



University of Qom - Iran

Online ISSN: 2980-9584  
Print ISSN: 2980-9282

# IRANIAN JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW

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# UNDERSTANDING ISLAMOPHOBIA IN HUMAN RIGHTS CONTEXT: A CONCEPTUAL ANALYSIS OF THE OIC INITIATIVES AGAINST HATE SPEECH

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## Article Info

### Article type:

Research Article

### Article history:

Received

21 October 2023

Received in revised form

8 April 2023

Accepted

23 January 2023

Published online

30 January 2024



[https://ijcl.qom.ac.ir/article\\_2697.html](https://ijcl.qom.ac.ir/article_2697.html)

### Keywords:

Islamophobia,  
Discrimination against Muslims,  
Hostility toward Islam,  
Defamation of Religions.

## ABSTRACT

In the past several decades, Islamophobia has emerged as a significant term in both popular and technical discourse. This term, regardless of its original meaning, is a construct that involves a variety of concepts such as “discrimination against Muslims” and “hostility toward Islam”. This article attempts to explore various aspects and manifestations of Islamophobia in the framework of human rights. The first part of this paper examines the historical background of the term as it was developed in the Human Rights agenda of the Organization of Islamic Cooperation (OIC) to comprehend the legal aspects of Islamophobia. The second part focuses on the conceptual analysis of Islamophobia, distinguishing between two distinct forms of the term in the context of human rights. Defining Islamophobia and demarcating its manifestations in a human rights framework would facilitate a better understanding of both the term and its conceptual boundaries in relation to similar terms and concepts. The author concludes that the United Nations resolutions, OIC standards, and European Union initiatives recognize the importance of responsible expression and realize the need for legal frameworks to combat all forms of Islamophobia. In comparison to other associated terms employed in UN and OIC human rights instruments, Islamophobia represents an inclusive term that can provide an acceptable legal framework for all stakeholders.

**Cite this article:** Mozaffari, M.H. (2023). Understanding Islamophobia in Human Rights Context: a Conceptual Analysis of the OIC Initiatives against Hate Speech, *Iranian Journal of International and Comparative Law*, 1(2), pp: 3-16.



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10.22091/IJICL.2024.10014.1080

Publisher: University of Qom

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## Introduction

In recent decades, Islamophobia has become a significant term in both common and technical usage. Too frequently, the term is used loosely in mass media to indicate the notion of irrational fear and prejudice towards Islam and Muslims.<sup>1</sup> However, the original meaning of the term has transformed into a construct with multiple meanings across various disciplines and fields of study. Thus, regardless of its original meaning, *Islamophobia* is a terminological construct that involves a range of concepts, including “*discrimination against Muslims*”, “*hatred of Islam*”,<sup>2</sup> and the colonial expansionism that gave rise to more “*geographically- and politically-oriented forms of Orientalism; anti-Muslim discourse*”.<sup>3</sup> To avoid confusion between the common usage and the technical meanings of the term in various fields of research such as international relations, political science, psychology, religion and sociology, it is advisable to make a distinction between these various meanings, particularly in the context of human rights discourse.

This article attempts to explore various aspects and manifestations of Islamophobia in the context of human rights. The first part of this paper examines the historical background of the term as it has been incorporated into the Organization of Islamic Cooperation (OIC) Human Rights agenda. It will be demonstrated that the Cairo Declaration of Human Rights in Islam (CDHRI) introduced the “sanctities and the dignity of Prophets” as a limitation on freedom of expression, a provision not found in the preceding human rights instruments.<sup>4</sup> Furthermore, in accordance with the limitation clause of International Covenant on Civil and Political Rights (ICCPR),<sup>5</sup> the CDHRI emphasizes that it is prohibited “to excite nationalistic or doctrinal hatred or to do anything that may be an incitement to any form of racial discrimination”.<sup>6</sup>

Understanding the legal aspects of Islamophobia requires reference to the background in

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1 . For more information, see: Humaira Riaz, *Unfolding Islamophobic Racism in American Fiction* (Lexington Books 2023) 3; Neil Chakraborti, Jon Garlan, *Hate Crime: Impact, Causes and Responses* (SAGE Publication 2015) 161; Douglas Pratt, Rachel Woodlock, *Fear of Muslims? International Perspectives on Islamophobia* (Springer 2016) vi.

2 . *Islamophobia: A Challenge for Us All*, Commission on British Muslims and Islamophobia (Runnymede Trust, 1997) 1.

3 . Kate Zebir, ‘The Redeployment of Orientalist Themes in Contemporary Islamophobia’ (2008) 10 *Studies in Contemporary Islam* 8.

4 . Cairo Declaration on Human Rights in Islam (CDHRI), Adopted at the Nineteenth Islamic Conference of Foreign Ministers, 31 July to 5 August 1990, Article 22.

5 . International Covenant on Civil and Political Rights, UNGA res. 2200 A (XXI), 23 Mar. 1976, Articles 19 and 20.

