

Combatting Hate with Freedom, Not Censorship: The Example of Anti-Semitism

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KEY TAKEAWAYS

The United Nations signaled last year that it would “fully mobilize” to tackle “hate speech” in response to violent attacks against houses of worship.

But in going after “hate speech,” the U.N. could threaten the unalienable rights of free speech and religious freedom as well as hurt efforts for peace and security.

U.N. member countries should focus on empowering Jews and other religious minorities by protecting freedom of speech and religion or belief.

Introduction

In 2019, United Nations Secretary-General Antonio Guterres launched the U.N. Strategy and Plan of Action on Hate Speech in response to violent attacks against houses of worship around the world—including synagogues, churches, and mosques. The Strategy observed:

Around the world, we are seeing a disturbing groundswell of xenophobia, racism and intolerance—including rising anti-Semitism, anti-Muslim hatred and persecution of Christians. Social media and other forms of communication are being exploited as platforms for bigotry.... Hate is moving into the mainstream—in liberal democracies and authoritarian systems alike. And with each broken norm, the pillars of our common humanity are weakened. Hate speech is a menace to democratic

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values, social stability and peace. As a matter of principle, the United Nations must confront hate speech at every turn. Silence can signal indifference to bigotry and intolerance, even as a situation escalates and the vulnerable become victims. Tackling hate speech is also crucial to deepen progress across the United Nations agenda by helping to prevent armed conflict, atrocity crimes and terrorism, end violence against women and other serious violations of human rights, and promote peaceful, inclusive and just societies. Addressing hate speech does not mean limiting or prohibiting freedom of speech. It means keeping hate speech from escalating into something more dangerous, particularly incitement to discrimination, hostility and violence, which is prohibited under international law.¹

Intolerance, including anti-Semitism, is rising worldwide and needs to be opposed with commitment and vigor. However, while well-intentioned, the U.N. Strategy on Hate Speech opens the door to prohibitions on free speech that are anathema to traditional advocacy for free speech. As noted by the U.S. Mission to the United Nations:

In the United States, our experience has taught us that speech restrictions do not work. Instead, they constrain democratic engagement, diminish respect for human dignity, and stifle change and social advancement. Banning so-called “offensive” speech has often served to protect those interested solely in maintaining the status quo or their own political preferences....

We have learned that democracy and prosperity depend on the free exchange of ideas and the ability to dissent, and that the best way to combat intolerant ideas is to let them fall of their own weight when challenged by well-reasoned counter arguments.²

This is the right approach. The United States should lead in fighting anti-Semitism and other intolerance at the United Nations by articulating how freedom of speech and freedom of religion or belief create the opportunities for dialogue and education that are prerequisites for individual and social change. The United States and its allies should urge the U.N. and member states to protect freedom in order to promote greater understanding, as well as peace and security for all.

U.S. Law on Free Speech

The First Amendment to the U.S. Constitution states that “Congress shall make no law...abridging the freedom of speech.” The freedom of speech is an end in itself, not simply a means to an end.

This approach has compelled the United States to reject government control of the content or viewpoint of speech. In *Wood v. Georgia*,³ for example, the Supreme Court held that “[u]nder our system of government, counterargument and education are the weapons...not abridgment...of free speech.” In *Gertz v. Robert Welch*,⁴ the Supreme Court similarly stated: “However pernicious an opinion may seem, we depend for its correction... on the competition of other ideas.”

The Supreme Court has also emphasized that content-based censorship has a “chilling effect” on speech.⁵ In *NAACP v. Button*,⁶ for example, the Court held that because “First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.”⁷ In *Cantwell v. Connecticut*,⁸ the Supreme Court held that an ordinance prohibiting “breach of the peace” could not be used to “suppress free communication of views.” In *Cohen v. California*,⁹ the Court held that the possibility that people might see, and be disturbed by, the message or content of speech does not transform it into “offensive conduct” that can be banned. The Court characterized this as the government “shut[ting] off discourse solely to protect others from hearing it.” That purpose, however, is “inherently boundless,” and the Court rejected the “facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process.”¹⁰

In *Matal v. Tam* (2017), the Supreme Court unanimously struck down a law that prohibited trademarks that could disparage persons or were immoral or scandalous. All Justices agreed on what Justice Samuel Alito called “a bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend.”¹¹

In the U.S., therefore, freedom of speech has been treated as an end in itself, and restrictions on the content or message of speech are routinely rejected. Pernicious ideas are best addressed by better ones rather than by the government choosing which views or messages are acceptable or attempting to manipulate what people do by regulating what they think, believe, and say.

