular language (unnumbered in the original) and to the substantive articles that follow.¹

The resolution repeatedly seeks to portray its goal as upholding human rights. For example, it invokes the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.(par. 2) Defamation of all religions is portrayed as linked to problems of racism and xenophobia. (par. 7), as causing human rights violations,(par. 9), and as “an aggravating factor that contributes to the denial of fundamental rights and freedoms of target groups, as well as their

¹ The text is available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=67&t=11

economic and social exclusion.”(Art. 4) It posits a link between discrimination and intolerance affecting Muslims and Arabs and broader problems of racism, racial discrimination, xenophobia and related intolerance.(par. 6)

Freedom of religion and belief is also invoked,(par.8) which involves striking hypocrisy, since OIC member countries are among the most egregious violators of this fundamental human rights principle, a right that the OIC deliberately excluded from the Cairo Declaration.

In a pattern common in the OIC resolutions, the language shifts back and forth from concerns about religions generally to specific references to problems of defamation of Islam and discrimination against Muslims.(cf par. 4, 5, and 6) This shifting is prompted by the OIC having real concern for Islam but needing to win votes by including wording that encompasses religions more generally. Officials are urged to show respect for different religions and beliefs,(Art. 9) and the use of the media to incite acts of violence, xenophobia or related intolerance and discrimination towards Islam or any other religion is deplored.(Art. 11) A complaint is made that “religions, and Islam and Muslims in particular,” are increasingly being attacked in human rights forums.(par. 10)

Various lines reveal a concern for the treatment of Muslim minorities living in the West in the era of the War on Terrorism. Deep concern is expressed at attempts to identify Islam with terrorism, violence and human rights violations.(Art. 2) In the aftermath of the 9/11 attack, the problems of defamation of religions and profiling of Muslim minorities are said to be increasing.(Art. 3) Measures that monitor Muslims and Arabs and legitimize discrimination are mentioned -- with the implication that this is concentrated in the West, where Muslim minorities face suspicions that they could have terrorist links. (Art.3, 5)

Special effort is made to portray the resolution as being compatible with Articles 19 and 20 of the ICCPR on freedom of expression. Article 7 of the resolution cites ICCPR Article 20(2) – but only with a major modification. The original provides: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” The resolution adds wording that calls for prohibiting “material aimed at any religion or its followers.” Adding this last phrase to the ICCPR Article 20(2) means that the grounds for censorship are being widened far beyond the limits contemplated in the original. This major alteration of the ICCPR wording exemplifies how the OIC attempts to convey the impression that its call for imposing a duty to combat defamation of religions is in line with existing principles of international human rights law while distorting what international human rights law actually provides.

Article 19(3) of the ICCPR limits restrictions on freedom of expression to what is necessary for “respect of the rights or reputations of others” as well as for “protection of national security or of public order (ordre public), or of public health or morals.” To this original ICCPR formulation the OIC resolution in Article 10 adds wording permitting curbs on freedom of expression necessary for “respect for religions and beliefs.” Again, the OIC seeks to convey the impression that it is following the ICCPR, but the new language, which is vague, significantly expands the potential scope of allowable censorship beyond the original parameters.

When the resolution calls for states to take all possible measures to promote tolerance and respect for all religions and their value systems,(Art.8) it departs from the goals of international human rights law, where the objective is to protect human beings rather than to protect religions. The same problem infects the lines where the resolution states that it deplores “the use of the print, audio-visual and electronic media, including the Internet, and any other means to incite

acts of violence, xenophobia or related intolerance and discrimination towards Islam or any other religion.”(Art. 11)

This and the other OIC resolutions on the duty to combat defamation of religions have the potential to alter international human rights law in harmful ways. For this reason, the resolutions have been denounced by NGOs committed to upholding international human rights law as well as by many democratic countries that take their human rights obligations seriously.

Among the problems in the resolutions is the notion that people must maintain a respectful attitude towards religion, which clashes with the guarantees of freedom of thought and conscience in international human rights law.

An important objection is that demands to curb the right to freedom of expression in the interests of combating defamation of religions embody a philosophy at odds with international human rights law, which, as noted, in the ICCPR specifically limits the grounds that may be used to curb freedom of expression. Having observed how Muslim countries in practice resort to repressive measures targeting religious minorities and political dissidents for supposedly offending Islam, critics also warn of the dangers in accepting the theory that religiously offensive speech should be punished. The experience of the Egyptian blogger Kareem Amer, sentenced in 2007 to four years in prison for insulting Islam and the Egyptian President and then held for an additional period after his scheduled release date on November 5, 2010, to allow for more beatings, embodies the kind of abusive deployment of charges that Islam is being insulted that is all too common in OIC countries. As international human rights NGOs observed, in raising questions about Islamic doctrines and criticizing positions taken by the powerful Islamic university al-

Azhar, Amer had merely exercised his right to freedom of expression.² In Egypt, however, where the disposition is to characterize expression of dissent as offensive to Islam, his comments amounted to a serious criminal offense. This is the kind of religiously-based censorship that the OIC apparently deems normal, since such incidents do not provoke the kind of protests that it made over the publications of the Danish cartoons.

