Abstract. The present paper aims, firstly, to pay attention to the impact of the multicultural environment in determining the change at United Nations Human Rights System. Underlining the institutional change and the role of new actors, the proposal will try to analyze the reaction of the system, taking into account both the situation of normative contestation and of “normative cross fertilization” (if any). Secondly, it will try to take a look at the introduction of the concept (e.g. tentative definition, probably misreading, etc.) of “defamation of religion” into the international human rights system as a consequence of the political, social and normative pressure by the Islamic Countries into the Human Rights Council and UN System in General. With this aim, a series of resolutions of the General Assembly of the United Nations, the Former Human Rights Commission and the Human Rights Council respectively, have been analyzed in detail, from 1999 until 2012. At the end of the analysis it has been possible to do some conclusions, like as: 1) the initial political consensus on the necessity to protect religion(s) from defamation has disappeared; 2) no legal clarity has been possible to resume from the multiple analysis; 3) “defamation of religion” in political fora has been at many times confused with and superposed on the prohibition of discrimination on the ground of religion or belief, the prohibition of the hate speech and the incitement to violence on the ground of religious and/or racial hatred. The primary consequence is a serious tentative to breach the principle of interdependence of human rights, in particular the existing fundamental interdependence between freedom of expression and freedom of religion or belief.

Nowadays, we are confronted with a continuous process of transformation of the international society in a global community. In our view, the central common pillar of this process of transformation is the quest for protection, respect and fulfillment of human rights. As rightly noted, in fact, in a present time of significant

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changes worldwide, individuals demand more accountability and respect for human rights\textsuperscript{1}, as they are “creditors of international responsibility” (A.Peters, 2009). If it is so, however the definition of human rights has been and is continuously subject to many contestations.

The increasing intensity of contestations has been directly proportional to the level of different social expectations, as like as to the differentiation of the international arena, evidenced by the increase of participation and actively membership into the two of the principal international arena, where human rights normative debate is based: the United Nations General Assembly (GA), and the United Nations Human Rights Council (HRC). In general terms, the United Nations Human Rights System is the international institutional place where, perhaps, a certain level of supposed normative contestation is directly proportional to the augmentation of political and social power of the different actors involved, as like as of the developing country.

The debate on the definition of a substance of a right, or of its limits, or about the emergence of a new query of protection is increasingly carrying out in a multicultural institutional environment. This multicultural\textsuperscript{2} and “pluri-subjects” character makes evident the United Nations Human Rights as being at a crossroad between normative contestation and cross fertilization while it is reinventing its stability.

However, one of the central point in this context refers to the nature of any existing new claim as like as to its legal foundation. This is particularly relevant for the case which is discussed in this paper, notably the supposed necessity to find or insert into the present universal human rights normative framework any kind of

\textsuperscript{1} Human Rights Must be at Centre of the UN Vision for the Rule of Law, Open Letter of the Coordination Committee of the Special Procedures of the Human Rights Council on the high-level meeting on the rule of law at the national and international levels, September 2012, available at http://www.ohchr.org/EN/HRBodies/SP/Pages/Coordination_committee.aspx (last accession on 7\textsuperscript{th} March 2016).

protection to religion from “defamation”. Defamation, in general terms, refers to a loss of honor as a consequence of the offense because of false declaration, expressed with the clearly aim to breach the personal integrity. In fact, in many Western Criminal Codes, those kind of criminal offenses appears as “Crime against the honor” (e.g. articles 208 and ss. of the Spanish Criminal Code), aiming to sanctioning any offense against the individual reputation and providing as such the legally admitted limits to freedom of expression. On the other side, freedom of expression is guaranteed in western democracy against any form of discrimination based on political, religious or racial grounds, almost in principle.