Freedom of speech is so important to the United States that President Franklin D. Roosevelt highlighted it in what has become known as the “Four Freedoms Speech” to Congress in the middle of World War II. In it, he described a world built on “four essential freedoms.” The first, he said, was “freedom of speech and expression—everywhere in the world.”

In a series of cases over the past century, the Supreme Court has acknowledged that free speech is not unlimited and refined the principle that content-based restrictions can be justified if they aim to prevent “imminent lawless action.”

Early in the 20th century, the Woodrow Wilson Administration aggressively sought to suppress opposition to the U.S. entry into World War I, resulting in prosecutions for dissent. In *Baltzer v. United States*, the first case of this kind to reach the Supreme Court, the defendants had been convicted of obstructing military recruitment by circulating a petition criticizing the administration of the draft. The majority was poised to affirm the conviction, but it set aside the case after Justice Oliver Wendell Holmes wrote a dissent arguing that the government's purpose of pursuing war should not blur the line between "giving real aid and comfort to the enemy" and "opinions and speech that could not be imagined to do harm, although opposed our own. It is better," he wrote, "for those who have unquestioned and almost unlimited power to err on the side of freedom."¹²

In *Schenck v. United States*,¹³ the Supreme Court unanimously upheld the conviction of Charles Schenck, the Socialist Party's general secretary, for violating the Espionage Act of 1917 by distributing fliers urging men not to comply with the military draft. Justice Holmes wrote: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.... The question in every case is whether the words used are used in circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive dangers that Congress has a right to prevent."

Subsequent cases would refine this standard, making it both more narrow and more concrete. In *Brandenburg v. Ohio*,¹⁴ the Court overturned the conviction of a Ku Klux Klan member for giving an inflammatory speech. The Court held that speech can be prohibited only if it is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

Free Speech in International Law

While the U.N. Strategy and Plan of Action on Hate Speech was developed to advance tolerance of religious and ethnic diversity, it subordinates a fundamental right to increased government control with no clear limiting principle. And while the Secretary-General has pledged that the strategy will not lead to restrictions on free speech, member states should remember the United Nations' own checkered history on free speech.

The U.N.'s Checkered History on Free Speech

On December 10, 1948, the U.N. General Assembly adopted Resolution 217, the Universal Declaration of Human Rights (UDHR), which states in part that:

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, regardless 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.¹⁵

The drafting history of the UDHR shows that Soviet bloc countries argued that limits on “fascist” speech were required in the wake of Nazi Germany’s atrocities and aggression.¹⁶ They succeeded in attaining hate speech prohibitions in the International Covenant on Civil and Political Rights (ICCPR), which the U.N. General Assembly adopted on December 12, 1966. Article 20 states:

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.

First Lady Eleanor Roosevelt, who had chaired the U.N. Human Rights Commission when it helped draft the UDHR, warned that Article 20 of the ICCPR was “extremely dangerous” and “would encourage governments to punish all criticism under the guise of protecting against religious or national hostility.” The U.S. delegation argued that only violence constituted an objective and therefore legitimate standard for restricting speech and that “incitement to discrimination” and “incitement to hostility” were too subjective, vague, and open to abuse.¹⁷ The U.S. Senate voted to ratify this treaty on April 2, 1992, subject to a reservation that “Article 20 does not authorize or require legislation or other action by the United States that

would restrict the right of free speech and association protected by the Constitution and laws of the United States.”

