

# Denouncing Divinity: Blasphemy, Human Rights, and the Struggle of Political Leaders to defend Freedom of Speech in the Case of *Innocence of Muslims*

by Tom Herrenberg\*

## Abstract

*This article is about freedom of speech and the political responses to the blasphemous Innocence of Muslims video, which sparked international controversy in the fall of 2012. Politicians from multiple corners of the world spoke out on freedom of speech and its relation to blasphemy. Whereas one might expect that those politicians would abide by international human rights law, many of them issued statements that unequivocally undermined the principle of free speech enshrined in those human rights instruments. This article discusses a number of these political statements against the background of human rights standards.*

*It is unsatisfactory and even painful to the thinker himself, if he is not permitted to communicate his thoughts to others, and it is obviously of no value to his neighbours.<sup>1</sup>*

*J.B. Bury (1861–1927)*

## I. Introduction

Freedom of speech is an individual right that is safeguarded by many international human rights instruments as well as by many national constitutions. Its importance can hardly be overstated. Michael O’Flaherty, former member of the United Nations Human Rights Committee, puts it this way: ‘The high importance accorded to freedom of expression [...] is not just a matter of philosophy or ideology. As a matter of empirical observation it can be seen that free expression is essential to the good working of the entire human rights system.’<sup>2</sup>

In recent decades we have witnessed a number of controversies about cases in which this right was practiced in a manner that was derogatory of Islamic tenets. The fall of 2014 marked the second anniversary of the latest example of such a controversy: the video that became known as *Innocence of Muslims*. Whereas ‘freedom’ can commonly be understood as the absence of coercion by national public actors who function according to national legislation<sup>3</sup>, cases such as *The Satanic Verses*, the *Danish cartoons* or *Innocence of Muslims* are different with

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1 *John Bagnell Bury*, *A History of Freedom of Thought* (1913), 7.

2 *Michael O’Flaherty*, *Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee’s General Comment No 34*, *Human Rights Law Review* (2012), 627–654, 630–631.

3 When, for example, Charles Schenck played a part in the dissemination of anti-war propaganda, he was prosecuted and sentenced by American officials for violating American law (the famous case of *Schenck v. United States*, 249 U.S. 47 (1919)).

regard to ‘freedom’. In these cases, ‘freedom’ means the absence of physical violence, or of the threat of physical violence, by foreign government officials (for example, Ayatollah Khomeini’s edict calling for the death of the novelist Salman Rushdie) or by non-state actors (for example, demonstrators attacking Western embassies in the Middle East). In the second set of cases mentioned above (*The Satanic Verses*, the *Danish cartoons*, and *Innocence of Muslims*) no law had been broken. Nonetheless, the blasphemous utterances included in these publications are often responded to by politicians. This proves to be an uneasy task, for they have to mediate between the value of free speech in general, and the particular expression that is related to severe public disorder.

This article aims to elaborate on this political dimension and the contrast between the legal instruments and political discourse by taking several reactions by political leaders to *Innocence of Muslims* as the starting point for discussion. The article proceeds as follows. Part II briefly describes some relevant events concerning the *Innocence of Muslims* video. Part III focuses on the response of the highest official of the United Nations, Secretary-General Ban Ki-moon, to *Innocence of Muslims*. This Part will compare Ban Ki-moon’s outlook on free speech to a key human rights instrument: the International Covenant on Civil and Political Rights. This Part also discusses statements made by Hillary Clinton and Navi Pillay, in which they spoke about the intentions of the creator of *Innocence of Muslims* in making his video. Part IV centers around a statement that was issued by several organizations, including the European Union, as a response to *Innocence of Muslims* and which proclaims the value of ‘respect’. A short conclusion will be presented in Part V.

## II. *Innocence of Muslims: the Video and the Turmoil*

*Innocence of Muslims* is the title commonly attributed to a video, considered by many Muslims to be blasphemous, that was posted on video-sharing website YouTube. The video was produced by Mark Basseley Youssef (also known as Nakoula Basseley Nakoula), an Egyptian-born Coptic Christian living in America, and was posted on YouTube by his son.<sup>4</sup> It was initially reported that the cost of making the video – \$5,000,000 – was funded by 100 Jewish donors.<sup>5</sup> Later, it transpired that the cost was no more than \$80,000, ‘apparently raised through Nakoula’s second ex-wife’s Egyptian family and donations from other Copts.’<sup>6</sup>

Roughly speaking, the video consists of two parts. The first part pictures an angry mob of Muslims rioting in the streets of modern-day Egypt. In the opening scenes, Muslims plunder what appears to be a pharmacy, burn houses and kill a woman wearing a crucifix. Security forces are depicted observing the mayhem but unwilling to intervene. In the second part the video shifts to the past and focuses on the prophet Muhammad and a group of looters surrounding him. Scenes likely to be offensive to many Muslims are those in which Muhammad is talking to a donkey, womanizing, and advocating slavery. Moreover, he is called ‘a murderous thug’ and is in general pictured as a vicious warlord. Many, if not all of the references to the prophet Muhammad and the Islamic religion were, to the dismay of the actors, added in post-production by means of overdubbing.<sup>7</sup> In a statement to CNN, the actors said: ‘We

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4 ‘From Man Who Insulted Muhammad, No Regret’, *The New York Times*, 26 November 2012.

5 ‘Anger Over a Film Fuels Anti-American Attacks in Libya and Egypt’, *The New York Times*, 12 September 2012.

6 ‘From Man Who Insulted Muhammad, No Regret’, *The New York Times*, 26 November 2012.

7 ‘Man Behind Anti-Islam Video Gets Prison Term’, *The New York Times*, 8 November 2012.

are shocked by the drastic rewrites of the script and lies that were told to all involved. We are deeply saddened by the tragedies that have occurred.<sup>8</sup> An actress also said that ‘the original script did not include a Prophet Muhammed character’ and that ‘she and other actors complained that their lines had been changed.’<sup>9</sup>

Despite the fact that *Innocence of Muslims* sparked controversy in September 2012, versions of the video – entitled *The Real Life of Muhammad* and *Muhammad Movie Trailer* – had already been posted on YouTube early in July 2012.<sup>10</sup> Yet it did not attract serious attention until parts of the video, dubbed in Arabic, were picked up by Egyptian television station Al-Nas and broadcast on 8 September 2012.<sup>11</sup> A short while later the video reached hundreds of thousands of Egyptian viewers online.<sup>12</sup> The scenes that were broadcast by Al-Nas included images implying that the Qur’an was plagiarized from the New Testament and a scene that pictures Muhammad talking to a donkey.<sup>13</sup>

These broadcasts triggered protests in Egypt’s capital city of Cairo, which in turn set off a snowball effect in the Islamic world. The events included a rampage on the U.S. embassy in Tunisia<sup>14</sup>; violations of the territory of the U.S. embassy in Egypt<sup>15</sup>; a car bombing in Afghanistan as a reprisal for *Innocence of Muslims*, which killed 14 people, mostly foreign civilian workers<sup>16</sup>; violent demonstrations in Pakistan<sup>17</sup>; a clash between hundreds of demonstrators and local police near the U.S. embassy in Jakarta, Indonesia<sup>18</sup>; roughly 500 people demonstrating outside the Swiss embassy in Tehran<sup>19</sup>; a protest outside the U.S. embassy in Doha, Qatar, where demonstrators shouted anti-U.S. slogans and called for the U.S. ambassador to Qatar to leave<sup>20</sup>; thousands of Muslims demonstrating against the video in India,

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8 ‘Staff and crew of film that ridiculed Muslims say they were ‘grossly misled’, *CNN (online)*, 13 September 2012, <http://edition.cnn.com/2012/09/12/world/anti-islam-film/>, last access: 20 November 2014.

