

# The Paris Attacks and Global Norms on Freedom of Expression

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## I. Introduction

Thank you.

Against the backdrop of recent events and associated fears, I am very grateful to the Tom Lantos Institute and ELTE for inviting me to speak on the subject of freedom of expression at this time – and to you the audience for your interest in coming hear this lecture.

Discussing freedom of expression, after all, has become a dangerous business. This past Valentine's weekend's shootings in Copenhagen claimed the life of Finn Norgaard, a documentary film director attending an event on art, free speech and blasphemy, and Dan Uzan, a volunteer synagogue security guard, and thus added to this year's toll of those killed in the name of religion. I wonder whether some of those people who registered for this event tonight, which is hosted by an organisation working against anti-Semitism, reconsidered their attendance because of those attacks on the Krudttønden café and at Copenhagen's Central Synagogue...

It has been already suggested by Danish intelligence services that the Copenhagen shootings were a copycat of those in Paris six weeks ago. The Paris attacks at Charlie Hebdo's offices and a kosher supermarket, which left 8 journalists and 9 others dead, have seemed to electrify the world into discussion, debate and also further violence around the issue of freedom of expression. Yet the killings at European venues of discussion and worship in the name of religion simultaneously attacked freedom of speech ("freedom of opinion and expression") and also freedom of worship ("freedom of religion or belief"), as yesterday's Guardian editorial observed.<sup>1</sup>

These events therefore deserve to be contextualised against a complex backdrop of two wider worrying phenomena: *first*, the upsurge in violent attacks against journalists and media workers around the world (according to the Committee to Project Journalists, the past three years have been the deadliest since it started compiling such records in

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<sup>1</sup> Editorial, "The Guardian view on a week of terror: from North Carolina to Copenhagen, the threat to freedom is the same", The Guardian, 15 February 2015.

1992)<sup>2</sup>; and *second*, various manifestations of violence, discrimination and intolerance against religious groups or motivated by religious beliefs (see January 2014 report by Pew Research Center and US State Department's International Religious Freedom Report 2013),<sup>3</sup> as horrifically evidenced by the latest ISIS atrocities, the brutal beheadings of 21 Coptic Christians in Libya, and also shown by the Boko Haram attacks in Nigeria, the shootings at the parliament in Ottawa, the hostage-taking in Sydney, and the anti-Islam demonstrations in Germany through 2014.

We urgently need to come up with global policy responses as the world seems to be "lurching towards a new normal where protest is advanced through murder" as Hugo Muir put it in *The Guardian* yesterday and spiralling into a state of chaos around our values and identities.<sup>4</sup>

My purpose through this lecture is *not* to deliver some kind of some sermon on the merits of freedom of expression as such or defend freedom of expression in absolute terms. It is also not to express my approval of the messages and perspectives conveyed by the cartoonists of Charlie Hebdo: I emphasise that defending the freedom of expression of Charlie Hebdo's satirists does not equate to an endorsement of the views they chose to advance.

*First*, I will look at how this has become "freedom of expression's moment" given the profile and attention poured on the right over the past six weeks. *Second*, I will identify and reflect on a range of threats to freedom of expression that have been exposed by the attacks on Charlie Hebdo's offices in Paris and responses to them. *Third*, and finally, I will turn to my argument which is that at this time the case for freedom of expression needs to be both urgently and coherently remade and that the responses to the attacks in Paris, Copenhagen and others like them that may come need to proceed on the basis of international human rights approaches, particularly on freedom of speech and how to combat religious intolerance, which have evolved markedly in the past five years.

## II. Freedom of expression's moment

The Paris attacks have stimulated a heightened level of consciousness on freedom of expression. They provoked a deluge of responses – from states' leaders, NGOs, intergovernmental figures, journalists, satirists, bloggers and members of the public – with freedom of expression at their epicentre. Indeed, it is difficult to recall a time when "freedom of expression" as such – beyond the narrower notions of "freedom of the press" or "freedom of the media", or the similar, First Amendment inspired concept of "freedom of speech" – has captured such broad attention across the world – or polarised it. Freedom of expression has been repeatedly invoked, hailed, qualified and contested in France, across Europe and internationally.