Also of concern is the U.N.’s International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which calls for legal (including criminal) punishment of “all dissemination of ideas based on racial superiority or hatred.”¹⁸ The United States signed ICERD in 1966 and ratified it in 1994 with a reservation that “[t]he Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention...to restrict those rights.”¹⁹

The Committee on the Elimination of Racial Discrimination, the ICERD treaty body, has stated that governments should declare and effectively sanction as offenses punishable by law “[e]xpression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination.”²⁰

The U.N. Office of the High Commissioner for Human Rights (OHCHR) issued the Rabat Plan of Action in 2012,²¹ which proposes a six-part test for criminal penalties on speech in the service of combatting “incitement to hatred” and applying ICCPR Article 20. The six-part test includes examination of (1) the social and political context; (2) status of the speaker; (3) intent to incite the audience against a target group; (4) content and form of the speech; (5) extent of its dissemination; and (6) likelihood of harm, including imminence (to discrimination, hostility, and violence).

While the Rabat Plan’s six-part test is meant to add guardrails to the imposition of criminal penalties, none of the six parts resolves the underlying flaws with attempts to control “hate speech.” Step 3’s focus on the speaker’s intent to incite the audience ignores the fact that intent is subjective and easy to misunderstand. In contrast to U.S. law, Step 4 explicitly makes content the subject of government scrutiny rather than the likelihood that the speech will lead to violence. And the Rabat Plan takes the opposite view of the U.S. Supreme Court in *Matal v. Tam*, specifically calling for punishment of speech, including imprisonment, on the grounds “that it expresses ideas that offend.”

U.N. Encourages Banning Online “Hate Speech”

A new report by David Kaye, the U.N. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, calls on both governments and social media companies, such as Facebook and Twitter, to align their laws and practices against online “hate speech”

with the ICCPR and the Rabat Plan.²² But applying the Rabat factors to social media provides little protection to users and could even increase their likelihood of punishment.

For instance, criteria such as “magnitude and size of its audience” discourage any public posts, as the potential audience is all Internet users in the world. Further, the report references the Rabat Plan factor that independent courts should determine the “reasonable probability that the speech would succeed in inciting actual action against the target group.” But the report does not define *action*, which, per ICCPR Article 20, could include action that leads to hostility or discrimination and not violence.²³ Considering that the report expands on the 10 protected categories in the ICCPR to include race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status—including indigenous origin or identity, disability, migrant or refugee status, sexual orientation, gender identity, or intersex status—the potential violations are infinite.²⁴

The U.N. should not encourage governments or social media companies to referee, judge, or punish these perceived offenses. There are legitimate concerns about the companies’ competency, bias, and arbitrariness. Facebook recently found an Ohio rabbi guilty of violating its community standards for a post showing Adolf Hitler shaking hands with Paul von Hindenburg, even though it described Hitler as “the most ruthless dictator in recent history.”²⁵ The mistaken meaning and missed context by a social media giant should caution human rights advocates and policymakers against supporting “hate speech” doctrines in law and policies in social media.

A Problematic Definition of *Hate Speech*

The Secretary-General’s pledge that “addressing hate speech does not mean limiting or prohibiting freedom of speech” should be seen in light of the U.N.’s own recommendations to states that justify restrictions on speech, including criminal penalties. The new U.N. Strategy defines *hate speech* as

Any kind of communication or speech, writing or behaviour, that attacks or uses *pejorative or discriminatory* language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor. This is often rooted in, and generates, intolerance and hatred, and in certain contexts can be demeaning and divisive.²⁶

This content-based definition limits the expression of both ideas and viewpoints. Although anti-Semitic, racist, or bigoted speech is reprehensible and should be vigorously denounced by government officials and civil society, empowering authorities to shut off discourse solely to protect others from hearing it is a purpose that is “inherently boundless.”

Are Speech Bans Effective at Reducing Anti-Semitism?

Jewish leaders have powerfully argued that in order to reduce anti-Semitic violence, states must adopt stricter hate speech laws to limit anti-Semitic speech, especially in Europe.²⁷ Attacks against Jewish targets are rising worldwide and the U.N. has expressed concern that COVID-19 is also leading to increased scapegoating of Jews.²⁸ Therefore, these calls to limit anti-Semitic speech have understandably taken on greater significance.

