

IS THE UNITED NATIONS ENDORSING HUMAN RIGHTS VIOLATIONS?: AN ANALYSIS OF THE UNITED NATIONS' COMBATING DEFAMATION OF RELIGIONS RESOLUTIONS AND PAKISTAN'S BLASPHEMY LAWS

Rebecca J. Dobras*

TABLE OF CONTENTS

I.	INTRODUCTION	341
II.	BACKGROUND TO ISLAM, PAKISTAN, AND THE DEFAMATION RESOLUTIONS	346
	<i>A. Islamic Governance</i>	346
	<i>B. Religious Tolerance (and Subsequent Intolerance) in Pakistan</i>	347
	<i>C. Combating Defamation of Religions Resolutions</i>	350
III.	PAKISTAN'S BLASPHEMY LAWS	354
	<i>A. How the Blasphemy Laws Violate International Human Rights</i>	355
	<i>B. Enforcement of the Blasphemy Laws: Other Violated Rights</i>	356
	<i>C. Pakistan's Stance on the Blasphemy Laws and the Weaknesses in Its Position</i>	359
IV.	ARGUMENTS FOR AND AGAINST THE DEFAMATION RESOLUTIONS	363
	<i>A. Proponents of the Defamation Resolutions</i>	364
	<i>B. Opponents of the Defamation Resolutions</i>	366
V.	DO THE DEFAMATION RESOLUTIONS SUPPORT PAKISTAN'S BLASPHEMY LAWS?	369
	<i>A. The Defamation Resolutions Extend the Blasphemy Laws to the International Arena</i>	369

* J.D., University of Georgia School of Law, 2009; B.A., Criminal Justice, University of Georgia 2006.

<i>B. The Defamation Resolutions Fail to Consider the Blasphemy Laws</i>	370
<i>C. Current Religious Situation in Pakistan</i>	372
<i>D. The Future of the Defamation Resolutions and Proposed Recommendations</i>	376
VI. CONCLUSION	379

I. INTRODUCTION

The September 11th terrorist attacks on the World Trade Center and other terrorist attacks throughout the world since the beginning of the millennium have caused a dramatic increase in Western discrimination against Muslims, a problem of grave international concern.¹ Muslims are frequently associated with religious extremism and terrorism, and the West often defames Muslims via the media.² In response to Western backlash against Muslims, commonly referred to as “Islamophobia,”³ Islamic countries have tried to address these concerns at the international level. At Pakistan’s initiative, the countries of the Organization of the Islamic Conference (OIC)⁴ have sponsored several United Nations resolutions, which have passed every year in the United Nations since 1999.⁵ For the purposes of this Note, these resolutions will be collectively referred to as the Defamation Resolutions. The Defamation Resolutions deplore intolerance and discrimination based on religion, particularly emphasizing the discrimination against Islam and the individuals

¹ See Maxim Grinberg, Note, *Defamation of Religions v. Freedom of Expression: Finding the Balance in a Democratic Society*, 18 SRI LANKA J. INT’L L. 197, 200 (2006) (discussing the 1999 Resolution that “refers to the September 11 attack on the United States as a catalyst for the rise of Islamophobia in the West”).

² *Id.* at 201.

³ *Id.* at 200.

⁴ This organization consists of fifty-seven Muslim states and works to safeguard the interests of Muslims. Organisation of the Islamic Conference, About OIC, http://www.oic-oci.org/oicnew/page_detail.asp?p_id=52 (last visited Jan. 15, 2009).

⁵ U.N.H.R.C. Res. 7/19, U.N. Doc. A/HRC/7/19 (Mar. 27, 2008); U.N.H.R.C. Res. 4/9, U.N. Doc. A/HRC/4/9 (Mar. 30, 2007); G.A. Res. 62/154, U.N. Doc. A/RES/62/154 (Dec. 18, 2007) [hereinafter Defamation Resolutions]. The first two resolutions listed are the most recent ones passed by the United Nations Human Rights Council (HRC); the third is the most recent resolution passed by the U.N. General Assembly. The first Defamation Resolution was introduced in 1999 to the U.N. Commission on Human Rights (UNCHR) and subsequently passed each year thereafter. See U.N.R.H.C. Res. 44/3, U.N. Doc. E/CN.4/RES/2005/3 (Apr. 12, 2005) (recalling prior resolutions: “resolutions 1999/82 of 30 April 1999, 2000/84 of 26 April 2000, 2001/4 of 18 April 2001, 2002/9 of 15 April 2002, 2003/4 of 14 April 2003 and 2004/6 of 13 April 2004). It is unclear whether a resolution was passed by UNCHR in 2006 before becoming the HRC in that year. The HRC passed its first Combatting Defamation of Religion resolution in 2007. Not only have the Resolutions been passed by the UNCHR (or its subsequent replacement, the HRC) each year, but the General Assembly passed a similar version of the Resolutions in 2005, 2006 and 2008. See generally G.A. Res. 62/154, U.N. Doc. A/RES/62/154 (Dec. 17, 2008); G.A. Res. 61/164, U.N. Doc. A/RES/61/164 (Dec. 19, 2006); G.A. Res. 60/150, U.N. Doc. A/RES/60/150 (Dec. 16, 2005).

who practice this religion.⁶ They also prohibit the dissemination of any ideas or materials that may incite violence, intolerance, or xenophobia.⁷ Most Asian and African countries vote in favor of the Defamation Resolutions each year, thus resulting in their passage.⁸ However, no Western country has ever voted in favor of any of the Defamation Resolutions,⁹ arguing they focus selectively on Islam, protect the *religion* itself instead of protecting individuals from religious discrimination, and unlawfully restrict freedom of expression.¹⁰

Under international law, freedom of expression is a fundamental right guaranteed by the Universal Declaration of Human Rights (UDHR)¹¹ and the International Covenant on Civil and Political Rights (ICCPR).¹² Though the UDHR is a non-binding document and the ICCPR is only binding on signatory countries, the right to freedom of expression has arguably become binding on all states, even those that have not ratified the ICCPR, because of customary international law.¹³ However, as noted in Article 19 of the ICCPR, freedom of expression is not absolute and may be restricted when "provided by law and [when it is] necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order . . . or of public health or morals."¹⁴ In addition, Article 20 of ICCPR prohibits "[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination,

⁶ Defamation Resolutions, *supra* note 5.

⁷ *Id.*

⁸ Liaquat Ali Khan, *Combating Defamation of Religions*, AM. MUSLIM, Jan. 1, 2007, http://theamericanmuslim.org/tam.php/features/articles/combating_defamation_of_religions/.

⁹ See *id.* ("The opposition [to the Defamation Resolutions] consists of predominantly Western states, including all members of the European Union, Australia, New Zealand, Canada, and the United States.").

¹⁰ See Grinberg, *supra* note 1, at 202 (discussing objections to the Resolution, such as its failure to protect individuals' choice of religion and failure to criticize defamation of other religions).

¹¹ Universal Declaration of Human Rights, G.A. Res. 217A, art. 19, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948) [hereinafter UDHR].

¹² International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), art. 19, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966).

¹³ Tayyab Mahmud, *Freedom of Religion & Religious Minorities in Pakistan: A Study of Judicial Practice*, 19 FORDHAM INT'L L.J. 40, 91 (1995); see also Amjad Mahmood Khan, Note, *Persecution of the Ahmadiyya Community in Pakistan: An Analysis Under International Law and International Relations*, 16 HARV. HUM. RTS. J. 217, 234 (2003) ("[T]he six Articles in the Declaration of 1981 offer arguably the most expansive annunciation of freedom of religion. The Declaration itself was adopted without a vote in the UN: it is 'soft law' designed to further the international norms the ICCPR espoused.").

¹⁴ ICCPR, *supra* note 12, art. 19.

hostility or violence.”¹⁵ The Defamation Resolutions note that while everyone has the right to freedom of expression,¹⁶ this right can be restricted for the reasons listed by the ICCPR in order to prevent the defamation of religion.¹⁷

One criticism of the Defamation Resolutions is that mere expression of negative stereotypes or the dissemination of xenophobic ideas, both of which are prohibited by the Defamation Resolutions, do not qualify under the definition of religious hatred under Article 20 of the ICCPR, nor do they meet the requirements of Article 19.¹⁸ Another criticism of the Defamation Resolutions is that they permit Islamic governments to suppress all anti-Islamic ideas and punish all individuals who defame Islam.¹⁹

Pakistan, for example, has enacted strict blasphemy laws that punish people for defaming Islam.²⁰ In Pakistan, any kind of direct or indirect action that either defiles Islam’s Holy Prophet Muhammad or upsets the religious feelings of Muslims may be punished with life imprisonment or even death.²¹ The blasphemy laws target Muslims and non-Muslims alike, and the government often arbitrarily enforces, hears, and punishes allegations of blasphemy.²² In addition to the arbitrary and abusive enforcement of these laws, government officials sometimes condone acts of violence against religious minorities, especially if the officials’ religious views are extreme.²³ Furthermore, Muslim extremists, taking matters into their own hands, have killed alleged

¹⁵ *Id.* art. 20.

¹⁶ *E.g.*, U.N.H.R.C. Res. 4/9, *supra* note 5, para. 1.

¹⁷ Defamation Resolutions, *supra* note 5. *E.g.*, U.N.H.R.C. Res. 4/9, *supra* note 5, para. 10. The 2008 version of the Defamation Resolutions, U.N.H.R.C. Res. 7/19, *supra* note 5, para. 12, appears to conform more closely to the requirements set forth in the ICCPR, but the changes may arguably restrict freedom of expression more than previous versions. *See infra* Part V.C.

¹⁸ *See* Grinberg, *supra* note 1, at 203–04 (discussing limits on Articles 19 and 20 in general).

¹⁹ *Id.* at 210–11.

²⁰ *See generally* David F. Forte, *Apostasy and Blasphemy in Pakistan*, 10 CONN. J. INT’L L. 27, 27–28, 50 (1994) (discussing how blasphemy laws have become weapons against religious minorities in Pakistan); HUMAN RIGHTS WATCH, PERSECUTED MINORITIES AND WRITERS IN PAKISTAN (1993), available at <http://www.hrw.org/legacy/reports/1993/pakistan> (noting blasphemy laws have been used to bring charges against some religious minorities and some Muslims) [hereinafter HRW: PERSECUTED MINORITIES].

²¹ PAK. PENAL CODE, §§ 295–298 (1860), available at http://www.punjabpolice.gov.pk/user_files/File/pakistan_penal_code_xlv_of_1860.pdf.

²² HRW: PERSECUTED MINORITIES, *supra* note 20 (“Under the law, personally or politically motivated charges of blasphemy may result in a conviction with little or no corroboration.”).

²³ *See* AMNESTY INTERNATIONAL, PAKISTAN: USE AND ABUSE OF THE BLASPHEMY LAWS 2, 7 (ASA 33/08/09) (1994) [hereinafter AI: USE AND ABUSE].

blasphemers.²⁴ For these reasons, and the fact that blasphemy is a capital offense in Pakistan, human rights organizations, such as Human Rights Watch and Amnesty International, argue that these strict blasphemy laws violate fundamental human rights and should be abolished or amended immediately.²⁵

Although the Defamation Resolutions are not binding on the consenting parties and thus do not require enforcement or international sanctions, they reinforce the idea that those who criticize another religion need to be severely punished. The International Humanist and Ethical Union (IHEU)²⁶ contends that the Defamation Resolutions extend domestic blasphemy laws, such as Pakistan's, into the international arena, almost giving international approval of such laws.²⁷ The IHEU argues that the Defamation Resolutions shield countries from criticism regarding the religious discrimination of minorities and further limit minorities' freedoms of speech and religion.²⁸ Thus, several goals of international human rights organizations, such as promoting religious freedom and tolerance, protecting freedom of speech, and eradicating strict blasphemy laws, are often set aside in order to stop the defamation of Islam, a task required by the Defamation Resolutions. For example, a judge of the Pakistani Supreme Court suggested that Ahmadi²⁹ proclamations stating that Muhammad is not the last prophet are discriminatory towards Islam and

²⁴ See *id.* at 14–15 (discussing examples of religious vigilantism).

²⁵ HRW: PERSECUTED MINORITIES, *supra* note 20 (calling for the repeal of blasphemy laws); AI: USE AND ABUSE, *supra* note 23, at 2 (calling for amendments to the blasphemy laws to prevent their use in abusing prisoners of conscience, to release persons held solely for religious beliefs, and to abolish the death penalty for this offence).

²⁶ The International Humanist and Ethical Union describes itself as “the sole world umbrella organisation embracing [h]umanist, atheist, rationalist, secularist, skeptic, laique, ethical cultural, free thought and similar organisations world-wide.” About IHEU, <http://www.iheu.org/about>.

