



International Association for  
the Defence of Religious Liberty

**Conscience and Liberty**

Dr. Liviu Olteanu  
(Coordinator)



# AGENTS & AMBASSADORS FOR PEACE

**PROTECTING**

**FREEDOM OF RELIGION & FREEDOM OF EXPRESSION**

**AGAINST VIOLENCE IN THE NAME OF RELIGION**

**Bern, Switzerland**

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### **THE DIPLOMATS WORKING FOR PEACE WORLDWIDE**

*The United Nations, the Secretary General Ban KI-moon*

*The Council of Europe, the European Union, the O.S.C.E and the other international organizations' efforts for respect and protection of human rights, rule of law, democracy and security...*

*The Special Rapporteur on Freedom of Religion or Belief, Heiner BIELEFELDT*

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BEING AMBASSADORS FOR FREEDOM AND PEACE**

International Association for the Defence of Religious Liberty

## **Conscience and Liberty**

Worldwide human rights & religious liberty

Special Edition

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**Dr. Liviu Olteanu**

(coordinator)

# **AGENTS AND AMBASSADORS FOR PEACE**

**PROTECTING FREEDOM OF RELIGION  
AND FREEDOM OF EXPRESSION**

**AGAINST VIOLENCE IN THE NAME OF RELIGION**

Volume III

**Bern, Switzerland**

## INTERNATIONAL ASSOCIATION FOR THE DEFENCE OF RELIGIOUS LIBERTY

A non-governmental organisation granted with consultative status at the United Nations in Geneva, New York and Vienna, the European Parliament in Strasbourg and Brussels, the Council of Europe in Strasbourg, and the Organization for Security and Cooperation in Europe.

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**Liviu Olteanu, editor**

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# Freedom of Speech vs. Religious Sentiments: A ‘Shouting Match’?<sup>22</sup>

*Rafael Palomino*<sup>23</sup>

In 2009 several professors at Universidad Complutense promoted a research group<sup>24</sup> to analyse the dimensions of the “Muhammad Cartoons Affair” of 2005<sup>25</sup>. The purpose of our project (a tiny part of a wider scholar spontane-

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22 Rafael Palomino, professor at the Universidad Complutense, Madrid, Spain

23 Spanish Ministry of Science and Education, Project “Freedom of Religion and Freedom of Expression” (2009-2011), ref. DER2008-05283.

24 Part of the results were published, along with contributions from other European scholars, in J. MARTÍNEZ-TORRÓN; S. CAÑAMARES ARRIBAS (eds.), *Tensiones entre libertad de expresión y libertad religiosa*, Tirant lo Blanch, Valencia, 2014.

