

# Freedom of Expression and Religious Sensitivities in Pluralist Societies: Facing the Challenge of Extreme Speech

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## I. INTRODUCTION

In particular in relation to religion, the meaning and scope of freedom of expression have been tested in recent times. Concerns about religious sensitivities within religiously pluralist societies have made a profound impact on the workings of the political bodies of the United Nations, in respect of which special mention must be made of the ‘Combating Defamation of Religions’ Resolutions adopted in recent years by the General Assembly and the Human Rights Council.<sup>1</sup>

The response to these Resolutions in legal doctrine has been characterized by sincere concern: the emerging counter-defamation discourse appears to overstep the mark and may very well foster illegitimate interferences with the fundamental right to freedom

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<sup>1</sup> And, previously, by the former Commission on Human Rights. See Commission on Human Rights Resolutions: 1999/82 of 30 April 1999 (“Defamation of Religions”); 2000/84 of 26 April 2000 (“Defamation of religions”); 2001/4 of 18 April 2001 (“Combating defamation of religions as a means to promote human rights, social harmony and religious and cultural diversity”); 2002/9 of 15 April 2002 (“Combating defamation of religions”); 2003/4 of 14 April 2003 (“Combating defamation of religions”); 2004/6 of 13 April 2004 (“Combating defamation of religions”); and 2005/3 of 12 April 2005 (“Combating defamation of religions”). See also Human Rights Council Resolutions: 4/9 of 30 March 2007 (“Combating defamation of religions”); 7/19 of 27 March 2008 (“Combating defamation of religions”); 10/22 of 26 March 2009 (“Combating defamation of religions”); 13/16 of 25 March 2010 (“Combating defamation of religions”). See also GA Resolutions: 60/150 (“Combating defamation of religions”) of 16 December 2005; 61/164 (“Combating defamation of religions”) of 19 December 2006; 62/154 (“Combating defamation of religions”) of 18 December 2007; 63/171 (“Combating defamation of religions”) of 18 December 2008; and Resolution 64/156 (“Combating defamation of religions”) of 18 December 2009.

of expression and the religious rights of minorities.<sup>2</sup> The emerging counter-defamation discourse introduces new grounds for limiting human rights, notably with respect to the right to freedom of expression—limitations that are not recognized by international law. It is largely intrinsic to religious belief to deem all contradicting, unorthodox or otherwise deviant religious doctrine and religious manifestations if not ‘heretical’, then at least erroneous, misguided or misdirected. Accordingly, in any pluralist society where more than one religion is practiced, an intensified focus on protecting religions against defamation may very well be counterproductive as far as the right to freedom of religion or belief itself is concerned. The examples of the persecution, in the interest of safeguarding ‘pure’ religious orthodoxy, of numerous ‘deviant’ or ‘break-away’ sects, or of individual ‘heretics’, in different part of the world, are striking.

In sum, the counter-defamation discourse is not the appropriate way of dealing with contemporary issues of religious intolerance. The counter-defamation approach is unacceptable because it seeks to shift the emphasis from the protection of the rights of individuals to the protection of religions per se. In so doing, new grounds for limiting human rights are introduced that are not, and should not become recognized by international human rights law (e.g. respect for religions, respect for people’s religious feelings), since such restrictions are open to governmental abuse.

How, then, to face the challenge posed by religious sensitivities in religiously pluralist societies? The answer that international monitoring bodies, independent human rights experts, and legal doctrine, offer, boils down to the recognition of the fact that

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<sup>2</sup> See, e.g., Jeroen Temperman, *Blasphemy, Defamation of Religions & Human Rights Law*, 26(4) NETHERLANDS QUARTERLY OF HUMAN RIGHTS 517 (2008); Allison G. Belnap, *Defamation of Religions: A Vague and Overbroad Theory that Threatens Basic Human Rights*, 2 BYU L. REV. 635 (2010); Rebecca J. Dobras, *Is the United Nations Endorsing Human Rights Violations?: An Analysis of the United Nations’ Combating Defamation of Religious Resolutions and Pakistan’s Blasphemy Laws*, 37(2) GEORGIA J. OF INT’L AND COMP. L. 339 (2009); Julian Rivers, *The Question of Freedom of Religion or Belief and Defamation*, 2 RELIGION AND HUMAN RIGHTS: AN INT’L J. 113 (2007); Maxin Grinberg, *Defamation of Religions v. Freedom of Expression: Finding the Balance in a Democratic Society*, 18 SRI LANKA J. OF INT’L L. 197 (2006); Sejal Parmar, *The Challenge of ‘Defamation of Religions’ to Freedom of Expression and the International Human Rights System*, 3 EUROPEAN HUMAN RIGHTS L. REV. 353 (2009); Aurel Sari, *The Danish Cartoons Row: Re-Drawing the Limits of the Right to Freedom of Expression?*, 16 FINNISH YEARBOOK OF INT’L L. 363 (2005); Francesca Klug, *Freedom of Expression Must Include the Licence to Offend*, 1(3) RELIGION AND HUMAN RIGHTS: AN INT’L J. 225 (2006)

adequate legal standards are already in place dealing with free speech, *and* with possible limitations thereto in the event of extreme speech. There is no need for additional bans on top of the ones presently recognized by international law. In short, we need to work with the existing standards and existing limitation clauses and further gear these instruments towards newly emerging challenges such as the one at hand—the interplay between freedom of expression and religious sensitivities in pluralist societies. This article asks the question as to what extent international monitoring bodies succeed in doing precisely that, and inquires into the question of what states may learn from these international benchmarks, expert opinions, and relevant case law.

## II. EUROPEAN COURT OF HUMAN RIGHTS: MAKING DO WITHOUT A HATE SPEECH PROHIBITION

The European Court of Human Rights so far has taken a somewhat unconvincing and rather incoherent approach to cases revolving around freedom of expression and religious sensitivities in pluralist societies. The Court more often than not—a few notable exceptions can be identified<sup>3</sup>—fails to distinguish between forms of criticism or insult that do and forms of criticism or insult that do not actually jeopardize public order and/or the rights and freedoms of others (notably their religious rights), being the two recognized grounds for limiting free speech rights that are potentially relevant in the present context.