9 Ibid.

10 ‘Key facts after fallout from film mocking Islam’s prophet Muhammad’, *Associated Press*, 14 September 2012; ‘Man behind anti-Islam film arrested, detained in Calif.’, *The Washington Post*, 28 September 2012; ‘From Man Who Insulted Muhammad, No Regret’, *The New York Times*, 26 November 2012.

11 ‘Foreign aid under fire on many fronts’, *The Washington Post*, 2 October 2012.

12 Ibid.

13 ‘Low-budget Muhammad film attempts to depict prophet as fraud’, *The Guardian (online)*, 12 September 2012, <http://www.theguardian.com/world/2012/sep/12/low-budget-muhammad-film-prophet>, last access: 20 November 2014.

14 ‘Violence ups ante for Tunisia’s new rulers’, *The Washington Post*, 21 September 2012.

15 ‘Anger Over a Film Fuels Anti-American Attacks in Libya and Egypt’, *The New York Times*, 12 September 2012.

16 ‘Suicide Bomber in Afghanistan Strikes Minibus, Killing Mostly Foreign Workers’, *The New York Times*, 19 September 2012.

17 ‘Deadly Violence Erupts in Pakistan on a Day Reserved for Peaceful Protests’, *The New York Times*, 22 September 2012; ‘Nineteen killed in Pakistan day of protest after Obama broadcast fails to calm fury’, *The Times*, 22 September 2012.

18 ‘Protests Turn Violent Around Asia’, *Associated Press*, 17 September 2012.

19 ‘Protests at ‘insulting’ film spread across Muslim world’, *The Times*, 14 September 2012. The Swiss embassy in Tehran represents the interests of the United States in Iran.

20 ‘Mideast Turmoil: Amid Chaos, Extremists Spur Violence – Inflamed by Anti-Islam Video, Marchers Target U.S. and Other Western Allies; Iran Calls for a ‘United Response’’, *The Wall Street Journal*, 15 September 2012.

burning U.S. flags and calling U.S. President Barack Obama a terrorist<sup>21</sup>; 300 Muslims in Colombo, Sri Lanka, calling for the creators of *Innocence of Muslims* to be hanged<sup>22</sup>; and the killing of the United States ambassador to Libya, Christopher Stevens, and three of his fellow Americans, Sean Smith, Tyrone S. Woods, and Glen A. Doherty.<sup>23</sup>

The release of the video had legal consequences for Youssef and others involved in its creation. In November 2012, an Egyptian court convicted ‘in absentia’ seven Egyptian Coptic Christians, including Youssef, and Terry Jones, the American pastor known for burning the Qur’an. They were sentenced to death on charges linked to the video.<sup>24</sup> The court stated that the accused ‘insulted the Islamic religion through participating in producing and offering a movie that insults Islam and its prophet.’<sup>25</sup> In America, Youssef was sentenced to a one-year prison term in November 2012 for violating the terms of probation, which stemmed from an earlier bank fraud conviction. This sentence was unrelated to the blasphemous content of *Innocence of Muslims*.<sup>26</sup>

### III. Ban Ki-moon on Freedom of Speech and Innocence of Muslims

During a press conference in New York on 19 September 2012, the Secretary-General of the United Nations, Ban Ki-moon, said the following about *Innocence of Muslims*: ‘In the past, we have experienced such kind of outrage and anger expressed by the people, provoked by a certain group, a few years ago, because of a cartoon of the Prophet. Now, it is very disgraceful and shameful that still people are provoking the values and beliefs of other people. Many world leaders have issued strong statements – I was one of them – strongly condemning [this] kind of very senseless, disgraceful act. This must stop. It is very important that all people around the world should have due respect and deeper understanding of the values and beliefs and tradition and history of other people and other groups of communities. This is a basic foundation of our civilized society. At the same time, I am also speaking out loudly against those people who really fan the flames of this intolerance and hatred, using these kinds of opportunities. I again strongly urge calm and reason and tolerance and forgiveness. These are things which we have to do.’<sup>27</sup>

When Ban Ki-moon was asked particularly about ‘the argument of freedom of expression that has been raised’, he stated that ‘All human beings have the inalienable right to freedom of expression, freedom of assembly. These are very fundamental rights. But, at the same time, this freedom of expression should not be abused by individuals. Freedom of expression should be and must be guaranteed and protected, when [it is] used for common justice, common purpose. When some people use this freedom of expression to provoke or humiliate some others’ values and beliefs, then this cannot be protected in such a way. So my position is that freedom of expression, while it is a fundamental right and privilege, should not be abused by such people, by such a disgraceful and shameful act.’<sup>28</sup>

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21 Ibid.

22 ‘International: Cartoon row: Film protests’, *The Guardian*, 20 September 2012.

23 ‘In Libya, Chaos Was Followed by Organized Ambush, Official Says’, *The New York Times*, 14 September 2012.

24 ‘World News: Egyptian Court Sentences Eight To Die for Video’, *The Wall Street Journal*, 29 November 2012.

25 ‘Egypt: Anti-Islam video results in death sentences’, *The Guardian*, 29 November 2012.

26 ‘Man behind anti-Muslim video is guilty of probation violation’, *The Washington Post*, 8 November 2012. Youssef was released in September 2013.

27 Cited from: ‘Press Conference by Secretary-General Ban Ki-moon at United Nations Headquarters’, 19 September 2012, <http://www.un.org/press/en/2012/sghsm14518.doc.htm>, last access: 20 November 2014.

### A. *Ban Ki-moon and his own Declaration protecting Freedom of Speech*

Ban Ki-moon's statement raises many questions. What does the 'abuse' of freedom of expression mean? After all, the creator of *Innocence of Muslims* was well within his rights protected by the First Amendment.<sup>29</sup> Or should we understand Ban Ki-moon's statement in the sense that the video was so offensive that it crossed a moral border? How is it possible that the American government allows its citizens to abuse such an important ideal as free speech? And when is freedom of speech used 'to provoke or humiliate some others' values and beliefs'? Is someone who strives for the legal prohibition of male circumcision on religious grounds 'humiliating' the values of others? Or would a capitalist mocking Marx count as such? Did Monty Python's *Life of Brian* 'humiliate' Christians? Ban Ki-moon's statement not only nurtures confusion by presenting no answers to all these questions, it could also potentially be understood by demonstrators as a signal that they are right: 'You see, even the highest official of the United Nations believes the video is a bridge too far.'<sup>30</sup>

Besides those questions arising from this statement and, perhaps, some unintended insidious side-effects of it, there is a more fundamental issue explicit in Ban Ki-moon's response. That is, that his statement is difficult to reconcile with international human rights standards (which, as we might argue, is something the Secretary-General of the foremost international organization supporting the idea of human rights should be especially concerned with). I would like to examine this further by looking at an important international human rights instrument that protects free speech: the International Covenant on Civil and Political Rights (ICCPR). The ICCPR was adopted by Ban Ki-moon's 'own' United Nations in 1966 and entered into force in 1976. As of today, it has a total of 168 parties.<sup>31</sup> Articles 19 and 20 ICCPR concern free speech and read as follows:

**Article 19 ICCPR:** (1) Everyone shall have the right to hold opinions without interference; (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special

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28 Ibid.

29 See *Emily Chertoff*, 'That Anti-Muhammad Film: It's Totally Protected by the 1st Amendment', *The Atlantic*, 13 September 2012, <http://www.theatlantic.com/national/archive/2012/09/that-anti-muhammad-film-its-totally-protected-by-the-1st-amendment/262324/>, last access: 20 November 2014; *Robert C. Post*, 'Free Speech in the Age of YouTube; Barack Obama couldn't censor that anti-Islam film – even if he wanted to', *Foreign Policy*, 17 September 2012, [http://www.foreignpolicy.com/articles/2012/09/17/free\\_speech\\_in\\_the\\_age\\_of\\_youtube](http://www.foreignpolicy.com/articles/2012/09/17/free_speech_in_the_age_of_youtube), last access: 20 November 2014 (also <http://www.law.yale.edu/faculty/16059.htm>, last access: 20 November 2014).