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<sup>2</sup> Committee to Protect Journalists, "International journalists killed at high rate in 2014; Middle East deadliest region", 23 December 2014.

<sup>3</sup> Pew Research Center, "Religious Hostilities Reach Six-Year High", 14 January 2014 <http://www.pewforum.org/2014/01/14/religious-hostilities-reach-six-year-high/>; United States State Department, Bureau of Democracy, Human Rights and Labor, International Religious Freedom Commission Report for 2013 <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper>

<sup>4</sup> Hugo Muir, "Our response to the Copenhagen attacks will define us", *The Guardian*, 16 February 2015.

A “universal belief in the freedom of expression”, as President Obama put it, or “our unfailing attachment to freedom of expression” as a universal value, as the Joint Statement of the Ministers of the Interior of the EU put it, has framed the outrage of world leaders and the millions.<sup>5</sup> (Incidentally, one of the few high level public voices which drew on limitations of freedom of expression was that of Pope Francis who said: “you cannot insult [or] make fun of the faith of others”)<sup>6</sup>. People have taken to the streets of Paris and major Western cities – including London, Brussels, New York, Montreal, Jerusalem, Istanbul, Sydney and Tokyo – in record numbers in a gesture of collective solidarity against the Paris attacks and for free speech. “Je Suis Charlie” has become a rallying cry for freedom of expression on social media platforms, with the hashtag #JeSuisCharlie being tweeted more than 5 million times in the first two days following the attack. This past weekend’s shootings in Copenhagen have also been quickly condemned by relevant international actors, such as Dunja Mijatovic, the OSCE’s Special Representative on Freedom of the Media, and human rights organisations such as ARTICLE 19, and have served to revive opinion writers’ reflections on the place of freedom of expression in Europe.<sup>7</sup> From the perspective of assertions and affirmations of freedom of expression, one could argue that freedom of expression is having a sort of heyday.

Yet the reality could not be further from the truth, of course. Freedom of expression is under extraordinary pressure from state and non-state actors, not least because of the forces of religious extremism. At the end of his tenure in July 2014, the former Special Rapporteur on Freedom of Opinion and Expression, Frank La Rue opined that freedom of expression was in a worse state at the end of his mandate than at its beginning in 2008.<sup>8</sup>

The Paris and Copenhagen attacks were sparked by speech that was and is offensive to certain religious sensibilities. They form the latest chapter in a story about free speech and “religious censorship” that stretches back more than a quarter of a century to 14 February 1989 when Ayatollah Ruhollah Khomeini the Supreme Leader of Iran delivered his fatwa on Salman Rushdie. It is a story that also obviously includes the torrent of violence that swept many countries following the publication of offensive cartoons by the Danish newspaper Jyllands-Posten in 2005. But the current chapter of this story is necessarily distinguished because of the rise of the Internet and social media as means to disseminate information and ideas, including ideas which cause offence to religious sensibilities. At the time of the fatwa on Rushdie in 1989, the World Wide Web was a proposal one month away from being presented by Sir Tim Burgess Lee

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<sup>5</sup> Remarks by the President on the Terrorist Attack in Paris, 7 January 2015 <http://www.whitehouse.gov/the-press-office/2015/01/07/remarks-president-terrorist-attack-paris>; Joint Statement of the Ministers of the Interior of the EU [http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20150111\\_joint\\_statement\\_of\\_ministers\\_for\\_interior\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20150111_joint_statement_of_ministers_for_interior_en.pdf)

<sup>6</sup> Abby Hohlheiser, “Pope Francis on Charlie Hebdo: ‘You cannot insult the faith of others’”, *The Washington Post*, 15 January 2015.