²⁷ Submission on “Combating Defamation of Religions” from Babu R.R. Gogineni, Int’l Dir., Int’l Humanist & Ethical Union to the Anti-Discrimination Unit, U.N. High Commissioner for Human Rights, <http://www.iheu.org/node/2751> (July 23, 2007, 06:55) [hereinafter IHEU: Submission].

²⁸ See IHEU: Submission, *supra* note 27 (stating that “[i]t would be unacceptable for the concerns over ‘Defamation of Religion’ and ‘Islamaphobia’ . . . to become a shield against criticism for states that fall short of their obligations under the various international human rights covenants and conventions” before discussing that in Pakistan “different religions receive different levels of protection from the state in cases of blasphemy”).

²⁹ The Ahmadiyya community is a religious minority group in Pakistan. Though the Ahmadis consider themselves part of the Muslim community, Muslims see Ahmadis as heretical to Islam for having different beliefs about the identity of the Promised Messiah. As a result, some Muslims have subjected Ahmadis to persecution. See Khan, *supra* note 13, at 218–19.

constitute grounds for prosecution under the country's blasphemy laws.³⁰ Under international human rights law, such an action normally violates an individual's right to freedom of religion.³¹ Yet in adhering to the Defamation Resolutions, countries can restrict any speech or ideas that are merely "discrimina[tory] towards Islam."³² So it appears, in certain situations, the Defamation Resolutions allow for the continued use of strict laws that punish those who merely offend religious feelings, such as the blasphemy laws found in Pakistan.

Although Pakistan proposed the Defamation Resolutions under the guise of promoting religious tolerance, given its strict blasphemy laws and its state-sponsored religious discrimination, this Note argues the Defamation Resolutions may actually promote religious discrimination. They not only contradict international norms and human rights but also validate and reinforce Pakistan's use of its blasphemy laws.

This Note discusses the problems surrounding Pakistan's blasphemy laws as well as the differing views on the Defamation Resolutions and argues how and why the Defamation Resolutions are doing more harm than good, especially in terms of condoning the blasphemy laws. Part II of this Note discusses a few of the basic tenets of Islam and how these religious beliefs catalyzed the passage of the blasphemy laws in Pakistan. It also explores the events leading up to the passage of the Defamation Resolutions. Part III discusses the arguments for and against the blasphemy laws, as well as the issues surrounding such laws, such as how they violate international human rights both inherently and as applied in practice. Part IV discusses varying points of view on the Defamation Resolutions and examines why some countries wholly support them, while others vehemently oppose them. Part V examines the arguments as to how the Defamation Resolutions are an international extension of blasphemy laws and discusses how little the blasphemy laws are actually addressed by international bodies. This part also explores the current religious and political situation in Pakistan following the passage of the Defamation Resolutions to determine if the religious conditions in Pakistan have changed since 2001. In conclusion, this part discusses the

³⁰ Forte, *supra* note 20, at 42.

³¹ See, e.g., UDHR, *supra* note 11, art. 18 ("Everyone has the right to freedom of . . . religion; this right includes freedom . . . to manifest his religion or belief in teaching, practice, worship and observance."); ICCPR, *supra* note 12, art. 18 ("Everyone shall have the right to freedom of thought, conscience and religion.").

³² Defamation Resolutions, *supra* note 5; see, e.g., U.N.H.C.R. Res. 4/9, *supra* note 5, para. 11.

most recent versions of the Defamation Resolutions passed by different United Nations bodies, the international community's reactions to them, and the proposed modifications to the Defamation Resolutions.

II. BACKGROUND TO ISLAM, PAKISTAN, AND THE DEFAMATION RESOLUTIONS

A. *Islamic Governance*

In order to understand why Pakistan implemented its blasphemy laws and why Muslim countries pushed so hard for the Defamation Resolutions, one must consider the basic tenets of Islam. The main belief of Islam is that there is only one God, Allah, and the Prophet Muhammad was his final messenger.³³ The Quran, the holy scripture of Islam, is regarded as the word of God and is thereby eternal, absolute, and irrevocable.³⁴ Typically in Muslim countries, the religion and the state are one entity—they cannot be separated into two distinct parts.³⁵ Islam provides the code of law, called the Shari'a, which governs the social, political, and economic aspects of life,³⁶ as well as the duties and obligations required of Muslims.³⁷ Shari'a law, which developed over the last three centuries, rests partly on the Quran and partly on the sayings and behaviors of the Prophet Muhammad.³⁸

In the 1970s, as countries across the world became more Westernized and secularized, Muslim countries sought to reinstate Islamic norms and values to bring society more in-line with Islam, a process termed "Islamization."³⁹ In the 1980s, several Muslim countries, such as Pakistan and Iran, adopted Islamization as an official government policy.⁴⁰ In these officially recognized Islamic states, the power to interpret Shari'a law ultimately rests with the

³³ Anita M. Weiss, *The Society and Its Environment*, in PAKISTAN: A COUNTRY STUDY 75, 125 (Peter R. Blood ed., 1995).

³⁴ *Id.* at 125.

³⁵ See Donna E. Arzt, *Heroes or Heretics: Religion Dissidents Under Islamic Law*, 14 WIS. INT'L L.J. 349, 352 (1996) ("No separation of 'mosque and state' exists in Islam . . .").

³⁶ *Id.* at 352, 366.

³⁷ Ebrahim Moosa, *The Dilemma of Islamic Rights Schemes*, 15 J. L. & RELIGION 185, 193 (2000–2001).

³⁸ Robert Carle, *Revealing and Concealing: Islamist Discourse on Human Rights*, 6 HUM. RTS. REV. 122, 127 (2005).

³⁹ Ann Elizabeth Mayer, *Law and Religion in the Muslim Middle East*, 35 AM. J. COMP. L. 127, 127–29 (1987).

⁴⁰ *Id.* at 130.

government.⁴¹ As a result, legislators often take advantage of this by interpreting the Shari'a according to what appeals to the majority in order to gain popular approval.⁴² For example, a popularized understanding of punishments under Shari'a law include amputation of the hand, flogging, and stoning; Muslim governments are often willing to adopt these laws to appeal to the masses.⁴³ Additionally, the governments of these countries exclude minorities who do not follow the state-decreed religious orthodoxy from political and public life, treating them as heretics or blasphemers.⁴⁴

B. Religious Tolerance (and Subsequent Intolerance) in Pakistan

From its beginning, the government of Pakistan yearned to create a country of religious tolerance and freedom. In 1947, the founder of Pakistan, Muhammad Ali Jinnah, desired to form a nation where every citizen would be free to practice his or her religion without fear of persecution.⁴⁵ Following its independence, Pakistan made it a top priority to protect the rights of religious freedom.⁴⁶ The first constitution, as well as subsequent ones, contained portions dedicated to protecting the religious freedoms of minorities.⁴⁷ In the first few years following the founding of Pakistan, even though religious extremists pushed for anti-Ahmadi measures, courts resolutely adhered to the "fundamental rights" granted in the constitution of 1956, stating that a "right guaranteed by the Constitution cannot be taken away by law."⁴⁸

However, this dedication to religious freedom and tolerance did not last long. Within the first decade of Pakistan's founding, the government found

⁴¹ See *id.* at 153 (noting that while there is no articulated theory behind why Muslims should allow governments to rule on debated issues of Shari'a law, governments have been given the power to do so).

⁴² *Id.* at 155.

⁴³ *Id.* at 171.

⁴⁴ *Id.* at 178–79 (stating that these persons may be considered "religious outsiders" or heretics).

⁴⁵ Forte, *supra* note 20, at 27.

⁴⁶ See Khan, *supra* note 13, at 221 ("The right to religious freedom was not only central to the struggle for the independent state of Pakistan in 1947; it was also an important part of a larger worldwide debate over human rights at that time.").

⁴⁷ Forte, *supra* note 20, at 30–31. The current version of the constitution proclaims that "adequate provision shall be made for the minorities freely to profess and practise their religions." PAK. CONST. of 1973 prmb. It also recognizes citizens' "right to profess, practise and propagate his religion" as a fundamental right. *Id.* art. 20.

⁴⁸ Mahmud, *supra* note 13, at 68–69.

itself succumbing to the goals of Muslim fundamentalists, especially on the excommunication of Ahmadis from Pakistan.⁴⁹ Starting in the 1950s, as religious fundamentalists gained more power and Islamization stifled secular movements, the rights of religious minorities, especially the Ahmadis, deteriorated.⁵⁰

The Constitution of 1973 expressly states that “[a]ll existing laws shall be brought in conformity with the Injunctions of Islam . . . and no law shall be enacted which is repugnant to such Injunctions.”⁵¹ By 1978, Zia-ul-Haq, a military dictator, had assumed power and strived to convert Pakistan into a theocracy, one in which all aspects of life would be governed by Islam.⁵² He empowered the courts to declare laws un-Islamic, restricted their ability to hear cases involving fundamental rights, and sought to purge the court of independent-minded judges.⁵³ Much of Zia’s influence seems to remain in place today, including the presence of the Federal Shariat Court, which has jurisdiction over all issues involving the Shari’a.⁵⁴

In the 1980s, the fundamentalists took Islamization to an even greater extreme by pressuring the government to specifically limit the freedoms of religious minorities, culminating in the passage of the five ordinances that make up the blasphemy laws.⁵⁵ These ordinances, despite being facially discriminatory towards racial minorities, were legitimized by the Federal Shariat Court.⁵⁶ The relevant sections provide:

295-B [President’s Order 1 of (1982) Ordinance (1 of 1982) dated 18.3.1982]

Defiling, etc, of Holy Qur’an. Whoever willfully defiles, damages or desecrates a copy of the Holy Quran . . . shall be punishable with imprisonment for life.

⁴⁹ Khan, *supra* note 13, at 223–25.

⁵⁰ *Id.* at 224–25.

⁵¹ PAK. CONST. of 1973, art. 227.

⁵² Osama Siddique & Zahara Hayat, *Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan – Controversial Origins, Design Defects, and Free Speech Implications*, 17 MINN. J. INT’L L. 303, 314–17 (2008).

⁵³ Osama Siddique, *The Jurisprudence of Dissolutions: Presidential Power To Dissolve Assemblies Under the Pakistani Constitution and Its Discontents*, 23 ARIZ. J. INT’L & COMP. L. 615, 627–28 (2006).

⁵⁴ *Cf. id.* at 628 (discussing the creation of the Federal Shariat Court).

⁵⁵ Khan, *supra* note 13, at 227.

⁵⁶ *Id.* at 227–28.

295-C [Criminal Law (Amendment) Act, (111 of 1986), S. 2.]
 Use of derogatory remarks, etc.; in respect of the Holy Prophet. Whoever by words . . . by visible representation, or by any imputation, innuendo, or insinuation . . . defiles the sacred name of the Holy Prophet Mohammed . . . shall be punished with death, or imprisonment for life, and shall also be liable to fine.

298-A [Pakistan Penal Code (Second Amendment) Ordinance (XLIV of 1980), S.2]

Use of derogatory remarks, etc., in respect of holy personages. . . shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

298-B [(Prohibition and Punishment) Ordinance XX of 1984]
 Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places.

(1) Any person of the Quadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name) who by words, either spoken or written, or by visible representation, -

(a) refers to, or addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (peace be upon him), as 'Ameer-ul-Mumineen', 'Khalifat-ul-Muslimeen', 'Sahaabi' or 'Razi Allah Anho';

(b) refers to, or addresses, any person, other than a wife of the Holy Prophet Muhammad (Peace be upon him), as 'Ummul-Mumineen';

(c) refers to, or addresses, any person, other than a member of the family (Ahle-bait) of the Holy Prophet Muhammad (peace be upon him), as Ahle-bait; or

(d) refers to, or names, or calls, his place of worship as 'Masjid';

shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(2) Any person of the Quadiani group or Lahori group (who call themselves 'Ahmadis' or by any other name) who by words, either spoken or written, or by visible representation, refers to the mode or form of call to prayers followed by his faith as 'Azan' or recites Azan as used by the Muslims, shall

be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

298-C [(Prohibition and Punishment) Ordinance XX of 1984]
... Any person of the Qadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name), who ... poses himself as a Muslim, or calls, or refers to, his faith as Islam ... shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.⁵⁷

Under these last two ordinances, Ahmadis may be sentenced to death for merely affirming their faith, such as by proclaiming that Muhammad is not the last prophet,⁵⁸ since such a statement could be considered defamatory to the Prophet. Though the laws restrict religious minorities from fully exercising their right to freedom of religion as guaranteed in the Pakistani constitution, the Supreme Court of Pakistan held that freedom of religion could be limited by Islamic law, despite what the constitution says.⁵⁹ In addition to the persecution of Ahmadis, other groups such as Christians, Hindus, journalists, human rights advocates, attorneys who defend alleged blasphemers, and even Muslims with moderate beliefs, are all at risk of violating the blasphemy laws.⁶⁰ Currently, the blasphemy laws and the religious intolerance remain a major problem in Pakistan.