More particularly, three trends discernable in the Court’s jurisprudence are rather objectionable from a human rights perspective:

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<sup>3</sup> See *e.g.* ECtHR, *Giniewski v. France*, 31 Jan 2006, Application No. 64016/00. In this case the Court held that a scholar’s critical analysis of Catholic doctrine, shocking to religious adherents particularly on account of the proposed link made to the origins of the Holocaust and the proposed linkage between Catholic doctrine and anti-Semitism more generally, should according to the Court not have been limited by France as this type of religious criticism is protected speech and as, among other reasons, the berated publications did not amount to hate speech (para. 52; some of the other reasons here listed by the Court seem beside the point though). The former European Commission on Human Rights did on at least one occasion point out that criticism of religion under circumstances must be protected rather than countered by states. See ECommHR, *Church of Scientology and 128 of its Members v Sweden*, 14 July 1980, 21 *Decisions & Reports* 109 (1980), Application No. 8282/78. In this case the Commission stated that it “is not of the opinion that a particular creed or confession can derive from the concept of freedom of religion a right to be free from criticism” (para. 5).

- (A) the Court’s gradual development of a ‘right not to be insulted in one’s religious feelings’;
- (B) the Court’s failure to realize that there is no conflict between freedom of religion or belief and freedom of expression *in abstracto*;
- (C) the Court’s sanctioning of inherently discriminatory laws.

A. *The Court’s Development of a ‘Right Not to be Insulted in One’s Religious Feelings’*

Particularly in its earlier case law, the European Court of Human Rights took an overly extensive reading of freedom of religion or belief, to subsequently employ that reading so as to limit someone’s freedom of expression. In a series of jurisprudence, the Court has held that Article 9 of the European Convention on Human Rights<sup>4</sup> purports to include a ‘right not to be insulted in one’s religious feelings’.<sup>5</sup> This interpretation of religious freedom has absurd ramifications as it would mean that there is virtually always a clash of rights—i.e. freedom of religion vs. freedom of expression—whenever someone expresses anything remotely critical of religion. Long-established legal doctrine provides that the right to freedom of religion or belief encompasses the freedom to have or adopt a religion or belief (the so-called *forum internum*) and the freedom to manifest that religion or belief (the *forum externum*). A person insulted in his or her religious feelings is not *ipso facto* indicative of that person’s religious freedoms being violated. International

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<sup>4</sup> [European] Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5, 213 U.N.T.S. 222, of 4 November 1950 (entered into force: 3 September 1953) [European Convention].

<sup>5</sup> See, e.g.: ECommHR, *Gay News Ltd. and Lemon v. the United Kingdom*, Application No. 8710/797, Judgment of 7 May 1982, para. 11 (“the right of citizens not to be offended in their religious feelings by publications”); ECtHR, *Otto Preminger-Institute v. Austria*, Application No. 13470/87, Judgment of 20 September 1994, para. 48 (“the right of citizens not to be insulted in their religious feelings”); ECtHR, *Wingrove v. the United Kingdom*, Application No. 17419/90, Judgment of 25 November 1996, para. 47 (“the right of citizens not to be insulted in their religious feelings”). In other cases, this notion (respect for the religious doctrines and beliefs of others) is not recognized as a right as such, but nonetheless considered as a recognized ground for limiting free speech. See e.g., ECtHR, *Murphy v. Ireland*, Application No. 44179/98, Judgment of 3 December 2003, para. 63–64 (“the prohibition sought to ensure respect for the religious doctrines and beliefs of others so that the aims of the impugned provision were public order and safety together with the protection of the rights and freedoms of others ... The Court does not see any reason to doubt that these were indeed the aims of the impugned legislation and considers that they constituted legitimate aims...”).

human rights law does not recognize a right to have one's religion or belief at all times exempted from criticism, ridicule or insult or a right, in other words, to respect for one's religious feelings. Put differently, the right to freedom of religion or belief does not by implication place a duty on all people to at all times have respect for everyone's religion or belief. In sum, for the state to legitimately interfere with a shocking or offensive speech or publication, a much higher threshold will need to be satisfied than the substantiation that certain people have been shocked or insulted or that people are likely to be shocked or insulted.

*(B) The Court's Failure to Realize that there is No Conflict  
Between Freedom of Religion and Freedom of Expression In Abstracto*

In more recent cases, the European Court, too, seems to be of that opinion and seems to have revised its train of thought somewhat. The Court seems to be abandoning its notion of a right not to be insulted in one's religious feelings as a 'rights-of-others' ground on the basis of which free speech may be limited. Instead, in relevant case law it increasingly refers to the literal, codified grounds for limiting freedom of expression, which are, as can be read in Article 9(2) of the European Convention, "public safety", "public order", "health", "morals", or "the protection of the rights and freedoms of others". In the context of cases revolving around free speech and religious sensitivities of third persons, it is clear that particularly "public order" and "the protection of the rights and freedoms of others" may at times be relevant. The protection of the right to freedom of religion or belief of a third person is most definitely a legitimate ground for limiting free speech—something that should not be equated, however, with a right not to be insulted in one's religious feelings.<sup>6</sup> For a speech or publication to actually affect someone's fundamental (religious) rights, we are entering the realm of extreme speech. This limitation ground (as is the case with any ground for limitation) cannot be advanced by the state without at least some sort of substantiation: the onus is on the state to establish that fundamental rights and/or public order are truly at stake.

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<sup>6</sup> See discussion *supra*, under II.A.

In recent cases the Court identifies ‘the rights of other to freedom of religion’ as a legitimate ground for limitation,<sup>7</sup> which is to be applauded in its own right, in as far as it indicates a departure from earlier jurisprudence which was premised on non-existing grounds for limitation. Having said that, presently the Court too uncritically accepts that in the cases at hand there indeed was a clash of rights and that a balance needed to be struck.<sup>8</sup> It is not enough for the state to submit that the religious rights of others are at stake: the state needs to indicate concretely why in the case at hand this is so. Moreover, as we are dealing with possible limits to the paramount democratic right to freedom of expression, some marginal assessment of that justification by the Court would seem to be in order. The leap from the likeliness of people being insulted by a certain publication or public speech, to the rights of these people being effectively undermined, it too uncritically made or presumed. The Court is probably right to also look into demographic figures as part of this analysis, but it could be argued that the Court’s use of them is counter-intuitive at best. In *I.A. v. Turkey*, the fact that many people are active believers (Muslims) added weight to their religious rights being threatened by comments that were disturbing, shocking or provocative statements on Islam.<sup>9</sup> One could easily reverse the argument: if the overwhelming majority of a society adheres to one and the same religion, a perhaps shocking view presented by an outsider is not likely to undermine any person’s individual religious rights. Demographical figures can certainly come into play in this type of balancing assessments, yet it would seem that only if they were to substantiate that the group of people targeted by a speech or publication is for instance a (vulnerable) minority, or if statistics show that the group at hand does indeed suffer from ‘hate crimes’, etc, then such data could arguably construed so as to add weight to the pressing

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<sup>7</sup> E.g. ECtHR, *I.A. v. Turkey*, Application No. 42571/98, Judgment of 13 September 2005, para. 27.

