

The International Prohibition of Religiously-Motivated 'Incitement' to Violence

Authors : J. D. Temperman

Abstract : Introduction: In particular, in relation to religion, the meaning and scope of freedom of expression have been tested in recent times. This paper investigates the legal justifications for restrictions that have been suggested in this area and asks whether they are sustainable from an international human rights perspective. The universal human rights instruments, particularly the UN International Covenant on Civil and Political Rights (ICCPR), are increasingly geared towards eradicating 'incitement' to contingent harms like violence or discrimination, whilst forms of extreme speech that fall short of such incitement are to be protected rather than countered by states. Human Rights Committee's draft-General Comment on freedom of expression, adopted in 2011, provides another strong indication that this is the envisaged way forward: repealing anti-blasphemy and anti-religious defamation laws, whilst simultaneously increasing efforts to combat 'incitement'. Within regional human rights frameworks, notably the European Convention system, judgments have in fact supported legal restrictions on both hate speech, holocaust denial, and blasphemy or religious defamation. Major contributions to scholarship: This paper proposes an actus reus for the offense of 'advocacy of religious hatred that constitutes incitement to discrimination or violence', as enshrined in Article 20(2) of the UN ICCPR. In underscoring the high threshold of 'incitement', the author distinguishes this offense from such notions as 'blasphemy' or 'defamation of religions'. In addition to treating the said provision as a sui generis prohibition, the question is addressed whether a 'right to be protected against incitement' may be distilled from the ICCPR. Furthermore, the author will discuss the question of how to judge incitement; notably, is mens rea required to convict someone of incitement, and if so, what degree of mens rea? This analysis also includes the question how to balance content and context factors when addressing alleged instances of incitement, notably what factors make provide for a likelihood that imminent acts of violence or discrimination will ensue from an inciteful speech act? Methodology: This paper takes a double comparative approach: (i) it endeavours to compare and contrast monitoring bodies' approach to incitement (notably, the UN Human Rights Committee, but also the UN Committee on the Elimination of Racial Discrimination which monitors states' compliance with Article 4 of ICERD on incitement); and (ii) it endeavours to chart and compare and analyse from an international human rights perspective recent forms of state practice in the field of dealing with incitement (i.e. a comparative legal analysis and vertical human rights analysis of newly emerging incitement legislation in the light of the said international standards). Conclusion: This paper conceptualizes a legal notion - 'incitement' - encapsulated in international human rights law that may have a profound bearing on contemporary challenges of radicalization and religious strife.

Keywords : incitement, international human rights law, religious hatred, violence

Conference Title : ICPIIL 2016 : International Conference on Public International Law

Conference Location : Seattle, United States

Conference Dates : August 08-09, 2016