6 . CDHRI, op. cit. Article 22.



which the term developed. This background knowledge would also help us better understand the provisions of the OIC Declaration of Human Rights (ODHR), adopted in November 2020,<sup>1</sup> and the resolutions addressing the vilification of religions that have been adopted by a variety of human rights forums in an attempt to address the roots causes of the controversy. This background will explicate the conceptual framework of the terms which are inherently linked to Islamophobia.

The second part of the paper focuses on the conceptual analysis of Islamophobia, distinguishing between two distinct forms of the term in human rights context. It will be explained that, regardless of its original meaning, this term has developed into an inclusive legal concept, demonstrated in various forms such as intolerance, discrimination, persecution, and hatred. Thus, Islamophobia intersects with freedom of religion, hate speech and racial discrimination. Defining Islamophobia and its various forms within the context of human rights is crucial in order to limit the scope of this study and to demarcate its conceptual boundaries from other closely associated terms and concepts.

The author concludes that the UN resolutions, the OIC standards and the EU recognize the importance of responsible expression, and realize the necessity of legal frameworks to combat all forms of systemic and non-systemic discrimination against Muslims. Islamophobia when analyzed in comparison with other associated terms that were used in the UN and the OIC human rights instruments, is an inclusive term that can provide a legal framework which is acceptable by all concerned entities.

## 1. Conceptual Analysis of the OIC Agenda against Hate Speech

This section aims to explain the OIC's strategies for comprehending and addressing various forms of Islamophobia and hate speech. The term Islamophobia was infrequent in political literature of the OIC prior to the adoption of the CDHRI. Historically, freedom of expression was not a contentious matter between the Muslim states and their Western counterparts following the adoption of Universal Declaration of Human Rights (UDHR)<sup>2</sup> and the ICCPR. However, the publication of Salman Rushdie's novel, *The Satanic Verses*, in 1988 triggered an intense dispute that suddenly disturbed Muslim-Western relations concerning the freedom of expression. It was imperative for Muslim States to address the issue in the course of the adoption of the CDHRI in 1990. In the following section, the OIC initiatives against "nationalistic or doctrinal hatred" or "any form of racial discrimination" will be illuminated.

### 1.1. Sanctity of Religions

Despite the fact that the publication of *The Satanic Verses* and other defamatory publications in Western media had already triggered an intense dispute, the CDHRI did not explicitly incorporate the term *Islamophobia* in its provisions. Instead, Article 22 of the CDHRI focuses on freedom of expression, highlighting the "*sanctity of religions*" in general. The OIC introduced a protective principle in Article 22(c) of CDHRI to prevent the misuse of this fundamental right in a manner

1 . Report of the IPHRC on the participation in the 47th Session of OIC Conference of Foreign Ministers in Niger, available at [https://oic-iphrc.org/web/index.php/site/view\\_news/?id=472](https://oic-iphrc.org/web/index.php/site/view_news/?id=472). (accessed on 15 December 2020)

2 . Universal Declaration of Human Rights, UNGA Res. 217 A (III), December 10, 1948.



that “may violate sanctities and the dignity of Prophets”: “Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical values or disintegrate, corrupt or harm society or weaken its faith.”

Moreover, in accordance with the corresponding article in the ICCPR, Article 22(d) of the CDHRI underlines that “[i]t is not permitted to excite nationalistic or doctrinal hatred or to do anything that may be an incitement to any form of racial discrimination.” It seems that these provisions have attempted to comply with the terminological constructs used in Articles 19 and 20 of the ICCPR. However, despite the above provisions, this study suggests that in subsequent years, the OIC shifted its focus from “sanctity of religions” and “hate speech” to new terminological constructs such as the “prohibition of defamation of religions” and “Islamophobia”.

The OIC was determined to establish generally accepted standards that explicitly prohibit the exploitation of freedom of expression for the denigration of religions and incitement to violence, which, they contend, lead to systemic discrimination against Muslims. However, the controversy over freedom of expression frequently continued to resurface until the late 1990s when it evolved into a new frontline between Western and Muslim delegations at the UN. The subsequent section will delve into the process through which the OIC succeeded in exporting the concept of “sanctities and the dignity of Prophets” into the UN Human Rights resolutions under the new terminology of “defamation of religions”.

In summary, while the CDHRI recognizes the right to express opinions, its limitations clause introduces significant constraints aimed at protecting the sanctities of religions and the dignity of Prophets, rather than the rights of others. However, Muslim states assume that the aim of UN resolutions on “defamation of religions” is to protect religious communities from prejudicial attitudes demonstrated in hate speech, resulting in systemic discrimination. It was implied that insulting the sanctities of religions and the dignity of Prophets is an indication of intolerance toward other cultures which is incompatible with the UN Charter. The Preamble of the Charter calls on member states “to practice tolerance and live together in peace with one another as good neighbors.”<sup>1</sup> While respecting freedom of expression, these provisions are indeed in line with the broader international efforts to prevent hate speech. Consequently, any expression deemed to contravene these principles may be subject to restriction or prohibition.