So far, the association of the term “defamation” to an abstract concept like religion present a series of problems, both at legal and political level. If the generally accepted definition of the term aims to prevent any breach of individual rights and at the same time guarantying a sort of mutual equilibrium between concurrent human rights, on the other side the new emerging Countries with different legal tradition, identify this term with the term of “blasphemy”. It is the case, for example of Nigeria, Pakistan, Morocco, Algeria, Bangladesh, Malaysia, etc. This is due to fundamental difference into the conception of the pillar of the Constitutional State. It is not just a matter of “North-South” divide. To be clear: every State is based on a group of fundamental constitutional principles, considered as inalienable and not to be submitted to judicial review, including the protection of fundamental rights (e.g. the first 12 articles of the Italian Constitution). Well, in many Asian and African countries, the pillars of the State are coincident with the fundamentals of the Islamic religion and every action or opinion, or belief considered by the respective authorities as contrary to them is punished because against the Supreme Constitutional Law. In other words, in such a group of Countries the constitutional order is guaranteed by the respect of official legal interpretation of the religious foundation of the State. It is easy to understand why, for example, Pakistan has one of the most sever blasphemy law in the world, considering that it is the instrument to avoid other doctrinal interpretation and to combat subversive expressions and
attitudes. It could be considered as a State legal arm against (religious) opposition and to criminalize in absolute terms any form of free expression. However, it must bearing in mind that blasphemy laws have been historically instrumental to guarantee consensus towards authority everywhere. As an example, the blasphemy law in UK has been abolished only in 2008, after the adoption on the law against hate speech, *The Racial and Religious Act* 2006, according to which anyone using words, behavior or any kind of material with the intent to threatening must be considered guilty of an offense if it is intended based on religious hatred (section 29B). The UK case is just one example of the opposite tendency at national level in Europe and US, where severe limitation of freedom of expression, has leave the place to laws having (almost apparently) the aim to prevent national security disorder by guarantying pluralism. However, no clear definition of what is intended for hate speech into the considered UK Law is available, leaving the decision to judge to clarify case by case its limits. What is important to note is that those different national debates have been translated to the international human rights discourse and vice-versa. In particular the debate on “combating defamation of religions” has been introduced at UN level for the first time in 1999. The Representative of Pakistan, on behalf of the former Organization of the Islamic Conference (nowadays the Organization for Islamic Cooperation), including around 57 Islamic Countries around the world, proposed to the former United Nations Human Rights Commission (the Commission, the HR Commission, CHR) a draft resolution on “Defamation of Islam”. It is also important to note, that on this occasion members of the Commission was concerned not just on the necessity of a resolution based on similar grounds, but just by the fact that it was centered just on one religion, implicitly excluding the others. As consequence, the draft resolution has been modified concerning the defamation of religion in general

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terms, as referred to any religion. In fact the final first resolution has been titled “Defamation of Religions”.

Since this first one in 1999 and until 2005, the Human Rights Commission adopted similar resolutions⁵, but just the first two years they had been adopted by consensus⁶, it means without any kind of legal or political opposition about its significance, or its necessity, or its impact on consolidated freedoms like freedom of expression and freedom of religion or belief and its effective enjoyment. As a result, one of the two mentioned resolutions adopted without a vote, Res. 2000/84, introduced into the human rights legal discourse and political debate some concepts seriously challenging the international framework for freedom of expression.

Even having pointed out that “[…] discrimination against human beings on the grounds of religion or belief constitute an affront to human dignity and […]” (Preamble, para.3) “[…] that discrimination based on religion or belief constitutes an offence to human dignity and a violation of human rights […]” (Preamble, para.4), the reference to the respect of the principal of non discrimination, considered as basic principle for the protection, guarantying and effective enjoyment of human rights and freedoms, especially, freedom of expression, freedom of religion and belief, disappeared from the text of the resolution. In fact, at the first operative paragraph, it expressed “deep concern for religions stereotyping” (not of individuals on the basis of their religion, but for the religions in general). Further to the general reference, on the second paragraph reference has been done expressly to Islam and to its association with human rights violation and terrorism.


Most important, what we already underlined as the principle concern on the initial draft – notably the initial exclusive reference to Islam – has been endorsed on the third operative paragraph, which read as follows and the CHR:

“3. Expresses its concern at any role in which the print, audio-visual or electronic media or any other means is used to incite acts of violence, xenophobia or related intolerance and discrimination towards Islam and any other religions […]”.

Here the clear example of tentative to prevent any act against religion(s) and not against individual on the basis of their religions or beliefs. The evidence of the first tentative to export constitutional relationships between State and religion into the international human rights discourse, with the placet of the international community, grateful to the extension of the protection to all religions and not just to Islam.

In this confusing resolution – one of a long list – the weight of Islamic Countries into the Commission is so evident that the same resolution asked to Governments, intergovernmental organizations and regional organizations to provide their respective “religious perspectives” in combating racism, serving as basis for the World Conference against Racism of 2001. What it means? Should the human rights discourse have a religious approach? International Legal Standards against discrimination should be accepted and/or admitted on the basis of the respective accepted religions at national level and their respective relationships with the State?

