Testimony of

Leonard A. Leo

Before the

Tom Lantos Human Rights Commission (TLHRC)

on

Implications of the Promotion of “Defamation of Religions”

Wednesday, October 21, 2009

Thank you, Mr. Chairman, for convening this hearing on this important and timely issue. For a number of years, the U.S. Commission on International Religious Freedom has been monitoring closely, and speaking out against, the campaign by some countries to create a global blasphemy law through the passage of UN resolutions against the so-called “defamation of religions.”

While they may sound tolerant and progressive, these resolutions do not solve the very real problems of persecution and discrimination suffered by the adherents of many religions around the world. Rather, they exacerbate these problems. The “defamation of religions” concept promotes intolerance and human rights violations, creating wide latitude for governments to restrict free expression and religious freedom. In addition, the concept deviates sharply from the historically rooted object of international human rights protections by addressing the interests of religious institutions and interpretations, rather than the rights of individuals.

The “defamation of religions” resolutions have been sponsored annually by the Organization of the Islamic Conference, or OIC, in the UN Human Rights Council and its predecessor since 1999, and in the General Assembly since 2005. At the Human Rights Council in Geneva, these efforts have been led by Pakistan. Egypt has played a leading role at the General Assembly in New York. The OIC’s publicly-stated goal is the adoption of a binding international covenant against the so-called “defamation of religions.”

Although the “defamation” resolutions purport to protect religions generally, the only religion and religious adherents that are specifically mentioned are Islam and Muslims. Aside from Islam, the resolutions do not specify which religions are deserving of protection, or explain how or by whom this would be determined. The resolutions also do not define what would make a statement defamatory to religions or explain who decides this question. For its part, the OIC

appears to deem any criticism of Islam or Muslims to be religiously defamatory speech—a view that goes well beyond the existing legal concept of defamation, which protects individuals against false statements of fact that damage their reputation and livelihood.

In terms of states’ practices, there is no universal international approach toward “defamation of religions.” The UN High Commissioner for Human Rights conducted a survey in 2008 and found no common understanding of the concept among those countries that said they had laws on the issue. Instead, the laws surveyed addressed “somewhat different phenomena and appl[ied] various terms such as contempt, ridicule, outrage and disrespect to connote defamation.”

What should we glean from this narrow focus on Islam and the ambiguity of the applicable legal standard? For the Commission, it signals that the “defamation of religions” resolutions are a poorly veiled attempt to export the repressive blasphemy laws found in some OIC countries to the international level. Under these laws, criminal charges can be levied against individuals for defaming, denigrating, insulting, offending, disparaging, and blaspheming Islam, often resulting in gross human rights violations. In Pakistan, for example, the domestic law makes blasphemy against Islam a criminal offense subject to severe penalties, including death. Extremists have abused these broad provisions to intimidate members of religious minorities, including members of disfavored minority Muslim sects, and others with whom they disagree, and unscrupulous individuals have found them to be useful tools to settle personal scores. Blasphemy allegations in Pakistan, which are often false, have resulted in imprisonment on the basis of religion or belief, as well as vigilante violence resulting in the death of accused individuals.

The “defamation of religions” resolutions usually come before the UN General Assembly in the fall and the UN Human Rights Council in the spring, and they continue to pass each year in each body. Yet there is some good news to report: the international community is starting—though I would stress only starting—to understand the problems with these resolutions. The last three times they were considered the votes in favor decreased from a majority to a plurality of members. At both the March 2008 and March 2009 Human Rights Council sessions, as well as the December 2008 General Assembly, the combined number of no votes and abstentions outnumbered the yes votes, although the resolutions still passed. The Commission hopes that this trend will continue when the expected “defamation of religions” resolution comes before the General Assembly later this fall. To that end, we are working on a number of fronts, including with various Members of Congress, to encourage UN member states to oppose these resolutions. The Commission welcomed Secretary Clinton’s recent remarks in New York affirming the United States’ continued opposition, and we urge the State Department to continue vigorously to engage all governments to urge them to vote no.

Like any smart tactician that detects a weakening of support, the OIC is diversifying its push for banning certain forms of speech by reaching into other venues and masking its objective through other language. The OIC sought, but failed, to insert language against the “defamation of religions” in the outcome document of the April 2009 Durban Review Conference. Instead, a compromise was reached to include a phrase deploring “the derogatory stereotyping and stigmatization of persons based on their religion or belief.” This is a somewhat better approach

because it focuses on individuals, not religions, and does not attach legal prohibitions or punishments.

The OIC also has attempted to include the “defamation of religions” concept into UN resolutions dealing with the freedom of expression. At the most recent UN Human Rights Council session, the United States worked with Egypt to jointly sponsor a compromise freedom of expression resolution that sought to find common ground between the “defamation” proponents and opponents. Like the Durban II Conference document, this resolution does not mention “defamation of religions,” but rather focuses on negative religious stereotyping, thereby rightly keeping the focus on individuals rather than belief systems. It also does not call for any laws against such stereotyping, but instead expresses concern about it.

However, many in the human rights community were surprised by the United States’ co-sponsorship of this resolution because it condemned “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” and called on states to “take effective measures, consistent with their international human rights obligations” to address such advocacy. Having just returned from Commission delegations to the European Union and Holy See, I know that many of our EU partners were equally surprised. The language on advocacy of hatred constituting incitement is taken from Article 20(2) of the International Civil and Political Rights, or ICCPR. Article 20(2) also requires states to enact laws against such incitement—a requirement on which the United States has placed a reservation to the extent that doing so would violate U.S. constitutional free expression guarantees. To be sure, the U.S./Egypt resolution does not expressly call for legal prohibitions, and therefore does not run afoul of the U.S’s reservation, and the U.S. previously has supported UN resolutions on religious intolerance and discrimination that condemned incitement but did not require laws against it.

But the Commission is concerned that this use of the incitement language is a Trojan Horse for the “defamation of religions” efforts. The United States and other supporters of free expression therefore must remain vigilant against attempts to conflate “defamation of religions” and Article 20(2) incitement. In addition to seeking a new anti-blasphemy norm through the “defamation” resolutions, the OIC has argued in various UN contexts that speech insulting or criticizing religions is outlawed under existing international law norms against incitement—citing ICCPR Article 20(2).

Article 20(2) has always been and should continue to be a limited exception to the fundamental individual freedoms of expression and religion meant to protect individuals from violence or discrimination, not to protect religious beliefs from criticism. The United States should recognize that the defamation proponents’ efforts to redefine and significantly broaden this provision are of serious concern.

National or international laws purporting to ban criticism or “defamation” of religions are not the solution to the very real problems of religious intolerance and discrimination. In fact, such prohibitions do more harm than good, as evidenced by the human rights abuses perpetrated under them in countries such as Pakistan. The United States should continue strongly to oppose, and urge other UN members to oppose, both the “defamation of religions” resolutions

and all efforts to reinterpret ICCPR Article 20(2) to encompass allegedly religiously defamatory speech.