The Charter of the Islamic Conference (Charter-1972) was amended in 2008 and therein, promotion of human rights and protection of fundamental freedoms were incorporated into its objectives.<sup>2</sup> This laid the ground for further major reforms including the revision of CDHRI. The revised declaration, the OIC Declaration of Human Rights (ODHR) attempted to align with UN human rights standards.<sup>3</sup> The subsequent section elaborates on the impact of these developments on the controversy over freedom of expression. In spite of the reconciliations made in the revised declaration, the provisions on freedom of expression in the ODHR preserved the spirit and rhetoric of CDHRI. The compromise is well reflected in Article 21 of the ODHR which fol-

1 . Preamble, Charter of the United Nations.

2 . Charter of the Islamic Conference. Adopted by the Third Islamic Conference of Foreign Ministers at Djidda, on 4 March 1972.

3 . Report of the IPHRC on the participation in the 47th Session of OIC Conference of Foreign Ministers in Niger, retrieved from [https://oic-iphrc.org/web/index.php/site/view\\_news/?id=472](https://oic-iphrc.org/web/index.php/site/view_news/?id=472), accessed on 15/12/2020.



lows the pattern adopted by the ICCPR with regard to limitation clause. Article 21(b) stipulates that “Everyone shall have the right to freedom of expression. The exercise of this right carries with it special duties and responsibilities”. Moreover, the ODHR introduces a new pattern by incorporating Article 20 of ICCPR into the remainder of Article 21(b), thereby clearly defining the limitation categories.

It is worth noting that Article 21(a) and Article 21(b) of ODHR merged the texts of Articles 19 and 20 of ICCPR into a single clause.<sup>1</sup> Nonetheless, Article 21(c) of ODHR not only retained the spirit of CDHRI on freedom of expression, but also reinforced its tone in the following terms:

*Freedom of expression should not be used for denigration of religions and prophets or to violate the sanctities of religious symbols or to undermine the moral and ethical values of society.*

The new pattern used in Articles 21(b) serves as an important development in human rights instruments, as it merges freedom of expression and its limitation clause in a single article. As Article 20 of the ICCPR does not stipulate human rights in a separate article but rather indicates a justifying reason for restricting freedom of expression, it is properly incorporated into Article 21 of the ODHR.

## 1.2. Defamation of Religions

Although *Islamophobia* is prevalent in public discourse, the European delegations to the United Nations did not accept it as a legal terminology. In 1999 the delegation of Pakistan, on behalf of the OIC, submitted a draft resolution on the prohibition of defamation of religion to the Human Rights Commission under the title of ‘Combating Racial Discrimination’ rather than ‘Islamophobia’ to remove the uncertainty surrounding the term.<sup>2</sup> The draft resolution was adopted under the title of “Racism, Racial Discrimination and Xenophobia” within the scope of the “International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).”<sup>3</sup> Although, the

1 . Articles 21 on the Right to Freedom of Opinion and Expression:

a. Everyone shall have the right to hold opinions without interference.

b. Everyone shall have the right to freedom of expression. The exercise of this right carries with it special duties and responsibilities. The State has the obligation to protect and facilitate the exercise of this right while also protecting its legitimate national integrity and interests, as well as promoting harmony, welfare, justice and equity within society. Any restrictions on the exercise of this right, to be clearly defined in the law, and shall be limited to the following categories:

i. Propaganda for war.

ii. Advocacy of hatred, discrimination or violence on grounds of religion, belief, national origin, race, ethnicity, color, language, sex or socio-economic status.

iii. Respect for the human rights or reputation of others.

iv. Matters relating to national security and public order.

v. Measures required for the protection of public health or morals.

c. The State and society shall endeavor to disseminate and promote the principles of tolerance, justice and peaceful coexistence among other noble principles and values, and to discourage hatred, prejudice, violence and terrorism. Freedom of expression should not be used for denigration of religions and prophets or to violate the sanctities of religious symbols or to undermine the moral and ethical values of society.

2 . Commission on Human Rights, Draft Resolution on Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination, 56th Sess. U.N. Doc. E/CN.4/1999/L.40 (April 20, 1999).

3 . International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965 UN General Assembly resolution 2106 (XX).





term ‘*defamation of religions*’ neither appeared in the preamble, nor in the operative provisions of the Resolution, it was incorporated into the title of a resolution of Human Rights Council. However, the concept of “intolerance and discrimination towards Islam and any other religion” was expressly elaborated in paragraph 3 of the operative provisions:

*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 religion.*<sup>1</sup>

As noted above, the OIC delegates were of the opinion that “intolerance and discrimination towards Islam and any other religion” may lead to incitement to violence and systemic discrimination against Muslims and other religious communities. This resolution remained on the agenda of the Human Rights Commission and subsequently its successor, the Human Rights Council for several years.<sup>2</sup> The first and second resolutions of the Commission on Human Rights were adopted by consensus.<sup>3</sup> The Commission adopted the resolutions by consensus in spite of the objections from European nations.<sup>4</sup> The new terminology of ‘defamation of religions’ was frequently incorporated into the resolutions of the Human Rights Council:

*However, the consideration of ‘defamation of religions’ indicates the recognition that ‘growing intolerance, discrimination against Muslims, insults against Islam and growing trends of defamation of religions have become pervasive and often condoned in certain countries and communities’.*<sup>5</sup>

