Freedom of expression and advocacy of group hatred; 

*Incitement to hate crimes and religious hatred*

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会议室

The subject of this meeting is “Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.” This paper will concentrate on the analogies and parallels to be drawn from situations where the State or the international community limit freedom of expression to provide protection against incitement to, or advocacy of, some hate crimes and the applicability of such limitations to advocacy of religious hatred. The links between, and balancing of, articles 19 and 20 of the ICCPR in general will not be discussed here. For the purposes of this paper, the notions of religion and freedom of religion have the reach and meaning established in article 18 of the Universal Declaration of Human Rights, article 18 of the ICCPR and relevant articles of the 1981 Declaration on the Elimination of all Forms of Intolerance and Discrimination on Religion or Belief.

Freedom of expression is not an absolute right, and does not belong to the list of rights that cannot be derogated according to article 4 of the ICCPR. States may legitimately limit that freedom when it is abused by the advocacy
of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The victims of that incitement are national, ethnic or religious groups, or their members. The nature of the group exposed to incitement – national, ethnic, or religious – should not justify differences in the treatment of those groups. This is particularly valid with regard to racial and religion-related groups. Racial and religious hatred involve similar motivations and produce similar consequences. Parallels can thus be drawn from limitations imposed upon freedom of expression in documents referring to one of those evils.

This approach is supported by the historical context, as well as by the developing notion that there exists an international public order encompassing treaty law and norms described as “soft law”, emanating from non-mandatory instruments. Originally, when the United Nations’ attention was drawn to a series of anti-Semitic outbursts in 1959-1960, the General Assembly, following resolutions of the relevant bodies, condemned “all manifestations and practices of racial, religious and national hatred...” (Resolution 1510, (XV). In the discussion as to how to implement the resolution there were different opinions. Some States proposed to prepare a convention on racial discrimination; other States preferred to adopt only a declaration, while some favored an instrument dealing with racial as well as religious discrimination. Finally, the General Assembly adopted similar Resolutions 1780 (XVII) and 1781 (XVII), asking to prepare declarations and draft conventions dealing separately with race and with religion. Concerning race, a Declaration was adopted in 1963 and the Convention was completed in 1965. As to religion, only a Declaration was adopted, in 1981. A draft convention is pending, sine die.

For obvious methodological reasons, the Convention on Race does not refer to religion, but it seems reasonable to apply, by analogy, relevant provisions to religion-related discrimination or intolerance. The Convention was concluded with large support in December 1965. A year later, the two Covenants on Human Rights were adopted, and article 20 of the ICCPR deals with advocacy to both racial or religious (or national) hatred. The preparation of a draft declaration and a draft convention on religion or belief made very slow progress, and in 1972 the General Assembly decided to give priority to the draft declaration. This meant in practice postponing indefinitely the work on a mandatory treaty. It took nine more years to reach agreement on the Declaration.

Several articles of the Declaration show the clear influence of the instruments on racial discrimination. The definition of the terms intolerance and discrimination also follows the model of the definition in the Racial Convention. This should be kept in mind when considering its applicability, by analogy, to advocacy of religious hatred. The relevance of other developments in international law should also be considered to that effect. Such are the instruments dealing with genocide, its denial, defamation of collectivities, and, in general, legislation restricting freedom of expression when it affects fundamental liberties.