However, the prevalence of hate speech laws has not stemmed the rise of anti-Semitism in Europe. According to the Pew Global Restrictions Survey, in 2015 Jews were harassed by individuals or social groups in 34 of Europe’s 45 countries—a higher share than in any other region of the world.²⁹ In a December 2018 survey, more than one-third of Jews living in Austria, Belgium, Denmark, France, Germany, Hungary, Italy, the Netherlands, Poland, Spain, Sweden, and the U.K. feared being physically attacked.³⁰ In a related study by Pew, restrictions on freedom of religion or belief by the government or civil society were correlated with more violent religious persecution, according to a 195-country cross-national comparison.³¹

Recommendations for laws against hate speech are premised on the beliefs that the bans will not (1) be used to silence Jews, philo-Semitic speech, and calls for tolerance; (2) exacerbate Islamist terror attacks against Jews; or (3) strengthen the appeal of anti-Semites. However, there is evidence that bans on speech correlate with increases in these three dynamics and may contribute to more anti-Semitism.

Censorship of Jews and Philo-Semites

Authoritarians around the globe have historically exploited the concept of “hate speech” to silence minorities, including Jews, philo-Semites, and advocates for religious tolerance. Adolf Hitler dreaded free speech because of the threat it posed to his grip on power and passed emergency degrees curtailing speech. His Propaganda Ministry took control of all

forms of communication: newspapers, magazines, books, public meetings and rallies, art, music, movies, and radio. On May 10, 1933, Nazis raided libraries and bookstores across Germany and burned more than 25,000 books, including works of Jewish writers, like Albert Einstein and Sigmund Freud.³²

Germans who opposed Hitler's campaign to eliminate the Jews also faced censorship. University of Munich student Sophie Scholl and the White Rose movement distributed pamphlets instructing the German people to resist the Nazis. One pamphlet stated, "Since the conquest of Poland 300,000 Jews have been murdered, a crime against human dignity... Germans encourage fascist criminals if no chord within them cries out at the sight of such deeds." The Nazis arrested her and other members of the society and executed them for treason.³³

Today, in Muslim-majority countries, governments use blasphemy laws to restrict the speech of advocates for religious pluralism.³⁴ In Mauritania, a blogger was arrested in January 2014 for blasphemy after posting an article online criticizing the Prophet Mohammed's treatment of the Jews of the Hijaz.³⁵ In Saudi Arabia, Raif Badawi was convicted of blasphemy, publicly lashed, and sentenced to 10 years in prison when he created a website dedicated to fostering debate on religion and politics.³⁶

Even in contemporary democracies speech bans have been used to silence philo-Semitic and pro-Israel speech. In 2007, the Canadian Islamic Congress filed a "hate speech" complaint against a magazine that published excerpts of best-selling author Mark Steyn's book *America Alone*, which focuses on anti-Semitism and extremism within sects of radicalized Islam.³⁷ At the time, the Canadian Human Rights Act banned communications "likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination."³⁸

At a recent anti-Israel demonstration in Germany, one of the demonstrators filed a criminal complaint against an Israeli woman for holding up an Israeli flag. Police charged her with provoking the demonstrators, citing the criminal code that makes "insults" punishable with imprisonment and fines.³⁹

U.N. experts have encouraged social media companies to partner with civil society groups to identify "hate speech."⁴⁰ But some civil society organizations apply the term *hate* in ways that are harmful to Jews. The Coalition for Jewish Values sent a letter from 100 rabbis to Amazon asking that it cease using the Southern Poverty Law Center (SPLC) "hate map" to vet organizations for charitable donations. The letter noted that the SPLC paid

millions of dollars to settle a defamation lawsuit after it labeled a Muslim reformer, Maajid Nawaaz, an “anti-Muslim extremist.”⁴¹ Nawaaz’s organization, the Quilliam Institute, advocates for religious pluralism and tolerance of religious minorities. The rabbis pointed out that the SPLC labeled organizations with conservative values as “hate groups” while ignoring radical Islamic terrorist organizations that were responsible for attacks against Jews. The letter stated, “This level of dishonesty directly endangers the Jewish community.”