C. Combating Defamation of Religions Resolutions

Though this Note concentrates on the Defamation Resolutions passed after September 11, 2001, Muslim countries pushed for international changes

⁵⁷ Siddique & Hayat, *supra* note 52, at 310 n.8. See generally PAK. PENAL CODE, §§ 295–298 (1860), available at http://www.punjabpolice.gov.pk/user_files/File/pakistan_penal_code_xlv_of_1860.pdf.

⁵⁸ Forte, *supra* note 20, at 42 (referring to sections 295C).

⁵⁹ MARTIN LAU, THE ROLE OF ISLAM IN THE LEGAL SYSTEM OF PAKISTAN 6, 70 (2006) (discussing the 1993 case, *Zaheeruddin v. State*); see *infra* note 139 and accompanying text.

⁶⁰ See U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2006: PAKISTAN sec. 2(c) (Mar. 6, 2007), <http://www.state.gov/g/drl/rls/hrrpt/2006/78874.htm> [hereinafter U.S. DEP'T OF STATE: HR] (discussing attacks and threats against these groups).

regarding the treatment of Muslims as early as the 1990s.⁶¹ In the late 1980s, British writer Salman Rushdie published a book entitled *The Satanic Verses*, which opposed teaching about Islam, the Prophet, and the Quran.⁶² Some Muslims saw the book as extremely blasphemous, and deadly protests erupted throughout the world in response to its publication.⁶³ Some countries, like Iran, even condemned Rushdie to death.⁶⁴ The United Nations, however, ignored the Rushdie affair and accepted assurances that Rushdie would not be condemned by the government, despite public statements to the contrary.⁶⁵

In response to the Rushdie affair and an increase of anti-Muslim sentiments spreading throughout the world, the OIC Muslim states⁶⁶ demanded recognition of their problems at the international level and insisted upon changes.⁶⁷ At the continued insistence of the OIC, phrases like “defamation of religion” and “blasphemy” slowly made their way into United Nations’ discussions.⁶⁸ In 1999, a decade after the Rushdie affair, Pakistan, on behalf of the OIC, introduced a draft resolution entitled “Defamation of Islam.”⁶⁹ The draft resolution specifically focused on the discrimination and intolerance targeted at Muslims.⁷⁰ However, many countries did not agree with the purpose of the resolution.⁷¹ For example, India felt “the defamation and stereotyping were not exclusive to any one religion”; Germany believed the resolution was “too specific and went too far on Islam”; Japan felt the resolution needed to be “more general.”⁷² Compromising, the OIC agreed to change the title of the resolution to “Defamation of Religions” and to reword

⁶¹ See David Littman, *Islamism Grows Stronger at the United Nations*, MIDDLE E. Q. (1999), available at <http://www.meforum.org/article/477> (discussing the demands of Muslim states to address the problems faced by Muslims in the 1990s).

⁶² *Id.*

⁶³ Anthony Chase, *Legal Guardians: Islamic Law, International Law, Human Rights Law, and the Salman Rushdie Affair*, 11 AM. U. J. INT’L L. & POL’Y 375, 388 (1996).

⁶⁴ Littman, *supra* note 61.

⁶⁵ *Id.*

⁶⁶ See *supra* note 4 and accompanying text.

⁶⁷ Littman, *supra* note 61.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ U.N. Econ. & Soc. Council, Comm’n on Human Rights, *Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination*, U.N. Doc. E/CN.4/1999/L.40 (Apr. 20, 1999).

⁷¹ Cf. Littman, *supra* note 61 (noting that Western countries refused to accept a resolution with such a provocative title).

⁷² Press Release, Commission on Human Rights, Commission on Human Rights Establishes Intersessional Working Group to Review and Enhance Its Mechanisms, U.N. Doc. HR/CN/99/64 (Apr. 29, 1999) [hereinafter Press Release U.N. Doc. HR/CN/99/64].

the text so as not to refer solely to Islam.⁷³ In the revised draft, Islam still remained the only religion mentioned in the text, but because the resolution was more general in nature and reflected the compromise, the resolution passed, though no vote was taken.⁷⁴

After September 11, 2001, as the United States focused the world's attention on the threat of terrorist attacks, Muslims became the subject of discrimination, and international concern about religious intolerance grew. In the Durban Declaration of 2001, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance noted "with deep concern the increase in . . . Islamophobia in various parts of the world, as well as the emergence of racial and violent movements based on racism and discriminatory ideas against . . . Muslim . . . communities," and called upon states to counter these and other movements.⁷⁵ Given these general feelings in the United Nations, the United Nation's Commission on Human Rights (UNCHR) passed Defamation Resolutions every year until its dissolution in 2006.⁷⁶ The Defamation Resolutions discuss the following: (1) that September 11 negatively affected Muslim communities through the negative projection of Muslims in the media and through laws that discriminate against Muslims; (2) that religious discrimination and intolerance threaten the enjoyment of fundamental rights; (3) that negative stereotyping of religions and manifestations of intolerance and discrimination exist throughout the world; (4) that the use of print, audio-visual, and electronic media for the purpose of inciting acts of violence, xenophobia, intolerance, or discrimination is deplored; (5) that states must combat the defamation of all religions, but particularly Islam, and; (6) that states should prohibit the dissemination of racist or xenophobic ideas aimed at any religion that leads to discrimination, hostility, or violence and should take all possible measures to protect against these acts.⁷⁷

The UNCHR, however, had very low standards for membership and has allowed even states that committed grave human rights violations to be

⁷³ Littman, *supra* note 61.

⁷⁴ Defamation of Religions, U.N.C.H.R. Res. 1999/82, U.N. Doc. E/CN.4/RES/1999/82 (Apr. 30, 1999); Littman, *supra* note 61.

⁷⁵ World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa, Aug. 31–Sept. 8, 2001, *Durban Declaration and Programme of Action*, ¶¶ 61, 150, U.N. Doc. A/CONF.189/12 (Sept. 2001).

⁷⁶ Grinberg, *supra* note 1, at 197–98. The Human Rights Council replaced the UNCHR on June 16, 2006. *Id.* at 198 n.2.

⁷⁷ Defamation Resolutions, *supra* note 5. See, e.g., U.N.C.H.R. Res. 2005/3, *supra* note 5.

members of the UNCHR.⁷⁸ Because of these lax standards, the UNCHR became discredited by the United Nations.⁷⁹ In 2006, the General Assembly abolished the UNCHR and replaced it with the Human Rights Council (HRC).⁸⁰

Unfortunately, the new HRC did not appear much different from the UNCHR because, once again, the only factor restricting a country's right to be on the council was its geographic location, rather than its human rights record.⁸¹ As a result, twenty-one of the forty-seven states elected to the HRC were not considered fully democratic, and many had inadequate human rights records.⁸² Furthermore, fifty-five percent of the states were from Africa or Asia, with OIC countries dominating these seats.⁸³ Thus, the OIC possesses a controlling interest in the HRC.⁸⁴ In 2007, the HRC passed another OIC-initiated Defamation Resolution, with wording very similar to those passed by the UNCHR, with the only difference being an even greater emphasis on the treatment of Muslims and Islam.⁸⁵ This new Defamation Resolution produced just as much criticism as did the previous ones.⁸⁶

Despite the criticisms of the Defamation Resolutions, in 2005 and 2006, the United Nations General Assembly passed resolutions nearly identical to the Defamation Resolutions passed by the UNCHR, with well over fifty percent

⁷⁸ Anne Bayefsky, *A Mockery of Human Rights: New U.N. Panel Signals Victory to Islamic Group*, WASH. TIMES, May 12, 2006, at A19.

⁷⁹ *Id.* (noting that the "major defect of the [UNCHR] was that it had no standards for membership"); How the Islamic States Dominate the UN Human Rights Council, <http://www.iheu.org/node/2546> (Apr. 2, 2007, 06:52) [hereinafter IHEU: UN HRC] ("By 2005, the [UNCHR] had become widely discredited.").

⁸⁰ IHEU: UN HRC, *supra* note 79.

⁸¹ Bayefsky, *supra* note 78. Further, "[t]he new council has also been restructured to give the African and Asian regional groups a 55 percent majority," and many of these countries have poor human rights records. *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Compare U.N.C.H.R. Res. 2005/3, *supra* note 5, paras. 1, 3–4 (discussing increasing trend of statements attacking Islam, the attempt to associate Islam with terrorism, and the religious profiling of Muslims), with U.N.C.H.R. Res. 4/9, *supra* note 5, paras. 5, 11–12 (discussing administrative measures stigmatizing Muslims; the serious implications of Islamophobia; and the acts of violence, intolerance, and discrimination toward Muslims).

⁸⁶ See IHEU: UN HRC, *supra* note 79 (voicing criticism of the 2007 Resolution because it was substantially similar to previous Resolutions, failed to define "defamation," limited the right to free expression, and ignored any distinction between religions and their followers).

of 192 member states voting in favor of the Resolutions both times.⁸⁷ In 2006, the number of states that voted in favor of the Resolution increased by ten, with 111 states voting for the Defamation Resolution.⁸⁸ The General Assembly passed a nearly identical version in 2007 as well.⁸⁹

It is clear religious discrimination against Muslims has increasingly become an international concern. The United Nations has attempted to counter this discrimination by passing the Defamation Resolutions. Additionally, as will be explained further, Pakistan has enacted its own measures, the blasphemy laws, to counter discrimination against Muslims. Specifically, the Defamation Resolutions give international justification to Pakistan's blasphemy laws which punish those who defame Muslims or Islam generally.

III. PAKISTAN'S BLASPHEMY LAWS

One problem with the Defamation Resolutions is that not only do they restrict what people can say, print, and disseminate with regards to religions, but they also permit states to take necessary precautions to prevent actions that may result in religious discrimination or intolerance.⁹⁰ Though states certainly should do all they can to curb religious discrimination, states may end up abusing the Defamation Resolutions for their own purposes. Through the use of its blasphemy laws, Pakistan is doing just what the Defamation Resolutions require—using official state-sanctioned means to punish those who say or do something that discriminates against Islam.⁹¹ However, Pakistan's blasphemy laws have been subject to severe criticism by human rights organizations because their application violates other internationally recognized human rights.⁹² So while the United Nations General Assembly and the HRC strive to end the grave defamation of religions that has persisted since September 11, 2001,⁹³ a problem rightfully deserving international attention,

⁸⁷ Khan, *supra* note 8.

⁸⁸ *Id.*

⁸⁹ See G.A. Res. 62/154, *supra* note 5 (protecting Islam and Muslims in particular and limiting free expression rights).

⁹⁰ See Defamation Resolutions, *supra* note 5 (urging states to take resolute action to prohibit the dissemination of racist and xenophobic material and to provide adequate protection against discrimination, intimidation, and coercion resulting from defamation of religion).

⁹¹ See Khan, *supra* note 13, at 218–19 (discussing the use of blasphemy laws to prosecute the Ahmadis).

⁹² Forte, *supra* note 20, at 29, 43 (discussing reports from Amnesty International and the Human Rights Commission of Pakistan).

⁹³ Defamation Resolutions, *supra* note 5.

the United Nations should not achieve this goal by permitting countries like Pakistan to violate other human rights in the name of preventing the defamation of Islam.

A. How the Blasphemy Laws Violate International Human Rights

Religious intolerance in Pakistan runs rampant, and the blasphemy laws facilitate such intolerance.⁹⁴ These laws allow extremist religious organizations to operate legally and target religious minorities.⁹⁵ Though several countries have blasphemy laws on their books, Pakistan's blasphemy laws in particular are more likely to result in the violation of other fundamental rights.⁹⁶ Pakistan's laws lack the intent element that many other blasphemy laws require⁹⁷ and the punishments are harsher than in other countries.⁹⁸ The blasphemy laws in other countries also differ from the ones in Pakistan because, in those countries, the laws are justified on the grounds that they protect individuals from religious violence and other threats to public order.⁹⁹ In Pakistan, however, the laws do not necessarily involve the rights of individuals or the potential violence that might result,¹⁰⁰ but rather merely the actions that insult Islam itself.¹⁰¹ Thus, even if no violence could result, Pakistan's blasphemy laws allow the government to punish minorities for merely preaching their own faith, since such an action can be deemed to be an affront to Islam.¹⁰²

⁹⁴ See HUMAN RIGHTS COMMISSION OF PAKISTAN, STATE OF HUMAN RIGHTS 2004: FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION 112–13 (2004) [hereinafter HRCP: HUMAN RIGHTS] (discussing disparate treatment in voting, police protection, and socioeconomic opportunities as well as problems caused by blasphemy laws).

⁹⁵ See Press Release, Commission on Human Rights, Commission Adopts Resolutions on Combating Defamation of Religions; Right to Development, U.N. Doc. HR/CN/1082 (Apr. 13, 2004) (documenting the abuse of blasphemy laws in Pakistan as stated by Muhammed Younus Sheikh of International Humanist and Ethical Union) [hereinafter Press Release, U.N. Doc. HR/CN/1082].

