Against the backdrop of the new globalized hate speech dynamics, the nature and scope of States’ obligations pursuant to international human rights law on prohibiting incitement to hatred have taken on increased importance and have become a controversial issue within multilateral human rights diplomacy. Key questions being posed in the ongoing debates over how best to respond to the new wave of hatred include whether the international legal norm against incitement to hatred, as it currently stands, is suitable to address the contemporary challenges of this phenomenon. Alternatively, does it need to be developed further? This book traces the journey of this norm in three analytical domains; its emergence, relevant supranational jurisprudence; and the recent standard-setting attempts within the UN. The book argues that five internal features of the norm had a strong influence on its difficult path within international human rights law.

Dr Mona Elbahtimy holds a PhD from the University of Cambridge and has long practical experience in multilateral human rights diplomacy.
The Right to Protection from Incitement to Hatred

AN UNSETTLED RIGHT

MONA ELBAHTIMY
For Selim and Nour
Contents

Acknowledgements  ix
Table of International Law  x
Table of International Cases  xi
Table of International Materials  xiii
List of Abbreviations  xx

1  Introduction  1
   1.1 Incitement to Hatred in a Globalized World  1
   1.2 The Right to Protection from Incitement to Discrimination, Hostility or Violence  5
   1.3 A Note on Terminology  12
   1.4 Main Argument  14
   1.5 Methodology and Sources  16
   1.6 Outline  18

2  The Right to Protection from Incitement to Hatred: An Analysis of Five Internal Features  20
   2.1 Introduction  20
   2.2 The ‘Emotive’ Component  20
   2.3 The Incitement Component  31
   2.4 The Tensions between Equality and Liberty Rights of Speakers and Members of Targeted Groups  37
   2.5 The Group Identity Component  45
   2.6 The ‘Religion’ Component  53
   2.7 Concluding Remarks  58
The Difficult Birth of the Right to Protection from Incitement to Hatred in International Human Rights Law

3.1 Introduction
3.2 The Historical and Political Context of Negotiations
3.3 Freedom of Expression: The Dual Use of the Logic of Abuse
3.4 The Emotive Component: A Major Dividing Line
3.5 Group Rights and Religious Freedoms: Another Dividing Line
3.6 The Drafts Leading to the Adoption of Article 20(2)
3.7 Concluding Remarks

The Norm Prohibiting Incitement to Hatred through the Lens of Supranational Monitoring and Adjudicatory Bodies

4.1 Introduction
4.2 The Jurisprudence of the UN Human Rights Committee
4.3 The Jurisprudence of the UN Committee on Elimination of Racial Discrimination
4.4 Regional Jurisprudence: The Hate Speech Jurisprudence of the European Court of Human Rights
4.5 Concluding Remarks

Recent Normative Battles within the UN on Hate Speech

5.1 Introduction
5.2 UN Resolutions on Defamation of Religions
5.3 Polarized Positions on the Need for Complementary Standards to Article 20(2) of the ICCPR
5.4 The Proposed Standards’ Interaction with the Scope of Freedom of Religion
5.5 The Proposed Standards’ Interaction with the Notion of Racism
5.6 The Characteristics of Supporters and Opponents of Standard-Setting Attempts on Hate Speech
5.7 Concluding Remarks

Conclusions

6.1 The Right to Protection from Incitement to Hatred under IHRL: A Summary of the Journey
6.2 The Way Ahead

Bibliography
Index
Acknowledgements

This monograph is the revised and updated version of my doctoral thesis submitted to the University of Cambridge. While preparing my thesis for publication, I have benefited from the great support of my family. I would like to first thank my beloved husband Mohamed for his invaluable, long-lasting, and ongoing support and patience. I am really grateful to my children, Selim and Nour, for their understanding, despite their young age, that I needed to dedicate considerable time to work on my book during the remarkably difficult year of 2020 (against the backdrop of the COVID-19 pandemic). I am deeply indebted to my brother Dr Hassan Elbahtimy; he has been an excellent and inspirational mentor, who offered important insights during the long discussions we had about the topic of this book. Words cannot express the depth of my gratitude to my dear parents, Ahmed and Amany, for their limitless love and encouragement throughout the years of my life.

Further back chronologically, it has been a pleasure to write my doctoral thesis under the supervision of Dr Barbra Metzger. She has provided valuable academic guidance and important feedback on my work throughout the three years of conducting my research. The Citadel Capital Scholarship Foundation contributed the funding that allowed me to undertake my doctoral studies at the University of Cambridge, which I immensely appreciate. Also, I would like to extend my gratitude to Ambassadors Dr Ibrahim Salama, Wael Aboulmagd, and Dr Ahmed Ihab Gamal Eldin for the valuable support they have provided me. I also appreciate the assistance of the staff of UN library in Geneva and the University of Cambridge Library. Special thanks go to the lovely couple Dr Tristram and Louisa Riley-Smith – I was lucky to write considerable parts of my doctoral thesis in their beautiful house in Fen Ditton-Cambridge.