A related problem is that, since there are no settled parameters for what constitutes “defamation of religions,” the limits on freedom of expression that combating it would entail are speculative and would be potentially expandable to the point where freedom of expression could be nullified altogether.

Moreover, the concept of “defamation” does not seem to fit when the issue is speech offensive to religion, because, as critics have noted, the law of defamation is designed to provide remedies for human beings whose personal reputations have been sullied by defamatory speech. When the defamatory speech complained of pertains to institutions or ideas, no personal reputation is at stake. However, in the case of the Danish cartoons, one could argue that at least in a rough sense the concept of defamation could apply, because the public image of a human being, the Prophet Muhammad, was being tarnished when the Prophet was depicted in a disrespectful manner, as in the drawing where he was shown with a bomb in his turban. In this connection the publication of the Danish cartoons came as a great boon to the OIC. Although it is a still stretch to extend the concept of defamation to a deceased person, being able to point to the example of insulting cartoons of the Prophet assists the OIC’s case, because in this particular instance the term

² See Amnesty International, Egyptian blogger held despite completing prison sentence, Nov. 11, 2010, available at <http://www.amnesty.org/en/news-and-updates/egyptian-blogger-held-despite-completing-prison-sentence-2010-11-11>

defamation does not seem as far out of place as it does when charges are raised that Islam is being defamed.

The complaints in the resolutions that Islam has been wrongly associated with human rights violations raise another worry -- that the rubric combating “defamation of religions” could be used to justify stifling critical discussion of laws and policies violative of human rights.

Governments of Muslim countries often claim to be acting pursuant to Islamic law, which could lead them to charge that Islam is being defamed in cases where critics are attacking certain patterns of human rights violations – such as the ones occurring when governments discriminate against women, stone persons charged with adultery, or execute people for supposed apostasy or blasphemy.

As exemplified in the 2007 resolution, aiming to counter criticisms that principles protecting religion per se have no place in a human rights system, the OIC presses the idea that defamation of Islam leads to rights violations affecting individual Muslims and Muslim communities with the focus being on the West. Such defamation allegedly exacerbates Islamophobia, which stigmatizes Muslims, aggravates hostility towards them, and leads to discriminatory treatment. In this connection in an October 2008 interview of the OIC Secretary General Ekmeleddin Ihsanoglu with Jyllands-Posten he denied that the OIC was trying to curb criticism of religion, speaking as if the issue were speech that endangers the lives of Muslims, which in context seemed to be the lives of Muslims dwelling in Denmark. He maintained:

What we are against is not the criticism of religion per se but rather the intended objective of this criticism which is, in this case, jeopardize [sic] Muslim rights, by creating an atmosphere of

hostility and rancor which make [sic]their life unsafe and strewn with prejudices of all kinds, and this is what international law prohibits.³

As one observes, having deemed it prudent to abandon demands for respect for Islamic cultural particularism, these days the OIC has backed away from arguing that the need to uphold Islamic law precludes compliance with international human rights law. Instead, it now pretends that it wants to fortify international law by adding the duty to combat defamation of religions, presented as a complementary principle.

In their calculations about what positions are diplomatically advantageous to assert, OIC officials and OIC member states have apparently concluded that it is by posing as supporters of international human rights law that they have the best chances of advancing their agendas in the UN system, which include certain foreign policy goals. Among other things, OIC spokesmen appear to have belatedly realized that in demanding exceptions to human rights to accommodate Islamic particularism, they were winding up associating Islam with human rights violations. If the OIC and its members are seen to be taking stances rejecting international human rights law, they can expect to have their input on human rights questions devalued at a time when they want to influence UN debates and votes with a view to advancing their own agendas in the human rights domain.

³ The Full text of the interview of the Secretary General with the Danish Daily Jyllands Posten, published on October 28, 2008, available at <http://www.oic-oci.org/english/article/Jyllands%20Posten%20Interview.pdf>

The OIC is hoping to go beyond repeated endorsements of its resolutions in the Human Rights Council. It seeks to buttress its claim that its idea that a duty to combat defamation of religions forms part of international human rights law by having this principle formally adopted as a principle of international law. There seem to be two likely options that it will try to use, either producing a new UN convention prohibiting defamation of religions or appending a protocol to the Convention on the Elimination of All Forms of Racial Discrimination that would oblige all countries to criminalize such defamation.