Speech Bans and Islamist Terror Against Jews

Islamist terror organizations that target Jews also gain legitimacy from blasphemy, laws against the defamation of religions, and hate speech laws that ban speech considered insulting to the Prophet Mohammed, Islam, or Muslims. Nearly half of the countries and territories in the world have laws or policies that penalize blasphemy or “defamation of religions” according to a 2011 Pew study. Of the 198 countries studied, a total of 32 countries (16 percent) have laws penalizing blasphemy and 87 (44 percent) have laws against the defamation of religions, including hate speech against members of religious groups.⁴² Blasphemy laws are particularly common in the Middle East and North Africa; 13 of the 20 countries in that region (65 percent) make blasphemy a crime.⁴³

According to Nilay Saiya’s time-series, cross-national negative binomial analysis of blasphemy laws in 51 Muslim-majority states from 1991–2013, Muslim-majority countries that enforce such laws are more likely to suffer from Islamist terrorism than countries that do not criminalize blasphemy. He explains that terrorists invoke these laws to silence those who threaten their ideology and to justify their violence towards the accused. The application of blasphemy laws serves to exacerbate social hostilities rather than prevent them.⁴⁴

Joelle Fiss observes that blasphemy laws narrow the acceptable scope of public discourse and marginalize reformers. Hardliners “use the concept of blasphemy to impose ever more restrictive interpretation of religion in their societies, at the expense of basic freedoms, and to fire up crowds in opposition to alleged transgressions. The pattern is such that blasphemy cases tend to strengthen extremists, who use anti-blasphemy laws to target moderates.”⁴⁵

The effects of blasphemy laws are not contained within Muslim-majority countries. Terrorists cite Islamophobia and claim that insults to the Prophet Muhammed justify global terror against Jews. The 2005

publication by Danish newspaper *Jyllands-Posten* of editorial cartoons depicting Mohammed was linked to multiple terror attacks. In 2015, three Muslim extremists murdered 12 staff of the magazine *Charlie Hebdo* at their office in Paris in response to the publication of Mohammed cartoons. They also attacked a kosher supermarket and murdered four Jewish people. One month after the Paris attacks, Islamists targeted Jews in Copenhagen, killing one person at an event entitled “Art, Blasphemy and Freedom of Expression.” In September 2020, an attacker stabbed multiple people on the street where *Charlie Hebdo* had been located, prompting French officials to deploy armed guards to protect Jews in synagogues on Yom Kippur.⁴⁶ On October 16, 2020, in Paris, a Chechen-Muslim beheaded Samuel Paty, a teacher who showed Mohammed cartoons to his students. Then, on November 3, a sympathizer of the Islamic State killed four people in a terror attack near Vienna’s central Jewish synagogue (that was closed at the time). Austrian Chancellor Sebastian Kurz stated that the attacker’s motives may have been anti-Semitic.⁴⁷

Amjad Mahmood Khan warns global counterterrorism efforts must not neglect the vital significance of anti-blasphemy laws. Khan states that the laws fuel terrorism by creating a religious duty to silence those who threaten, even indirectly, the reputation of Mohammed, Islam, or a nation’s status as an Islamic state. In Pakistan, a local branch of the international terror group Tehrik e Taliban (TTP) has made combatting blasphemy its “raison d’etre” and rallied youth with the anti-Semitic message that “Zionist and crusader enemies of Islam are insulting the signs of Islam everywhere.” Yet, global counterterrorism efforts rarely acknowledge the relationship between blasphemy laws and terrorism, including anti-Semitic attacks. Furthermore, international attempts to create a global blasphemy law may drive more terrorism.

The U.N. Human Rights Committee has tried to distinguish blasphemy laws as an unacceptable form of a “hate speech” restriction because they “punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”⁴⁸ The U.N. Secretary-General’s implementing guidance to heads of United Nations missions on the Hate Speech Strategy states that blasphemy should not be punished by law but that other forms of more harmful hate speech should be.⁴⁹

However, blasphemy laws have the same innate problems as “hate speech” restrictions. Both are dependent on the subjective feelings of offense by the hearer. Both punish content rather than only speech that could lead to “imminent lawless action.” And both treat speech as a means to an end rather than allowing speech itself to be the ends.