The escalation of Islamophobia in some Western societies after 2005 compelled the OIC delegations to take further actions, whereby the representative of Yemen, on behalf of the OIC, submitted a resolution to the UN General Assembly.<sup>6</sup> While most human rights resolutions were focused on discrimination against Muslims and minorities in general, this one shifted its focus from discrimination against Muslims to “the negative projection of Islam in the media” and “hostility towards Islam” that “is frequently and wrongly associated with human rights violations and terrorism”. The resolution also expressed concern about “agendas pursued by extremist organizations and groups aimed at the defamation of religions” and the use of media “to incite acts of violence, xenophobia or related intolerance and discrimination towards Islam or any other religion.” Western delegations, however, considered the resolution in contradiction with freedom of expression and an attempt to introduce anti-apostasy laws into human rights

1. Commission on Human Rights, Draft Resolution on Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination, op. cit.

2. UN Doc. E/CN.4/2000/SR.67 (December 1, 2000); U.N. Doc. E/CN.4/2001/L.7 (Apr. 11, 2001); Commission on Human Rights, 57th Sess. 67th mtg. at: 4-6.

3. Commission on Human Rights, Res. 1999/82, at: 281. Commission on Human Rights, Res. 2000/84, 2001/4, 2002/9, 2003/4, 2004/6.

4. Commission on Human Rights, 56th Sess. 67th mtg. at: 72-73; U.N. Doc. E/CN.4/2000/SR.67 (December 1, 2000); UN Doc. E/CN.4/2001/L.7 (April 11, 2001).

5. Human Rights Council, Ad Hoc Committee on the Elaboration of Complementary Standards, Outcome referred to in paragraph 2(D) of the Road Map on the Elaboration of Complementary Standards, October 2009, A/HRC/AC.1/2/2 at: 67

6. G.A. Res. 60/150, 61/164, 62/154, U.N. Doc. A/Res/60/150, A/Res/61/164, A/Res/62/154.



resolutions. The European Union, therefore, in 2006, made critical remarks about the adoption of the UNGA resolution on combating defamation of religions:

*The European Union does not regard the concept of defamation of religion as an accepted and valid concept in human rights discourse. From a human rights perspective, members of a faith or religious communities should not be considered members of a homogeneous identity. The rules of the international human rights basically protect the rights of individuals to practice their religion or belief freely, not religion itself.*<sup>1</sup>

The language used in the above resolutions clearly rejects the argument presented by Western delegations about the concept of defamation of religion, claiming that human rights protect the rights of individuals, rather than protecting religions. It underscores that *defamation of religions* contributes to “*the denial of fundamental rights and freedoms of target groups*” and “*their economic and social exclusion*” which “*need to effectively combat defamation of all religions, Islam and Muslims in particular especially in human rights forums*”.<sup>2</sup>

In comparison to Article 22(c) of CDHRI, which sets forth a protecting principle to safeguard the “*sanctities and the dignity of Prophets*”, the Resolution has even gone a step further to prevent “*intolerance and discrimination towards Islam and any other religion*”. It has been taken for granted that while violation of the former may incite religious hatred, the latter would result in racial intolerance and discrimination. This is because the resolution was adopted within a framework of *racial discrimination* in order to include *defamation of religions* under the scope of article 4 of the ICERD, which concerns hate speech. It calls on States Parties to “*declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination*”.

The OIC delegations, in resolutions submitted to the UNGA, constantly insisted on the urgency of addressing the problem, since vilification of the Islamic faith often results in discrimination against Muslim minorities in Western countries.<sup>3</sup> Thus, the dispute over on a highly complex terminology continued for several years, despite agreement on many fundamental aspects such as combating hate speech and discrimination against Muslims. The dispute is whether respecting the sanctity of religions and addressing the defamation of religions is the most effective means of eliminating discrimination and hate speech, or the terminology is alien to human rights language.

To narrow the gap, a convincing argument for reconciliation might suggest the use of ‘Islamophobia’ instead of ‘defamation of religions.’ While it is important to respect the beliefs and practices of all religions, ‘Islamophobia’ can be used as an inclusive term that implies both of prejudices towards Muslims and hostility toward Islam. In his final report to the Human Rights

1. Statement by Portugal on behalf of the European Union to the December 18, 2007 session of the UNGA, found in: Statement by the International Humanist and Ethical Union to the Human Rights Council (February 24, 2008), available at <http://www.iheu.org/node/2949>.

2. Commission on Human Rights, 44th meeting 12 April 2005 [Adopted by a recorded vote of 31 to 16, with 5 abstentions.

3. Diène, Doudou, ‘Report of the former Special Rapporteur to the 9th session of the Human Rights Council: A/HRC/9/12.’





Council on “*the manifestations of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights*”, Doudou Diène argued that the defamation of religions should be addressed under the provisions relating to incitement to national, racial or religious hatred.<sup>1</sup> It is, therefore, necessary to shift from the sociological concept of the defamation of religions to the human rights concept of incitement to racial and religious hatred.<sup>2</sup> Consequently, in 2011 the OIC reached a compromise with Western delegations in Resolution 18/16, ceasing to insist on the adoption of resolutions on defamation of religions.<sup>3</sup> The language of this resolution shifted from defamation of religion to religious discrimination and the combat against hate speech.