In donning the mantle of a defender of international human rights law, the OIC now seeks to occupy the moral high ground where human rights are concerned. It wants to be able to lecture non-Muslim countries about their supposed failings to comply with international law when they resist demands to curb defamation of Islam. More specifically, OIC countries are seeking a basis for striking back at the West after having long been placed on the defensive by harsh condemnations of their dismal human rights records coming from Western governments, independent human rights NGOs operating in the West, and dissidents living in Western countries after fleeing repression in Muslim countries. One way of hitting back is by adding a principle to international human rights law that the OIC knows that the West will try to resist – which will enable the OIC to pillory the West for non-compliance with international law.

The OIC's desire to strike back at the West explains why the OIC resolutions have been supported by both China and Russia, countries that mete out harsh treatment to their oppressed Muslim minorities. However, China and Russia can comfortably support the OIC's resolutions, because the OIC is disinclined to attack them. There has apparently been an agreement behind the scenes that the OIC will not condemn human rights violations like China's brutal repression of its Uighur minority or Russia's savage attacks on its Chechen population.

Although the problems facing Muslim minorities living in the West are real and need to be sensitively addressed in an era when Islamophobia and xenophobia are metastasizing, given the OIC's obvious selectivity and double standards, there is little reason to take the OIC's professions of concern for issues related to Muslims' human rights seriously. By its record of blind spots and blatant hypocrisy, the OIC has undermined its own credibility to the point where one can fairly class any protests that it makes about human rights violations connected to what it calls defamation of Islam as ones that must be driven by the OIC's political agendas, not by any devotion to the ideals of human rights.

As the framework for this conclusion, I would cite the excellent analysis offered by Eric Heinze in his article "Even-handedness and the Politics of Human Rights."⁴ Heinze proposes a standard for evaluating the legitimacy of any human rights mandate:

The touchstone of a human rights organization or policy remains its willingness to provide candid criticism of all governments, or other responsible entities, falling within an otherwise plausibly defined territorial, temporal, issue, and victim mandate. Policies failing that test may play a valuable role in political discussion, but are not legitimate human rights policies.⁵

Because the OIC has ostensibly shifted its official stance from one of promoting Islamic particularism to embracing human rights universalism, in which context it calls for the protection of Muslims' human rights as guaranteed under international law, it should be bound to criticize all governments that violate Muslims' human rights. In the light of its descriptions of the

⁴ Eric Heinze, *Even-handedness and the Politics of Human Rights*, 21 *Harvard Human Rights Journal* 7 (Winter, 2008).

⁵ *Ibid.*, 46.

objectives of its resolutions calling for combating defamation of religions, it should similarly be bound to criticize all governments that engage in or tolerate insults directed at any religions or that mistreat any religious minorities. In exclusively lambasting the West, in treating the West as the epicenter of defamation of religions, it patently fails to adhere to its ostensible position on universality, meaning that its human rights policies lack legitimacy.

In this connection, anyone familiar with the human rights records of OIC member countries will be struck by the OIC's choice to ignore the grievously deficient human rights performances of its own members, which includes the practice of denying freedom of religion and mistreating and persecuting dissident Muslims, minority Muslim sects, and non-Muslims. One has only to think of the abusive and discriminatory treatment meted out by the Pakistani government to Ahmadis, by the Saudi Arabian government to Shi'is, or by the Iranian government to Baha'is to be reminded of the religiously-based persecutions and insults to religious beliefs to which disfavored religious groups are subjected in Muslim countries.

Heinze calls those criticizing human rights violations "Accusers" and calls their targets "Perpetrators." He argues that an entity's criticisms of human rights violations are discredited when the criticisms are revealed as showing what he calls "substantially disproportionate Perpetrator selectivity." This occurs when "the Accuser grossly and systematically condemns only a limited number of Perpetrators, out of a greater number that would qualify under the Accuser's own selected territorial, issue, victim, and temporal parameters." This amounts to "illegitimate Perpetrator selectivity," which means that the Accuser shows obvious political bias.⁶ According to Heinze, this happens:

⁶ Heinze, 15.

when it brings accusations only against Perpetrators to whom its political objectives are opposed, insofar as those objectives are extraneous to the norms it purports to apply, while failing--not just sporadically, but systematically, over a sufficiently long period of time--to condemn Perpetrators of the same kinds of abuses, but with whom it shares political objectives.⁷

Using Heinze's analysis, one can readily confirm that "illegitimate Perpetrator selectivity" infects the OIC's human rights mandate.