<sup>8</sup> For an exception, see: ECtHR, *Klein v. Slovakia*, Judgment of 31 October 2006, Application No. 72208/01. In this case the Court concluded that a verbal attack on a high representative of the Roman Catholic Church could not have threatened the religious rights of individuals, meaning that the fundamental religious rights of others could not be relied on as legitimate ground for limiting the applicant’s free speech.

<sup>9</sup> *I.A. v. Turkey*, para. 29. Thus, the Court seems to endorse to an extent the Turkish Government’s views, summarized in para. 20: “The Government submitted that the applicant’s conviction had met a pressing social need in that the book in issue had contained an abusive attack on religion, in particular Islam, and had offended and insulted religious feelings. They argued in that connection that the criticism of Islam in the book had fallen short of the level of responsibility to be expected of criticism in a country where the majority of the population were Muslim.”

social need to interfere with free speech. In the classic *Otto Preminger* case (concerning Austria's seizure and forfeiture of film that was no doubt blasphemous), the Court makes the same error: "The Court cannot disregard the fact that the Roman Catholic religion is the religion of the overwhelming majority of Tyroleans. In seizing the film, the Austrian authorities acted to ensure religious peace in that region and to prevent that some people should feel the object of attacks on their religious beliefs in an unwarranted and offensive manner".<sup>10</sup> Again, the reverse argument seems the strongest one: as the local population overwhelmingly adhered to this dominant majority, their individual rights were never going to be undermined by a small-scale (art cinema) screening of this film. Of course, in this type of circumstances there is always the chance that the majority's outrage may in actual fact threaten the rights of the person(s) responsible for the speech, publication, film, etc. Such could naturally not be construed as a 'rights-of-others' argument. If anything, this scenario provides a 'public order' argument; however, in a democratic society there are very good reasons for the state to take additional measures to protect such unpopular speech (and the persons behind it) rather than to limit it.

To an extent, this criticism goes for the Courts Holocaust denial case law too.<sup>11</sup> On the one hand, surely one must appreciate where the Court is coming from, in as far as the entire contemporary human rights framework stems from the horrors of the Holocaust—a denial of which equals a denial of everything that framework stands for. On the other hand, the Court's automatic,<sup>12</sup> self-evident correlation between Holocaust denial and the denier's active undermining of the rights of others perhaps boils down to overrating the impact of such statements, and at the same time underrating a democratic society's capability of identifying both the truth and the grotesque.

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<sup>10</sup> *Otto Preminger-Institute v. Austria*, para. 56.

<sup>11</sup> ECtHR, *Garaudy v. France*, Application No.65831/01, Judgement of 24 June 2003.

<sup>12</sup> *Ibid.*: "There can be no doubt that denying the reality of clearly established historical facts, such as the Holocaust, as the applicant does in his book, does not constitute historical research akin to a quest for the truth. The aim and the result of that approach are completely different, the real purpose being to rehabilitate the National-Socialist regime and, as a consequence, accuse the victims themselves of falsifying history. Denying crimes against humanity is therefore one of the most serious forms of racial defamation of Jews and of incitement to hatred of them. The denial or rewriting of this type of historical fact undermines the values on which the fight against racism and anti-Semitism are based and constitutes a serious threat to public order. Such acts are incompatible with democracy and human rights because they infringe the rights of others."

### *C. The Court's Sanctioning of Inherently Discriminatory Laws*

In dealing with freedom of expression and religious sensitivities in pluralist societies, the European Court has never convincingly dealt with blasphemy/defamation prohibitions that are inherently discriminatory in that they *de jure* or *de facto* only apply so as to protect the predominant religion.<sup>13</sup> It is hard to see how an inherently discriminatory law could ever form the basis for restrictions 'necessary in a democratic society'.

### *D. Reconceptualizing the 'Abuse of Rights' Doctrine?*

The challenge of dealing with religious sensitivities in pluralist societies, and particularly the Court's noted difficulties in distinguishing genuine hate speech from shocking-yet-protected speech within the European context, must significantly be fuelled by the fact that the European Convention does not entail a proper religious hate speech prohibition. That is to say, in the European Convention one will look in vain for the equivalent of Article 20(2) of the ICCPR.<sup>14</sup> Different (possibly complimentary) solutions circumventing this omission are imaginable:

1. 'reading' a hate speech prohibition 'into' Article 10(2) of the European Convention;
2. reconceptualizing the abuse of rights doctrine.

#### *1. 'Reading' a hate speech prohibition 'into' Article 10(2) of the European Convention*

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<sup>13</sup> *Wingrove v. the United Kingdom*, para. 50: "It is true that the English law of blasphemy only extends to the Christian faith ... The uncontested fact that the law of blasphemy does not treat on an equal footing the different religions practised in the United Kingdom does not detract from the legitimacy of the aim pursued in the present context." Note that England itself has come to the conclusion that its ancient blasphemy laws were inherently discriminatory and contrary to free speech, and abolished these laws in 2008. See Article 79 of the Criminal Justice and Immigration Act 2008 (c. 4; the abolishment entered into effect on 8 July 2008).

<sup>14</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, of 16 December 1966 (entered into force: 23 March 1976) [ICCPR].



One could of course ‘read’ a hate speech prohibition ‘into’ Article 10(2) of the European Convention, into the list of recognized grounds for limitation, be it as a public order ground or as part of the ‘fundamental rights and freedoms of others’-ground (e.g. the right of others to be free from discrimination). This approach risks being accused of precisely that what the European Court’s past jurisprudence may be accused of, namely reading into the European Convention notions that are not actually enshrined (i.e. ‘the rights of others not to be insulted’).