## 2. Defining Islamophobia in Human Rights Language

The conceptual analysis of the terms used in the OIC Human Rights instruments provided the necessary background knowledge to understand the new terminology of *Islamophobia* in human rights context. *Islamophobia* was originally used to refer to the irrational fear, hatred, and prejudice towards Islam and Muslims. It might be demonstrated in various spheres of social activity and realized in different cultural forms. Although the term was first used by the mass media, it has quickly gained prominence in public discourse and in the political and legal literature. While it is said to have first emerged in France in the 1980s, it was Edward Said who used the term *Islamophobia* in his article “Orientalism Reconsidered” in English literature.<sup>4</sup> However, it was not taken seriously until the publication of the Runnymede Trust Report under the title: “*Islamophobia: A Challenge for Us All*” in 1998.<sup>5</sup>

Following the horrific attacks of September 11, 2001, the use of the term became widespread in the mass media worldwide. In 2004, the British Muslim Commission published a report on Islamophobia, attempting to define the term in human rights language, and declared that Islamophobia in the sense of discrimination and persecution of Muslims has become one of the challenge of Western societies.<sup>6</sup> Thus, the crux of the discussion among scholars is whether Islamophobia should be understood as discrimination against Muslims as noted above, or whether it should be construed as a terminological construct that also involves hostility towards Islam.

Moreover, as the technical usage of the term is a contemporary development in human rights context, it was not mentioned in the core human rights instruments. This is why some scholars have suggested the use of xenophobia instead of Islamophobia as Cheng argues that “*there is currently no clarity on what Islamophobia covers: Does it relate to hostility towards Islam, hostility towards Muslims or racism against Muslims?*”<sup>7</sup> It is, therefore, important to define the

1. A/HRC/9/12.

2. Commission on Human Rights, Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination, at: 2, U.N. Doc. E/CN.4/2003/23 (Jan. 3, 2003).

3. Human Rights Council, Resolution 16/18 on Combating Intolerance, Discrimination and Violence against Individuals on the basis of Religion or Belief; A/HRC/RES/16/18.

4. For details about background information on the term, see Zafar Iqbal, *Islamophobia: History, Context and Deconstruction* (SAGE Publications 2019) 38.

5. *Islamophobia: a challenge for us all*, op. cit.

6. *Muslims in the European Union Discrimination and Islamophobia*, European Monitoring Centre on Racism and Xenophobia, 2006, 13.

7. Jennifer E Cheng, ‘Islamophobia, Muslimophobia or Racism? Parliamentary Discourses on Islam and Muslims



term meticulously in the context of human rights to avoid ambiguity or uncertainty. Although there had been previous individual arguments in favor of an exclusive approach, the developments after September 2001 provided compelling arguments in favor of the opposite approach. The following sections examine the arguments for and against both competing approaches to find the best achievable solution for contemporary forms of human rights violations.

## 2.1. Discrimination against Muslims

It is worth noting that on March 15, 2022, the UNGA Adopted a resolution on Combating Islamophobia, proclaiming March 15 as the “*International Day to Combat Islamophobia*”.<sup>1</sup> This resolution was adopted unanimously in spite of the critical remarks that directed by the representative of France. It was pointed out that “*Islamophobia has no agreed definition in international law*” and “*the creation of an international day does not respond to concerns to counter all forms of discrimination*”.<sup>2</sup>

This indicates that the representative of France strongly disagrees with the use of this terminology and argues that it “*has no agreed definition in international law*”. However, apart from extensive scholarship and research conducted over more than three decades in this specific area, the term is used by the European Union for several years. As early as 2006, European Union released a report on “*Muslims in the European Union: Discrimination and Islamophobia*,”<sup>3</sup> which investigates the discrimination against Muslims in the area of employment, education and housing.<sup>4</sup> Nonetheless, equating Islamophobia with discrimination against Muslims represents the restrictive approach that attempts to define it in terms of racial discrimination. They argue that the term should be understood as hostility directed at Muslims as individuals, rather than towards Islam as a religion. As indicated above, in 2006 the European delegations in the UNGA expressed the same concerns regarding the concept of “*defamation of religions*” in human rights discourse.<sup>5</sup>

The argument that Islamophobia has two different meanings is based on the idea that discrimination against Muslims is rooted in prejudices and biases against individuals who are perceived as being Muslim, while hostility towards Islam is based on negative perceptions and stereotypes of the religion itself. Discrimination against Muslims can take the form of social exclusion, verbal abuse, or physical violence, while hostility towards Islam can manifest as hate speech, biased media representation, or political scapegoating, which has a long history in European colonialism. Therefore, to confront Islamophobia in all its forms, it is essential to take into account both the subjective and objective aspects of Islamophobia. Subjective aspects of Islamophobia refer to personal attitudes held by individuals which can manifest in various ways, ranging from verbal abuse to physical violence, while objective aspects refer to systemic discrimination implemented by institutions and governments.

in debates on the minaret ban in Switzerland’ (2015) 26 *Discourse & Society* 562.