The OIC members' castigation of Denmark for its supposed noncompliance with international human rights law in the Danish cartoons controversy is an apt example of the special vehemence that characterizes the OIC's castigations of Western democracies. The undemocratic and often deeply unpopular regimes ruling Muslim countries hope to harvest political dividends via posturing as defenders of Islam against Western insults and demanding that international law incorporate the principle that defamation of Islam must be criminalized. Experience has shown that in Muslim countries resentments can be easily inflamed by propaganda that Islam is under attack in the West. In these circumstances, pandering to anti-Western sentiment and championing in the international arena the idea that there is a duty to combat defamation of Islam offer ways for regimes to enhance their shaky legitimacy in the eyes of their restive citizenry.

The Danish cartoons case offered OIC countries an opportunity for demonstrating their zeal to defend Islam. After the Danish cartoons controversy exploded, ten ambassadors of Muslim countries wrote to the Danish Prime Minister, displaying the pro-censorship policies that prevail among OIC members. They called on the Danish government "to take all those responsible to

⁷ Ibid.

task” admonishing that the Danish press “should not be allowed to abuse Islam in the name of democracy, freedom of expression and human rights, the values that we share.”⁸

As these comments indicate, these Muslim countries did not ask Denmark to defer to Islamic particularism. Instead, in line with the revised OIC tactic of portraying its policy as respectful of international human rights law, they presented their demands for censorship of the cartoons as consonant with mainstream values of democracy, freedom of religion, and human rights, values that they pretended to support but which they notoriously breach in actual practice.

In January 2006, the OIC espoused the cause of the Muslims condemning the Danish cartoons at the UN and asked the UN for a binding resolution “banning contempt for religious beliefs and providing for sanctions to be imposed on contravening countries or institutions.”⁹ This call for UN sanctions revealed how the OIC envisages using the UN to put pressure on Western countries if they do not defer to OIC demands for censorship.

As cries for killing the Danish cartoonists escalated and as rewards were promised for the killers, in February 2006 the OIC Secretary General belatedly tried to calm things down. As part of its protests that Islam was being defamed, the OIC had been complaining that Islam was being wrongly associated with terrorism. Realizing that it would be disadvantageous to have its calls for combating defamation of Islam become associated with assassinations, Secretary General Ihsanoglu admonished: “This is not a joke to go and say kill this and that. This is a very serious matter and nobody has the authority to issue a ruling to kill people.” He asserted that the calls

⁸ Jytte Klausen, *The Cartoons That Shook the World* (New Haven: Yale University Press, 2009), 36.

⁹ P.K. Abdul Ghafour & Abdul Hannan Faisal Tago, OIC, Arab League Seek UN Resolution on Cartoons, Arab News January 30, 2006, available at <http://www.arabnews.com/?page=1§ion=0&article=77052&d=30&m=1&y=2006>

for killings were un-Islamic and urged a cessation to the violent protests.¹⁰ This constituted a move away from the OIC's stance during the Rushdie affair, when it had failed to denounce Khomeini's death edict and had indirectly legitimized it.

The demands for censorship and punishment for those behind the cartoons were rejected by the Danish government, and lawsuits by aggrieved Muslims were dismissed by Danish courts, prompting objections in February 2006 by Secretary General Ihsanoglu. In condemning Denmark for upholding freedom of expression and for allowing an independent judiciary to rule on the plaintiffs' claims, he revealed the kind of aggressive governmental initiatives to censor independent media that the OIC wanted to see, in which respect for the rule of law did not figure. He complained about Denmark's failure to take measures against Jyllands-Posten and about the attitudes of other European governments:

We expected from the European Governments to identify the real nature and the sources of this crisis and to take a political and ethical stand against uncivilized transgressions in the name of freedom of expression. To our dismay, what we found in return was an official common European position in support of the stance of the Danish government who [sic] refrained for a long time to take any political or ethical responsibility on the grounds that the laws of the country guarantee the freedom of the press and that there is no government authority or responsibility over this matter as it is completely up to the court to determine if what was published was within the boundaries of law or not. However, Danish public prosecutors, both at

¹⁰ OIC denounces cartoons violence, BBC News, February 21, 2006, available at http://news.bbc.co.uk/2/hi/south_asia/4736854.stm

local and federal levels later ruled that the act was not illegal and the cases of the offended Muslim citizens of Denmark were either dismissed or filed away.¹¹

It is obviously the aim of the OIC to try to challenge democracies in the West that defer to rulings by independent courts that uphold the right to freedom of expression using settled legal criteria and that respect human rights and the rule of law by pressing the idea that they are in breach of international law when they fail to punish any expression that in the OIC's view defames Islam. In a remarkable turnaround, the OIC now charges that Western democracies are asserting cultural particularisms at the expense of human rights. The West is, according to the OIC, wrongfully insisting on upholding a version of the right to freedom of expression that embodies a Western cultural particularism -- an unacceptably broad concept of freedom of expression that accommodates defamation of religions and thereby, in the OIC's view, leads to deplorable human rights violations.

