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978-1-107-12417-2 - Religious Hatred and International Law: The Prohibition of Incitement to Violence or Discrimination

Jeroen Temperman

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RELIGIOUS HATRED AND INTERNATIONAL LAW

The UN International Covenant on Civil and Political Rights obliges State parties to prohibit any advocacy of religious hatred that constitutes incitement to discrimination or violence. This book traces the origins of this provision and proposes an *actus reus* for this offence. The question whether hateful incitement is a prohibition per se or also encapsulates a fundamental 'right to be protected against incitement' is extensively debated. Also addressed is the question of how to judge incitement. Is *mens rea* required to convict someone of advocating hatred, and if so, what degree of intent? This analysis also includes the paramount question if and to what extent content and/or context factors ought to be decisive. The author engages extensively with comparative domestic law and compares the workings of the UN Human Rights Committee with those of the UN Committee on the Elimination of Racial Discrimination and the European Court of Human Rights.

JEROEN TEMPERMAN is an associate professor of public international law at Erasmus University Rotterdam. He is also the editor-in-chief of *Religion and Human Rights*.

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By

JEROEN TEMPERMAN



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FOREWORD

The prohibition of incitement in international human rights law has attracted enormous attention in the last couple of years. Previously, even many experts had only been dimly aware of the norm, which on the surface may look slightly strange in human rights documents, since it seems to serve a restrictive purpose rather than empowering human beings. While some observers continue to express unease about a human rights norm that obliges State parties to prohibit certain speech acts, others interpret this prohibition as the corollary to an implicit right of everyone to be free from incitement to acts of hatred, a right particularly significant for members of ethnic, religious or other minorities. Unsurprisingly, the precise contours of the prohibition of incitement – definitions, thresholds, remedies – remain contested, and the relationship of this particular provision to other human rights guarantees, in particular freedom of expression, continues to cause controversies.

Within UN fora, the new attention to incitement was preceded by a decade of emotional debates on how to deal with the issue of ‘defamation of religions’. Between 1999 and 2010 the Organizations of the Islamic Conference (now: Organization of Islamic Cooperation (OIC)), regularly tabled resolutions titled ‘combating defamation of religions’, which repeatedly led to a split within the UN membership. In order to overcome an increasingly sterile antagonism, new formulas were proposed, with a view to facilitating more meaningful discussions. In all those new formulas, ‘incitement’ figures as a key term. In March 2011 the OIC tabled Human Rights Council Resolution 16/18 on (inter alia) incitement, which was adopted without a vote and has served as a main reference document in the UN. In October 2012 a series of expert seminars organized by the Office of the High Commissioner for Human Rights culminated in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

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Religious incitement is merely one kind of incitement alongside other forms. However, in the wake of a decade of controversies over ‘defamation of religions’, the new attention paid to incitement has much to do with hateful conflicts around (or ascribed to) religious differences. Many observers welcomed the move from ‘defamation’ to ‘incitement’ as an important step. Whereas the concept of defamation was linked to projects of protecting the reputations of certain religions, the prohibition of incitement focuses on human beings, individuals and communities, and thus seems to fit better with the general human rights approach. However, one should bear in mind that the Penal Codes of many states have overly broad anti-incitement laws, which can be as damaging to freedom of expression and other human rights as traditional anti-blasphemy laws. The Rabat Plan of Action therefore places great emphasis on the significance of freedom of expression as the *sine qua non* to public discourses. While defining a very high threshold for restrictive measures, in accordance with international human rights law, the Rabat Plan of Action encourages states and other stakeholders to invest mainly in ‘positive speech’ as the most promising strategy for countering incitement.

Jeroen Temperman’s study on the prohibition of incitement in international law comes at the right moment. In view of highly politicized current debates, Temperman provides a detailed and comprehensive analysis with an unprecedented depth. When dealing with the *travaux préparatoires* of international incitement provisions, he reminds us of largely forgotten debates that took place generations ago. When taking stock of various individual cases and country assessment, he at the same time describes the learning curve in international courts and monitoring agencies. And by comparing global, regional and national developments, he further broadens the awareness of very different experiences in this area.

I hope that Jeroen Temperman’s book will find many readers. The book will doubtless contribute to a more solid debate on a complicated human rights provision, which itself will certainly continue to trigger many controversies.

Heiner Bielefeldt, UN Special Rapporteur
on freedom of religion or belief

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