1. United Nations General Assembly, 76th Sess. 61ST meeting (AM), March, 15, 2022.

2. Ibid.

3. *Muslims in the European Union: Discrimination and Islamophobia* (2006), Retrieved from [https://www.ssoar.info/ssoar/bitstream/handle/document/31588/ssoar-2006-Muslims\\_in\\_the\\_European\\_Union.pdf?sequence=1](https://www.ssoar.info/ssoar/bitstream/handle/document/31588/ssoar-2006-Muslims_in_the_European_Union.pdf?sequence=1), accessed 18 November 2023

4. *Muslims in the European Union: Discrimination and Islamophobia*, Retrieved from <https://fra.europa.eu/en/publication/2012/muslims-european-union-discrimination-and-islamophobia>, accessed November 18, 2023.

5. Statement by Portugal on behalf of the European Union to the December 18, 2007, session of the GA.



The distinction between the two forms of Islamophobia can facilitate a proper examination of the systemic and structural dimensions of anti-Muslim racism and discrimination. In summary, while there is debate about whether Islamophobia should be understood as discrimination against Muslims or hostility towards Islam, it is clear that both forms of Islamophobia are harmful and have negative impacts on Muslim individuals and communities. It is important to recognize and address Islamophobia in all its forms and to work towards promoting tolerance, respect, and inclusion for all individuals, regardless of their religion, race, nationality, ethnicity, or cultural background.

From an opposing perspective, it might be argued that in the absence of agreement on a more inclusive definition of Islamophobia, it may be reasonable to agree on its narrow definition. This is because, in the era of the United Nations, the principle of equality and the principle of non-discrimination, shaped the two main pillars of international human rights standards. Accordingly, if there were no other choice but to use the term Islamophobia, it must be construed in its restrictive sense, which entails discrimination against Muslims. The concept of discrimination is clearly defined both in domestic and international law. For instance, Article 26 of the ICCPR stipulates:

*In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

It is noteworthy that a similar line of argument, that had been proposed against differentiating between the two different forms of Islamophobia, had already been deployed and eventually failed in the years following the adoption of a resolution by the UNGA in 1962 to draft a declaration and an international convention on the elimination of all forms of intolerance and discrimination based on religion or belief.<sup>1</sup> However, as will be explicated in the subsequent discussion, the same arguments that have been put forth in favor of distinguishing between intolerance and discrimination can be applied to differentiate between the two different forms of Islamophobia.

Furthermore, there are compelling arguments that recognizing the two distinct forms of Islamophobia is important for understanding and addressing the different ways in which Muslim individuals and communities face marginalization and oppression. The distinction between the two forms of Islamophobia can properly address the systemic and structural dimensions of anti-Muslim racism and discrimination. It is, therefore, imperative to recognize and address both subjective and objective aspects of Islamophobia in order to promote tolerance, respect, and inclusivity for all individuals and communities.

## 2.2. Hostility towards Islam

As discussed above, the distinction between intolerance and discrimination based on religion or belief initially faced numerous challenges, with opponents arguing that intolerance is widely used

1. Angelo Vidal d'Almeida Ribero, Implementation of the Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief, E/CN.4/1987/35, (1986) 4, at: 6.



in political literature but lacks a specific meaning in the legal context. A set of arguments have been deployed against the inclusion of intolerance in the field of human rights. While discrimination holds significant importance in core human rights instruments, religious intolerance is not a legal term and cannot be incorporated into these instruments.

Despite vehement arguments against the terminology, intolerance was included in a draft of a convention on discrimination based on religion in 1967.<sup>1</sup> At this point, it has been recognized that a distinction must be made between discrimination and intolerance based on religion or belief. In 1972, the UNGA prioritized the completion of the Declaration and the draft convention has suddenly disappeared from the agenda of the Human Rights Commission. Even though the draft convention was never adopted, the terminological construct was incorporated into human rights instruments. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief was adopted in 1981, and since then the term has gained increasing prominence in human rights literature.<sup>2</sup> Article 4(2) of the 1981 Declaration, not only distinguishes between the two concepts in legal terms, but also differentiates the strategies of addressing discrimination from those for combating religious intolerance:

*All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or belief in this matter.*

The controversy, regardless of its justification, indicates that there is a debate among scholars and politicians on whether Islamophobia, even if accepted as a proper terminology to denote to discrimination against Muslims, should be expanded to include hostility towards Islam. However, it is especially noteworthy that intolerance, which bears much similarities to our current concept of Islamophobia, has been accepted as a legal term under similar circumstances, despite convincing arguments against its inclusion. It has immediately turned into a popular term in human rights scholarship.

Islamophobia is indeed the most inclusive term combining both discrimination against Muslims and hostility towards Islam. In summary, while there is an ongoing debate on whether Islamophobia should be understood as discrimination against Muslims or hostility towards Islam, it is clear that both forms of Islamophobia are detrimental and have negative impacts on Muslim individuals and communities. The distinction between discrimination against Muslims and hostility towards Islam can help states to develop innovative strategies for addressing every particular manifestation of Islamophobia. Because, while the commitment to ending discrimination against Muslims is an “obligation of conduct”, the commitment to the eliminating hostility towards Islam is an “obligation of result”. The distinction between obligations of conduct and obligations of result has its roots in the Civil Law tradition and has been extended to a multiple areas of law.