But then, a society free from hatred, discrimination and marginalization is what the human rights framework is explicitly premised upon (see the preambles of all post-WWII human rights documents). Accordingly, this implied ground for limitation does not take an enormous leap of faith. By comparison, the UN Human Rights Committee indeed has derived from the ICCPR a “right to be protected from religious hatred”.<sup>15</sup> However, it could of course base itself on the existence of Article 20(2) ICCPR for that purpose (i.e. essentially the Committee has taken a positive reading of a negatively formulated norm; that is to say, it has distilled an individual right from a prohibition addressed at states).

## *2. Reconceptualizing the abuse of rights doctrine*

Alternatively, or perhaps in addition to that, the time may be right to reconceptualize (and thus revitalize) the abuse of rights doctrine, a notion not unique to the European Convention,<sup>16</sup> but which has or could have special legal significance being the only provision in the European Convention that offers concrete points of departure for dealing with cases in which the activities of people may be construed as being aimed at the destruction of the rights and freedoms of others.<sup>17</sup> Article 17 of the European Convention reads in full: “Nothing in this Convention may be interpreted as implying for

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<sup>15</sup> *E.g.*, Human Rights Committee, *Malcolm Ross v. Canada*, views of 18 October 2000, Communication No. 736/1997, UN Doc. CCCCPR/C/70/D/736/1997, 2000, para. 11.5.

<sup>16</sup> *See, e.g.*, the ICCPR, which codifies an abuse of rights provision in Article 5, i.e. in addition to the prohibition of advocacy of hatred (Article 20(2) ICCPR).

<sup>17</sup> The former European Commission on Human Rights did realize this, *see e.g.*: ECommissionHR, *Glimmerveen & Hagenbeek vs the Netherlands*, Judgment of 11 October 1979, 18 *Decisions & Reports* 187 (1979), Application Nos 8348/78 and 8406/78.

any State, group or person any right to engage in any activity or perform any act aimed at the destruction on any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

One important caveat is that not all ‘hate speech cases’ can be discussed under this heading as a matter of course. This approach could possibly only apply to potential hate speech cases brought before the Court by persons alleging to have suffered an interference with their free speech (e.g. as they have been imprisoned, fined, fired, or otherwise punished, on account of their alleged hate speech). Cases referred to the Court by alleged victims of hate speech, naturally, cannot to be dealt with under this heading. Again, the UN Human Rights Committee has derived from the ICCPR a “right to be protected from religious hatred”. Should that notion, once Article 20(2) ICCPR has been further elaborated upon by the Human Rights Committee,<sup>18</sup> be construed so as to mean an autonomous fundamental right, it cannot be excluded that people may bring a case before the Committee complaining that states have not taken sufficient measures to eradicate advocacy of religious hatred. Though it remains as yet to be seen whether the Committee’s conceptualization of Article 20(2) ICCPR will in the future indeed make such cases possible, any such development under Article 17 European Convention seems to be ruled out from the outset. This article is expressly designed to reject certain human rights claims (those that are made with a view towards destructing the rights of others), not to provide any new right in addition to the ones codified by Article 2–14 of the European Convention. Having said that, arguably some legal significance could be derived from the fact that the abuse of rights prohibition is codified as a part of the treaty section listing the substantive rights and freedoms.<sup>19</sup>

This leads to a second caveat: a potential downside of a consistent approach of dismissing relevant claims on the basis of the abuse of rights doctrine is that such tends not lead to a body of jurisprudence dealing with the merits of such hate speech cases. Judicial practice thus far is that abuse of rights concerns are dealt with as an admissibility issue (not as part of a judicial exercise of balancing different rights). Article 35(3)(a) of

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<sup>18</sup> See section III *infra*.

<sup>19</sup> *I.e.* Section I of the European Convention on Human Rights (entitled “Rights and freedoms”).

the European Convention, too, refers back to an “abuse of the right of individual application” as one of the grounds for declaring a case inadmissible. Again the fact that the abuse of rights prohibition is actually codified as part of the section listing the substantive rights and freedoms could be seized to argue in favour of consideration of the merits of complaints here, rather than more *prima facie* considerations of the admissibility of a case *per se*.<sup>20</sup> In sum, ‘abuse of rights’ concerns are ideally always tackled as a part of a discussion of the merits (i.e. in conjunction with the standard discussion of relevant grounds for limitation under Article 10(2), and of the criteria applicable to those restrictions) and not too uncritically seized as a ground to deny standing.

### III. Human Rights Committee: The Rediscovery of the Prohibition of Advocacy of Religious Hatred

#### A. *The Role of the Prohibition of Advocacy or Religious Hatred: A First Glance*

Although Article 20(2) ICCPR formulates a clear duty for each state party to adopt legislation prohibiting religious hate speech, until recently little activity on the part of the Human Rights Committee to scrutinize whether states actually complied with that norm could be noted. Article 20(2) ICCPR provides in full: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” In recent Views (opinions regarding individual communications) and Concluding Observations (opinions regarding state reports),<sup>21</sup> the Committee seems

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<sup>20</sup> It must be noted that a (partial) focus on Article 17 of the European Convention in for instance the Court’s Holocaust denial case law (*Garaudy v. France*) did lead to indirect yet rather extensive considerations of the merits of the case (even though strictly speaking it was an admissibility case)—a sensible compromise. However, the fact that the Court presently seems only to be prepared to engage Article 17 in the context of Holocaust denial cases, and not in the context of other apparent instances of racist or hate speech can be criticized; see David Keane, *Attacking Hate Speech under Article 17 of the European Convention on Human Rights*, 25(4) NETHERLANDS QUARTERLY OF HUMAN RIGHTS 641–663 (2007), also for a comprehensive discussion of all extreme speech cases thus far in which Article 17 was alone, or in conjunction with article 10(2), seized upon by the Court.

<sup>21</sup> E.g., A/58/40 vol. I (2002) 31 at para. 77(18)[Egypt]: “The Committee is deeply concerned at the State party’s failure to take action following the publication of some very violent articles against the Jews in the Egyptian press, which in fact constitute advocacy of racial and religious hatred and incitement to

to have rediscovered this legal notion. Particularly in its draft-General Comment on freedom of expression,<sup>22</sup> to be adopted in the course of 2011, the Committee seems determined to conceptualize the prohibition of religious hatred so as to deal with extreme speech more actively and effectively—and, arguably, at the same time so as to differentiate this type of extreme speech from blasphemy/defamation of religion, which as a rule must be protected rather than countered by states.