30 Dutch rules of academic integrity require authors to explicitly state if material from an earlier publication is used. Some of the sentences above in section III (A) have appeared (in Dutch) in: *Tom Herrenberg*, *Vrijheid van meningsuiting in de multiculturele samenleving: evaluatie van twee tegenstrijdige interpretaties*, *Civis Mundi* (2014). A small part of this article has appeared in: *Tom Herrenberg*, *Politici, de vrijheid van meningsuiting en Innocence of Muslims*, *Nederlands Juristenblad* (2013), while part of this article will appear in a volume dedicated to free speech, tentatively entitled 'May I Say This? Freedom of Speech in Turbulent Times' (edited by Afshin Ellian & Geliijn Molier).

31 United Nations Treaty Collection, Chapter IV, Human Rights, [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-4&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&lang=en), last access: 20 November 2014.

duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

**Article 20 ICCPR:** (1) Any propaganda for war shall be prohibited by law; (2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

As follows from the first paragraph of article 19 ICCPR, holding opinions (which takes place in the *forum internum*) is an absolute right.<sup>32</sup> The third paragraph of article 19 ICCPR contains the possibility of limiting the expression of opinions, which is granted in the second paragraph of article 19 ICCPR. Whereas article 19 ICCPR permits but does not require states to limit free speech, article 20 ICCPR *obliges* state parties to adopt laws prohibiting the categories of speech mentioned in it (namely, war propaganda and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence).<sup>33</sup> Since *Innocence of Muslims* does not qualify as ‘war propaganda’, I will focus on the second paragraph of article 20 ICCPR, the ‘advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’.

### B. *The Intention to produce Harm*

The sole fact that an expression is blasphemous, whether people react violently to it or not, is insufficient to violate the norms stipulated in the ICCPR. According to the Human Rights Committee in its latest General Comment: ‘Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant.’<sup>34</sup> The ICCPR differs in this regard from many of the countries where protests took place, that have strict legal norms prohibiting blasphemy.<sup>35</sup>

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32 See Human Rights Committee, ‘General comment No. 34’ (2011) UN Doc. CCPR/C/GC/34, § 9 (‘This is a right to which the Covenant permits no exception or restriction’).

33 See *ibid.*, § 51 (‘What distinguishes the acts addressed in article 20 from other acts that may be subject to restriction under article 19, paragraph 3, is that for the acts addressed in article 20, the Covenant indicates the specific response required from the State: their prohibition by law’).

34 *Ibid.*, § 48.

35 See e.g. Paul Marshall/Nina Shea, *Silenced: How Apostasy and Blasphemy Codes are Choking Freedom Worldwide* (New York, 2011); International Humanist and Ethical Union, *Freedom of Thought 2013: A Global Report on the Rights, Legal Status, and Discrimination Against Humanists, Atheists, and the Non-religious*; Brian J. Grim, ‘Laws Penalizing Blasphemy, Apostasy and Defamation of Religion are Widespread’, PewResearch, 21 November 2012, <http://www.pewforum.org/2012/11/21/laws-penalizing-blasphemy-apostasy-and-defamation-of-religion-are-widespread/>, last access: 20 November 2014.

The ‘advocacy’ of ‘hatred’ that has to be prohibited by law requires an intention on the part of the speaker to produce the specific harms mentioned in the ICCPR.<sup>36</sup> It is thus relevant to examine whether the creator of *Innocence of Muslims* intended the turmoil that followed the release of his video. Hillary Clinton, United States Secretary of State at the time, came to a rapid assessment of the purpose of the video. On 13 September 2012 she said that the video ‘appears to have a deeply cynical purpose: to denigrate a great religion and to provoke rage.’<sup>37</sup> Also for Navi Pillay, the United Nations High Commissioner for Human Rights at the time, it was soon clear how *Innocence of Muslims* should be regarded. On 14 September 2012 she called the video ‘malicious and deliberately provocative’.<sup>38</sup>

What did the creator himself have to say about the purpose of his video and his intentions in making it? Youssef said that he wanted his video to expose the ‘hypocrisy of Islam’.<sup>39</sup> He stated that ‘Islam is a cancer’ and that ‘this is a political movie. The U.S. lost a lot of money and people in Iraq and Afghanistan, but we’re fighting with ideas.’<sup>40</sup> In response to questions asked by *The New York Times*, Youssef made it clear that he did not regret the video and that ‘he would go to great lengths to convey what he called ‘the actual truth’ about Muhammad.’<sup>41</sup> ‘I thought, before I wrote this script’, Youssef told the newspaper, ‘that I should burn myself in a public square to let the American people and the people of the world know this message that I believe in.’<sup>42</sup> Youssef also ‘reeled off ‘atrocities’ by Muslims that went back many years and formed his views, focusing on shootings, a bombing and the torture of his fellow Copts’.<sup>43</sup> According to his son, Youssef always said, ‘Don’t fight Muslims; fight their ideology.’<sup>44</sup> Youssef told *The Wall Street Journal* that he ‘wanted to showcase his view of Islam as a hateful religion’ and that ‘the movie is a political movie’ rather than ‘a religious movie’.<sup>45</sup> As reported by *The Huffington Post* on 13 September 2012, Youssef was also concerned about the legal aspects of his enterprise since he contacted anti-Islam activist Steve Klein ‘months ago for advice about the limits of American free speech and asked for help vetting the movie’s script.’<sup>46</sup>

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36 See Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, 4–5 (n 4) (‘The term advocacy is to be understood as ‘requiring an intention to promote hatred publicly towards the target group.’), which refers to The Camden Principles on Freedom of Expression and Equality (Principle 12.1(ii)). See also *Evelyn M. Aswad, To Ban or Not to Ban Blasphemous Videos*, *Georgetown Journal of International Law* (2013), 1313–1328, 1328 (‘Article 20(2) does not require banning insulting speech that provokes violence unless there is advocacy of hatred, that is, an intent on the part of the speaker to promote hatred that would incite certain harm’); *Toby Mendel, Study on International Standards Relating to Incitement to Genocide or Racial Hatred for the UN Special Advisor on the Prevention of Genocide* (2006), 14.

37 ‘In Libya, Chaos Was Followed by Organized Ambush, Official Says’, *The New York Times*, 14 September 2012.

38 ‘Pillay concerned by spreading violence in wake of ‘malicious and provocative’ film’, 14 September 2012, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12522&LangID=E>, last access: 20 November 2014.

39 ‘Director in hiding but unapologetic about his film’, *The Times*, 13 September 2012.

40 *Ibid.*

41 ‘From Man Who Insulted Muhammad, No Regret’, *The New York Times*, 26 November 2012.

42 *Ibid.*

43 *Ibid.*

44 *Ibid.*

45 ‘World News: U.S. Missions Stormed in Libya, Egypt – Movie Critical of Prophet Muhammad Spurs Attack in Benghazi, Killing American; Protesters Breach Wall of Cairo Compound’, *The Wall Street Journal*, 12 September 2012.