The situation changed after the terrorist attacks of 9/11 in US. The Diplomatic acceptance, better said, consensus on the topic, disappeared. Despite that, further resolutions had been adopted with a strong majority. Furthermore, after the publication of the Danish cartoons in 2005, and the consequent vague of manifestations, the pressure on the international fora to reach to an international recognition of the prohibition of defamation of religion(s) received a further input.
The balance since then was centered on freedom of expression v. religious sensitivity\(^7\), with the aim that the last one should be turned out as a legitimate limitation (or denegation) of the first one.

In fact, in 2005 for the first time a similar resolution has been introduced before the General Assembly\(^8\). And the debate would rest still centered on these grounds almost until 2011, with numerous tentative to seriously challenges freedom of expression and freedom of religion and belief in the terms of the right to express a religion or belief.

As the United Nations Human Rights Committee rightly underlined, “Freedom of expression is fundamental to achieve principles of transparency and accountability, both essential to the promotion and protection of human rights”, (General Comment n. 34 in relation to article 19\(^9\) of the Covenant on Civil and Political Rights)\(^10\). Moving from the consideration that the question of content and limits to the right to freely express ourselves constitutes is fundamental to its effective enjoyment and implementation, we should move from the political and diplomatic debate to the legal framework looking for its legitimate limitations.

Freedom of expression is not an absolute right and its limits are clearly evidenced under international human rights law. In particular, article 19 of ICCPR provides that “[...] its exercise entails special duties and responsibilities [...]” (Human Rights Committee, GC/34, para. 21), including on its third paragraph the


\(^9\) Article 19 of the Covenant on Civil and Political Rights (ICCPR) reads as follows: “1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.”

\(^10\) General Comment n. 34, Freedom of Opinion and Expression, 102nd Session Period, July 2001, para. 3, CCPR/C/GC/34.
general conditions legitimizing possible limitations. Furthermore, art.19 clarify that any such limitations must be expressly provided by law, as like as be necessary to ensure respect of rights and reputation of others, and/or to protect national security, public order, public health and/or moral. According to Committee, in fact, “[s]ince any restriction on freedom of expression constitutes a serious curtailment of human rights, it is not compatible with the Covenant for a restriction to be enshrined in traditional, religious or other such customary law.” (GC/34, para.24).

There are no provisions under article 19 related to “defamation of religions” to be considered as between those admitted limits to freedom of expression. Nor seems admissible or credible identify such a possibility as provided by article 20 of ICCPR. From a joint reading of both articles 19 and 20 of ICCPR, we can easily deduce a limitation to an abuse of right with the intention to provoke instability and public insecurity. On this point, according to the Committee, it is bearing in mind that the two provisions are complementary, and that the acts referred to by the second paragraph of art. 20 should be considered so extremely than their limitation is covered by paragraph third of article 19 (GC/34, para. 50). Furthermore, the Committee recall that the acts referred to by article 20 are different from limitations included into article 19.3, because the first ones include an obligation for State Parties to prohibit that by law (GC/34, para 51).

What is clear from the legal framework is that freedom of expression should be subjected to limits, in order to prevent breach of rights of others, public order and moral, and most important discrimination against individual. The unique subject of protection according human rights law is individual, not a group of ideas to which

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11 Article 20 of ICCPR provides: “1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

12 Examining the merit of the individual communication, Malcolm v. Canada, n. 736/1997, of 26 April 2000, CCPR/C/70/D/736/1997, the Human Rights Committee underlined that “[…] should be admitted restrictions to those declarations aiming to strengthening anti-Semitic believes and opinions, protecting Judaic communities from religious hatred. […]”(para. 11.5). However, the Committee identified the respect of rights of others as legitimate limit to freedom of expression; in other words the Committee views declared about a possible violation of the reputation of the community and not of a religious sensitivity. See also, Faurisson v. France, communication n. 550/1993, 8th November 1996.
everyone has the right to adhere or not. What is emerged from the analysis is that the new plural public arena seems to have worked to limit pluralism, trying to introduce new interpretations of those consolidated limits, according to new States interests, like translate or migrate “constitutional ideas” out from national borders looking for international consent.

The analysis of resolutions and verbal transcript at UN evidenced this initial political clash on which basis consolidate new legal views.

However, since to 2008, at Human Rights Council this clash has received a sort of mitigation translated the debate from defamation of religions to the prohibition of hate speech and discrimination on the grounds (also) of religion.