The advantage of assessing speeches or publications (partly) in light of the hate speech prohibition is clear: instead of taking subjective factors such as insult as a point of departure, more objective factors can be scrutinized in order to judge whether the state rightly interfered with the applicants' free speech. That is to say, the centre of gravity of legal assessment becomes the actual speech and the reaction or potential reaction vis-à-vis the group or persons addressed by the speech (not the reaction or potential reaction by the targeted group itself). A case in point would be the well-know *Ross v. Canada* case, concerning a teacher propagating anti-Semitic sentiments. In this case the Committee reasoned that the teacher's right could reasonably be restricted on the basis of the rights and reputations of others, more specifically the right of others (in this case the pupils) to be protected from religious hatred.<sup>23</sup> Restrictions are in principle permitted on statements which are of a nature as to raise or strengthen hostile feelings vis-à-vis adherents of a certain religion (i.e. Article 19(3) read in conjunction with Art. 20(2) of the ICCPR. Scrutinizing not so much the question of whether pupils or parents were hurt in their religious feelings, but rather whether or not the berated publications could objectively

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discrimination, hostility and violence"; A/58/40 vol. I (2003) 64 at para. 85(20)[Israel]: "The Committee is concerned by public pronouncements made by several prominent Israeli personalities in relation to Arabs that may constitute advocacy of racial and religious hatred constituting incitement to discrimination, hostility and violence. The State party should take the necessary action to investigate, prosecute and punish such acts in order to ensure respect for article 20, paragraph 2, of the Covenant. The State party must take whatever action is necessary to punish such acts by ensuring respect for article 20, paragraph 2, of the Covenant." Earlier statements include A/50/40 vol. I (1995) 38 at para. 181[New Zealand]: "The Committee is concerned about the fact that, while the Human Rights Act contains a provision corresponding to article 20, paragraph 2, of the Covenant, this provision does not include a prohibition of advocacy of religious hatred"; A/50/40 vol. I (1995) 57 at para. 322[Ukraine].

<sup>22</sup> CCPR/C/GC/34/CRP.4 (22 October 2010).

<sup>23</sup> Human Rights Committee, *Malcolm Ross v Canada*, views of 18 October 2000, Communication No. 736/1997, UN Doc. CCPR/C/70/D/736/1997, 2000, particularly para. 11.5.

(i.e. on the basis of a textual analysis of the publications also in light of the actual social context in which statements were made) threaten the rights of others, the Committee establishes that the rights of Jewish pupils were indeed at stake. In that respect two things were important to the Committee. First, the author's statements not merely denigrated Judaism, but actually "called upon true Christians ... to hold those of the Jewish faith and ancestry in contempt as undermining freedom, democracy and Christian beliefs and values" (i.e. an objective incitement element).<sup>24</sup> Second, the Committee is concerned with the reaction or potential reaction of persons that read the publications vis-à-vis the group or persons targeted by the publication (i.e. is the publication of such a nature that people may indeed be incited to act upon it, thus threatening the rights of the people targeted by the publication?). Posing this question means that the Committee is not simply satisfied with the fact that a relevant, recognized limitation of the freedom of expression can *in abstracto* be engaged (here the rights of others); it is furthermore essential to inquire into the necessity of the interference. In this particular case, the Human Rights Committee confirmed the existence of a "poisoned school environment",<sup>25</sup> thus establishing the necessity to interfere with the teacher's publications.

*B. The Need for Further Conceptualization of the Prohibition  
of Advocacy of Religious Hatred*

Thus, *prima facie* the advantages of the countering hate speech approach compared to combating all forms of defamation approach seem to be as follows. The mechanism is already in place; meaning we do not need to conceive of new prohibitions to deal with extreme speech in the religiously pluralist society. This legal norm does most justice to both freedom of expression and freedom of religion, in as far this approach would only consider 'balancing' rights when there is a real or imminent clash of rights. Also, hate speech can be objectified to a greater extent than religious defamation; accordingly, there would be less scope for governmental abuse.

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<sup>24</sup> *Ibid.*, para. 11.5.

<sup>25</sup> *Ibid.*, para. 11.6 (following earlier observations made by the Canadian Supreme Court and a domestic Board of Inquiry; *idem*, paras. 4.6–4.7).

However, leaving it at that would be an oversimplification. In actual fact, we must acknowledge that international case law and benchmarks on religious hate speech are very scarce indeed. Many legal issues, therefore, remain unresolved. As long as these issues are unresolved, a ‘combating hate speech approach’ may be equally abused. Also, state practice at the national level is fairly new, fairly tentative, and ostensibly not well-informed by international benchmarks—essentially, again, because up to very recently there hardly were any.

States have opted for widely varying laws and policies. A number of states, mostly liberal democracies, have fairly recently started implementing (experimenting with) religious hate speech legislation. In many of these countries the political discussion leading up to this type of legislation revolved around the untenability of blasphemy bills. In the UK, the enacting of hate speech legislation went more or less hand-in-hand with striking the blasphemy offence off the statutes.<sup>26</sup> In some states, however, hate speech legislation has not replaced blasphemy legislation but rather complements the latter. The Netherlands would be a good example (initially incitement to hatred was supposed to replace the penal provision on blasphemy, but eventually it was simply added).<sup>27</sup> Many other notable differences among domestic legislation can be discerned. Some states have adopted fairly elaborate hate speech legislation (UK would again be the best example); whilst others have either included fairly minimal or more generic clauses in their penal code (e.g., Brazil, Canada, Croatia, Denmark, Finland, Germany, India, Netherlands, New Zealand, Serbia, Sweden), or simply have reinterpreted existing laws on racial hate speech so as to also cover religious hate speech. Some of the Nordic states increasingly employ ancient defamation laws *de facto* to counter religious hate speech, providing

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<sup>26</sup> Racial and Religious Hatred Act 2006 (c. 1). Important was also House of Lords’ Select Committee on Religious Offences in England and Wales, *Religious Offences in England and Wales: First Report*, Session 2002–2003 (published in HL Paper 95-I, 2003), which recommended the abolition of blasphemy as an offence.