What could those ‘atrocities’ be that Youssef talked about, committed by Muslims against Copts ‘that went back many years’? Egyptian-born Youssef belongs to the Copts, a Christian minority that has faced, and still faces, persistent discrimination in Muslim-majority Egypt. That discrimination includes the preferential status of Muslims in government and the military, and limitations on their right to build churches.<sup>47</sup> Sectarian violence has been a burden for the Coptic community for decades.<sup>48</sup> The first scenes of *Innocence of Muslims*, in which Muslims plunder what appears to be a pharmacy and slaughter a Christian woman by using an ax, bear close resemblances to a number of real events that occurred in Egypt in the 1990s. In April 1990, *The New York Times* featured an article about the sectarian violence that had hit the Egyptian Coptic community. It reported that: ‘Last month, a wave of anti-Christian attacks by a small Islamic organization called Islamic Groups left five churches in the upper Egyptian province of Minya destroyed or damaged.’<sup>49</sup> Members of the group ‘had also attacked Christian-owned charities, cars, pharmacies, factories and warehouses.’<sup>50</sup> On 22 June 1992 *The Guardian* wrote that Muslim militants attacked 20 shops and homes owned by Coptic Christians in the village of Sanabu. In the gun fight with security forces that followed the raid, two leaders of the militant group were killed. The next day the militants ‘launched several simultaneous attacks in revenge for the killings, targeting police and Christians in the nearby town of Dairut [...]. They burst into a pharmacy and killed Berzi al-Nahal, a Christian doctor, and murdered a Christian storekeeper.’<sup>51</sup> *The New York Times* reported on 27 July 1992 that ‘Coptic Christians, who number 7 to 8 million of Egypt’s 56 million people and belong to one of the oldest denominations in Christendom, have become the victims of an increasingly violent campaign waged by Islamic militants who want to create a state ruled according to strict interpretations of Islamic law. In the last four months, more than 30 people have been killed in Asyut Province, [...], including 13 Christians massacred by militants one morning in May. Assaults on Christians and the burning of their houses and shops are a daily occurrence.’<sup>52</sup> On 4 January 1993, ‘assailants in Dairut, a fundamentalist stronghold [...], shot and killed an elderly Coptic farm manager and wounded a Coptic pharmacist.’<sup>53</sup>

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46 ‘Steve Klein & ‘Innocence Of Muslims’: Film Promoter Remains Outspoken On Islam’, 13 September 2012, [http://www.huffingtonpost.com/2012/09/13/steve-klein-innocence-of-muslims-producer\\_n\\_1882595.html](http://www.huffingtonpost.com/2012/09/13/steve-klein-innocence-of-muslims-producer_n_1882595.html), last access: 20 November 2014.

47 See e.g. *Mordechai Nisan*, *Minorities in the Middle East: A History of Struggle and Self-Expression* (Jefferson, 2002), 147; *Paul Marshall*, *Egypt’s Endangered Christians*, in: Martyn et al. (eds.), *Copts in Egypt: A Christian Minority under Siege* (2006), 24–29; *Paul Rowe*, *Building Coptic Civil Society: Christian Groups and the State in Mubarak’s Egypt*, *Middle Eastern Studies* (2011), 111–126, 112; United States Commission on International Religious Freedom, *Annual Report 2013*, 53–55; United States Commission on International Religious Freedom, *Annual Report 2014*, 51–53.

48 *Paul Marshall*, *Egypt’s Endangered Christians*, in: Martyn et al. (eds.), *Copts in Egypt: A Christian Minority under Siege* (2006), 24–29; *Adly A. Youssef*, *Tragedies and Sufferings of Egypt’s Copts (Manifesto)*, in: Martyn et al. (eds.), *Copts in Egypt: A Christian Minority under Siege* (2006), 30–35; *Mordechai Nisan*, *Minorities in the Middle East: A History of Struggle and Self-Expression* (Jefferson, 2002), 149–150.

49 ‘Omens of Intolerance Among Cairo’s Muslims’, *The New York Times International*, 12 April 1990.

50 *Ibid.*

51 ‘Eight die as Islamic militants renew violent campaign. Egypt may tighten anti-terrorism laws’, *The Guardian*, 22 June 1992.

52 ‘Heaviest Cross for Egypt’s Copts: March of Islam’, *The New York Times International*, 27 July 1992.

53 ‘Copts Are Targets as New Strife Roils Egypt’, *The New York Times International*, 5 January 1993.



So, the first scenes of *Innocence of Muslims* appear to be not much more than re-enactments of events that form a grim part of Egyptian society. From these first scenes onwards, *Innocence of Muslims* shifts to the prophet Muhammad and the video no longer portrays living people or impersonations of living people. While the contemptuous depictions of the prophet undoubtedly offended many Muslims, a speaker has not yet ‘intended’ violence even if he or she is aware that people might respond violently to the expression. Professor of international law Evelyn Aswad puts it as follows: ‘An example of advocacy of hatred would be a speaker adhering to religion X who calls on an angry mob of coreligionists to physically attack persons of religion Y. It would not constitute ‘advocacy’ for a speaker adhering to religion X to simply criticize, question, mischaracterize or ridicule religion Y without the intent to promote hatred against members of religion Y.’<sup>54</sup> In her discussion of the ICCPR, Aswad stresses that: ‘There is certainly no suggestion in the negotiating history that speech should be banned if the targeted group would take offense to or oppose the message and members of the group display rejection of the message through violence or other harmful acts against the speaker or those associated with the speaker. [...] Article 20(2) was not meant to embody in human rights law a ‘heckler’s veto,’ which would mandate the stifling of speakers when those who are offended choose to show their displeasure through harmful acts.’<sup>55</sup>

How could Clinton know so quickly that the video was made ‘with the cynical purpose to provoke rage’? At this point an observation by legal scholar Paul Cliteur is very insightful. Commenting on several controversial utterances, Cliteur argues that ‘we should carefully distinguish between two dimensions of the concept of an ‘insult’ or ‘insulting’: (1) an objectified dimension, (2) the motive. The (first) objectified dimension refers to the feelings of the person offended. He (or she) has the feeling of being insulted. The second dimension refers to the attitude of the person who made the remark deemed to be insulting. He *deliberately aimed* to be insulting. What appears to be common practice nowadays, is that the second dimension (the intention of insulting) is simply deduced from the first (an experienced insult). Someone *feels* offended, so there was someone *deliberately aiming* to give offence.’<sup>56</sup> Cliteur’s observation is interesting for assessing Clinton’s response to the *Innocence of Muslims* video. Could it be that she reasoned that (1) violence *followed* the release of *Innocence of Muslims*, and *therefore* (2) the creator of the video must have made it with the purpose of provoking that rage? This brings us to a discussion of the causal connection between the blasphemous utterance and the violent response.

### C. *The Connection between Speech and Harm*

Legal scholar Toby Mendel has argued that, although ‘the question of what constitutes incitement is an extremely complex and controversial one’, ‘it may be understood very generally as imposing some requirement of nexus – causation, intent, impact – between the speech in question and the proscribed result.’<sup>57</sup> According to human rights organization Article 19, ‘incitement’ in the ICCPR is understood as an ‘instigation or encouragement which is virtually certain to lead directly to discrimination, hostility or violence. Central to

54 Evelyn M. Aswad, To Ban or Not to Ban Blasphemous Videos, *Georgetown Journal of International Law* (2013), 1313–1328, 1319.

55 *Ibid.*, 1322.