The obligation of conduct in human rights requires States to take certain measures to end

1. Elizabeth Odio Benito; Special Rapporteur; Study of the Current Dimensions of the Problems of Intolerance and of Discrimination on grounds of Religion or Belief, E/CN.4/Sub. 2/1987/26, (1986) 1.

2. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, General Assembly Resolution 36/55, November 1981.



discrimination, whereas an obligation of result grants states the liberty to select between various means and take appropriate measures to achieve certain goals, such as changing individuals' negative attitudes toward other cultures.<sup>1</sup> In the case of fighting against all forms of Islamophobia, for example, a State may fulfil its obligation of conduct by choosing and advocating to abolish discriminatory laws that perpetuate racial prejudice and religious intolerance and, if necessary, enacting laws to prohibit discrimination. On the other hand, in the case of an obligation of result, the States are required to achieve the results such as elimination of prejudices and intolerance through appropriate measures.<sup>2</sup>

Islamophobia can be defined as hostility, prejudice, or negative attitudes directed towards Islam as a religion, its teachings, practices, and its followers, Muslims. This hostility can manifest in various forms, including discrimination, stereotyping, hate speech, and even acts of violence targeting Muslims or Islamic institutions. It is important to note that hate speech represents the external manifestation of profound intolerance and prejudice. Therefore, a legal response is not sufficient to bring about real changes in mindsets and attitudes of intolerant societies. In addition to legal responses, the introduction of policy initiatives in the realm of intercultural dialogue and education towards tolerance and diversity is essential to eradicate the root causes of intolerance.

## Conclusion

This article has examined various forms of Islamophobia, classifying them into two distinct categories: discrimination against Muslims and hostility towards Islam. It has been explicated that Islamophobia, regardless of its original meaning, has developed into an inclusive legal concept that can confront its various forms such as intolerance, discrimination, persecution, and hatred. Thus, Islamophobia stands at the intersection of freedom of religion, hate speech and racial discrimination.

Addressing Islamophobia in the framework of human rights seeks to reconcile the opposing realms of free speech and freedom from bias based on religion or ethnicity. The exercise of freedom of expression must come with the responsibility of abstaining from language that incites violence, hatred, or prejudice against any individual or religious group. Apparently, discrimination against Muslims can be addressed by enacting anti-discriminatory policies; yet, the complexity usually arises when there is an even greater concern of hostility towards Islam that result in systemic discrimination. Thus, addressing all forms of Islamophobia remains an ongoing challenge that requires international cooperation and commitment.

It appears that the member states of the Organization of Islamic Cooperation (OIC) were determined to incorporate "defamation of religions" into human rights resolutions to protect the sanctity of religions from offensive expression. They argue that defamation of religions and other forms of hate speech and xenophobia can contribute to the marginalization and discrimination of Muslim communities. The United Nations resolutions emphasize the need to combat

1. See Yearbook of the International Law Commission (United Nations International Law Commission 1977) 19; Bertrand G. Ramcharan, 'Violations of Economic, Social and Cultural Rights' in Bertie G Ramcharan (ed), *Judicial Protection of Economic, Social and Cultural Rights* (Brill 2005) 556.

2. Elizabeth odio Benito; *op. cit.*, 193.





defamation of religions and Islamophobia, which result in systemic discrimination. The OIC initiatives and the UN resolutions, while respecting freedom of expression, are in line with the broader international efforts to combat hate speech and xenophobia.

Realizing the necessity to fight all kinds of Islamophobia, member states of the European Union hold the view that human rights resolutions which introduce “defamation of religions” aim to protect religious doctrines, rather than respecting the rights of individuals. Nevertheless, the term “Islamophobia” has been used by the European Monitoring Centre on Racism and Xenophobia, despite the opposition to the OIC and the UN terminological construct of “defamation of religions”.<sup>1</sup> In addition, the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance has also used the term “Islamophobia” in his reports to the Human Rights Council.

To narrow the existing gap between the UN resolutions, the OIC standards, and the EU’s understanding of defamation of religions, Islamophobia represents the common dominator that provides a common framework for combating all forms of systemic and non-systemic discrimination against Muslims. Perhaps, all stakeholders recognize the importance of responsible expression and acknowledge the necessity of legal frameworks to eliminate Islamophobia to create an environment where religious freedom is upheld, hate speech is minimized, and communities are treated with dignity and equality.

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1. Muslims in the European Union: Discrimination and Islamophobia, Yearbook of the OSCE (Organization for Security and Co-operation in Europe, 2007) EUMC (since March 2007 the European Union Agency for Fundamental Rights/FRA), Vienna, December 18, 2006.