⁹⁶ See HRW: PERSECUTED MINORITIES, *supra* note 20 (discussing laws in Britain, Finland, France, and Indonesia).

⁹⁷ Siddique & Hayat, *supra* note 52, at 343. Despite the absence of an intent requirement, some courts have attempted to read intent elements into the blasphemy laws but with limited success. *Id.* at 348.

⁹⁸ *Id.* at 354–58.

⁹⁹ *Id.*

¹⁰⁰ These are considerations taken into account in other countries' blasphemy laws. *Id.*

¹⁰¹ HRW: PERSECUTED MINORITIES, *supra* note 20.

¹⁰² U.S. DEP'T OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2007: PAKISTAN

Along these same lines, human rights organizations opposed to the blasphemy laws argue that hate speech differs from indirect incitement,¹⁰³ noting that "advocating" racial hatred is not the same thing as "arousing" racial hatred.¹⁰⁴ The blasphemy laws do not require an element of intent, deliberate, malicious, or otherwise.¹⁰⁵ According to Human Rights Watch, the blasphemy laws not only criminalize speech that is intended to be discriminatory, but also speech where a mere indirect "innuendo" might cause offense, even if no hateful intent is present.¹⁰⁶ Punishing speech that involves no hateful intent violates freedom of expression.¹⁰⁷ Thus, human rights organizations believe the blasphemy laws intrinsically run counter to international human rights.

B. Enforcement of the Blasphemy Laws: Other Violated Rights

In addition to the inherent problems with the blasphemy laws themselves, the actual enforcement of the laws results in the violation of several other rights, including the right to be treated equally under the law, the right to be free from arbitrary arrests, and the right to fair and speedy trials.

First, the Pakistani government does not offer much protection to religious minorities¹⁰⁸ and at times may even appear to condone such discrimination.¹⁰⁹

(2007), <http://www.state.gov/g/drl/rls/irf/2007/90233.htm> [hereinafter U.S. DEP'T OF STATE: RELIGION]. It should be noted that "[m]issionaries (except Ahmadis) operate in the country and can proselytize, as long as there is no preaching against Islam and the missionaries acknowledge they are not Muslim." *Id.*

¹⁰³ Dinah PoKempner, *A Shrinking Realm: Freedom of Expression Since 9/11*, in HUMAN RIGHTS WATCH, WORLD REPORT 63, 69 (2007).

¹⁰⁴ See Hurst Hannum, Remarks, *Speech, Religious Discrimination, and Blasphemy*, 83 AM. SOC'Y INT'L L. PROC. 427, 428 (1989) (asking whether there "[s]hould . . . be a distinction between the prohibition of propaganda that might arouse religious hatred and that which might advocate racial hatred").

¹⁰⁵ Siddique & Hayat, *supra* note 52, at 340.

¹⁰⁶ HRW: PERSECUTED MINORITIES, *supra* note 20.

¹⁰⁷ See PoKempner, *supra* note 103, at 72 (contending that under Article 20 of the ICCPR "a conscious intent to spur hatred" is necessary before the State should prohibit the speech).

¹⁰⁸ See ASIAN HUMAN RIGHTS COMMISSION, PAKISTAN: THE HUMAN RIGHTS SITUATION IN 2006, at 31 (Dec. 21, 2006), available at <http://material.ahrchk.net/hrreport/2006/Pakistan2006.pdf> [hereinafter AHRC] (discussing that religious minorities were not allowed to freely perform their religious rights because the state failed to protect them).

¹⁰⁹ See AI: USE AND ABUSE, *supra* note 23, at 2 ("Instances of violence reported over the last few years against members of religious minorities have been treated with laxity by successive governments; this may have created the impression that the authorities condone such acts of violence.").

This is evidenced by the arbitrary enforcement of the blasphemy laws.¹¹⁰ A judgment of whether someone has committed a discriminatory act against Islam is entirely subjective and privy to the state officials' personal biases.¹¹¹ Individuals arrested for blasphemy are often erroneously charged with the offense, since a mere accusation of blasphemy is sufficient for arrest.¹¹² Because warrants are not required and investigations are not typically conducted, individuals can accuse others of blasphemy for a variety of reasons other than religion, such as economic or professional rivalry, personal grudges, intimidation, or political clashes.¹¹³ Government officials often accept these accusations without any regard to the complainant's motivations.¹¹⁴ As a result, minorities face a much higher risk of being arrested under the blasphemy laws,¹¹⁵ though journalists, lawyers, and even less traditional Muslims may be at risk as well.¹¹⁶

Second, the alleged blasphemer may not receive a fair or speedy trial.¹¹⁷ He may sit in jail for months before even seeing a judge.¹¹⁸ The delays occur because offenses under the blasphemy laws are often non-bailable, many lawyers refuse to defend those charged with blasphemy, and judges hesitate to take up blasphemy cases for fear of their own safety, especially if they are inclined to rule in favor of the alleged blasphemer.¹¹⁹ Lastly, given that the prosecutors, judges, and police officers may have their own personal and religious biases against alleged blasphemers, the accused are unlikely to receive a fair trial that is not inundated with biases.¹²⁰

¹¹⁰ HRW: PERSECUTED MINORITIES, *supra* note 20.

¹¹¹ *Id.* ("[T]here are no provisions in the law to safeguard against an arbitrary or politically biased ruling.").

¹¹² Forte, *supra* note 20, at 58 ("[A] mere complaint . . . results in an arrest without a warrant . . .").

¹¹³ See AI: USE AND ABUSE, *supra* note 23, at 16 (noting that because no warrants are needed local law enforcement must use their discretion which may be clouded by religious or political bias).

¹¹⁴ *Id.*

¹¹⁵ Forte, *supra* note 20, at 63 (quoting the Herald of Karachi as saying "[t]he blasphemy law clearly singles out non-Muslims for persecution").

¹¹⁶ U.S. DEP'T OF STATE: HR, *supra* note 60, sec. 2(c).

¹¹⁷ AI: USE AND ABUSE, *supra* note 23, at 16 ("Amnesty International is . . . gravely concerned that many people charged with blasphemy are denied a fair trial.").

¹¹⁸ See HRCP: Human Rights, *supra* note 94, at 121 (noting judges' reluctance to issue decisions and international delays to avoid threatened violence).

¹¹⁹ U.S. DEP'T OF STATE: RELIGION, *supra* note 102; AI: USE AND ABUSE, *supra* note 23, at 1.

¹²⁰ See AI: USE AND ABUSE, *supra* note 23, at 11 (noting biases of many lawyers and many in the lower judiciary).

Although many people are arrested for blasphemy, very few individuals serve the full sentence required under the laws. While some offenses under the blasphemy laws carry a sentence of either life imprisonment or death, the higher courts acquit most of the alleged offenders.¹²¹ The misuse of the blasphemy laws occurs in the rural areas of the country where the judges are biased and easily influenced.¹²² Higher court judges, however, are aware of these abuses and, therefore, usually set free those people convicted of blasphemy.¹²³ As of 2007, no one has been convicted by the Supreme Court of Pakistan under the blasphemy laws.¹²⁴

However, exoneration by the Supreme Court offers little solace to a person who has spent more than twenty years in prison while awaiting the appeals process,¹²⁵ especially when the fear of deadly violence by inflamed inmates is a stark reality.¹²⁶ Furthermore, given the general climate of religious intolerance and the lack of protection afforded by the government,¹²⁷ the fact that the highest courts usually overturn blasphemy cases does not sufficiently protect minorities from danger. Those accused of or charged with blasphemy often face violence from private citizens.¹²⁸ Even those individuals who are found innocent by the court system often have to go into hiding and seek asylum elsewhere as a result of the many death threats they and their families

¹²¹ Farooq Hassan, *Religious Liberty in Pakistan: Law, Reality, and Perception (A Brief Synopsis)*, 2002 B.Y.U. L. REV. 283, 297 (2002).

¹²² *Id.*

¹²³ *Id.* at 297 (discussing that the accused are typically acquitted by higher courts).

¹²⁴ Aoun Sahi, *Repealed Not Yet*, THE NEWS, June 24, 2007, http://www.jang.com.pk/the_news/jun2007-weekly/nos-24-06-2007/enc.htm#1.

¹²⁵ Each appeal, of which there are three to four, can take six to seven years, meaning that appeals taken all the way to the Supreme Court of Pakistan can be as long as twenty or twenty-five years. AHRC, *supra* note 108, at 4.

¹²⁶ Nirupama Subramanian, Opinion, *A Killing that has Sparked Debate on Blasphemy Laws in Pakistan*, HINDU, May 3, 2008, at 11 (those accused of blasphemy "live in fear of violence against them by other inmates").

¹²⁷ AHRC, *supra* note 108, at 31.

¹²⁸ See HUMAN RIGHTS COMMISSION OF PAKISTAN, HRW ANNUAL SURVEY OF PAKISTAN (2005), http://www.hrcp-web.org/report_HRW.cfm [hereinafter HRCP: SURVEY OF PAKISTAN] (discussing acts of sectarian violence against religious minorities). In fact, the Commission reported in 2004 that since 1980 at least 4,000 people, largely minorities, had died as a result of private violence by extremist groups. They noted that this kind of violence has been increasing over the past several years. *Id.*

receive.¹²⁹ For these reasons, human rights organizations believe that the blasphemy laws violate international human rights.¹³⁰

C. Pakistan's Stance on the Blasphemy Laws and the Weaknesses in Its Position

It is often difficult to allow freedom of expression and to protect people's religious beliefs at the same time.¹³¹ In some countries, it may be argued that the balance must be tipped in favor of protecting these religious feelings.¹³² According to one member of Pakistan's National Assembly, the freedoms of speech and expression never justify offending religious feelings.¹³³ Also, some individuals regard defamation of Muslims as a "heinous crime" that aims to "create a 'hostile environment for Muslims' and 'destabilize[s] Muslim countries.'" ¹³⁴ They feel it gives Muslims across the world a "bad name."¹³⁵

Pakistan offers several arguments for why it can continue to punish people under the blasphemy laws. First, it argues that the freedoms of religion and speech are derogable rights under the Pakistani constitution: Article 19 subjects freedom of expression to reasonable restrictions in the interest of, among others, "public order, decency or morality," and Article 20 states that rights to religion are subject to "law, public order and morality."¹³⁶ Officials can invoke these limitations if they believe that speech or expressive action poses a threat to the government.¹³⁷ Indeed, even the ICCPR provides for

¹²⁹ U.S. DEP'T OF STATE: RELIGION, *supra* note 102.

¹³⁰ See, e.g., HRW: PERSECUTED MINORITIES, *supra* note 20 (noting the sectarian violence and overt discrimination on the basis of religious against Pakistani minorities).

¹³¹ See Hurst Hannum, Remarks, *Speech, Religious Discrimination, and Blasphemy*, 83 AM. SOC'Y INT'L L. PROC. 427, 427 (1989) (discussing conflicts due to conflicts between religious belief and freedom of expression).

¹³² See Ved Nanda, Remarks, *Speech, Religious Discrimination, and Blasphemy*, AM. SOC'Y INT'L L. PROC. 427, 431 (1989) (recommending that "you need to draw the line more towards giving protection to and honoring the religious sensibilities of people" rather than defer to absolute freedom of expression).

¹³³ Raja Aqeel, *National Assembly Condemns Sacrilegious, Blasphemous Caricatures*, BUS. RECORDER (PAK.), Apr. 16, 2008 (noting that the National Assembly told the Netherlands and Denmark that "right to freedom of expression does not give licence to offend members of the religions").

¹³⁴ Fouzia Qureshi, *Terrorism or Freedom of Speech*, THE NATION (PAK.), Mar. 12, 2006.

¹³⁵ Aqeel, *supra* note 133.

¹³⁶ PAK. CONST. of 1973, arts. 19, 20.

¹³⁷ See Mayer, *supra* note 39, at 148 (stating this is the case in much of the "Muslim Middle East").

limitations on the freedom of speech to protect public safety, order, or morals.¹³⁸ Thus, it seems freedom of religion can be limited for certain public emergencies under both the Pakistani constitution and the ICCPR. In a 1993 case, the Pakistani Supreme Court upheld the constitutionality of the blasphemy provisions by declaring the laws necessary to protect public order in Pakistan.¹³⁹

Second, Pakistan argues that Islamic law supersedes international human rights, so that when the two conflict Islamic law has priority.¹⁴⁰ In the Universal Islamic Declaration of Human Rights, the Shari'a explicitly limits the application of human rights.¹⁴¹ Under the Shari'a, non-Muslims have inferior status; they are only granted limited citizenship rights and cannot preach their faith in public.¹⁴² Thus, the legally enacted blasphemy laws that punish non-Muslims for practicing their faith do conform to the Shari'a.¹⁴³ Further, some argue that under Islamic law, the only appropriate punishment for blasphemy is the death penalty, regardless of what international law says the right punishment should be.¹⁴⁴

Third, Pakistanis contend that international calls for it to modify its blasphemy laws violate Pakistan's sovereignty as an independent nation.¹⁴⁵ Pakistan was founded for the purpose of being an Islamic state; Islam forms the foundation of Pakistan's national identity.¹⁴⁶ According to one scholar, departing from Islamization and its laws, such as the blasphemy laws, would rob the Pakistani society of its sense of common purpose.¹⁴⁷ Additionally, democratically elected officials enacted the laws, demonstrating a general

¹³⁸ Arzt, *supra* note 35, at 404.