56 Paul Cliteur, *The Secular Outlook: In Defense of Moral and Political Secularism* (2010), 161. Italics in original.

57 Toby Mendel, Study on International Standards Relating to Incitement to Genocide or Racial Hatred for the UN Special Advisor on the Prevention of Genocide (2006), 14.

the idea of incitement is the creation of an environment where enjoyment of the right to equality in dignity is not possible.<sup>58</sup> Incitement ‘implies a very close link between the expression and the resulting risk of discrimination, hostility or violence, and may be distinguished, for example, from mere advocacy which supports or even calls for these results but where they are unlikely to come about.’<sup>59</sup> Furthermore, ‘context is central to a determination of whether or not a given expression constitutes incitement; the likelihood of ethnic violence in the immediate aftermath of an ethnic conflict, for example, will be higher than in a peaceful, democratic environment.’<sup>60</sup>

Let us look at the ‘very close link’ between an expression and its negative consequences. Both the White House and the United States Ambassador at the United Nations at the time, Susan Rice, blamed *Innocence of Muslims* for the turmoil. According to Rice, *Innocence of Muslims* was the ‘proximate cause’ of the outbreak of protests.<sup>61</sup> She also said: ‘What sparked the recent violence was the airing on the Internet of a very hateful, very offensive video that has offended many people around the world.’<sup>62</sup> Jay Carney, spokesman for the White House, stated that the protests were ‘in response not to United States policy, not to obviously the administration, not to the American people’ but were ‘in response to a video that is offensive to Muslims’.<sup>63</sup> Also Hilary Clinton argued that the video ‘has led to these protests in a number of countries’.<sup>64</sup>

At this point we need to recall that the blasphemous video was uploaded on the Internet in July 2012.<sup>65</sup> How can this be reconciled with the fact that the first demonstrations over the video took place roughly two months later? *The New York Times* columnist Ross Douthat gave the following explanation shortly after the mayhem started to unfold: ‘There is certainly unreason at work in the streets of Cairo and Benghazi, but something much more calculated is happening as well. The mobs don’t exist because of an offensive movie, and an American ambassador isn’t dead because what appears to be a group of Coptic Christians in California decided to use their meager talents to disparage the Prophet Muhammad. What we are witnessing, instead, is mostly an exercise in old-fashioned power politics, with a stone-dumb video as a pretext for violence that would have been unleashed on some other excuse. [...] Today’s wave of violence [...] owes much more to a bloody-minded realpolitik than to the madness of crowds. [...] What we’re watching unfold in the post-Arab Spring Mideast is the

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58 Agnes Callamard, *Expert Meeting on the Links Between Articles 19 and 20 of the ICCPR: Freedom of Expression and Advocacy of Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence* (2008), 24. There is a minor omission in the original document, where it states: ‘Central to the idea of incitement is the creation of an environment where enjoyment of the right to equality in dignity is not *impossible*.’

59 Ibid.

60 Ibid.

61 Cited from: ‘The Video Did It’, *The Wall Street Journal*, 17 September 2012.

62 Ibid.

63 ‘Press Briefing by Press Secretary Jay Carney’, 14 September 2012, <http://www.whitehouse.gov/the-press-office/2012/09/14/press-briefing-press-secretary-jay-carney-9142012>, last access: 20 November 2014.

64 See ‘Hillary Clinton Condemns Anti-Islam Film’, 13 September 2012, <http://www.ibtimes.com/hillary-clinton-condemns-anti-islam-film-full-text-788950>, last access: 20 November 2014.

65 ‘From Man Who Insulted Muhammad, No Regret’, *The New York Times*, 26 November 2012; ‘World News: U.S. Missions Stormed in Libya, Egypt – Movie Critical of Prophet Muhammad Spurs Attack in Benghazi, Killing American; Protesters Breach Wall of Cairo Compound’, *The Wall Street Journal*, 12 September 2012.

kind of struggle for power that frequently takes place in a revolution's wake: between secular and fundamentalist forces in Benghazi, between the Muslim Brotherhood and its more-Islamist-than-thou rivals in Cairo, with similar forces contending for mastery from Tunisia to Yemen to the Muslim diaspora in Europe.<sup>66</sup>

Let me provide a few examples of the point made by Douthat. *The Washington Post* reported the following exchange between representatives of the Muslim Brotherhood and the United States Embassy in Cairo: 'The Brotherhood posted a message of support for the embassy staff, saying it was 'relieved' that no diplomatic worker had been harmed in the Cairo demonstrations and expressing hope that relations between the countries would be maintained through the 'turbulence of Tuesday's events'. In response, the U.S. Embassy feed said, 'Thanks. By the way, have you checked out your own Arabic feeds? I hope you know we read those too,' an apparent reference to the calls for more protests.<sup>67</sup> *The Wall Street Journal* featured an article which said that in Cairo, 'protesters rallied to the Embassy at the prompting of Islamist Facebook groups and hard-line Salafi preachers who frequently preach on Islamist satellite channels.'<sup>68</sup> *USA Today* reported that 'When the video started circulating, Nader Bakkar, the spokesman for the Egyptian Salafist Noor party, which holds about 25% of the seats in parliament, called on people to go to the Embassy. He also called on non-Islamist soccer hooligans, known as Ultras, to join the protest.'<sup>69</sup> Protests in Yemen 'came hours after a Muslim cleric, Abdul Majid al-Zindani, urged followers to emulate the protests in Libya and Egypt.'<sup>70</sup> In Tunisia, 'a hard-line Islamist instigated a violent rampage at the U.S. Embassy', according to the Tunisian authorities.<sup>71</sup> *The Daily Telegraph* reported that Hassan Nasrallah, the leader of Lebanon-based terrorist organization Hezbollah, 'denounced the film as an even greater insult to Islam than The Satanic Verses. Responding to his call for a demonstration of public anger in Lebanon, thousands of followers of the Shia militant group, which is funded and armed by Iran, massed in the slums of south Beirut. 'The whole world needs to see your anger on your faces, in your fists and your shouts,' Sheikh Nasrallah said.'<sup>72</sup> As reported by *The Washington Post*, the organized rally was 'also an attempt to show the party's strength'<sup>73</sup>, and was aimed 'to show that the political alliance that many observers refer to as the 'axis of resistance' – Hezbollah, Syria and Iran – is still holding strong. Demonstrators carried pictures of Assad and Syrian flags in the crowd on Monday, and some carried Iranian flags, too.'<sup>74</sup> *The Washington Post* also reported that 'Hez-

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66 'It's Not About The Video', *The New York Times*, 16 September 2012.

67 'More protests erupt in Muslim world', *The Washington Post*, 14 September 2012.

68 'World News: U.S. Missions Stormed in Libya, Egypt – Movie Critical of Prophet Muhammad Spurs Attack in Benghazi, Killing American; Protesters Breach Wall of Cairo Compound', *The Wall Street Journal*, 12 September 2012.

69 'Deadly embassy attacks were days in the making', *USA Today*, 12 September 2012, <http://usatoday30.usatoday.com/news/world/story/2012/09/12/deadly-embassy-attacks-were-days-in-the-making/57752828/1>, last access: 20 November 2014.

70 'Turmoil Over Contentious Video Spreads', *The New York Times*, 14 September 2012.

71 'Violence ups ante for Tunisia's new rulers', *The Washington Post*, 21 September 2012.

72 'Violent protests over US-made film spill into more Islamic nations', *The Daily Telegraph*, 18 September 2012.

73 'Thousands in Beirut protest anti-Islam video in Hezbollah show of strength', *The Washington Post (online)*, 17 September 2012, [http://www.washingtonpost.com/world/middle\\_east/thousands-in-beirut-protest-anti-islam-video-in-hezbollah-show-of-strength/2012/09/17/821b9188-00f5-11e2-b257-e1c2b3548a4a\\_story.html](http://www.washingtonpost.com/world/middle_east/thousands-in-beirut-protest-anti-islam-video-in-hezbollah-show-of-strength/2012/09/17/821b9188-00f5-11e2-b257-e1c2b3548a4a_story.html), last access: 20 November 2014.