<sup>7</sup> OSCE, “OSCE media freedom representative strongly condemns attack on participants at the event ‘Art, freedom of speech and blasphemy’ in Copenhagen” 15 February 2015 <http://www.osce.org/fom/140591>; ARTICLE 19, “Denmark: One dead at free speech event in Copenhagen”, Statement, 16 February 2015.

<sup>8</sup> As quoted in ARTICLE 19, “UNHRC must strengthen protections for civil society” Joint Statement, 13 June 2014.

and in late 2005 was around a billion (15.8% penetration). Now there is three times that (40.4% penetration).<sup>9</sup>

### III. The Paris attacks and responses: threats to freedom of expression

The attacks on Charlie Hebdo in Paris (and now also the free speech event in Copenhagen) and responses to them have exposed and amplified a number of challenges to freedom of expression as a universal right. These challenges – which have been to varying degrees highlighted in the burgeoning commentaries – show that the threats to freedom of expression are as complex, diverse and interwoven, as they are global.

The *first*, most serious and direct challenge is that of the “assassin’s veto”. “Where the heckler’s veto says merely ‘I will shout you down,’ the assassin’s version is ‘dare to express that and we will kill you’” as Timothy Garton Ash explains in the current issue of the *New York Review of Books*.<sup>10</sup> Charlie Hebdo’s journalists were targeted and lost their lives precisely because of their defiant lampooning of Islam, particularly the Prophet Mohammed, as they saw that as a legitimate and necessary form of expression. The café shooting in Copenhagen appears to go further by targeting a discussion on free speech, art and blasphemy.

The effects of the “assassin’s veto” encompass not only silencing through murder, but also the silencing that takes place because of fear that takes hold, the “chilling effect”, in its wake. Media organisations are especially impacted. Consider the different choices of newspapers as to whether to reprint Charlie Hebdo cartoons in the aftermath of the Paris attacks.

The decision by the editors of British newspapers not to republish any of Charlie Hebdo’s previous cartoons on 8 January and subsequent days after the Paris attacks was self-censorship, appears motivated by a refusal to run the risk of their staff being physically attacked themselves.<sup>11</sup> In this way, the approach of British newspapers contrasted with that of newspapers elsewhere in Europe (e.g. Belgium, Denmark, Germany, the Netherlands). Interestingly, the Danish *Jyllands-Posten* decided *not* to republish the cartoons with Flemming Rose, its foreign editor and the man who commissioned the original cartoons saying “We caved in. Violence works. Sometimes the sword is mightier than the pen.”<sup>12</sup>

While, for some commentators, the decision not to republish the cartoons was driven by “respect” rather than fear, for others, that term “respect” is “so uncomfortably intertwined with fear of the assassin’s veto”, rather than being connected with ethical standards and concerns about “tolerance”.<sup>13</sup> After careful editorial consideration, the *Guardian* and the *Independent* reprinted the cover of Charlie Hebdo’s “comeback

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<sup>9</sup> See data from International Telecommunications Union <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>

<sup>10</sup> Timothy Garton Ash, “Defying the Assassin’s Veto”, *The New York Review of Books*, 19 February 2015.

<sup>11</sup> Adam Wagner, “We Are Not All ‘Charlie Hedbo’, But We Are All Afraid”, *Huffington Post UK*, 8 January 2015.

<sup>12</sup> As quoted by Garton Ash, as above.

<sup>13</sup> Compare Anne-Marie Slaughter, “Charlie Hebdo’s Rights and Wrongs”, *Project Syndicate*, 27 January 2015 and Garton Ash.

issue” on the grounds that the cover set a conciliatory tone and was not gratuitous, with the Prophet Mohammed weeping while bearing a sign “Je Suis Charlie” beneath a banner “All is Forgiven”.<sup>14</sup> But surely more editors would have reprinted had they known others would do the same?