It has been a pleasure working with Cambridge University Press, where Tom Randall has been a very supportive editor, both during the proposal stage and since then. I am also indebted to the anonymous reviewers for their constructive and helpful comments and suggestions on the proposal for this book. Special thanks go to Alan O’Dowd, who provided very expeditious and to-the-point copy-editing.
International Law

1969 American Convention on Human Rights, 22 November 1969, 1144 UNTS 144
1972 Charter of the Organization of the Islamic Conference, 4 March 1972, 914 UNTS 103
1966 International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 172
International Cases

UN HUMAN RIGHTS COMMITTEE

UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION
Mohammed Hassan Gelle v. Denmark, Communication no. 034/2004, UN Doc. CERD (6 March 2006)

EUROPEAN COURT OF HUMAN RIGHTS AND EUROPEAN COMMISSION ON HUMAN RIGHTS
Aydin Tatlav v. Turkey, Application no. 50692/99, ECHR (2 May 2006)
Erbaan v. Turkey, Application no. 59405/00, ECtHR (6 June 2006)
Feret v. Belgium, Application no. 15615/07, ECtHR (16 July 2009)
Giniewski v. France, Application no. 64016/00, ECtHR (31 January 2006)
Glimmverveen and Hagenbeck v. Netherlands, Application nos. 8348/78, 8406/78, ECommHR (11 October 1979)
Gunduz v. Turkey, Application no. 4870/02, ECtHR (4 December 2003)
International Cases

Handyside v. United Kingdom, Application no. 5493/72, ECtHR, Plenary (7 December 1976), Series A no. 24
Jersild v. Denmark, Application no. 15890/89, ECtHR, Grand Chamber (23 September 1994), Series A no. 298
Le Pen v. France, Application no. 18788/09, ECtHR (20 April 2010)
Murphy v. Ireland, Application no. 44179/98, ECtHR (10 July 2003), ECHR Reports 2003-IX
Otto-Preminger-Institut v. Austria, Application no. 13470/87, ECommHR (13 January 1993)
Otto-Preminger-Institut v. Austria, Application no. 13470/87, ECtHR (20 September 1994)
Pavel Ivanov v. Russia, Application no. 35222/04, ECommHR (20 February 2007)
Soulas and Others v. France, Application no. 32307/96, ECtHR (1 February 2000)
Vejdeland and Others v. Sweden, Application no. 1813/07, ECtHR (9 February 2012)
Witaś v. Poland, Application no. 35943/00, ECtHR (9 December 2013)
Wingrove v. United Kingdom, Application no. 17419/90, ECtHR (25 November 1996)
Witzsch v. Germany, Application no. 7485/03, ECtHR (13 December 2005)
International Materials

UN DOCUMENTS ON TRAVAUX PRÉPARATOIRES OF ARTICLE 20(2) OF THE ICCPR

A/C.3/SR.289 – General Assembly, Fifth Session (19 October 1950)
A/C.3/SR.291 – General Assembly, Fifth Session (20 October 1950)
A/C.3/SR.568 – General Assembly, Ninth Session (1 November 1954)
A/C.3/SR.575 – General Assembly, Ninth Session (5 November 1954)
A/5000 – General Assembly, Sixteenth Session (5 December 1961)
A/C.3/SR.1078 – General Assembly, Sixteenth Session (19 October 1961)
E/CN.4/NGO/39 – Commission on Human Rights, Eighth Session
(20 November 1952)
E/CN.4/223 – Commission on Human Rights, Fifth Session (23 May 1949)
E/CN.4/SR.123 – Commission on Human Rights, Fifth Session (14 June 1949)
E/CN.4/SR.379 – Commission on Human Rights, Ninth Session (19 October 1953)
E/CN.4/L.269 – Commission on Human Rights, Ninth Session (7 May 1953)
E/CN.4/SR.377 – Commission on Human Rights, Ninth Session (19 October 1953)
E/CN.4/SR.378 – Commission on Human Rights, Ninth Session (19 October 1953)
E/CN.4/41 – Commission on Human Rights, Second Session (1 December 1947)
International Materials

E/CN.4/52 – Commission on Human Rights, Second Session (6 December 1947)
E/CN.4/365 – Commission on Human Rights (1952)
E/CN.4/SR.320 – Commission on Human Rights (18 June 1952)
E/CN.4/82 – Drafting Committee, Second Session (16 April 1948)
E/CN.4/82/Add.12 – Drafting Committee, Second Session (3 June 1948)
E/CN.4/AC.1/SR.28 – Drafting Committee, Second Session (18 May 1948)
E/SR.438 – Economic and Social Council, Twelfth Session (21 February 1951)