74 Ibid.

ollah has called for demonstrations to continue and take place in other cities across Lebanon in coming days. Sunni leaders, not to be outdone by their Shiite counterparts, also announced more protests on Monday. The controversial Sunni sheikh Ahmad Assir, who is based in the city of Sidon, announced a demonstration for his followers later this week.<sup>75</sup>

Seen against the background of these events and considering the broad time span between the publication of *Innocence of Muslims* and the first demonstrations, it seems proper to regard the behaviour of those political and religious leaders as at odds with the free speech provisions of the ICCPR instead of *Innocence of Muslims*.<sup>76</sup> Aswad notes that ‘not banning the anti-Islam video [was in accord] with the international human rights law regime.’<sup>77</sup>

In sum, it seems not unreasonable to argue that *Innocence of Muslims* is a blunt criticism of a religion that in the view of the creator is the cause of – or is at least closely related to – a situation of long-lasting social injustice concerning a religious minority in the country he originates from and to which he belongs. To say that *Innocence of Muslims* was created for the ‘purpose of provoking rage’ or that it was ‘deliberately provocative’, as Clinton and Pillay did, strikes me as an oversimplification. Second, considering the connection between speech and harm required by the ICCPR to establish ‘incitement’, it appears that Rice’s, Carney’s, and Clinton’s explanations for the mayhem were not the most accurate. It is important to distinguish between the situation (1) in which a person intentionally utters an expression when there is a direct danger that that expression will cause physical harm (falsely shouting ‘Fire’ in a theater<sup>78</sup>), and (2) the situation in which violence is used as a response to an emotionally harmful expression in public debate. To use Justice Holmes’ metaphor: we must not make the mistake of concluding too quickly from the fact that there is havoc in a theater that someone falsely shouted ‘Fire’. Third, Ban Ki-moon’s vague ‘common purpose’ and ‘common justice’ requirements for protected speech are incompatible with the International Covenant on Civil and Political Rights. We arrive at the odd conclusion that Ban Ki-moon bypassed the human rights framework that was adopted by the organization of which he is the Secretary-General, which requires that restrictions on speech have to be narrowly defined<sup>79</sup> and allows for the very types of expressions that he sees as ‘abuses of freedom of expression’.

In the following section, another political statement will be examined in light of international human rights standards.

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75 Ibid.

76 Cf. the ‘classic example’ of incitement: ‘An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard.’ See *John Stuart Mill*, *On Liberty* (London, 1865 (orig. 1859)), 32.

77 Evelyn M. Aswad, *To Ban or Not to Ban Blasphemous Videos*, *Georgetown Journal of International Law* (2013), 1313–1328, 1328.

78 *Schenck v. United States*, 249 U.S. 47 (1919).

79 *Agnes Callamard*, *Expert Meeting on the Links Between Articles 19 and 20 of the ICCPR: Freedom of Expression and Advocacy of Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence* (2008), 24.

#### IV. *The European Union co-drafting the Joint Statement on Peace and Tolerance*

On 20 September 2012, a day after Ban Ki-moon responded to *Innocence of Muslims*, a ‘Joint statement on Peace and Tolerance’ was issued by the representatives of four political organizations: the European Union, the Organisation of Islamic Cooperation, the Arab League and the Commission of the African Union.<sup>80</sup> In the joint statement, the political leaders stated that: ‘While fully recognizing freedom of expression, we believe in the importance of respecting all prophets, regardless of which religion they belong to.’<sup>81</sup> They also ‘[reiterated their] strong commitment to take further measures and to work for an international consensus on [...] full respect of religion, including on the basis of UN Human Rights Council resolution 16/18.’<sup>82</sup>

##### A. *Full Respect for Religion and Resolution 16/18*

The sentences cited above are problematic because they contradict human rights standards. International human rights law centers around people; *they* are the focus of respect rather than belief systems or religious symbols. This is unequivocally underlined by the current UN Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt: ‘In the human rights framework, respect always relates to human beings [...]. The idea of protecting the honour of religions themselves would clearly be at variance with the human rights approach.’<sup>83</sup>

The UN Human Rights Council resolution 16/18 mentioned is a three-page resolution entitled: ‘Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief.’<sup>84</sup> This resolution was proposed by Pakistan on behalf of the OIC and adopted by the Human Rights Council in March 2011. Although the joint statement talks of a ‘strong commitment to take further measures and to work for an international consensus on [...] full respect of religion, including on the basis of UN Human Rights Council resolution 16/18’, no reference to ‘full respect of religion’ can be found in resolution 16/18. The resolution does ‘call upon States to adopt measures and policies to promote the full respect and protection for places of worship and religious sites, cemeteries and shrines, and to take measures in cases where they are vulnerable to vandalism or destruction’<sup>85</sup>, but this obviously differs from the general

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80 Of these last three, this Part will focus solely on the Organisation of Islamic Cooperation (OIC). First, because it is the world’s largest intergovernmental organization after the United Nations; second, because many of the member States of the Arab League and the African Union are also members of the OIC; and third, because the OIC is the most active group in the international discourse on free speech. The OIC is an intergovernmental organization, whose member states spread over Africa, the Middle East, Asia, Europe and South America, that functions as ‘the collective voice of the Muslim world’. One of the aims of the OIC is ‘to combat defamation of Islam’.

81 ‘Joint statement on Peace and Tolerance by EU High Representative, OIC Secretary General, Arab League Secretary General, and AU Commissioner for Peace and Security’, 20 September 2012, [http://www.eu-un.europa.eu/articles/en/article\\_12602\\_en.htm](http://www.eu-un.europa.eu/articles/en/article_12602_en.htm), last access: 20 November 2014.

82 Ibid.

83 Report of the Special Rapporteur on freedom of religion or belief, *Heiner Bielefeldt* (2013), UN Doc. A/HRC/25/58, § 33. See also *Leonard A. Leo, Felice D. Gaer & Elizabeth K. Cassidy*, Protecting Religions From “Defamation”: A Threat To Universal Human Rights Standards, *Harvard Journal of Law & Public Policy* (2011), 769–784, 770.

84 UN Doc. A/HRC/RES/16/18.

85 Ibid., 3 (§ 8).

remark about full respect for religion in the joint statement. Thus, the politicians use a phrase from resolution 16/18 that was written for an entirely different situation (namely, preventing physical attacks on religious sites) than the situation commented on in their joint statement (namely, anti-religious speech).

Another example of a ‘loose interpretation’ of resolution 16/18 was presented by the Secretary-General of the Organisation of Islamic Cooperation at the time, Ekmeleddin Ihsanoglu. He stated, in reference to resolution 16/18, that ‘the OIC has a principled position against denigration of all religions as well as sacred symbols and venerated personalities in each case.’<sup>86</sup> He did so in a speech to the United Nation’s Human Rights Council. However, in an earlier address to the Council of Foreign Ministers of the OIC Member States, Ihsanoglu hailed the resolution as an achievement solely for Islam and Muslims. He said the following: ‘Another indication of our newly acquired strength at the global level is what we have achieved at the UN Human Rights Council, when we convinced the Council to unanimously pass Resolution No. 16/18 which will help us defend Muslim rights and shield Islam and Muslims from discrimination on the basis of their religion.’<sup>87</sup> Ihsanoglu is wrong in his observation that the resolution has anything to do with shielding ‘sacred symbols and venerated personalities’ in general, or Islam in particular. It is not directed at religions but at people, which is quite clear from the title of the resolution.<sup>88</sup>

### ***B. The OIC on Freedom of Speech and the Importance of respecting Prophets***

In order to better understand both Ihsanoglu’s statements as well as the joint statement, it is proper and necessary to address the OIC’s activities in the international political arena on the subject of free speech. The OIC is the driving force behind the draft and proclamation of the ‘Cairo Declaration on Human Rights in Islam’ (CDHRI, 1990). Contrary to universal human rights standards, the CDHRI not only denies people freedom of religion (article 10 CDHRI reads: ‘Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism’<sup>89</sup>), it also allows religion to determine the scope of the human rights stipulated in it. Article 24 CDHRI reads: ‘All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari’ah’, while article 25 states: ‘The

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86 ‘Statement by H. E. Prof. Dr. Ekmeleddin Ihsanoglu, Secretary General, Organization of Islamic Cooperation at the High Level Segment of the 22nd Session of the UN Human Rights Council’, 28 February 2013, [http://71.18.253.18/en/topic\\_details.asp?tid=315](http://71.18.253.18/en/topic_details.asp?tid=315), last access: 20 November 2014.