25 Academic literature on this topic is almost unmanageable. Among others, F. ALICINO, “Liberté d’expression et religion en France. Les démarches de la laïcité à la française”, *La Costituzione francese / La constitution Française*, 2 vol., Giappichelli, Torino, 2009; S. ANGELETTI, “La diffamazione delle religioni nei documenti delle Nazioni Unite: Alcune osservazioni critiche”, *Coscienza e Libertà*, 44, 2010; I. M. BRIONES MARTÍNEZ, “Religión y religiones en el Reino Unido. Diez años desde la ley de Derechos Humanos a la supresión del delito de blasfemia”, *Anuario de Derecho Eclesiástico del Estado*, vol. 25, 2009; B. CHELINI-PONT, “La diffamazione delle religioni: un braccio di ferro internazionale (1999-2009)”, *Coscienza e Libertà*, 44, 2010; B. CLARKE, “Freedom of Speech and Criticism of Religion: What are the Limits?”, *Murdoch University eLaw Journal*, vol. 14, 2, accessed 10/04/2015 at <https://elaw.murdoch.edu.au/archives/elaw-14-2-2007.html>; N. COLAIANNI, “Diritto di satira e libertà di religione”, *Stato, Chiese e pluralismo confessionale*, Maggio 2008, accessed 07/08/2012 at: [http://www.statoechiese.it/images/stories/2008.5/colaianni\\_diritto.pdf](http://www.statoechiese.it/images/stories/2008.5/colaianni_diritto.pdf); Z. COMBALÍA SOLÍS, “Libertad de expresión y difamación de las religiones: el debate en Naciones Unidas a propósito del conflicto de las caricaturas de Mahoma”, *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado*, 19, 2009; Council of Europe, Venice Commission, *Blasphemy, insult and hatred – Finding answers in a democratic society*, Council of Europe Publishing, Strasbourg Cedex, 2010; A. M. EMON, “On the Pope, Cartoons, and Apostates: Shari’a 2006”, *Journal of Law and Religion*, vol. 22, 2006; C. EVANS, “Religion and freedom of expression”, *Fides et libertas*, 2010; J. FERREIRO GALGUERA, “Las caricaturas sobre Mahoma y la jurisprudencia del Tribunal Europeo de los Derechos Humanos”, *Revista Electrónica de Estudios Internacionales*, vol. 12, 2006; P. FLORIS, “Libertà religiosa e libertà di espressione artistica”, *Quaderni di Diritto e Politica Ecclesiastica*, vol. 2008, 1; J. FOSTER, “Prophets, Cartoons, and Legal Norms: Rethinking the United Nations Defamation of Religion Provisions”, *Journal of Catholic Legal Studies*, vol. 48, 1, 2009; D. GARCÍA-PARDO, “La protección de los sentimientos religiosos en los medios de comunicación”, *Ius Canonicum*, vol. XL, 79; M. GRINBERG, “Defamation of Religions v. Freedom of Expression: Finding the Balance in a Democratic Society”, *Sri Lanka Journal*

ous movement<sup>26</sup>) was to understand the conflict and to find legal clues in order to provide an enduring solution to the dramatic global affairs we were gazing at. We thought "perhaps naively" that we were facing an outbreak of violence and misunderstanding which once cooled over time could be studied in a quiet academic environment. Nothing could be further from the truth, since the Muhammad Cartoons Affair have been repeated (in a different fashion) again and again in the period of ten years. The last episode took place in Paris, in January 2015. The apparent confrontation between "secular speech" and "religious sentiments" (which has been the more frequent confrontation during these years) could lead to draw the conclusion that the problem is a one-way street in which the Western-secularized world is attacking the religious-Eastern world. However, it is also true that the "religious speech" has been labelled as "offensive" to secular sentiments "at home" (especially in the gender ideology sphere...).

The conflict was far from being "spontaneously" solved, since the opponents have reaffirmed their own positions; i.e., the Western media have responded to the attacks with "more speech" and radical Islam sectors have reacted with "more bullets." In the end, this "shouting match" has claimed many innocent lives, has distanced us from each other, has hindered the advancement of human rights and has buried dialogue as a tool for promoting peace among Peoples.

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of International Law, vol. 18, 2006; C. C. HAYNES, "Living with our Deepest Differences: Freedom of Expression in a Religiously Diverse World", *Fides et Libertas*, vol. 2008-2009; N. LERNER, "Freedom of Expression and Incitement to Hatred", *Fides et Libertas*, vol. 2008-2009; Á. López-Sidro López, "Libertad de expresión y libertad religiosa en el mundo islámico", *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado*, 30, 2012; J. MARTÍNEZ-TORRÓN, "Libertad de expresión y libertad de religión. Comentarios en torno a algunas recientes sentencias del Tribunal Europeo de Derechos Humanos", *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado*, 11, 2006; L. Martín-Retortillo Baquer, "Respeto a los sentimientos religiosos y libertad de expresión", *Anales de la Real Academia de Jurisprudencia y Legislación*, vol. 36, 2006; I. MINTEGUIA ARREGUI, "Libertad de expresión artística y sentimientos religiosos", *Anuario de Derecho Eclesiástico del Estado*, 14, 1998; I. MINTEGUIA ARREGUI, "El arte ante el debido respeto a los sentimientos religiosos", *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado*, 11, 2006; D. NORRIS, "Are Laws Proscribing Incitement to Religious Hatred Compatible with Freedom of Speech?", *UCL Human Rights Review*, vol. 1, 1, 2008; F. PÉREZ-MADRID, "Incitación al odio religioso o «hate speech» y libertad de expresión", *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado*, 19, 2009; G. PUPPINCK, "Lottare contro la diffamazione delle religioni", *Coscienza e Libertà*, 44, 2010; J. RIVERS, "The Question of Freedom of Religion or Belief and Defamation", *Religion and Human Rights*, 2, 2007; A. SAJÓ (ed.), *Censorial sensitivities: free speech and religion in a fundamentalist world*, Eleven International Pub., Utrecht; Portland, OR, 2007; J. TEMPERMAN, "Blasphemy, Defamation of Religions and Human Rights Law", *Netherlands Quarterly of Human Rights*, vol. 26, 4, 2008.