The *second* challenge is nothing less than the universal appeal of freedom of expression. While people took to the streets of Western capitals on 11 January in solidarity and unity, a perception that freedom of expression is an exclusively Western ideal has spurred marches and violent protests across the Muslim world – such as those in Afghanistan, Pakistan, Algeria, Kuwait, Lebanon, Tunisia, Sudan, Niger and Gaza – following the depiction of the Prophet Mohammed in Charlie Hebdo’s latest issue. As *The Economist* observed, “free speech is ... in many places at best a wavering ideal”.<sup>15</sup>

The *third* challenge is that of the duplicity and pretence states, particularly authoritarian and illiberal ones, with respect to freedom of expression. Many political leaders’ statements and gestures in support of freedom of expression in the immediate wake of the Paris attacks have seemed hollow, hypocritical, and even ridiculous given their domestic practices and policies. This challenge has been well-exposed, thanks largely to the Daniel Wickham, a twenty-one year old LSE student, tweeted about the human rights abuses of twenty-one of such “staunch defenders” of free press represented at the solidarity rally in Paris on 11 January.<sup>16</sup> Remarkably, Wickham was re-tweeted more than 18,000 times, including by such prominent figures as Glenn Greenwald and his tweets were also covered media.<sup>17</sup> Prime ministers, ministers and high ranking officials from states with seriously troubling freedom of expression records – notably Egypt, Bahrain, Algeria, the United Arab Emirates, Turkey, Gabon and Russia – were amongst world leaders at the head of the rally of 1.5 million which marched down Boulevard Voltaire. Hungary should arguably be mentioned in this cluster of states, given that prime minister Viktor Orban marched for freedom of expression too, despite this state’s clampdown on the media.<sup>18</sup>

Perhaps the strangest presence was that of the ambassador of Saudi Arabia to France who attended the Paris rally just two days after his state flogged fifty times the activist Raif Badawi, in the first in a series of 1,000 lashes which was supposed to be carried out over twenty weeks as punishment for insulting Islam. Given this forum, it is important to mention that in a “dramatic challenge”, Katrina Lantos Swett, chairwoman of the US Commission on International Religious Freedom and Tom Lantos’ daughter, and six of her colleagues sent a letter to the government of Saudi Arabia on 20 January (between the first and the second set of scheduled lashes), each offering to take 100 of Badawi’s lashes.<sup>19</sup> (After being pressed by Amnesty International UK, the heir to the

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<sup>14</sup> Chris Elliott, “The readers’ editor on... the Guardian’s values and Charlie Hebdo’s cartoons of Muhammad”, *The Guardian*, 19 January 2015.

<sup>15</sup> *The Economist*, “Freedom Speech: The Sound of Silence”, 24 January 2015.

<sup>16</sup> See Daniel Wickham’s Twitter feed <https://twitter.com/danielwickham93> and list of tweets on “staunch defenders” at <https://storify.com/tometty/staunch-defenders-of-free-press-attend-solidarity>; Adam Taylor, “The free speech hypocrisy of some world leaders marching in Paris”, *The Washington Post* 11 January 2015.

<sup>17</sup> Oscar Williams, “Paris anti-terror rally: why I called out hypocritical world leaders on Twitter” *The Guardian*, 13 January 2015.

<sup>18</sup> Lydia Gall, “Hungary’s Insidious Media Clampdown”, Human Rights Watch, 13 June 2014.

<sup>19</sup> “From N.H., a dramatic challenge to the Saudi government”, *The Boston Globe*, 6 February 2015.

British throne, Prince Charles, raised Badawi's case to Saudi Arabia's King Salman last week.)<sup>20</sup>

The *fourth* challenge concerns responses of the "liberal heartland" of Europe to the Paris attacks, which depart from and hence undermine the very values of freedom of expression for which their leaders rallied in Paris. European states are seeking to beef up their counter-terrorism laws and policies, combat radicalisation and tackle growing anti-Semitism – and legitimately so.<sup>21</sup> But their responses have exhibited a distinct lack of consideration of rights values, chief among them freedom of expression, ironically.