<sup>27</sup> See Article 137d of the Dutch Penal Code (hate speech). Articles 147 and 147a on blasphemy and religious defamation, however, are *de facto* fairly dead letters.

judges with the task to interpret existing laws in ‘treaty-conform’ ways.<sup>28</sup> Still other states ban particular types of extreme speech (consider, for instance, the ‘denial laws’ adopted by Austria, Belgium, and France).

Clearly, different states face different challenges; consequently, it is to some extent logical that state practice is still rather ‘tentative’. Having said that, from the perspective of legal certainty it is equally clear that state practice would greatly benefit from further, critical conceptualization of freedom of expression and its limits in the religiously pluralist state. More particularly, the relevant human rights monitoring bodies, jointly with the independent experts (relevant Special Rapporteurs), and legal doctrine, will need to:

- Further conceptualize the prohibition of advocacy of religious hatred as a notion of international law; more particularly, to identify legal benchmarks and factors that help determine the phenomenon advocacy of religious hatred, so as to contrast it to protected forms of blasphemy and defamation;
- Identify the precise state obligations emanating from the internationally codified prohibition of advocacy of religious hatred (Article 20(2) ICCPR);
- And, importantly, consider safeguards against governmental abuse of hate speech legislation.

#### *1. Further necessary conceptualization*

The first question that comes to mind regards the precise scope of the prohibition: what actually constitutes “advocacy of religious hatred”? The phenomenon of religious hate speech is multi-faceted. That is to say, religious hate speech may (analytically) be:

- hate speech *vis-à-vis* a specific religious group; or:
- religion-inspired hate speech.

The first category involves incitement against a religious group typically on the basis of specific characteristics attributed to the group/religion in question (e.g.

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<sup>28</sup> For a comparative legal analysis of domestic blasphemy bills around the world, *see* Jeroen Temperman, *Blasphemy, Defamation of Religions & Human Rights Law*, 26(4) NETHERLANDS QUARTERLY OF HUMAN RIGHTS 517 (2008), particularly section II, at 519 *et seq.*

incitement by the secular establishment against minority religions newly emerging due to migration processes). Religion-inspired hate speech involves incitement against persons triggered by one's interpretations of one's own belief (for instance, ultra-orthodox Imams in mosques in Western states inciting against 'western infidels'; bible belt priests inciting against homosexuals; African Pentecostalist priests inciting against child witches; or incitement against 'deviant' breakaway sects abandoning orthodoxy).

Human Rights Committee's Views and Concluding Observations seem to cover both angles; in that respect the issue is perhaps academic. Nonetheless, this issue does raise questions concerning domestic processes of enacting hate speech legislation. Take the case of the Netherlands, for example. The Dutch official version of the ICCPR speaks explicitly of advocacy of hatred "based on religious motives". Dutch domestic hate speech legislation itself (on the basis of which Dutch politician Geert Wilders is presently being prosecuted), interestingly, is exclusively premised on the need to ban hate speech vis-à-vis a specific religious group (regardless of what motives are at play). The Dutch Penal Code provides: "Any person who publicly, orally or in writing or image, incites to hatred or discrimination against persons...on account of *their* religion or belief...may be punished with imprisonment of maximally one year or a third category fine".<sup>29</sup> Thus, it appears that the provision prohibits incitement against people on account of them adhering to a certain religion. Ostensibly not covered are forms of incitement against people based on one's own religious motives (e.g. religion-inspired hatred against homosexuals, or against adherents of dissimilar religious creeds).

This example begs several questions. First, can the Dutch law be seen as giving effect to the international prohibition (Article 20(2) of the ICCPR)? It is, ironically, the Dutch official translation of the ICCPR itself that provides that the ICCPR purports to ban advocacy of hatred 'based on religious motives'. Secondly, and more importantly, what acts does Article 20(2) of the ICCPR actually purport to prohibit? It would appear that the object and purpose of the provision on advocacy of religious hatred (and of the ICCPR more generally) is to ensure that people can live free from marginalization,

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<sup>29</sup> Art. 137d Dutch Penal Code (transl. author; emphasis added). Note that the emphasized 'their' refers back to 'persons'.



discrimination, hostility and violence. In that respect it should not matter how religious hate speech is exactly motivated.

It is part of the Human Rights Committee's mandate to construe Article 20(2) of the ICCPR in a manner in which contemporary challenges can be tackled. In that respect, it is encouraging to see that the Committee in recent times has taken up the task to elaborate further on the freedom of expression (Article 19 ICCPR), and the interplay of this right with Article 20(2) on hate speech, in the form of a new General Comment.<sup>30</sup> The draft-General Comment resolves many long-standing debates, for instance on the precise nature of state obligations; the relation between the prohibition of hate speech and freedom of expression, the precise meaning of some of the key terms, and, finally, some guidance is provided on the necessary safeguards that must be in place when it comes to combating hate speech. The Committee, at the same time, leaves a number of issues unresolved.

First and foremost, the qualified act of (a) advocacy of (b) religious hatred<sup>31</sup> that (c) constitutes incitement to discrimination, hostility or violence is to be *a priori* prohibited by states. Thus, forms of advocacy that would fall short of such incitement are not covered by the Covenant provision. In its second and third draft of the General Comment, the Committee had defined the individual key terms:

- *advocacy*: "By advocacy is meant public forms of expression that are intended to elicit action or response",<sup>32</sup>

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<sup>30</sup> Draft-General Comment 34 on Article 19 is expected to be adopted by the Committee in the course of 2011. The General Comment, once adopted, will replace General Comment 10 on Article 19, and will complement General Comment 11, which already –albeit very briefly– touched upon advocacy of hatred. The present state of play (November 2010) is that the Committee has completed its 'first reading' of the document, resulting in a fourth revised draft (Member Prof. O'Flaherty is the principal drafter). After the first reading and the resulting fourth draft had been completed in October 2010, the draft-Comment has been posted on the Human Rights Committee's website so as to invite responses from experts and stakeholders (<http://www2.ohchr.org/english/bodies/hrc/comments.htm>). In what follows, reference is made to the draft-Comment as circulated by the Committee in October 2010 (CCPR/C/GC/34/CRP.4, 22 October 2010), unless expressly indicated otherwise. The document used is subject to changes.

<sup>31</sup> Something that is beyond the scope of this account: also advocacy of *national* and *racial* hatred is to be prohibited.