87 ‘Speech Of His Excellency Prof. Ekmeleddin Ihsanoglu Secretary General Of The Organisation Of Islamic Cooperation To The Annual Coordination Meeting Of The Council Of Foreign Ministers Of The OIC Member States’, 29 September 2012, <http://oichumanrights.wordpress.com/2012/10/02/speech-oic-sg-annual-coordination-meeting-of-the-cfm-of-the-oic-member-states/>, last access: 20 November 2014.

88 See Leonard A. Leo, Felice D. Gaer & Elizabeth K. Cassidy, Protecting Religions From ‘Defamation’: A Threat To Universal Human Rights Standards, *Harvard Journal of Law & Public Policy* (2011), 769–784, 784 (n 83) ([...] resolution [16/18] properly focuses on protecting individuals from discrimination or violence, instead of protecting religions from criticism’).

89 Cf. e.g. article 18 Universal Declaration of Human Rights (1948): ‘Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.’

Islamic Shari’ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.’ And specifically regarding the right to free speech, article 22 (a) of the Declaration states that: ‘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.’

Activities of the OIC at the United Nations in recent years on the matter of free speech have been described by the United States Commission on International Religious Freedom as seeking ‘to establish what would be in effect a global blasphemy law’.<sup>90</sup> These activities commenced in 1999, when Pakistan, on behalf of the OIC, proposed to the UN Commission on Human Rights – the predecessor of the Human Rights Council – a draft resolution entitled ‘Defamation of Islam’.<sup>91</sup> In this resolution, the Commission on Human Rights ‘expresses its concern at the use of print, audio-visual or electronic media or any other means to spread intolerance against Islam’<sup>92</sup> and ‘expresses its appreciation of the efforts of many countries and societies to combat ignorance of and intolerance towards Islam.’<sup>93</sup> This draft attracted criticism from non-Muslim-majority countries for its exclusive focus on Islam. For example, the Japanese delegation ‘would have liked the draft resolution to be worded in more general terms’<sup>94</sup>, while the German delegation said that ‘although it understood some of the concerns which had led the sponsors of [the draft resolution] to submit that text, it was of the opinion that the draft resolution’s overall design was not balanced, since it referred exclusively to the negative stereotyping of Islam [...]’.<sup>95</sup> Amendments designed to ‘broaden the issue and deal equally with all religions’ were proposed by Germany on behalf of other Western countries.<sup>96</sup> These amendments proposed, inter alia, to change the title of the resolution from ‘Defamation of Islam’ to ‘stereotyping of religions’<sup>97</sup> and to replace the phrase ‘alarmed at the negative stereotyping of Islam and the tendency to associate human rights violations and terrorism with Islam’ with ‘deeply concerned at the negative stereotyping of some religions, including many minority religions.’<sup>98</sup> These proposed amendments were much to Pakistan’s dismay, for ‘the problem faced by Islam was of a very special nature and its manifestations took many forms.’<sup>99</sup> The amendments ‘would defeat the purpose of the text, which was to bring a problem relating specifically to that religion to the attention of the international community.’<sup>100</sup> Subsequently, ‘the States which had submitted the draft resolution could therefore not agree to the proposed amendments and [...] appealed to Germany and the other co-sponsors of the amendments to withdraw them.’<sup>101</sup> Eventually, Pakistan introduced a revised draft which was adopted under the title ‘Defamation of religions.’<sup>102</sup> Although this final resolution was, as the title suggests, indeed formulated in more general terms, the only religion that is explicitly mentioned in it is Islam. This resolution was followed by many OIC-

90 United States Commission on International Religious Freedom, Annual Report 2013, 304.

91 UN Doc. E/CN.4/1999/L.40.

92 Ibid., 2.

93 Ibid.

94 UN Doc. E/CN.4/1999/SR.61, 3.

95 Ibid., 2.

96 Ibid.

97 UN Doc. E/CN.4/1999/L.90, 1.

98 Ibid.

99 UN Doc. E/CN.4/1999/SR.61, 3.

100 Ibid.

101 Ibid.

102 UN Doc. E/CN.4/RES/1999/82. See also Commission on Human Rights, Report on the 55<sup>th</sup> Session (22 March – 30 April 1999), 308–309.

sponsored resolutions expressing the same intention to dampen criticism of belief systems in general and Islam in particular. Those resolutions were proposed to and adopted by the Commission on Human Rights, the Human Rights Council as well as the main body of the United Nations, the General Assembly.<sup>103</sup> Members of the United States Commission on International Religious Freedom have argued that these defamation of religions resolutions are ‘in essence [...] an attempt to export the repressive blasphemy laws found in some OIC countries to the international level’<sup>104</sup> and that ‘implementing the OIC’s approach would violate provisions of the Universal Declaration of Human Rights and various human rights treaties that protect, with only narrow exceptions, every individual’s right to receive and impart information and speak out.’<sup>105</sup>

Support for these resolutions gradually deteriorated, which resulted in a break in the trend when the aforementioned resolution 16/18 on ‘Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief’ was adopted in March 2011. International human rights organization Human Rights First welcomed the resolution as ‘a huge achievement because for the first time in many years it focuses on the protection of individuals rather than religions.’<sup>106</sup> Later resolutions proceeded on this path of focusing – in accordance with international law – on individuals, lacking any reference to the ‘defamation of religion’ or demanding ‘full respect of religion’.<sup>107</sup>

Although the wording of resolution 16/18 and subsequent resolutions is different from the previous resolutions on combating the defamation of religion, it appears that the main sponsor of these types of resolutions, the OIC, regards this shift as insignificant. Pakistani ambassador Zamir Akram, head of the OIC mission at the time resolution 16/18 was passed by the Human Rights Council, said: ‘I want to state categorically that this resolution does not replace the OIC’s earlier resolutions on combating defamation of religions which were adopted by the Human Rights Council and continue to remain valid.’<sup>108</sup> His colleague from Saudi Arabia, Ahmed Suleiman Ibrahim Alaquil, stated: ‘This text is not replacing the other, existing text which also criminalizes attack on religion. This text still remains valid.’<sup>109</sup> Evidence that the OIC refuses to take the changed nature of resolution 16/18 into account also stems from the organization’s remarks quoted earlier in this paragraph about resolution 16/18 helping to ‘shield Islam’, and from the fact that comments on anti-religious opinions have generally remained the same over the years. In January 2003, Ayaan Hirsi Ali, a Member of the Dutch Parliament at the time, stated in an interview that ‘Muhammad is, measured by our Western standards, a pervert. A tyrant. He is against free speech. If you do not do what

103 For an overview, see [http://www.strasbourgconsortium.org/index.php?blurb\\_id=778](http://www.strasbourgconsortium.org/index.php?blurb_id=778), last access: 20 November 2014.

104 Leonard A. Leo, Felice D. Gaer & Elizabeth K. Cassidy, Protecting Religions From ‘Defamation’: A Threat To Universal Human Rights Standards, *Harvard Journal of Law & Public Policy* (2011), 769–784, 772.

105 Ibid.

106 ‘UN rights body ditches religious ‘defamation’ idea’, *The Washington Post (online)*, 24 March 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/24/AR2011032403901.html>, last access: 20 November 2014.

107 See e.g. UN Doc. A/HRC/19/L.7; UN Doc. A/HRC/22/L.40; UN Doc. A/RES/67/178; UN Doc. A/RES/68/169; UN Doc. A/HRC/25/L.41.

108 ‘U.N. Religious ‘Defamation’ Resolution is Not Dead, Says Islamic Bloc’, *CNSNews.com*, 30 March 2011, <http://cnsnews.com/news/article/un-religious-defamation-resolution-not-dead-says-islamic-bloc>, last access: 20 November 2014.