In the wake of the Paris attacks, the French government has cracked down on speech that constitutes "apologie du terrorisme". According to the French Ministry of Justice, between 7 and 29 January, there had been some 486 cases linked to the attacks on Charlie Hebdo; 257 of these involved individuals accused of condoning or provoking terrorism; about 41 of these had been quickly pushed through the courts with 18 people having been given prison sentences.<sup>22</sup> One of those under investigation is the provocative comedian Dieudonné for writing on Facebook that he "felt like Charlie Coulibaly" a reference to both Charlie Hebdo and the kosher supermarket gunman, Amédy Coulibaly. Expressing a different opinion against the dominant or official line on the Paris attacks has had severe consequences. Consider also the case of a man, who was arrested for drunken driving, who shouted at police that there should be more of the gunmen who attacked Charlie Hebdo and that he hoped that they would be "next". He was immediately brought before judges and sentenced to four years in prison.<sup>23</sup> Meanwhile in the UK, not content with GCHQ's far reaching surveillance powers as exposed by Edward Snowden (including the ability to access material collected by the NSA and other spy agencies, without a warrant), the prime minister David Cameron has called for a further ramping up of security services' powers to intercept all online communications and also to break encrypted messages – something that would affect journalists in the communications with sources more than anyone else – as further new anti-terrorism measures pass through Parliament (Counter-Terrorism and Security Bill and revived Snoopers' Charter, the Communications Data Bill).<sup>24</sup> Narrow conceptions of security are once again pushing out more measured considerations based on rights, once again.

The *fifth* challenge concerns the inconsistent and selective legal and policy approaches to freedom of expression in Europe, which cannot be ignored as we consider the responses to the Paris attacks. While European leaders have indicated their support of Charlie Hebdo's freedom of expression as encompassing the freedom to offend and have taken a clear stance against blasphemy around the world in the international policies, laws on blasphemy are still on the statute books in some EU Member States (such as Austria, Denmark, Finland, Greece, Ireland and Italy) and "religious insult"

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<sup>20</sup> Richard Spencer, "Prince Charles raises Saudi blogger case with Saudi king" *The Daily Telegraph*, 10 February 2015.

<sup>21</sup> Ben Ward, "Assessing Europe's Response to the Paris Attacks", Human Rights Watch, 11 February 2015.

<sup>22</sup> Angelique Chrisafis, "French dissenters jailed after crackdown on speech that glorifies terrorism" *The Guardian*, 30 January 2015.

<sup>23</sup> As above.

<sup>24</sup> Nicholas Watt, Rowena Mason and Ian Traynor, "David Cameron pledges anti-terror law for internet after Paris attacks", *The Guardian*, 12 January 2015.



or “vilification” of religious feelings remains an offence in many such states (such as Cyprus, the Czech Republic, Denmark, Spain, Finland, Germany, Greece, Italy, Lithuania, the Netherlands, Poland, Portugal and Slovakia).<sup>25</sup>

The incoherence between many EU Member States’ domestic and international positions is coupled with problematic inconsistency in the jurisprudence of the European Court of Human Rights on artistic expression that offends religious sensibilities. Although the court has on innumerable occasions reiterated the part of its judgment in *Handyside v the UK* setting down the principle that freedom of expression encompasses the right to disseminate information or ideas that “offend, shock or disturb the State or any sector of the population”<sup>26</sup> – a phrase that is invoked in relation to the cartoons by many now – it has also mandated blasphemy laws on the basis of states margin of appreciation and a lack of a European consensus,<sup>27</sup> and has hitherto allowed convictions for genocide denial, but only in relation to the Holocaust, and not the Armenian genocide.<sup>28</sup> Moreover, the court has refused to hear the complaints of two Moroccan nationals about the cartoons in *Jyllands-Posten*.<sup>29</sup>

Little wonder that the external projection of Europe’s internal legal reality when it comes to freedom of expression is a major impediment to European states persuading others to protect free speech, particularly expression which may be insulting to religious beliefs.

#### **IV. An international human rights based response to the Paris attacks**

How should these momentous challenges concerning freedom of expression in the wake of the attacks in Paris and in Copenhagen be approached?