¹³⁹ Khan, *supra* note 13, at 228.

¹⁴⁰ Moosa, *supra* note 37, at 196 (quoting a former foreign minister of Pakistan).

¹⁴¹ Universal Islamic Declaration of Human Rights, Preamble (Sept. 19, 1981), available at <http://www.alhewar.com/ISLAMDECL.html> ("[B]y the terms of our primeval covenant with God our duties and obligations have priority over our rights . . ."); Carle, *supra* note 38, at 130.

¹⁴² Abdullahi A. An-Na'im, *Religious Minorities Under Islamic Law and the Limits of Cultural Relativism*, 9 HUM. RTS. Q. 1, 10-12 (1987) (discussing the three classes within Islam, Muslims, People of the Book, and unbelievers, and their various rights).

¹⁴³ See *id.* at 12 (explaining that Shari'a law requires the killing of unbelievers on sight); *id.* n.33 (citing chapter nine, verse five of THE HOLY QUR'AN (Abdullah Yusuf Ali trans., Qatar Nat'l Printing Press, n.d.)).

¹⁴⁴ LAU, *supra* note 59, at 194.

¹⁴⁵ Khan, *supra* note 13, at 238.

¹⁴⁶ Martin Lau, *Twenty-Five Years of Hudood Ordinances—A Review*, 64 WASH. & LEE L. REV. 1291, 1299 (2007).

¹⁴⁷ *Id.*

desire for these laws.¹⁴⁸ Also, the laws conform to the constitution and a majority of Pakistanis favor these laws; therefore, the international community should not involve themselves with these internal decisions of Pakistan.¹⁴⁹

On the other hand, these arguments face criticism. First, as to Pakistan's public order argument, restrictions on fundamental rights are warranted only when the situation requires them, and even then the restrictions must be proportionate to legitimate governmental aims.¹⁵⁰ However, respecting religions and religious beliefs has never appeared in the limitations clauses¹⁵¹ of any human rights treaties.¹⁵² Additionally, limitations cannot discriminate on the basis of one's religion.¹⁵³ Pakistan may be justified, though it is unlikely, in arguing that the blasphemy laws are necessary to protect public order or morals since social unrest threatens the stability of the country.¹⁵⁴ Yet, diminishing religious unrest is an insufficient reason to limit these rights to such an extreme extent.¹⁵⁵ In addition, discriminating against non-Muslims and authorizing the death penalty for blasphemy is exceedingly disproportionate to the public order aims of the Pakistani government.¹⁵⁶

Second, as to Pakistan's argument that the Shari'a supercedes international law, scholars have argued that the Shari'a may not absolutely require non-Muslims to have an inferior status to Muslims.¹⁵⁷ Islamic history and traditions do not support this harsh interpretation of the Shari'a.¹⁵⁸ As discussed earlier,

¹⁴⁸ Khan, *supra* note 13, at 238.

¹⁴⁹ See *id.* (noting that the laws are "wholly constitutional" and that a majority of Pakistanis seem to favor Shari'a as a legal system).

¹⁵⁰ Linda J. Berberian, Comment, *Pakistan Ordinance XX of 1984: International Implications of Human Rights*, 9 LOY. L.A. INT'L & COMP. L. REV. 661, 677 (1987).

¹⁵¹ Limitation clauses restrict rights when such restrictions are necessary for reasons of national security; protection of fundamental rights; or public safety, order, health, or morals. *Id.* at 673-74.

¹⁵² John Cerone, *Inappropriate Renderings: The Danger of Reductionist Resolutions*, 33 BROOK. J. INT'L L. 357, 375 (2008).

¹⁵³ Berberian, *supra* note 150, at 674-75; see also ICCPR, *supra* note 12, art. 4.

¹⁵⁴ Berberian, *supra* note 150, at 687; see *id.* at 680-83 (describing the threat to public morals or public order since April 1984).

¹⁵⁵ *Id.* at 681.

¹⁵⁶ See Donna E. Arzt, *Religious Human Rights in Muslim States of the Middle East and North Africa*, 10 EMORY INT'L L. REV. 139, 150 (1996) (noting that international law never authorizes the death penalty for blasphemy).

¹⁵⁷ An-Na'im, *supra* note 142, at 18. See Moosa, *supra* note 37, at 203 (arguing that despite early practices of treating non-Muslims differently, "there is no fundamental imperative in modern Islamic law and ethics to perpetuate such enforcement").

¹⁵⁸ See Mahmud, *supra* note 13, at 61 (contending the founders of Pakistan created an

the founder of Pakistan, even while forming an Islamic state, envisioned a country that would guarantee freedom of religion for all minorities.¹⁵⁹ The current interpretation of the constitution conflicts with this vision.¹⁶⁰ In 1978, a Pakistani judge, after examining a wide range of primary and secondary Islamic sources, stated, "I have not come across a single instance in the Islamic history when the non-Muslim subjects . . . have been subjected to religious intolerance or their freedom to practise their religions has ever been curtailed or interfered with."¹⁶¹

Additionally, scholars argue that despite the popular view, Islamic law is not absolute and unchangeable.¹⁶² While the Quran provides the unchangeable final word of God, the social and political aspects of the Shari'a are open to reinterpretation in order to respond to new situations; this rationale is based on the idea that Shari'a law developed in a particular historical context, but that context has been modified as social values evolve and continue to evolve today.¹⁶³ Therefore, given this history and the views on the flexibility of the Shari'a, it seems possible to interpret the Shari'a as not requiring such harsh anti-minority laws.¹⁶⁴ At least one scholar argues that Muslims must seek ways to reconcile the Shari'a with human rights.¹⁶⁵

Third, simply because Pakistan democratically and lawfully enacted the blasphemy laws does not give it the right to treat individuals contrary to the current universal standards for human rights.¹⁶⁶ The state still has an obligation to honor commitments to international human rights norms.¹⁶⁷ Otherwise the state could democratically enact laws that allow torture and genocide, and justify them under the will of the religious majority.¹⁶⁸ Thus,

"implied covenant between religious minorities and the leadership of the Pakistan movement," which pledges that "the State will have a republican form of government with a sovereign legislature unencumbered by medieval formulations of Islamic law or Shari'a . . .").

¹⁵⁹ Forte, *supra* note 20, at 27.

¹⁶⁰ See Mahmud, *supra* note 13, at 62 (explaining that the judicial branch has abdicated its duty to protect fundamental rights).

¹⁶¹ *Id.* at 74 (quoting Mobashir v. Bokhari, 1978 P.L.D. (Lah.) 113, 185 (Pak.)).

¹⁶² Moosa, *supra* note 37, at 194.

¹⁶³ See An-Na'im, *supra* note 142, at 16-17 (arguing that some aspects of Shari'a are open to reinterpretation).

¹⁶⁴ *Id.* at 17.

¹⁶⁵ *Id.* at 18.

¹⁶⁶ See *id.* at 17 (arguing that "Muslims are not free to treat their religious minorities as they please unless and until the Muslim cultural norms are consistent with the relevant universal standards").

¹⁶⁷ Khan, *supra* note 13, at 236.

¹⁶⁸ See An-Na'im, *supra* note 142, at 14 (noting that the belief that religion allows for the

despite Pakistan's arguments favoring the blasphemy laws, the laws are not absolutely necessary for either the maintenance of public order or adherence to the Shari'a. Ultimately, the misuse and abuse of these laws results in severe violations of people's rights.

Pakistan's blasphemy laws, though designed to curb religious discrimination, result in countless human rights violations. They deny freedom of expression, they protect the religion rather than the individual, and they are arbitrarily enforced at the expense of minorities in Pakistan. The Defamation Resolutions, though striving to correct the defamation directed at Muslims and may actually achieve this goal, allow countries like Pakistan to continue to abuse human rights through a system of blasphemy laws.

IV. ARGUMENTS FOR AND AGAINST THE DEFAMATION RESOLUTIONS

Despite the international criticism of Pakistan's blasphemy laws by human rights organizations, the United Nation human rights bodies as well as other countries have overlooked many of the problems resulting from these laws. For example, though the United States encourages modification of the blasphemy laws,¹⁶⁹ it has arguably muted its criticism of Pakistan's human rights issues since Pakistan became a key ally in fighting the War on Terror.¹⁷⁰ Since the start of this joint effort to combat terrorism, the United States has rarely concerned itself with Pakistan's human rights violations, nor has it pressed for any human rights improvements.¹⁷¹

Similarly, neither the Defamation Resolutions themselves nor any of the United Nations reports on the Defamation Resolutions mention anything about the effect these Defamation Resolutions might have on blasphemy laws like those found in Pakistan. However, much of the criticism surrounding the Defamation Resolutions bears a strong resemblance to the criticism surrounding the blasphemy laws discussed in Part II.

abuse of minorities is not justifiable even if the government recognizes the religion).

¹⁶⁹ U.S. DEP'T OF STATE: RELIGION, *supra* note 102.

¹⁷⁰ HUMAN RIGHTS WATCH, WORLD REPORT 2007, at 307 (2007), available at <http://www.hrw.org/legacy/wr2k7/> [hereinafter HRW: REPORT 2007]; Khan, *supra* note 13, at 217.

¹⁷¹ HRW: REPORT 2007, *supra* note 170, at 307.

A. Proponents of the Defamation Resolutions

Though Western countries like the United States, Canada, and those in the European Union oppose the Defamation Resolutions,¹⁷² the Resolutions have gained widespread support and pass with a clear majority each time.¹⁷³ The countries that favor the Defamation Resolutions are very concerned with the growing intolerance of religious differences.¹⁷⁴

In two reports submitted by the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, the Special Rapporteur noted with concern the increasing trend of the defamation of religion.¹⁷⁵ The Rapporteur noted that in the United States, negative images of Muslims are sixteen times more prevalent than positive images, and approximately one in four Americans believe that the Muslim religion teaches violence and hatred.¹⁷⁶ He also stated that a constant sense of cultural inferiority can lead to exclusion and then to extremism, pointing to this as the reason why some young Muslims feel the need to join extremist religious groups.¹⁷⁷ Finally, due to the grave effects of the defamation of religion, the Rapporteur urged states to “express and demonstrate a firm political will and commitment to combating the rise of racial and religious hatred” and encouraged the “promotion of the dialogue between cultures and religions.”¹⁷⁸

Pakistan, as noted earlier, was the country that initiated the Defamation Resolutions in 1997.¹⁷⁹ The reasons for the Defamation Resolutions included

¹⁷² See Khan, *supra* note 8 (discussing that the Western viewpoint perceives a “fundamental rift between liberal and non-liberal worlds,” but cautions this view is undermined by India and South Africa).

¹⁷³ *Id.*

¹⁷⁴ See, e.g., Press Release, U.N. Gen. Assembly, Rise of Racism, Intolerance Is Serious Threat to Democratic Process, Third Committee Told U.N. Doc. GA/SHC/3867 (Nov. 6, 2006) (noting the comments of the South African representative to the U.N.).

¹⁷⁵ Human Rights Council, *Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance: Follow-Up to and Implementation of the Durban Declaration and Programme of Action*, U.N. Doc. A/HRC/6/6 (Aug. 21, 2007) (*prepared by Doudou Diène*) [hereinafter U.N. Doc. A/HRC/6/6]; U.N. Econ. & Soc. Council, Comm. on Human Rights, *Report: Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination*, U.N. Doc. E/CN.4/2005/18/Add.4 (Dec. 13, 2004) (*prepared by Doudou Diène*) [hereinafter U.N. Doc. E/CN.4/2005/18/Add.4].

¹⁷⁶ U.N. Doc. E/CN.4/2005/18/Add.4, *supra* note 175, ¶ 24.

¹⁷⁷ U.N. Doc. A/HRC/6/6, *supra* note 175, ¶ 17 (noting that such extremist groups give the marginalized a “reaffirmed identity and reason for pride”).

¹⁷⁸ *Id.* ¶¶ 74–75.