109 Ibid.



he says, you will end up badly. That reminds me of all those megalomaniac rulers in the Middle East: Bin Laden, Khomeini, Saddam.<sup>110</sup> Hirsi Ali's opinion was received badly by the ambassadors of the 21 OIC member states represented in the Netherlands. A letter written by those representatives was sent to the Dutch government and to all the political parties of the Lower Chamber.<sup>111</sup> In the letter, the representatives argued that Hirsi Ali had 'insulted 1.5 billion Muslims' with her 'crude remarks'.<sup>112</sup> The letter also stated that 'free speech should not be used as an excuse for denigrating and humiliating the religious beliefs of others'.<sup>113</sup> According to the OIC, expressions such as the *Danish cartoons* should be exceptions to free speech.<sup>114</sup> The OIC felt that the publication of Muhammad caricatures in French satirical magazine *Charlie Hebdo* in 2011 was 'an outrageous act of incitement and hatred and abuse of freedom of expression'.<sup>115</sup> In its 2012 report on Islamophobia, the OIC stressed that freedom of speech 'cannot be exploited to infringe the rights of others or to incite violence and hatred to endanger human lives by engaging in blatant insult, denigration and mockery of the deep-seated religious beliefs and symbols and personalities sacred to religions and their followers'.<sup>116</sup> *Innocence of Muslims* constituted a 'deliberate, motivated and systematic abuse' of freedom of speech and 'posed a clear and present danger to peace, security and stability in the region as well as the global context' according to OIC's frontman at the time, Ekmeleddin Ihsanoglu.<sup>117</sup> Zamir Akram, speaking to the Human Rights Council on behalf of the OIC, said the video was a 'flagrant incitement to violence'.<sup>118</sup> 'Incidents like this clearly demonstrate the urgent need on the part of states to introduce adequate protection against acts of hate crimes, hate speech, discrimination, intimidation and coercion resulting from defamation and negative stereotyping of religions, and incitement to religious hatred, as well as denigration of venerated personalities', according to Akram.<sup>119</sup> In their recent study of Pakistan's blasphemy laws, legal scholars Javaid Rehman and Stephanie Berry '[identify], notwithstanding [the] apparent departure from explicit references to 'defamation of religions' in the UN, a continuing trend on the part of the OIC and its members towards the banning and criminalization of all forms of 'defamation of religions' and protecting and promoting analogous domestic anti-blasphemy laws'.<sup>120</sup>

It is safe to say that the position on anti-religious speech held by the OIC differs fundamentally not only from that of many Western countries, but also from human rights standards. This has implications for the sentence in the joint statement which reads: 'While fully recognizing freedom of expression, we believe in the importance of respecting all prophets,

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110 Cited from: 'Hirsi Ali: Mohammed is pervers', NRC Handelsblad, 25 January 2003 ('Mohammed is, gemeten naar onze westerse maatstaven, een perverse man. Een tiran. Hij is tegen vrije meningsuiting. Als je niet doet wat hij zegt, loopt het verkeerd met je af. Dat doet mij denken aan al die megalomane machthebbers uit het Midden-oosten: Bin Laden, Khomeini, Saddam.').

111 'Hirsi Ali zou uitlatingen moeten herroepen', NRC Handelsblad, 26 February 2003.

112 Ibid.

113 Ibid.

114 Organisation of Islamic Cooperation, Fourth OIC Observatory Report on Islamophobia (2011), 32.

115 Organisation of Islamic Cooperation, Fifth OIC Observatory Report on Islamophobia (2012), 24.

116 Ibid., 6.

117 'Islamic body warns of turmoil over French cartoons', *Agence France Presse*, 20 September 2012.

118 'World Muslim group demands laws against 'Islamophobia'', *Reuters News*, 25 September 2012.

119 Ibid.

120 *Javaid Rehman & Stephanie E. Berry, Is 'Defamation of Religions' passé? The United Nations, Organisation of Islamic Cooperation, and Islamic State Practices: Lessons from Pakistan*, *The George Washington International Law Review* (2012), 431–472, 433.

regardless of which religion they belong to.’ The question that arises is: ‘Which freedom of expression does the joint statement fully recognize?’ Suppose we were to conclude from the facts that the statement was co-authored by the European Union and was issued in the ‘capital city’ of the European Union, Brussels, that ‘while fully recognizing freedom of expression...’ points to article 10 of the European Convention on Human Rights (ECHR), which protects free speech. The problem that emerges then is that article 10 ECHR does not require citizens to respect all prophets, just as neither the First Amendment nor the Universal Declaration on Human Rights require this. If we also take into consideration the comment made by the President of the European Parliament, Martin Schulz, who literally ‘criticized any attempt to ridicule Islam’<sup>121</sup> five days prior to the publication of the joint statement, the question arises whether according to the very top of European politics freedom of speech is granted only as long as it does not disrespect religion and its symbols; a stance that comes much closer to the free speech principle favored by the Organisation of Islamic Cooperation than to the one written in the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, or the European Convention on Human Rights. Both the joint statement co-authored by the European representative for foreign affairs and the statement by the President of the European Parliament steer away from one of the bedrocks underlying the European free speech principle: ‘Freedom of expression [...] is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society.’<sup>122</sup>

## V. Conclusion

In this article I have discussed a number of reactions by political leaders to the *Innocence of Muslims* video. While politicians are usually willing to promote human rights standards, some of the responses to *Innocence of Muslims* from high-level politicians unequivocally contradicted those standards. The Secretary-General of the United Nations, Ban Ki-moon, for example, issued a statement that introduced vague criteria for protected speech, namely that free speech has to be used for ‘common justice’ and a ‘common purpose’ for it to be protected. The European Union co-drafted a statement that contradicted international human rights by relating the value of ‘respect’ to symbols and belief systems, instead of relating it to people. It could be argued that these and other responses of politicians endorsed the ideas on free speech favored by the Organisation of Islamic Cooperation, an organization that has lobbied for years – in the words of the United States Commission on International Religious Freedom – ‘to establish what would be in effect a global blasphemy law’. Ban Ki-moon’s stance on free speech – ‘Freedom of expression should be and must be guaranteed and protected, when [it is] used for common justice, common purpose. When some people use this freedom of expression to provoke or humiliate some others’ values and beliefs, then this cannot be protected in such a way’ – and Martin Schulz’s statement ‘I criticize any attempt to ridicule Islam’ are remarkably similar to the OIC’s principle that ‘free speech should not be used as an excuse for denigrating and humiliating the religious beliefs of others.’ And while the OIC

121 ‘Schulz on the violent attacks against diplomatic missions’, 15 September 2012, [http://www.europarl.europa.eu/former\\_ep\\_presidents/president-schulz/en/press/press\\_release\\_speeches/press\\_release/2012/2012-september/html/schulz-on-the-violent-attacks-against-diplomatic-missions](http://www.europarl.europa.eu/former_ep_presidents/president-schulz/en/press/press_release_speeches/press_release/2012/2012-september/html/schulz-on-the-violent-attacks-against-diplomatic-missions), last access: 20 November 2014.

122 *Handyside v. United Kingdom*, App. No. 5493/72 (Eur. Ct. H.R., Dec. 7, 1976), § 49.

saw *Innocence of Muslims* as a ‘deliberate, motivated and systematic abuse’ of free speech, so Ban Ki-moon argued that the video was an ‘abuse of freedom of expression’. The point I have tried to make is not so much that politicians should not be allowed to comment on controversial utterances – although, if they took this task seriously and executed it fairly, practical problems would arise, since the Internet and other forms of media are full of sharp and, from time to time, offensive criticism of probably any topic you can think of – but if they do so, that they do not deviate from principles enshrined in human rights law.