There certainly needs to be revival and reminder by leadership figures of the reasons why protecting freedom of expression is so fundamental: as the best way of getting to the “truth” or the nature of reality; as the means of keeping our elected representatives in check in a democracy; as a way of promoting development; as a way of realising ourselves. Recalling such rationales at this time needs to be coupled with recognition that freedom of expression is actually a “universal” – rather than uniquely French, American or American – ideal and “yearning” in order to cut through a sense that it is the “West versus the Rest” on this matter.<sup>30</sup> Witness the situation of countless journalists, writers, bloggers and activists who knowingly risk persecution, imprisonment and torture in states from Azerbaijan to Eritrea to Vietnam simply for expressing their views before suggesting that freedom of expression is just for America or Europe. Recall the fact that a cry for free speech still forms a key part of the demands

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<sup>25</sup> According to the European Humanist Federation (EHF) and the International Humanist and Ethical Union (IHEU) who have recently launched a campaign for the abolition of blasphemy laws worldwide. See <http://iheu.org/end-blasphemy-laws-a-new-campaign/>

<sup>26</sup> Application No 5493/72, judgment of 7 December 1976, para 49.

<sup>27</sup> *Otto-Preminger v Austria*, Application No 13470/87, judgment of 20 September 1994 and *Wingrove v UK*, Application No 13470/87, judgment of 25 November 1996.

<sup>28</sup> *Perincek v Switzerland*, Application No 27510/08, judgment of 17 December 2013, Grand Chamber judgment pending.

<sup>29</sup> *Mohammed Ben El Mahi and others v Denmark*, Application No 5853/06, decision of 11 December 2006.

<sup>30</sup> Lee Bollinger, “Americans only figured out free speech 50 years ago. Here’s how the world can follow our lead.”, *The Washington Post*, 12 February 2015.

of people and groups in “the least free” part of our planet, despite the Arab Spring which all but failed in states except Tunisia.<sup>31</sup>

In the past days, various responses or “solutions” – of varying degrees specificity and concreteness – to the Paris attacks have been forthcoming. The technical. Timothy Garton Ash has suggested the development of a “safe haven” site devoted to the republishing and dissemination of offensive materials which are considered of genuine news interest, but which media online and offline refuse to publish. This site would have an anonymous staff and board, strong editorial procedures and would not be not US led. (There are problems with this proposal as Garton Ash recognises: it could mean editors might “pass the buck on difficult decisions” and there might be an “auction of victimhood”, a competition amongst publications to get into this space as a badge of honour.)<sup>32</sup> They have also included the economic and market orientated. Lee Bollinger, the President of Columbia University, has suggested promoting global freedom of expression norms by “[harnessing] the prevailing international commitment to free markets and a global economic system, which demands the open sharing of information” through the establishment of a “new international trade regime that protects journalism, academia and digital information”. (Bollinger points to the fact that the US has already made moves in this direction by pressing the WTO to investigate how Chinese censorship creates barriers to business.) Bollinger argues that regional and bilateral trade agreements should “commit all parties to the free flow of information and ideas integral to trade and investment.” For instance, the “Trans-Pacific Partnership agreement ... should contain not only provisions concerning the environment and labor standards”.<sup>33</sup> These proposal are also not beyond criticism since they may be seen to draw on the broad protection of free speech under the First Amendment, including the safeguarding of corporate interests.<sup>34</sup>

Leaving aside further engagement with these proposals, I would like to finally turn to my argument about global norms on freedom of expression.