¹⁷⁹ See *supra* text accompanying note 69.

correcting the “alarming trend of religious intolerance in many regions of the world”;¹⁸⁰ expressing the need for “dialogue and understanding among civilizations, cultures and religions to prevent provocative incidents”;¹⁸¹ and countering the “negative propaganda against Islam.”¹⁸² In addition, Pakistan wanted to ensure that the Defamation Resolutions did not get watered down; it wanted specific references to the defamation of Islam, not just all religions in general.¹⁸³

Many other countries agreed with the arguments put forth by the Special Rapporteur and the representatives of Pakistan. The representative of Sudan expressed his concern about the mocking of the Prophet Muhammad in a Danish cartoon¹⁸⁴ and stated that, in order to maintain international peace, security, and stability, some mechanism must be in place to end the defamation of religions.¹⁸⁵ The Cuban representative stated that “[n]o religion should be defamed, but Islam required special treatment.”¹⁸⁶ Similarly, the Azerbaijan representative noted that “any statement defaming a religion was equal to a racist statement . . . and therefore, had nothing to do with the enjoyment of the right to freedom of expression.”¹⁸⁷ Finally, representatives from Malaysia, Senegal, Indonesia, and Turkey, among many others, believed that creating a dialogue to address this issue was essential.¹⁸⁸ As these statements illustrate,

¹⁸⁰ See U.N. GAOR, 61st Sess., 48th plen. mtg. at 2, U.N. Doc. A/61/PV.48 (Nov. 3, 2006) [hereinafter U.N. Doc. A/61/PV.48] (discussing the special Rapporteur’s concerns).

¹⁸¹ See *id.* (noting the president of the sixtieth session’s expression of a strong commitment to this issue).

¹⁸² Littman, *supra* note 61 (discussing Pakistan’s purposes for the Resolution).

¹⁸³ Press Release, U.N. Doc. HR/CN/99/64, *supra* note 72 (“Pakistan . . . believed the draft resolution should draw specific attention to specific forms of . . . discrimination suffered by Islam.”).

¹⁸⁴ In 2005, a Danish newspaper published cartoons depicting the Islam Prophet Mohammad in a mocking manner. Thousands of protests and riots erupted throughout the Middle East as a result of this alleged defamation. See, e.g., Carlotta Gaul & Craig S. Smith, *Muslim Protests Against Cartoons Spread*, N.Y. TIMES, Feb. 7, 2006, at A8.

¹⁸⁵ U.N. Doc. A/61/PV.48, *supra* note 180, at 5.

¹⁸⁶ Press Release, Commission on Human Rights, Commission Adopts Resolutions on Combating Defamation of Religions and on Right to Development (Apr. 12, 2005), available at [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/34155998A014B799C12570F1004B618C?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/34155998A014B799C12570F1004B618C?OpenDocument) [hereinafter Press Release, Apr. 12, 2005].

¹⁸⁷ Press Release, Human Rights Council, Human Rights Council Discusses Reports on Health, Right to Food and Human Rights Defenders, U.N. Doc. HR/HRC/06/44, 6 (Sept. 22, 2006) [hereinafter Press Release, U.N. Doc. HR/HRC/06/44].

¹⁸⁸ See Press Release, Human Rights Council, Human Rights Council Concludes Debate on Racism, Durban Declaration and Programme of Action, Defamation of Religions, U.N. Doc. HR/HRC/07/067 (Sept. 25, 2007), available at [http://www.unog.ch/80256EDD006B9C2E/\(http](http://www.unog.ch/80256EDD006B9C2E/(http)

many countries find the defamation of religion, and often the defamation of Islam in particular, to be a problem of international concern.

B. Opponents of the Defamation Resolutions

The countries that oppose the Defamation Resolutions do not reject religious tolerance or respect for cultural differences, nor do they disagree with all of the arguments set forth by those favoring the Defamation Resolutions.¹⁸⁹ For example, the representative of the United States explained that the United States was founded on freedom of religion and that it supports many of the ideas in the Defamation Resolutions.¹⁹⁰ However, opposing countries have expressed concern about the scope of the Defamation Resolutions and the effects they have on other fundamental rights.¹⁹¹ Many countries criticize the Defamation Resolutions for the effect they have on freedom of expression. Some argue that the only way to maintain a dialogue about combating religious intolerance is to have open discussions that include accepting criticisms and analysis of different religions.¹⁹² The Defamation Resolutions permit states to suppress the honest inquiry into religion and the expression of legitimate concerns about the practice of Islam for the sole reason that this information might be discriminatory.¹⁹³ Accordingly, statements of this nature differ from statements that actually promote violence, with the former protected under

NewsByYear_en)/C3D30BE098B616A8C1257361003CB492?OpenDocument (listing individual statements from various representatives conveying a need for inclusiveness and open communication).

¹⁸⁹ See, e.g., Press Release, U.N. Doc. HR/HRC/06/44, *supra* note 187 (noting the U.S. representative's concern over incitement to racial and religious hatred).

¹⁹⁰ Press Release, U.N. Gen. Assembly, Third Comm. Approves Draft Resolution Urging Full Respect for All Human Rights by Democratic People's Republic of Korea, U.N. Doc. GA/SHC/3874 (Nov. 17, 2006) [hereinafter Press Release, U.N. Doc. GA/SHC/3874].

¹⁹¹ *Id.* See Sally Bolton, *Third Committee: Social, Humanitarian and Cultural – Human Rights Dominate the Development Agenda*, 42 U.N. CHRON. 14 (Dec. 1, 2005) (explaining that “many delegations expressed hope that future texts on such an important issue would be more inclusive and adopted by consensus”).

¹⁹² Cf. Press Release, U.N. Doc. GA/SHC/3874, *supra* note 190 (noting that the representative from Costa Rica hoped for a “broad and open dialogue”).

¹⁹³ IHEU: Submission, *supra* note 27.

international law while the latter is not.¹⁹⁴ Yet the Defamation Resolutions prohibit both.

On a similar note, some argue that the lack of a definition for “defamation” in the Defamation Resolutions will encourage abuse.¹⁹⁵ States could use the Defamation Resolutions to justify punishing anyone who simply criticizes religious practices.¹⁹⁶ More dangerously, states that officially sponsor a religion, like Pakistan, could use the Defamation Resolutions to justify the punishment of those who criticize the government.¹⁹⁷ For example, the IHEU was accused of attacking Islam when it merely raised the issue of how alleged apostates were treated in Islamic countries.¹⁹⁸ These broad definitions allow for abuse of the Defamation Resolutions.

Furthermore, the opposing states expressed concern that the Defamation Resolutions address religion, an issue that had never before been the subject of international protection.¹⁹⁹ Opponents argue that the defamation of religion is not *always* a recognized human right.²⁰⁰ International human rights law protects individuals from discrimination but does not protect the religion itself.²⁰¹ So in order for there to be a human rights violation, the action must incite discrimination or interfere with an individual’s religious freedom.²⁰² An article in the Human Rights Watch 2007 World Report explained that religious systems should not be shielded from criticism when political beliefs and cultural opinions are not.²⁰³ The article further asserts that states with

¹⁹⁴ See Bolton, *supra* note 191 (explaining that “[s]everal delegations expressed concern that the resolution threatened the freedom of speech and expression by failing to distinguish between actions and statements that were protected and those that promoted violence, which should not be protected”).

¹⁹⁵ See IHEU: UN HRC, *supra* note 79 (contending that because the Resolutions do not define defamation, it serves as a “catch-all term intended to silence any criticism of religious practice or of laws on religion - however pernicious”).

¹⁹⁶ *Id.*

¹⁹⁷ Khan, *supra* note 8, at 5 (“An overly broad interpretation of defamation would allow states to own a religion and persecute even their own citizens who challenge any aspect of this ownership.”).

¹⁹⁸ *Id.*

¹⁹⁹ See Press Release, U.N. Doc. GA/SHC/3874, *supra* note 190 (“[I]nternational human rights law protected individuals in the exercise of their freedom of religion, and not religions as such.”).

²⁰⁰ See Cerone, *supra* note 152, at 374–75 (arguing that religious defamation is not itself a human rights issue).

²⁰¹ See *supra* note 199 and accompanying text.

²⁰² Cerone, *supra* note 152, at 374.

²⁰³ PoKempner, *supra* note 103, at 72.

democratic values should not offer such selective protection of speech.²⁰⁴ Canada noted that in only protecting the religion itself, the Defamation Resolutions do not sufficiently protect religious minorities.²⁰⁵ Similarly, the IHEU's main representative stated, "lack of respect for a belief should not be confused with hatred of the believer," and "[i]t is the believer that merits protection, not the belief."²⁰⁶

Finally, opponents believe that the Defamation Resolutions both over-emphasize Islam and completely under-emphasize other religions.²⁰⁷ A representative from the Dominican Republic stated that many other religions were subject to defamation, and that it would not sign onto the Defamation Resolutions unless they became more balanced.²⁰⁸ Similarly, India and Honduras abstained because the Defamation Resolutions did not address other religions.²⁰⁹ The UNCHR and the present HRC continuously fail to address these problems in the Defamation Resolutions, even though other instances of religious discrimination are known to occur around the world.²¹⁰ In fact, supporters of the Defamation Resolutions specifically blocked efforts to extend protection to other specifically identified religions.²¹¹

While the Defamation Resolutions have many proponents throughout the world who claim they are striving to create a world in which no people are discriminated against for their religion, the Defamation Resolutions also face criticism. The opponents of the Defamation Resolutions certainly do not denounce religious tolerance, but would like to see a more balanced resolution that does not put the defamation of religion on a higher plane than other fundamental rights, encourage abuse, or overemphasize Islam. A major criticism of the Defamation Resolutions is that they may lend continued support to Pakistan's harsh blasphemy laws.

²⁰⁴ *Id.*

²⁰⁵ Press Release, U.N. Doc. GA/SHC/3874, *supra* note 190.

²⁰⁶ IHEU: UN HRC, *supra* note 79.

²⁰⁷ See, e.g., Press Release, Apr. 12, 2005, *supra* note 186 (listing the comments from representatives who voted against the Resolution that expressed either a desire for more religions to be mentioned or no particular religion to be mentioned).

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ See Press Release, U.N. Doc. HR/CN/1082, *supra* note 95 (stating the representative from Ireland's opposition to the Defamation Resolution was based on the draft's ample evidence that religious discrimination was not limited to any one belief or religion).

²¹¹ Cerone, *supra* note 152, at 374.

V. DO THE DEFAMATION RESOLUTIONS SUPPORT PAKISTAN'S BLASPHEMY LAWS?

A. The Defamation Resolutions Extend the Blasphemy Laws to the International Arena

Arguments made in opposition to Defamation Resolutions are similar to those made urging the repeal of Pakistan's blasphemy laws. Opponents of the blasphemy laws and the Defamation Resolutions argue that both of these laws stifle freedom of expression, allow states to punish people for criticism that does not incite violence, and may be abused by states because the terms are so broad.²¹²

Human Rights Watch argues that the Defamation Resolutions serve as an international endorsement of the blasphemy laws,²¹³ which may give some justification to the violation of essential human rights, such as freedom of religion and freedom of speech. As the IHEU stated, "[t]he current attempts to 'combat defamation of religions' at the [United Nations] are in fact attempts to apply internationally, and in a different form, the blasphemy laws that are in force in many of the countries."²¹⁴ Arguably, the United Nations is encouraging countries to pass laws, like the blasphemy laws, which make the criticism of Islam a crime and legitimize criminal prosecution for those that merely insult religious feelings.²¹⁵ For example, the Special Rapporteur on Contemporary Forms of Racism urged states to punish Islamophobic acts, writings, and statements by enacting the necessary domestic legislation and by taking whatever measures necessary to avoid strengthening Islamophobia.²¹⁶ Pakistan is acting exactly the way the Special Rapporteur has urged by strictly adhering to its blasphemy laws. Thus, it becomes "difficult to distinguish the Resolution from the[se] . . . abusive laws."²¹⁷

²¹² See *supra* text accompanying notes 189–211.

²¹³ See PoKempner, *supra* note 103, at 72; Grinberg, *supra* note 1, at 217 (arguing that the Resolution supports restrictions on speech by "equating expressions that 'negatively project[] Islam' with defamation of religion").

²¹⁴ IHEU: Submission, *supra* note 27.

²¹⁵ See Tim Rutten, *Regarding Media: Where is the West's Outcry?*, L.A. TIMES, June 23, 2007, at E1 (quoting Flemming Rose, culture editor of the Danish newspaper at the heart of the caricatures of the Prophet Muhammed, as saying the Defamation Resolutions condone state punishment of speech that insults religion).

²¹⁶ U.N. Doc. E/CN.4/2005/18/Add.4, *supra* note 175, ¶ 32.

²¹⁷ Grinberg, *supra* note 1, at 215.