In his 2008 Jyllands-Posten interview OIC Secretary General Ihsanoglu perfectly encapsulated the OIC's position that it is entitled to lambaste the West for being remiss in its human rights obligations when it fails to combat defamation of Islam. The interview was posted on the OIC website, and it showed how the OIC was gaining confidence that it could lecture Denmark, a country with a particularly fine human rights record, about its supposed human rights deficiencies and position itself as the defender of human rights. Ihsanoglu spoke as if the OIC's views on the duty to combat defamation of Islam had now become the settled norm in

¹¹ Statement of Secretary General at The First International Conference Organized by (OIC) under the Theme: "Challenging Stereotypes in Europe and the Islamic World," February 5, 2006, available at [http://www.oic-oci.org/topic_detail.asp?t_id=2318&x_key=van gogh](http://www.oic-oci.org/topic_detail.asp?t_id=2318&x_key=van%20gogh)

international human rights law and as if Denmark were the transgressor in failing to censor the cartoons of the Prophet. In line with the OIC policy of presenting fighting racism as one of its prime motivations, he spoke as if religious and racial discrimination were overlapping categories, and he sought to equate the OIC demands for punishing those involved in publishing the cartoons with combating incitement to religious or racial hatred. He insisted on a causal link between hate speech, which in this context would involve the cartoonists' supposed defamation of Islam, and attacks on Muslims and discriminatory treatment that they suffered in the West.

In the face of overwhelming evidence to the contrary, Ihsanoglu disingenuously protested that curbing freedom of expression was not at all the OIC's objective and that its concern was the rights of victims of hate speech:

I am quite surprised to see in the Danish press insinuations that I or the OIC are opponents of freedom of expression who are endeavoring to stifle this freedom by calling for banning of criticism of religions. Everybody is entitled to criticize anybody or anything. . . We have no problem whatsoever with this. However, when freedom of expression is abused to ridicule and demonize with the intention to sow seeds of hatred against a group of peoples or citizens, then problems start because the rights of the victims of this incitement comes to the fore.¹²

As critics could note, if the OIC's actual concern were the harms that hate speech can cause to targeted groups, its resolutions on combating defamation of religions were utterly superfluous, because hate speech was already prohibited under ICCPR Article 20(2).

¹² Full text of the interview of the Secretary General with the Danish Daily Jyllands Posten.

Conclusion

If the OIC persuades the UN to adopt the duty to combat defamation of religions as part of international human rights law, this universally applicable duty will be deployed by OIC members both as a shield to defend their records and as a sword with which to attack Western countries for failing to fulfill their obligations.

The OIC's claims that its campaign to inject a duty to combat defamation of religions – which in practice amounts to defamation of Islam – into international law is designed to promote the cause of human rights are specious. The OIC's record of insisting that Islamic law should override international human rights law, its manifest disregard for the right to freedom of expression, the distortions and inaccuracies in its statements about international human rights principles, its record of tolerating egregious human rights violations affecting religious minorities occurring in its member states and allied countries, and its unwillingness to address -- much less criticize -- human rights violations in a fair and consistent manner all disprove its claims to be committed to human rights.

The OIC's resolutions on the duty to combat defamation of religions ultimately involve deploying Islamic criteria to restrict the right to freedom of expression in much the same way that Islamic law was invoked decades ago to condemn Salman Rushdie's *The Satanic Verses*. In that era, there was no coherent theory of extraterritoriality to support Ayatollah Khomeini's presumption that he could extend Islamic law as construed in Iran to criminalize publications in Europe. However, in lieu of extraterritorial extension of their domestic criminal laws, now OIC members can aspire to utilize international law, as rewritten to serve OIC objectives, as a vehicle for making the draconian regimes of censorship prevailing in OIC countries universally

applicable. The underlying objectives include chilling robust debates about OIC members' human rights performance and also placing the West on the defensive for failing to clamp down on all expression that the OIC deems offensive to Islam.

The fact that this subversive OIC campaign has repeatedly won approval in the UN Human Rights Council should alarm all who have supported the construction of the edifice of international human rights law.