While states have focussed on tightening up their counter-terrorism and security laws and policies – and legitimacy so – the significance of global human rights norms – as a set of the world’s most fundamental values – has largely been overlooked. In crafting their responses to the Paris attacks, political leaders, religious figures and social commentators have steered clear away from the *international* rule of law, even as they have appealed to the concept of the rule of law itself. My argument is that they should look to international human rights approaches on freedom of expression and combating intolerance as providing a credible and legitimate framework – in terms of its substance and process via which it developed – for developing strategies that are coherent and measured, and involve all states “taking stock” and “putting their houses in order”. In addition, through promoting a global consciousness of freedom of expression that is based on international human rights law, we can avoid how freedom of expression is “reductively understood”.<sup>35</sup>

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<sup>31</sup> Freedom in the World Report, Freedom House, 2015 <https://freedomhouse.org/report/freedom-world/freedom-world-2015#.VPSsiC5RJG4>

<sup>32</sup> Garton Ash, as above.

<sup>33</sup> Bollinger, as above.

<sup>34</sup> *Citizens United v Federal Election Commission*, No 08-205, 558 U.S. 310.

<sup>35</sup> Gavan Titley, “Discussing Charlie Hebdo”, *Irish Left Review* 15 January 2015.



International human rights law on freedom of expression under Article 19 of the Universal Declaration of Human Rights can and should provide the normative framework in shaping responses following the Paris attacks. Article 19 of the International Covenant on Civil and Political Rights, which was adopted in 1966 and has since been ratified by 168 states, states that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” This is not an absolute right. Limitations may be provided if they meet a legitimate aim (such as the protection of the rights or reputation of others), are provided for by law and are necessary. Article 20 of the ICCPR provides that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” The percolation of international human rights protections on freedom of expression across societies around the world certainly takes time, as Bollinger argues drawing on the American experience of the First Amendment, which took fifty years to move “from the periphery of America’s civic consciousness to its center”.<sup>36</sup>

But contemporary events mean that there is a particular urgency in understanding the international human rights framework that has developed around freedom of expression. This urgency is only enhanced by the fact that global bodies have developed highly relevant interpretations on matters of expression and religious intolerance that concern us today.

These provisions have been subject to heightened levels of critical discussion and interpretation by key UN human rights bodies in recent years. The outcomes of these reflections speak directly to all states in their efforts to protect freedom of expression while also addressing advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence in the wake of the Paris attacks. I will now highlight the most important aspects of this international human rights framework, which must inform responses to the Paris attacks.

Most notably, international law does not allow restrictions on expression which is considered blasphemous or insulting to a particular religion or belief system. International law protects the rights of individuals, believers and non-believers, and groups, but not abstract entities such as religious ideas, symbols and tenets.

According to the UN Human Rights Committee authoritative interpretation of Article 19 of the ICCPR from September 2011, laws on blasphemy and religious insult, are incompatible with Article 19 of the ICCPR.<sup>37</sup> From an international law perspective, therefore, blasphemy laws should be abolished unequivocally everywhere, as is emphasised by the Rabat Plan of Action on incitement that was adopted in 2012 and reiterated on numerous occasions by David Kaye, the current Special Rapporteur on Freedom of Opinion and Expression has reiterated in line with his predecessors.<sup>38</sup> (The

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<sup>36</sup> Bollinger as above.

<sup>37</sup> Human Rights Committee, General Comment No 34, CCPR/C/GC/34, 11 September 2011, para 48.

<sup>38</sup> The RPA was later contained as the Appendix to an Addendum to an Annual report of the High Commissioner for Human Rights. Appendix in the Annual Report of the United Nations High Commissioner for Human Rights, A/HRC/22/17/Add.4, 11 January 2013. David Kaye, “Beyond the

sea change towards blasphemy laws had come a few months prior, in March 2011 when for the first time in over a decade the Organisation of Islamic Cooperation (as it is now) did not propose a resolution on combating “defamation of religions” at the UN Human Rights Council.)<sup>39</sup>

The fact that authoritative interpretation of international law as it has evolved now stipulates that blasphemy laws ought to be abolished provides a strong basis for establishing a “mutually supporting and robust international network” of advocates against blasphemy laws, as proposed by humanist NGOs.<sup>40</sup> The development of such a network is particularly crucial when in many states, such as Pakistan, even the opposition to blasphemy laws is regarded as blasphemous.