The IHEU further stated that the Defamation Resolutions shield Muslim countries from outside scrutiny of their discrimination against religious minorities and that "states will now have the added weapon of these [United Nations] resolutions to further limit these [freedoms of religion and conscience]." ²¹⁸ Pakistan, for example, uses the Defamation Resolutions to justify its discrimination against non-Muslims and the suppression of religious and political dissent. ²¹⁹

The IHEU also argues that the states that do not adhere to international human rights should not be able to use the Defamation Resolutions as a shield; these states, like Pakistan, should not be able to seek protection for their own freedom of religion if they do not grant this right to religious minorities living within their borders. ²²⁰ Yet Pakistan, who ardently advocates for the Defamation Resolutions each year, demanding better treatment of Muslims, has been accused of teaching religious intolerance and the hatred of minorities in its own schools. ²²¹

In addressing concerns about the blasphemy laws, the HRC representative from Pakistan merely stated that the Constitution of Pakistan grants equal rights to followers of all religions and that minorities are adequately represented in the government. ²²² He further explained that the blasphemy laws are similar to the ones found in many other countries, and while sometimes abused, they have never resulted in the application of the death penalty. ²²³ However, as discussed above, the government of Pakistan does not sufficiently protect the rights of minorities in actuality, despite what the constitution guarantees. These statements do nothing but deny the legitimate concerns about the blasphemy laws and do not consider how the Resolutions may result in more human rights violations.

B. The Defamation Resolutions Fail to Consider the Blasphemy Laws

Despite the concerns expressed by international human rights organizations, the United Nations General Assembly and the HRC have had very little

²¹⁸ IHEU: Submission, *supra* note 27.

²¹⁹ See Grinberg, *supra* note 1, at 210–11 (discussing various actions restricting political and religious expression).

²²⁰ IHEU: Submission, *supra* note 27.

²²¹ See Press Release, U.N. Doc. HR/CN/1082, *supra* note 95 (summarizing comments by Shaheen Schbai, of International Institute for Peace).

²²² Press Release, Apr. 12, 2005, *supra* note 186.

²²³ *Id.*

discussion on how the Defamation Resolutions may actually increase the human rights violations and exacerbate other negative effects stemming from the blasphemy laws.

In 1999, the same year the UNCHR passed the first Defamation Resolution, the Special Rapporteur for the UNCHR warned that the efforts to combat the defamation of religion “may be manipulated for purposes contrary to human rights.”²²⁴ He stressed that efforts to combat religious defamation should not be used to prohibit religious criticism.²²⁵ However, despite these warnings by the Special Rapporteur, neither the UNCHR nor the HRC have addressed these concerns in the Defamation Resolutions.²²⁶ In addition, the Special Rapporteur on Contemporary Forms of Racism, though encouraging efforts to prevent Islamophobia, opposed the use of Islam to justify violence and explained that Islam must be open to critical commentary in order to properly respond to prejudices and stereotypes.²²⁷ Yet, again, the human rights bodies did not address these concerns in the Defamation Resolutions.

Furthermore, opponents of the Defamation Resolutions proposed changes to the resolutions, such as adding language that denounced violence and the suppression of legitimate opinions.²²⁸ However, none of the Defamation Resolutions addressed any of these proposed changes. Some scholars argue the only reason the Defamation Resolutions continue to pass without any mention of these warnings or proposals is because the OIC has a controlling interest in the HRC,²²⁹ giving these countries (many of whom are human rights violators themselves) “an exceptional status at the United Nations that has no legal basis and no precedent.”²³⁰

Thus, although the Defamation Resolutions do not actually address any concerns about the blasphemy laws, many opponents argue that the Defamation Resolutions give international justification to the continued use of the blasphemy laws.²³¹ They allow countries like Pakistan to continue punishing religious minorities for merely offending religious feelings. Arguably, rather than promoting religious tolerance, the Defamation

²²⁴ U.N. General Assembly, *Elimination of All Forms of Religious Intolerance*, ¶ 118 U.N. Doc. A/54/386 (Sept. 23, 1999) (prepared by Abdelfattah Amor).

²²⁵ *Id.*

²²⁶ Defamation Resolutions, *supra* note 5.

²²⁷ U.N. Doc. E/CN.4/2005/18/Add.4, *supra* note 175, ¶ 34.

²²⁸ Grinberg, *supra* note 1, at 220–21.

²²⁹ See *supra* text accompanying notes 81–83.

²³⁰ Littman, *supra* note 61.

²³¹ See *supra* text accompanying notes 218–21.

Resolutions do just the opposite. The IHEU argues that they are "unnecessary, flawed, and morally wrong" and should not continue being passed without any modification to address these concerns.²³²

C. Current Religious Situation in Pakistan

In order to determine whether the Defamation Resolutions actually lend support to Pakistan's blasphemy laws, one must evaluate the current situation in Pakistan and ask whether, since the passage of the Defamation Resolutions, the religious situation in Pakistan has improved. According to Pakistan's National Assembly member M.P. Bhandara, the situation for religious minorities has improved since the beginning of President Musharraf's regime in 1999.²³³ For example, the government allocated land to the Hindu community for a funeral site,²³⁴ restored a Hindu temple, and President Musharraf visited a Hindu temple, the first time a ruler of Pakistan had ever done so.²³⁵ Additionally, Pakistan recently ratified the International Covenant on Economic, Social and Cultural Rights and signed both the ICCPR and the United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment,²³⁶ which shows it is taking positive steps to adhere to international human rights.

However, though the Pakistani government has taken some positive steps to improve the treatment of religious minorities,²³⁷ in the past several years, the number of blasphemy cases and the abuse of these laws has continued to increase.²³⁸ Currently, the blasphemy laws pose a real threat to the safety of

²³² IHEU: Submission, *supra* note 27.

²³³ Nirupama Subramanian, Editorial, *Towards Enlightened Moderation*, HINDU, Feb. 23, 2007, at 10.

²³⁴ *Human Rights Violation Destabilised World Peace*, FRONTIER STAR (ASIANET-PAKISTAN), Dec. 13, 2006.

²³⁵ Subramanian, *supra* note 233.

²³⁶ *Pakistan Ratifies Key UN Human Rights Treaty*, AMNESTY INT'L, Apr. 18, 2008, <http://www.amnesty.org/en/news-and-updates/good-news/pakistan-ratifies-key-un-human-rights-treaty-20080418>.

²³⁷ U.S. DEP'T OF STATE: RELIGION, *supra* note 102.

²³⁸ See HRW: REPORT 2007, *supra* note 170, at 302 (noting an increase in blasphemy charges in 2006); HRCP: SURVEY OF PAKISTAN, *supra* note 128 (noting a steep increase in sectarian violence in the five years preceding 2004); Paul Anderson, *Death Penalty in Blasphemy Case*, BBC NEWS, Nov. 12, 2003, available at http://news.bbc.co.uk/2/hi/south_asia/3265127.stm (noting an increase in cases in 2002); *Pakistan's HRC Deplores its Poor Record in Education, Health*, HINDUSTAN TIMES, May 11, 2005 (noting the rise of sectarian violence and 600 reported deaths in connection with blasphemy laws); Sahi, *supra* note 124 (between 1947 and 1986 there

religious minorities.²³⁹ Sectarian violence and attacks on minorities also increased in these years.²⁴⁰ Additionally, the government continues to frequently misuse the laws to punish minorities.²⁴¹ In 2006, the Asian Human Rights Commission stated that, in addition to Islamic extremists, the Pakistani government itself has prevented religious minorities from freely practicing their religion.²⁴² Because of the lack of protection offered by the government, many minorities have been forced to leave their homes in Pakistan.²⁴³ In 2007, the United States Department of State stated that the Pakistani government failed to prevent acts of violence, religious intolerance, and intimidation against minorities,²⁴⁴ which often encourages people to take the law into their own hands.²⁴⁵ Religious extremists have attended court cases involving violations of blasphemy laws and threatened violence if the alleged blasphemer was acquitted; they have also threatened to kill those accused of blasphemy or those, like judges or lawyers, who stood in the way of convictions.²⁴⁶

Reports from the United States Department of State and the Asian Human Rights Commission describe numerous instances of how Pakistan abused the blasphemy laws during 2006 and 2007.²⁴⁷ These reports listed multiple examples of unfounded accusations against religious minorities, mob attacks, innocent people accused of blasphemy, refusals by police to stop attacks on minorities, and official misuse of blasphemy laws to jail political opponents and torture those in custody.²⁴⁸

were only six blasphemy cases, but since 1986 there have been approximately 400 cases).

²³⁹ See Subramanian, *supra* note 233 (identifying the blasphemy laws as a source of insecurity).

²⁴⁰ HRCP: SURVEY OF PAKISTAN, *supra* note 128.

²⁴¹ U.S. DEP'T OF STATE: RELIGION, *supra* note 102.

²⁴² AHRC, *supra* note 108, at 31.

²⁴³ *Id.* (discussing how Christians have had to leave their homes in various cities).

²⁴⁴ U.S. DEP'T OF STATE: RELIGION, *supra* note 102 ("[T]he Government's failure to take action against societal forces hostile to those who practice a different faith fostered religious intolerance, acts of violence, and intimidation.").

²⁴⁵ Subramanian, *supra* note 126.

²⁴⁶ See U.S. DEP'T OF STATE: RELIGION, *supra* note 102 (discussing how judges continue trials indefinitely to avoid confrontation or violence and how one lawyer received threats for several months); see also U.S. DEP'T OF STATE: HR, *supra* note 60 ("Trial courts were reluctant to release on bail or acquit blasphemy defendants for fear of violence from religious extremist groups.").

²⁴⁷ See, e.g., U.S. DEP'T OF STATE: RELIGION, *supra* note 102; AHRC, *supra* note 108, at 31–38.

²⁴⁸ See, e.g., U.S. DEP'T OF STATE: RELIGION, *supra* note 102; AHRC, *supra* note 108, at 31–38.

In one particularly atrocious situation in 2005, a Christian man, Younis Masih, complained about loud music coming from a late night gathering of Muslims because it disturbed the mourning of his nephew.²⁴⁹ Some of the Muslims at the gathering became angry after Masih allegedly made derogatory remarks about the Prophet; he was later charged with blasphemy.²⁵⁰ The next day local Muslims looted several Christian homes.²⁵¹ In 2006, Amnesty International, who declared Masih a prisoner of conscience,²⁵² expressed concerns that Masih would be killed by other detainees or by the prison staff at the jail where he was being held.²⁵³ The group felt that Masih's lawyer was also in grave danger if he continued to represent Masih; he had already been physically accosted and had received anonymous death threats.²⁵⁴ On May 30, 2007, Masih was sentenced to death by the Lahore district court; this case is currently on appeal.²⁵⁵

More recently, on April 8, 2008, a Hindu man named Jagdeesh Kumar was lynched by his co-workers for allegedly making blasphemous comments about the Prophet; however, some believe that the incident was actually a result of a personal dispute and that blasphemy was not the real motive.²⁵⁶ After an initial dispute was resolved by a supervisor, Kumar's co-workers accused him of blasphemy.²⁵⁷ Despite an intervention by security guards and police, a mob collected at a guard room in Kumar's factory and he was subsequently lynched.²⁵⁸ One analyst links this incident directly to the blasphemy laws, stating that the conduct can be explained by the "vague complexity of the law which leaves every individual free to view the 'imputation, innuendo or insinuation, directly or indirectly' in the light of his own conviction"²⁵⁹ Gruesome situations like the above examples persist in Pakistan, illustrating that discrimination of religious minorities is still a grave problem.

²⁴⁹ Felice D. Gaer & Michael Cromartie, Op-Ed., *Eye on Pakistan: Disturbing Human Rights Record*, WASH. TIMES, June 21, 2007, at A17.

²⁵⁰ *Id.*

²⁵¹ Amnesty Int'l, *Death Threats/Fear for Safety/Possible Death Penalty/Prisoner of Conscience*, AI Index ASA 33/003/2006, Feb. 3, 2006.

²⁵² See *id.* ("Amnesty International considers people imprisoned under blasphemy laws for exercising their right to freedom of opinion and expression to be prisoners of conscience.").

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ U.S. DEP'T OF STATE: RELIGION, *supra* note 102.

²⁵⁶ Subramanian, *supra* note 126.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

Under his “Enlightened Moderation” strategy,²⁶⁰ President Musharraf has tried to curb religious extremism and produce a country of religious tolerance.²⁶¹ In 2000, he moved to amend the blasphemy laws, wanting to modify some procedural aspects of the laws to make them less abusive.²⁶² But when Islamic extremists went to the streets in protest and vowed to defend Islamic laws, Musharraf quickly withdrew the amendment.²⁶³ In 2004, Pakistan amended the law, allowing only senior police officials to bring indictments.²⁶⁴ The law, however, did not have much effect on lessening the abuses of the blasphemy laws, as police officers, because of societal pressure, would register the cases themselves without an investigation.²⁶⁵ Since then, Musharraf has not done anything to amend or repeal the blasphemy laws since they are so widely supported.²⁶⁶

In Pakistan, the blasphemy laws remain very popular.²⁶⁷ The laws protect the Pakistanis’ Islamic identity, their reverence for the Quran, and their devotion to the Prophet.²⁶⁸ Many Pakistanis feel there should be no compromise regarding the treatment of the Prophet.²⁶⁹ In 2007, a National Assembly member proposed a new amendment to the blasphemy laws, in which he sought to curb the abusive provisions of the laws.²⁷⁰ However, the National Assembly unanimously rejected the proposal.²⁷¹ The Federal

²⁶⁰ This strategy involves the rejection of terrorism and extremism in order to fully concentrate on socioeconomic development. It also calls for international cooperation and assistance. The strategy is not intended to digress from traditional Islamic teachings, but to bring about “emancipation” for Muslims. PERVEZ MUSHARRAF, *IN THE LINE OF FIRE* 297–99 (2006).