<sup>32</sup> CCPR/C/GC/34/CRP.2 (29 January 2010), para. 53; and CCPR/C/GC/34/CRP.3 (28 June 2010), para. 53.

- *hatred*: “By hatred is meant intense emotions of opprobrium, enmity and detestation towards a target group”,<sup>33</sup>
- *incitement*: “Incitement refers to the need for the advocacy to be likely to trigger imminent acts of discrimination, hostility or violence. It would be sufficient that the incitement relate to any one of the three outcomes: discrimination, hostility or violence”.<sup>34</sup>

In the October 2010 draft,<sup>35</sup> these definitions have been deleted. Although it was perhaps a bit on the progressive side to offer such extensive definitions of the prohibition’s key terms, and although any definition provided may count on criticism on the part of at least some states, altogether the deletion of these definitions is to be regretted. Those definitions did make it clearer what amounts to hatred and what not (even though the Committee again failed to make explicit for once and for all the multi-faceted nature of “religious hatred” specifically: see discussion above).

The deletion mentioned is particularly regrettable, as these definitions shine a light on the question as to what precise extent *mens rea* (intention) is an element of the crime of hate speech—thus indicating a threshold for this crime, and in so doing, surrounding the prohibition with concrete safeguards against abuse at the national level. The definitions made it clear that for a speech or publication to amount to ‘advocacy’, one must intend at least “to elicit action or response”. For the advocacy to amount to incitement, in turn, it is necessary (under the now dropped definitions) that the speech or publication is “*likely* to trigger imminent acts of discrimination, hostility or violence”. At the same time it is clear that not all forms of advocacy of hatred are to be prohibited, but only those instances that constitute “incitement to discrimination, hostility or violence” (it is clear, given the word “or”, that it is sufficient that the incitement relate to any one of the three outcomes). It is also clear that minimally one such outcome must be aimed at.

Again domestic state practice gives evidence of the fact that processes of enacting hate speech legislation, presently, is a rather tentative affair and apparently not informed

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<sup>33</sup> *Idem.*

<sup>34</sup> *Idem.*

<sup>35</sup> CCPR/C/GC/34/CRP.4 (22 October 2010).

by international benchmarks. Consider the Dutch example: “Any person who publicly, orally or in writing or image, *incites to hatred or discrimination* against persons...on account of their religion or belief...may be punished with imprisonment of maximally one year or a third category fine”.<sup>36</sup> The threshold of the Dutch offence would seem to be considerably lower than the international norm which provides that what should be prohibited is: (a) advocacy of (b) religious hatred that (c) constitutes incitement to discrimination, hostility or violence.

The Comment is careful on the issue of Holocaust denial. Rather than considering this form of extreme speech as falling automatically within the ambit of advocacy of hatred within the meaning of Article 20(2), the Committee’s considerations are characterized by concern about these laws: “Laws that penalise the promulgation of specific views about past events, so called “memory-laws”, must be reviewed to ensure they violate neither freedom of opinion nor expression. The Covenant does not permit general prohibitions on expression of historical views, nor does it prohibit a person’s entitlement to be wrong or to incorrectly interpret past events. Restrictions must never be imposed on the right of freedom of opinion and, with regard to freedom of expression they may not go beyond what is permitted in paragraph 3 or required under article 20”.<sup>37</sup> Given their general nature, these considerations cannot as such be deemed a departure from earlier Views,<sup>38</sup> but the level of expressed concern is nonetheless striking.

The draft-Comment, furthermore, for once and for all explains the relationship between freedom of expression and the prohibition of hate speech: “The acts that are addressed in article 20 are of such an extreme nature that they would all be subject to limitations of Article 19, paragraph 3. As such, a restriction that is justified on the basis of article 20 requires also to comply with article 19, paragraph 3, which lays down requirements for determining whether restrictions on expression are permissible”.<sup>39</sup> In other words, Article 20(2) ICCPR is at the same time *lex specialis* to the extent that this is

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<sup>36</sup> Art. 137d Dutch Penal Code (transl. author; emphasis added).

<sup>37</sup> CCPR/C/GC/34/CRP.4 (22 October 2010), para. 51.

<sup>38</sup> Human Rights Committee, *Robert Faurisson v. France*, Communication No. 550/1993, views of 8 November 1996, UN Doc. CCCCPR/C/58/D/550/1993, 1996.

<sup>39</sup> Draft-General Comment 34 (CCPR/C/GC/34/CRP.4), para. 52 (with a reference to *Ross v. Canada*).

the only form of speech with respect to which an *a priori* response by the state is required (their prohibition by law),<sup>40</sup> whilst at the same time it is clear that this ground for limitation is treated on a par with the ones provided by Article 19(3) ICCPR. This additionally underscores the fact that interferences with someone's free speech on account of hate speech concerns, must always be provided by a law prohibiting extreme speech. Furthermore, given the interrelation between articles 19 and 20, such standard benchmarks as necessity and proportionality play a role in assessing interferences based on hate speech regulations.

## 2. *State obligations*

Article 20(2) ICCPR itself leaves in fact little doubt about the fact that legislative action is necessary, after all: advocacy or religious hatred “shall be prohibited by law”. On the other hand, a number of states upon ratification entered reservations or declarations to Article 20(2) ICCPR stating that compliance to this provision shall (as far as these states are concerned) not entail the issuance of laws prohibiting extreme speech.<sup>41</sup> In its General Comment, the Human Rights Committee reiterates its own position and makes explicit that countering advocacy of religious hatred requires the adoption of laws prohibiting such extreme speech.

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<sup>40</sup> See Draft-General Comment 34 (CCPR/C/GC/34/CRP.4), para. 53.

<sup>41</sup> *E.g.* Malta: “The Government of Malta interprets article 20 consistently with the rights conferred by Articles 19 and 21 of the Covenant but reserves the right not to introduce any legislation for the purposes of article 20” (Malta's 5<sup>th</sup> reservation); New Zealand reserves the right not to introduce *new* legislation on this point: “The Government of New Zealand having legislated in the areas of the advocacy of national and racial hatred and the exciting of hostility or ill will against any group of persons, and having regard to the right of freedom of speech, reserves the right not to introduce further legislation with regard to article 20.”; similarly UK: “The Government of the United Kingdom interpret article 20 consistently with the rights conferred by articles 19 and 21 of the Covenant and having legislated in matters of practical concern in the interests of public order (*ordre public*) reserve the right not to introduce any further legislation. The United Kingdom also reserve a similar right in regard to each of its dependent territories.”; similarly Australia: “Australia interprets the rights provided for by articles 19, 21 and 22 as consistent with article 20; accordingly, the Commonwealth and the constituent States, having legislated with respect to the subject matter of the article in matters of practical concern in the interest of public order (*ordre public*), the right is reserved not to introduce any further legislative provision on these matter”; USA: “That article 20 does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States” (first reservation).