26 L. ZUCCA, *Constitutional Dilemmas: Conflicts of Fundamental Legal Rights in Europe and the USA*, Oxford University Press, Oxford; New York, 2007, p. 51.

It is easy to infer that our research group didn't reach the promising solution we envisaged at the beginning of our academic work. However, after three years of legal study (comparing the laws of different countries, analysing international legal instruments and the case-law of the European Court of Human Rights) we reached several conclusions concerning the seemingly unsolvable conflict between freedom of expression and religious sentiments. It would be pretentious on my part to try to synthesize all the conclusions (or to take the role of spokesman for all my colleagues of the research group!) Instead, I shall offer some personal ideas below.

It is important to underscore that in almost all cases there is not a *legal* conflict *strito sensu* between freedom of religion and freedom of speech. A real legal conflict arises when "a right makes something permissible while a competing right makes it impermissible." And this is not the case: the fact that someone utters hurtful speech which is judged by the listener as insulting, annoying or even blasphemous, does not mean necessarily to infringe upon the right of others to have, change or to adopt a religion or belief, either individually or in community, or to manifest his religion or belief in worship, observance, practice and teaching... Besides, the right to speech does not entail the right not to listen. "Freedom of speech puts the emphasis on the speaker and what is said (...) A worrying trend is the shift toward the hearer and to what is being heard or how things are perceived, including the possibility that an individual or group may feel hurt or offended by what has been expressed. This is a move from the objective (what was expressed) to the subjective (how it was received, perceived). This is contrary to fundamental Rule of Law."<sup>27</sup>

To be sure, only in those instances in which offensive speech "is very likely to lead to violence and death are these grounds a reason in favor of state sanctioning. The same applies to the fact that offending someone's religious beliefs is very likely to cause severe psychological distress or damage to that person."<sup>28</sup>

This being said, it is also undisputed that "a social environment of free exchange of ideas and free speech including the free expression of beliefs" is essential for democracy. Conversely, a social environment dominated by verbal aggression or violence is certainly not the most suitable habitat for the exercise

27 M. TUNEHAG, "Religious Cartoons & Sermons on Homosexual Practice", Global Trends, Concerns and Recommendations Regarding Freedom of Speech & Religion, 2007, p. 6, accessed 12/12/2011, at <http://www.worldevangelicals.org/news/article.htm?id=1556>.

28 G. LETSAS, "Is There a Right not to be Offended in Ones Religious Beliefs?", SSRN eLibrary, 2009, accessed 10/04/2015 at <http://ssrn.com/paper=1500291>.

of freedoms. From this perspective, attacks on religion are not inherently different from attacks based on sex, race or national origin; and all these factors are mentioned by Article 14 ECHR, which prohibits discrimination.<sup>29</sup>

In addition, the new scenario in which speech and religious sentiments collide has its own new and peculiar features. In part, this is due to the “unforeseen potential audience” of offensive speech. Internet makes possible to reach countries and cultures in which the context and the reactions cannot be measured according to the expectations of Western media. Many years ago, Oliver Wendell Holmes underscored the role that circumstances and places play in free speech limitation cases: “The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. (...) The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.”<sup>30</sup> Nowadays the relevance of context increases insofar as internet and technology make almost impossible to know (let’s return to Wendell Holmes) whether we are in a theatre, whether the theatre is empty or crowded, and whom exactly is the audience (firemen? pyromaniacs?).