UN RESOLUTIONS
A/HRC/Res/16/18 – HRC Res. 16/18, Combating Intolerance, Negative Stereotyping and Stigmatization of, and Discrimination, Incitement to Violence, and Violence against Persons Based on Religion or Belief, Human Rights Council, 16th sess., 46th mtg (24 March 2011)
A/HRC/Res/7/19 – HRC Res. 7/19, Defamation of Religions, UN Human Rights Council, 7th sess., 40th mtg (27 March 2008)
International Materials

A/Res/60/150 – GA Res. 60/150, Combating Defamation of Religions, GA, 60th sess., 64th plen. mtg (16 December 2005)
A/Res/64/156 – GA Res. 64/156, Combating Defamation of Religions, GA, 65th plen. mtg (18 December 2009)

UN REPORTS
A/48/18 – CERD, General Recommendation no. 15: Organized violence based on ethnic origin (Art. 4) (23 March 1993)
A/49/18 – Concluding Observations of the Committee on Elimination of Racial Discrimination: Germany, Committee on Elimination of Racial Discrimination (April 1977)
xvi International Materials

A/62/280 – Asma Jahangir, Interim Report by the Special Rapporteur on Freedom of Religion or Belief, UN Human Rights Council (20 August 2007)
A/CONF.189/PC.1/7 – Abdelfattah Amor, Study of Special Rapporteur on Religious Intolerance (13 April 2000)
A/HRC/5/10 – Doudou Die`ne, Report by the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance on Political Platforms Which Promote or Incite Racial Discrimination, UN Human Rights Council (25 May 2007)
A/HRC/6/6 – Doudou Die`ne, Manifestations of Defamation of Religions and in Particular on the Serious Implications of Islamophobia on the Enjoyment of all Rights, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, UN Human Rights Council (21 August 2007)
International Materials xvii

A/HRC/7/19 – Doudou Diène, Report by the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (20 February 2008)


A/HRC/12/58 – Githu Muigai, Report by the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance on the Manifestations of Defamation of Religions, and in Particular on the Serious Implications of Islamophobia on the Enjoyment of All Rights by Their Followers (1 July 2009)


A/HRC/14/43 – Githu Muigai, Report by the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, UN Human Rights Council (30 March 2010)

A/HRC/15/53 – Githu Muigai, Manifestations of Defamation of Religions, and in Particular on the Ongoing Serious Implications of Islamophobia, for the Enjoyment of All Rights by Their Followers, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, UN Human Rights Council (12 July 2010)


CCPR/CO/84/SVN – Concluding Observations of the Human Rights Committee: Slovenia, Human Rights Committee (25 July 2005)

CCPR/C/AUT/CO/4 – Concluding Observations of the Human Rights Committee: Austria, Human Rights Committee (30 October 2007)
International Materials

CCPR/C/21/Rev.1/Add.11 – CCPR, General Comment no. 29: States of Emergency (Article 4) (31 August 2001)

CCPR/C/21/Rev.1/Add.13 – CCPR, General Comment no. 31: Nature of the General Legal Obligation on States Parties to the Covenant (26 May 2004)

CERD/C/AUT/CO/17 – Concluding Observations of the Committee on Elimination of Racial Discrimination: Austria, Committee on Elimination of Racial Discrimination (21 August 2008)

CERD/C/GC/35 – CERD, General Recommendation no. 35: Combating Racist Hate Speech (26 September 2013)

CERD/C/UKR/CO/18 – Concluding Observations of the Committee on Elimination of Racial Discrimination: Ukraine, Committee on Elimination of Racial Discrimination (8 February 2007)

E/CN.4/2001/64 (Annex V) – Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression (13 February 2001)


Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACHPR</td>
<td>African Charter on Human and Peoples’ Rights</td>
</tr>
<tr>
<td>ACHR</td>
<td>American Convention on Human Rights</td>
</tr>
<tr>
<td>ACommHPR</td>
<td>African Commission on Human and Peoples’ Rights</td>
</tr>
<tr>
<td>Ad Hoc Committee</td>
<td>UN Ad Hoc Committee on the Elaboration of Complementary Standards</td>
</tr>
<tr>
<td>CERD</td>
<td>UN Committee on Elimination of Racial Discrimination</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>GA</td>
<td>General Assembly</td>
</tr>
<tr>
<td>HRC</td>
<td>Human Rights Council</td>
</tr>
<tr>
<td>HR Cttee</td>
<td>Human Rights Committee</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
</tr>
<tr>
<td>ICL</td>
<td>International Criminal Law</td>
</tr>
<tr>
<td>IHRL</td>
<td>International Human Rights Law</td>
</tr>
<tr>
<td>OHCHR</td>
<td>The Office of the High Commissioner for Human Rights</td>
</tr>
<tr>
<td>OIC</td>
<td>Organization of Islamic Cooperation</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
</tr>
</tbody>
</table>