Alongside repealing blasphemy laws, states need to step up their efforts to combat religious intolerance and incitement by effectively implementing relevant Human Rights Council and General Assembly resolutions on the subject, which were proposed instead of the problematic resolutions on “defamation of religions” and currently attract a consensus. Human Council Resolution 16/18 requires states to amongst other things: (1) encourage the creation of collaborate networks to build mutual understanding, promote dialogue and inspire construction action; (2) create an appropriate mechanism within governments to identify and address potential areas of tension between members of different religious communities, and assist conflict prevention and mediation; (3) speak out against, including advocacy of religious hatred intolerance and incitement to discrimination, hostility or violence; (4) recognise that open, constructive and respectful debate can play a positive role in combating religious hatred; (5) encourage the representation and meaningful participation of individuals of individuals irrespective of their religion in all sectors of society; and (6) adopt measures to criminalise incitement to imminent violence based on religion or belief.<sup>41</sup> States now need to augment their efforts to implement this consensus-based policy framework.<sup>42</sup>

The Rabat Plan of Action on incitement also urges states to adopt a multi-pronged and consistent approach to instances of incitement to religious hatred, encompassing criminal sanctions if a high threshold is reached according to a six-part test, civil and administrative sanctions, measures to promote civility and respect in societies, as well as comprehensive anti-discrimination legislation. It also highlights the moral and social responsibilities of the media in combating discrimination and promoting intercultural understanding.<sup>43</sup>

It is important to emphasise that the process of developing these UN texts sets some important precedents in terms of international cooperation on freedom of expression issues, and in doing so raises their sense of global legitimacy. The hard-won consensus between Western and Islamic states that underpinned the resolutions on combat

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Paris Attack and Rally: What Should Happen Next?”, *Points of Order* (blog), 11 January 2015 <http://pointsoforder.org/2015/01/11/beyond-the-paris-attacks-and-rally-what-should-happen-next/>

<sup>39</sup> Human Rights Council resolution 16/18 of 24 March 2011, A/HRC/RES/16/18

<sup>40</sup> International Humanist and Ethical Union, as above.

<sup>41</sup> Human Rights Council resolution 16/18 as above.

<sup>42</sup> Dr Nazila Ghanea at “High Level Panel Discussion” <http://www.universal-rights.org/events>, held on 12 February 2015, of report Marc Limon, Nazila Ghanea, Hilary Power, “Combating global religious intolerance: the implementation of resolution 16/18” Universal Rights Group, December 2014.

<sup>43</sup> See discussion in Sejal Parmar, “The Rabat Plan of Action: A Global Blueprint for Combating ‘Hate Speech’” (2014) 1 *European Human Rights Law Review* 21 – 31.

religious intolerance and incitement as well as the cross-regional process leading up to the Rabat Plan shows that state and non-state actors can come together to agree on some basics of freedom of expressions, albeit through lengthy and tough negotiations.

These international human rights approaches should now be at the very forefront of work of key UN human rights bodies should frame and positively inform states' policies in response to the Paris attacks encouraging them to tackle the difficult underlying challenges to the realisation of freedom of expression as well as equality in their own societies. They should also provide a rallying point around which supportive states, NGOs, the media and individuals across the world can gather – most obviously in support of a global campaign against blasphemy laws. Public awareness of the key elements of such texts is crucial: the essence of these standards clearly need to be understood more widely beyond the elites of diplomats, civil servants, advocates, activists and academics that work with and within the international human rights system. In the face of powerful forces, this certainly requires major efforts of persuasion by states, NGOs and the media, in addition to those of UN human rights bodies. But unless ordinary people across regions, religions and beliefs (including no belief) themselves are able to exercise as well as appreciate and find some consensus upon the meaning of freedom of expression, deadly attacks and waves of violence because of conflicts on expressions about religious ideas are likely to continue unabated.

The case for freedom of expression needs to be urgently remade. The moment for a deeper understanding of freedom of expression based on international human rights standards has undoubtedly come.

Thank you