Pakistan and the Organization of Islamic Cooperation (OIC) use blasphemy, defamation of religions, and “hate speech” interchangeably, including in international organizations, to advance the concept of Islamophobia and justify censorship.

In 2012, OIC members called for censorship of the YouTube video “Innocence of Muslims” describing the video’s depiction of Islam as blasphemy. Muslim extremists reacted to the movie by leading riots in Afghanistan, Egypt, Indonesia, Lebanon, Libya, Pakistan, Sudan, Tunisia, and Yemen, that caused dozens of deaths and hundreds of injuries.⁵⁰ At the U.N. General Assembly that year, leaders of Muslim-majority countries called for a global code to criminalize blasphemy.

The U.N.’s distinctions between blasphemy, defamation of religions, and “hate speech laws” are not shared by the OIC which has easily pivoted from calling explicitly for a global blasphemy law to “defamation of religions” to “hate speech.” In a report by the OIC’s human rights division on countering “Islamophobia” in international institutions, both the terms *hate speech* and *blasphemy* are used. The report calls for a study on national “hate speech” laws in Western countries “to focus on identifying areas of similarity between legislation criminalizing hate speech/incitement to hatred including cases of denial of the Holocaust, anti-Semitism and Nazism on the one hand and criminalizing hate speech against Islam and Muslims on the other.”⁵¹ At a 2019 meeting of the OIC in Mecca, Pakistani Prime Minister Imran Khan told members that “in the forums like the United Nations and the forums like the European Union, we must explain to them that they cannot hurt the sentiments of 1.3 billion people under garb of freedom of expression.”⁵² And at the 75th U.N. General Assembly September 2020, Khan reiterated denunciation of Mohammed cartoons and called for an “International Day to Combat Islamophobia.”⁵³

The evidence that blasphemy laws may exacerbate terrorism should give pause to policymakers and advocates against anti-Semitism who are considering support for the U.N. Strategy on Hate Speech. The ease with which Muslim-majority countries that support blasphemy laws have adopted “hate speech” show that blasphemy bans are being repackaged rather than discarded.

Holocaust Denial and Anti-Semites

In Europe, hate speech laws have also been used to punish denial of the Holocaust in an effort to combat anti-Semitism. But, rather than bringing facts about the Holocaust into the open, the suppression of debate may

deepen alienation and mistrust between Jews and other communities. As free speech advocate Jacob Mchangama has noted, “Even the European Commission Against Racism and Intolerance acknowledges that criminal law is often ineffectual and that addressing the causes of hate speech is ‘much more likely to prove effective in ultimately eradicating it.’”⁵⁴

During Germany’s Weimar Republic in the 1930s, laws against “insulting religious communities” were used to prosecute hundreds of Nazi agitators. “The Nazis turned their prosecutions for hate speech to their advantage, presenting themselves as political victims and whipping up public support among aggrieved sections of German society, their future social base. Far from halting Nazism, hate speech legislation assisted it.”⁵⁵

Former president of the ACLU Nadine Strossen warns against repeating the same mistake with modern hate speech laws:

[P]eople have often said to me, “Oh, the Holocaust wouldn’t have happened if only Germany had enforced laws against all anti-Semitic expression” without realizing that the laws that were in place in Germany then were every bit as strict as German laws now, which are the strongest in the world with the possible exception of many countries in the Middle East, and were very strictly enforced. There were dozens of prosecutions, including successful prosecutions, against Nazis—including Julius Streicher, the publisher of *Der Sturmer*. And it just became a propaganda platform for the Nazis. It got all kinds of attention they otherwise would not have received, and sympathy they otherwise would not have received.⁵⁶

Anti-Semites benefit from contemporary hate speech laws, including bans on Holocaust denial. Nine EU member states currently have laws against Holocaust denial: Austria, Belgium, the Czech Republic, France, Germany, Lithuania, Poland, Romania, and Slovakia. These countries also have some of the most anti-Semitic parties in the EU. As British author Timothy Garton Ash writes, the Holocaust denial laws have obviously not prevented their vigorous and dangerous growth. “If anything, the bans and resulting court cases have given them a nimbus of persecution, that far-right populists love to exploit.”⁵⁷

The U.N. Human Rights Committee has stated that the ICCPR “does not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events.” “Hate speech” laws and Holocaust denial laws are incompatible with free speech. Both are content-based and both give authorities the power to limit speech. Neither require that “injury-in-fact” or that a threat of violence be demonstrated. Both Holocaust denial

laws and “hate speech” laws are based on the implication that speech can lead to violence, which can lead to abuse of power and/or censorship that those who truly espouse hate can manipulate.