## References

- Benito E O, Special Rapporteur: Study of the Current Dimensions of the Problems of Intolerance and of Discrimination on grounds of Religion or Belief, E/CN.4/Sub. 2/1987/26 (1986)
- Cairo Declaration on Human Rights in Islam, Adopted at the Nineteenth Islamic Conference of Foreign Ministers, 31 July to 5 August 1990
- Chakraborti N, J Garlan, Hate Crime: Impact, Causes and Responses, (SAGE Publication 2015)
- Charter of the Islamic Conference. Adopted by the Third Islamic Conference of Foreign Ministers at Djidda, on March 4, 1972
- Cheng J E, 'Islamophobia, Muslimophobia or Racism? Parliamentary Discourses on Islam and Muslims in debates on the minaret ban in Switzerland' (2015) Vol 26 Issue 5 Discourse & Society
- Commission on Human Rights Res. 2000/84, 2001/4, 2002/9, 2003/4, 2004/6, and 2005/3, UN Doc.A/HRC/4/L.12, A/HRC/7/L.15
- Commission on Human Rights, 44th meeting April 12, 2005.
- Commission on Human Rights, 56th Sess. 67th mtg. at: 72-73; U.N. Doc. E/CN.4/2000/SR.67 (December 1, 2000), UN Doc. E/CN.4/2001/L.7 (April 11, 2001)
- Commission on Human Rights, Draft Resolution on Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination, 56th Sess. UN DOC. E/CN.4/1999/L.40 (April 20, 1999)
- Commission on Human Rights, Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination, at 2, UN Doc. E/CN.4/2003/23 (January 3, 2003)
- Commission on Human Rights, Res. 1999/82
- Commission on Human Rights, Res. 2000/84, 2001/4, 2002/9, 2003/4, 2004/6
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, General Assembly Resolution 36/55, November 1981
- Hargreaves J, ISLAMOPHOBIA: REALITY OR MYTH? (Lancaster University 2016)
- Human Rights Council, Ad Hoc Committee on the Elaboration of Complementary Standards, Outcome referred to in paragraph 2(D) of the road map on the elaboration of complementary standards 19830 October 2009, A/HRC/AC.1/2/2 at: 67
- International Convention on the Elimination of All Forms of Racial Discrimination, December 21, (1965) United Nations General Assembly Resolution 2106 (XX)
- International Covenant on Civil and Political Rights, UNGA Res. 2200 A (XXI), March 23, 1976
- Iqbal Z, Islamophobia: History, Context and Deconstruction (SAGE Publications 2019)
- Islamophobia: A Challenge for Us All, Commission on British Muslims and Islamophobia (Runnymede Trust 1997)
- Muslims in the European Union Discrimination and Islamophobia, European Monitoring Centre on Racism and Xenophobia, 2006
- Muslims in the European Union: Discrimination and Islamophobia (2006), Retrieved from [https://www.ssoar.info/ssoar/bitstream/handle/document/31588/ssoar-2006,Muslims\\_in\\_the\\_European\\_Union.pdf?sequence=1](https://www.ssoar.info/ssoar/bitstream/handle/document/31588/ssoar-2006,Muslims_in_the_European_Union.pdf?sequence=1), accessed on November 18, 2023
- Muslims in the European Union: Discrimination and Islamophobia, Retrieved from <https://fra.europa.eu/en/publication/2012/muslims-european-union-discrimination-and-islamophobia>, accessed on November 18, 2023
- Muslims in the European Union: Discrimination and Islamophobia, Yearbook of the OSCE (Organization for Security and Co-operation in Europe, 2007) EUMC (since March 2007 the European Union Agency for Fundamental Rights/FRA), Vienna, December 18, 2006
- Pratt D, Woodlock R, Fear of Muslims? International Perspectives on Islamophobia (first edition, Springer 2016)
- Ramcharan B.G, 'Violations of Economic, Social and Cultural Rights' in B G Ramcharan (ed), Judicial Protection of Economic, Social and Cultural Rights (Brill 2005)
- Report of the IPHRC on the participation in the 47th Session of OIC Conference of Foreign Ministers in Niger, Retrieved from [https://oic-iphrc.org/web/index.php/site/view\\_news?id=472](https://oic-iphrc.org/web/index.php/site/view_news?id=472), accessed on 15/12/2020
- Riaz H, Unfolding Islamophobic Racism in American Fiction (Lexington Books 2023)
- Ribero A.V, Implementation of the Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion or Belief, E/CN.4/1987/35 (1986)
- United Nations General Assembly Resolution 16/18 on Combating Intolerance, Discrimination and Violence against Individuals on the basis of Religion or Belief; A/HRC/RES/16/18
- United Nations General Assembly, 76th Session, 61st meeting (AM), March 15, 2022
- United Nations General Assembly, Res. 60/150, 61/164, 62/154, UN Doc. A/Res/60/150, A/Res/61/164, A/Res/62/154
- Universal Declaration of Human Rights, UNGA Res. 217 A (III), December 10, 1948
- Yearbook of the International Law Commission (United Nations International Law Commission 1977)
- Zebir K, 'The Redeployment of Orientalist Themes in Contemporary Islamophobia' (2008) 10 Studies in Contemporary Islam 4