In a globalized context, we might think and act in different ways and with different attitudes. **First**, we may think and act locally: “Here in Europe freedom of speech is sacred, it includes the right to publish something which could be considered insulting or blasphemous... Free speech is equal to all: I may say “X”, you may say “Y”... Free market of ideas is part of the rules of the game. —What about Pakistan or Nigeria? Well, that’s not our problem...” **Second**, thinking locally and acting globally: “Everyone everywhere must respect human rights. Let’s exercise freedom of speech worldwide to change this world, let’s respond to more violence with more speech. —What about Pakistan or Nigeria? Well, the cause of freedom may bring forth martyrdom.” **And finally**, thinking globally and acting globally: “Freedom of speech is a fundamental human right every human being possesses. Though there are utterances that reach beyond our cultural boundaries... So, let’s also think about those innocent people, let’s exercise freedom responsibly.”

29 J. MARTÍNEZ-TORRÓN, “La tragedia de «Charlie Hebdo»: algunas claves para el análisis jurídico”, *El Cronista del Estado Social y Democrático de Derecho*, 50, 2015, p. 26.

30 *Schenck v. United States*, 249 U.S. 47 at 52 (1919).

The last option is not only an “ethical” one. When recognizing freedom of speech, the European Convention of Human Rights points out that this right “carries with it duties and responsibilities.” In a global context, not all duties and responsibilities are compiled in domestic law. “Freedom of expression must include a *legal right* to offend. But not, in all circumstances, the complete license to *do so*.”<sup>31</sup>

Besides, globalization made us experience religion as multi-faceted. In the dominant Western thought, religion is a matter of choice,<sup>32</sup> is part of the *ideas* that one may or may not have, leave or change. However, in the Eastern world religion is considered to be part of personal *identity*.<sup>33</sup> The Western press sometimes intends to ridicule or criticize “ideas,” not people. And yet, the Eastern effect turns out to be quite different. This is not to say that freedom of speech has to be measured according to the hearer’s sensibility, but encourages one to realize the complexity of religion in global context.

Violence is not the legitimate response to speech, we all know that. And violent responses on the part of extremists (both in Muslim and non-Muslim countries, let us always be reminded of this) require serious internal reflection and action inside the Muslim world. At the same time, freedom of speech in the area of religious sentiments requires a certain amount of sensitivity and responsibility. As a Spanish scholar pointed out in 2012 on the occasion of one of the terrible episodes of this long-term affair<sup>34</sup> when Parliament and the Libyan people asked forgiveness for the murder of the US ambassador and, at the same, time demanded respect for Islamic beliefs, they began to walk the right path. They rejected violence but demanded decency by the West. Indeed, in a diverse – but sometimes deranged – society unfair attacks on the great religions are not uncommon. The problem is how to react fairly.

31 F. KLUG, “Freedom of Expression Must Include the Licence to Offend”, *Religion and Human Rights*, vol. 1, 2006, p. 227.

32 J. H. GARVEY, *What are freedoms for?*, Harvard University Press, Cambridge, Mass., 1996, pp. 43-49; M. J. SANDEL, “Freedom of Conscience or Freedom of Choice”, James Davison Hunter, Os Guinness (eds.) *Articles of Faith, Articles of Peace: The Religious liberty Clauses and the American Public Philosophy*, Brookings Institution Press, 1990.

33 S. MAHMOOD, “Religious Reason and Secular Affect: An Incommensurable Divide?”, *Critical Inquiry*, 35, 2009.

34 R. NAVARRO-VALLS, “La Globalización del Odio”, *Zenit*, 20/09/2012, accessed 30/10/2012 at <http://www.zenit.org/es/articles/la-globalizacion-del-odio>.