Censorship cannot reverse hate. Education about the Holocaust and Jewish history as well as dialogue and contact with Jews can increase understanding and tolerance. All these forms of communication and interactions depend on freedom of speech and freedom of religion or belief. Senators James Lankford (R–OK) and Chris Coons (D–DE) have introduced a resolution calling upon the President and the Secretary of State to oppose blasphemy, apostasy, and defamation of religion laws, including at the U.N. This resolution is much needed. It should also urge the U.S. government to oppose efforts to enact “hate speech” restrictions that fall short of the imminent lawless action test, including at the U.N.⁵⁸

Recommendations

The Secretary-General deserves credit for recognizing religious intolerance and creating a strategy and action plan. But, the safest place for minorities is in a free society. Therefore, the U.N. should focus its efforts on protection of freedom of speech and religion for minorities, including Jews, to live and speak openly and for others to do the same.

To address problems with the current strategy:

- **The United States should proactively urge the U.N. to rescind its Strategy on Hate Speech** and increase its efforts to protect the unalienable rights and fundamental freedoms of all human beings, particularly free speech and freedom of religion or belief. This is the best way to empower minorities and human rights advocates to combat hatred and educate the public about the human dignity and equality of all.
- **The United States should actively promote the “imminent lawless action” standard in all discussions and negotiations at the U.N. related to “hate speech.”** Placing limits on freedom of expression in the pursuit of combatting hate comes with dangerous consequences.
- **The U.S. government should unequivocally oppose efforts by or at the U.N. to limit freedom of expression through “hate speech,”** in addition to its efforts to call on the U.S. government to oppose laws against blasphemy, apostasy, and defamation of religions in S. Res. 458 and H. Res. 512.

- **The U.N. Special Procedures and Treaty Bodies should unequivocally state that all forms of “hate speech” restrictions**—that fall short of the imminent lawless action test, including but not limited to blasphemy and Holocaust denial laws—**violate freedom of expression.**
- **The U.N. and all member states should endorse the International Holocaust Remembrance Alliance (IHRA) working definition of anti-Semitism**, which captures how modern anti-Semitism is couched in anti-Israel rhetoric, including accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust or denying the Jewish people their right to self-determination (e.g., by claiming that the existence of a state of Israel is a racist endeavor or requiring of Israel a behavior that is not expected or demanded of any other democratic nation).⁵⁹
- **Both the United States and U.N. should continue to equip the next generation with historical awareness** in order to inoculate them against attempts to distort the truth about the Holocaust and the underlying ideology of the Nazis. In the words of Holocaust historian Deborah Lipstadt, we must understand history to fathom the terrible consequences of ignoring it.⁶⁰

Conclusion

Throughout history, the powerful have easily wielded hate speech laws to limit the speech of the powerless. Even the most well-intended plans to combat intolerant speech can lead to the suppression of citizens who speak from their consciences without malice. Thus, as a matter of principle, the U.N. should take particular issue with hate speech laws and should uphold the freedom to speak and live according to one’s religion or beliefs. These are the pillars of a robust civil society.

U.N. member states should focus on empowering Jews and other minorities by protecting free speech and freedom of religion or belief for all. Liberty is essential for people to speak up against those who oppress them based on their ethnic or religious identity. Hatred based on race or religion is best addressed through exposure to other ways of thinking. Ultimately, the recognition that every human being has inherent dignity is the foundation of a truly pluralistic society. For this recognition to occur, all citizens must be able to freely think, speak, and live according to their beliefs.

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Endnotes

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