²⁶¹ See *id.* at 281 (listing efforts to limit the influences of extremists).

²⁶² ZAHID HUSSAIN, *FRONTLINE PAKISTAN* 8 (2007).

²⁶³ *Id.*

²⁶⁴ Gaer & Cromartie, *supra* note 249.

²⁶⁵ Sahi, *supra* note 124.

²⁶⁶ David Pinault, *Losers’ Vengeance*, *AMERICA*, Apr. 10, 2006, at 8.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ See *Opp, Gov’t Snub Bid to Amend Blasphemy Law*, *THE NATION* (Pak.), May 8, 2007 (listing the statements of Pakistani politicians when rejecting an amendment of the blasphemy laws).

²⁷⁰ See *Amendment in Blasphemy (Criminal Laws) Bill 2007 Rejected Unanimously*, *BALUCHISTAN TIMES*, May 8, 2007 (the parliamentary member who moved for the amendment argued that Islam gives equal rights to minorities, who want the same protections as Muslim citizens).

²⁷¹ *Id.*

Minister for Parliamentary Affairs labeled the amendment as a bill against Islam and stated that no legislation against Islam should be pursued.²⁷²

Since 2006, officials have made proposals to strengthen the blasphemy laws.²⁷³ In fact, the National Assembly passed a resolution prohibiting the printing and reprinting of blasphemous caricatures of the Prophet and banning the release of an offensive and derogatory documentary film, made by a Dutch Parliament member,²⁷⁴ which shows acts of violence by Muslims.²⁷⁵

As these facts show, the religious situation in Pakistan has not significantly improved following the adoption of the Defamation Resolutions. In fact, in most cases, it appears to have worsened, as more and more cases of blasphemy are lodged against religious minorities and anybody else who allegedly insults Islam.

D. The Future of the Defamation Resolutions and Proposed Recommendations

In 2008, the HRC passed a new version of the Defamation Resolutions that is slightly more balanced in terms of other fundamental rights, but it also gives even more justification to the blasphemy laws. Compared to the 2007 Resolution, the 2008 version places a greater emphasis on the treatment of Islam specifically, rather than on the treatment of religions in general, despite the previous criticisms.²⁷⁶ It also illustrates how much consideration was given to the needs of Muslim countries, as it specifically notes that the concerns of the OIC and the Islamic Conference of Foreign Ministers played a role in the creation of this Resolution.²⁷⁷

The 2008 version does attempt to balance other rights slightly more than the previous Resolutions. It notes the importance of maintaining a "careful

²⁷² *Id.*

²⁷³ *See Pakistan's Blasphemy Laws Violate Human Rights*, HINDUSTAN TIMES, June 13, 2007 (discussing a proposed bill imposing "the death penalty for apostasy, or converting from Islam to any other religion").

²⁷⁴ *NA Adopts Resolution Condemning Re-Printing of Derogatory Caricatures*, BALOCHISTAN TIMES, Apr. 15, 2008.

²⁷⁵ *Fitna*, Internet Movie Database, <http://www.imdb.com/title/tt1198399/synopsis> (last visited Feb. 24, 2009) (describing *Fitna* as a documentary that offers a "critical view of Islam and the Koran").

²⁷⁶ *Compare* U.N.H.R.C. Res. 7/19, *supra* note 5 (emphasizing that protection of religions from contempt is essential for the exercise of free religion and that prohibition of ideas based on racial superiority is "equally applicable to the question of incitement to religious hatred"), *with* U.N.H.R.C. Res. 4/9, *supra* note 5 (mentioning neither of these ideas).

²⁷⁷ U.N.H.R.C. Res. 7/19, *supra* note 5.

balance” between secularism and the respect for freedom of religion, and of respecting all rights embodied in the ICCPR.²⁷⁸ Additionally, it urges the limitation on freedom of expression only as far “as stipulated in international human rights law,”²⁷⁹ a phrase that was not included in the 2007 version, but had been a recommended change by at least one scholar.²⁸⁰ These changes are a step in the right direction; however, their effect on Pakistan and its blasphemy laws are unclear at this time.

Despite these positive changes, this version added two amendments that seem to restrict freedom of expression even more than it had in the past. The first amendment explains that since one can prohibit the dissemination of all ideas based on notions of racial superiority and hatred without violating freedom of expression, one can also apply this theory to religious defamation.²⁸¹ The second amendment “expresses its grave concern” with the “deliberate stereotyping of religions . . . in the media and by political parties.”²⁸² This amendment, much like all the other Defamation Resolutions, was sponsored by Pakistan and was meant to address situations in which the media has ridiculed Muslims or has associated them with terrorism and violence.²⁸³ Both of these amendments further limit freedom of expression in the name of combating religious defamation and further justify the continued application of the blasphemy laws. Moreover, this Resolution received broad support; not only did the OIC and the African Group support this Resolution, but China, Cuba, Nicaragua, the Philippines, Russia, and Sri Lanka did as well. Finally, it must be noted that the General Assembly’s most recent version contains virtually the same language as the previous Resolutions.²⁸⁴

In 2008, since the passage of the General Assembly’s and the HRC’s most recent version of the Resolution, Western governments and human rights organizations have mounted new efforts to defeat many of the ideas espoused by the Defamation Resolutions.²⁸⁵ First, the Bush Administration, concerned

²⁷⁸ *Id.*

²⁷⁹ *Id.* para. 12.

²⁸⁰ Grinberg, *supra* note 1, at 220.

²⁸¹ U.N.H.R.C. Res. 7/19, *supra* note 5, para 13.

²⁸² *Id.* para 4.

²⁸³ *HRC Adopts Two Important Initiatives Sponsored by Pakistan*, BALOCHISTAN TIMES, Apr. 3, 2008.

²⁸⁴ G.A. Res. 62/154, *supra* note 5.

²⁸⁵ Betsy Pisik, *U.S. Fights Islamic Anti-Defamation Push, Cites Clash with Free Speech*, WASH. TIMES, Sept. 2, 2008, at A1; see International Humanist and Ethical Union: *Growing Opposition to the Concept of “Defamation of Religion,”* <http://www.iheu.org/node/3288> (Sept. 25, 2008 06:55) [hereinafter IHEU: *Growing Opposition*] (discussing opposition from the

that the Defamation Resolutions provide a “diplomatic cover” for countries like Pakistan to repress speech, will attempt to persuade Senegal, Mali, Nigeria, and Indonesia—all moderate Muslim countries—to reject the next set of Resolutions.²⁸⁶ France and Belgium voiced similar sentiments.²⁸⁷ Finally, NGOs such as the Cairo Center for Human Rights Studies, the European Center for Law and Justice, the Center for Inquiry, and IHEU, affirmed their concerns that defamation is not compatible with human rights.²⁸⁸ The European Center for Law and Justice filed a brief with the United Nations High Commissioner warning that the Defamation Resolutions violate international law.²⁸⁹ Further, the executive director of the Center for Islamic Pluralism noted that “[t]he right to criticize a religion is a fundamental right” mentioned in the Quran.²⁹⁰

In addition to persuading countries that the Defamation Resolutions are contrary to international law or writing briefs for the United Nations, there are several other ways to address the Resolutions’ problems. First, the resolutions should be applicable for countries to use as a “sword” only when a country has a decent human rights record; otherwise countries with poor human rights records will use the Resolutions to deflect criticisms of their own violations, as a “shield,” as suggested by the IHEU.²⁹¹ Second, language could be added to the Resolution that would lessen the effect of the blasphemy laws, such as language that (1) denounces an interpretation of the Resolutions that is contrary to international law,²⁹² (2) forbids using religion to justify violence, and (3) clarifies that the Resolution cannot justify the suppression of legitimate opinions or critical views.²⁹³

Human rights organizations and several Western governments worry that the Defamation Resolutions bring blasphemy laws into the international arena. Though Pakistan claims to implement these Resolutions to prevent the defamation of all religions, it may be using these Resolutions to hide its own

Cairo Center for Human Rights, European Center for Law and Justice, Center for Inquiry, and IHEU).

²⁸⁶ Pisik, *supra* note 285.

²⁸⁷ IHEU: *Growing Opposition*, *supra* note 285.

²⁸⁸ *Id.*

²⁸⁹ Pisik, *supra* note 285.

²⁹⁰ *Id.*

²⁹¹ IHEU: Submission, *supra* note 27.

²⁹² This provision was added to the 2008 version of the Defamation Resolution. See *supra* note 279 and accompanying text.

²⁹³ Grinberg, *supra* note 1, at 220–21.

human rights violations, especially those stemming from its blasphemy laws, and to further justify its own religious discrimination. Currently, the religious situation in Pakistan has not improved, and the United Nations bodies continue to pass the Defamation Resolutions, approving even more Islamic-favored versions in 2007 and 2008. Certainly, the issues surrounding Pakistan's blasphemy laws and the Defamation Resolutions will continue to be a concern for the international community.

VI. CONCLUSION

In response to the growing anti-Muslim sentiment across the world, the UN human rights bodies passed Combating Defamation of Religions Resolutions. On the surface, these Resolutions appear to advocate religious tolerance and acceptance by trying to prevent the expression of racist and xenophobic ideas. However, the Defamation Resolutions may actually increase religious intolerance and discrimination of religious minorities, while also violating other fundamental human rights, such as freedom of speech and expression. The Defamation Resolutions permit and even encourage countries to take measures necessary to prevent Islam from being defamed, including the punishment of individuals who exercise free speech that indirectly criticizes Islam.

Arguably, Pakistan is acting just as the Defamation Resolutions encourage states to act—by punishing those who defame Islam. Pakistan, the country that initiates these Resolutions each year, has extraordinarily strict blasphemy laws.²⁹⁴ The country sentences people to death if religious feelings are even slightly offended, which could occur if religious minorities vocalize their belief that Muhammad is not the last prophet.²⁹⁵ Despite Pakistan's constitutional guarantee of freedom of religion, religious minorities cannot freely practice their religions for fear of being persecuted under the blasphemy laws. In addition to this blatant violation of human rights, the blasphemy laws are arbitrarily enforced and often result in malicious unfounded accusations against innocent people.

²⁹⁴ See PAK. PENAL CODE, §§ 295–298 (1860), available at http://www.punjabpolice.gov.pk/user_files/File/pakistan_penal_code_xlv_of_1860.pdf (providing a death of life imprisonment sentence for direct or indirect insults of Muhammad); see also *supra* 57 and accompanying text.

²⁹⁵ See Forte, *supra* note 20, at 42 (noting that a Pakistani Supreme Court judge suggested that any proclamation that Muhammad is not the last prophet could be subject to the death penalty).

By enforcing the blasphemy laws, Pakistan adheres to requirements set forth in the Defamation Resolutions. These Resolutions extend blasphemy laws, like those in Pakistan, into the international arena, and justify the continued use of such oppressive laws in the name of combating the defamation of religion. These Resolutions, in allowing such violations of human rights, conflict with international norms.

Many countries favor the Defamation Resolutions with the hope they will bring about better international treatment of Muslims and other religious groups. The countries opposed to the Resolutions believe the Resolutions improperly emphasize the defamation of Islam and shield religion from criticism or valid opinions. However, neither view actually addresses the effects the Defamation Resolutions may have on the continued justification of the harsh blasphemy laws. Upon closer scrutiny, it becomes clear that the criticisms opposing the Resolutions closely resemble the criticisms made against the blasphemy laws. Both laws allow states to unnecessarily punish people for merely insulting Islam, even though the insult does not rise to the level of incitement. International law has never before accepted this derogation of the freedom of speech.

Pakistan argues the Resolutions promote tolerance and acceptance, yet religious intolerance in Pakistan continues to rise. Both Muslim extremists and the Pakistani government continue to abuse these laws. Countless religious minorities are being wrongfully accused, arrested, and tried under these laws. Religious minorities continue to fear for their safety for accidentally defaming Islam. As long as the blasphemy laws remain on the books, the country is not safe for religious minorities.

Therefore, by giving Pakistan international justification to continue using its abusive blasphemy laws, the Defamation Resolutions do more harm than good in the fight for international human rights. They need to be modified to prevent countries like Pakistan from perverting laws designed to promote religious tolerance to instead be used to discriminate against non-Muslim minorities. These Resolutions are not protecting human rights. They are doing just the opposite.