It must be noted that in previous drafts the Committee emphasized this point much stronger: “Article 20 is an important tool for the protection of persons from discrimination, hostility or attack because of their national, racial or religious identity. It imposes an obligation on State parties with regard to the prohibition of specified forms of extreme speech. It requires legislative action of the part of States parties. Such legislation should be reviewed as necessary to take account of contemporary forms and manifestations of national, religious and racial hatred. It is not compatible with the Covenant for the legislative prohibitions to be enacted by means of customary, traditional or religious law.”<sup>42</sup> The October 2010 draft still explicitly requires states to adopt legislation, but chooses to do so in more moderate language.<sup>43</sup> Be that as it may, it is clear that political commitment to this international norm alone is not sufficient. Compliance requires national implementation, more particularly a law explicitly prohibiting advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence. This also means that the issue cannot be left to the discretion of a judge on a case-by-case basis: limiting speech on this basis always requires a national law forbidding extreme speech. This is hardly a departure from previous doctrine (in that respect one may wonder why the Committee has toned down this part of the draft-Comment). General Comment No. 11 as early as 1983 already provided: “For article 20 to become fully effective there ought to be a law making it clear that...advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation. The Committee, therefore, believes that States parties which have not yet done so should take the measures necessary to fulfil the obligations contained in article 20, and should themselves refrain from any such...advocacy.”<sup>44</sup>

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<sup>42</sup> CCPR/C/GC/34/CRP.2 (29 January 2010), para. 50; and CCPR/C/GC/34/CRP.3 (28 June 2010), para. 51, twice with a reference to Concluding Observations regarding Belgium and Slovenia.

<sup>43</sup> CCPR/C/GC/34/CRP.4), para. 53 (“the Covenant indicates the specific response required from the State: their [hate speech offences] prohibition by law”).

<sup>44</sup> Human Rights Committee, *General Comment 11: Article 20 (Prohibition of propaganda for war and inciting national, racial or religious hatred)*, Nineteenth session, 1983, reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 133 (2003), para. 2. The point has also been repeatedly made in the state reporting procedure in Concluding Observations, e.g.: CCPR/CO/81/BEL (Belgium); CCPR/CO/84/SNV (Slovenia).

In the eyes of the Human Rights Committee, the flip side of this increased focus on identifying what amounts to hate speech and accordingly, what acts should be prohibited and combated, is the decriminalization of speech and publications that do not amount to advocacy of religious hatred. Concretely this means that states are to criminalize hate speech not alongside but *instead of* religious defamation or blasphemy offences. The draft-General Comment takes a firm stance in this debate where it provides that “States parties should repeal criminal law provisions on blasphemy and regarding displays of disrespect for religion or other belief system”.<sup>45</sup> It is to be hoped that this paragraph will survive the final drafting stages.<sup>46</sup>

### 3. *Safeguards*

The Human Rights Committee is not solely concerned with states taking the prohibition of Article 20(2) ICCPR seriously in its recent efforts. The Committee equally underscores that states may not abuse the prohibition of advocacy of religious hatred to punish legal criticism of religion or to stifle unpopular and unwanted debate:

- First and foremost, it is clear that the threshold for the acts that must be prohibited is exceptionally high: only the *qualified* act of (a) advocating (b) religious hatred that (c) constitutes incitement to discrimination, hostility or violence is to be prohibited by states.
- It is not compatible with the Covenant for the legislative prohibitions to be enacted by means of customary, traditional or religious law.<sup>47</sup> Thus is hinted at the fact that a legislative prohibition must be the result of competitive politics, so as to ensure that the result is not discriminatory (i.e. protects all religious minorities and other groups in need of protection), does not undermine free speech, and

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<sup>45</sup> Draft-General Comment 34 (CCPR/C/GC/34/CRP.4), para. 50. See also paragraph 47 on defamation laws (in which States are more moderately requested to “consider” the decriminalization of defamation).

<sup>46</sup> See the introductory remarks on the human rights concerns that surround combating defamation of religion approachers.

<sup>47</sup> Explicitly in CCPR/C/GC/34/CRP.2 (29 January 2010), para. 50; and CCPR/C/GC/34/CRP.3 (28 June 2010), para. 51; presently more generally referred to in CCPR/C/GC/34/CRP.4), para. 25. It is to be hoped that the earlier, extended safeguard finds its way back into the Comment.

- otherwise be in line with the state's constitution and with international human rights law.
- Given the interrelation between articles 19 and 20, such standard benchmarks as necessity and proportionality must play a role in assessing interferences based on hate speech regulations.

#### IV. CONCLUSION

Within the European Convention system, judgments have supported legal restrictions both on hate speech, but also on blasphemy or religious defamation. The universal (UN) human rights instruments, particularly the ICCPR, are increasingly geared towards eradicating hate speech (speech that threatens the rights and freedoms of others), whilst forms of extreme speech that fall short of that category are to be protected rather than countered by states. Human Rights Committee's draft-General Comment on freedom of expression, to be adopted in the course of 2011, provides another strong indication that this is the envisaged way forward: repealing blasphemy and defamation bills, whilst simultaneously increasing the efforts to combat hate speech. It is important to keep taking stock of the legal justifications for restrictions that are suggested in this area and to scrutinize whether they are in fact sustainable from a human rights perspective—not only on paper, but also in actual practice. Considering the different legal standards described in the article (universal vs. regional), and considering ongoing developments in the area of domestic hate speech measures, future research must take a double comparative approach: (i) it should aim at further comparing and contrasting the universal monitoring bodies' approach to extreme speech with that of regional monitoring bodies; and (ii) it should aim at charting and comparing, and analysing from an international human rights perspective, recent forms of state practice in the field of dealing with extreme speech.