

THE LEGAL ADVISER

DEPARTMENT OF STATE

WASHINGTON

October 26, 2012

Mr. Michael W. Macleod-Ball  
Mr. Gabriel Rottman  
American Civil Liberties Union  
915 15<sup>th</sup> Street NW  
Washington, DC

Dear Mr. Macleod-Ball and Mr. Rottman,

Thank you for your letter to Secretary Clinton dated October 15, 2012, in which you highlighted her support for constitutional free speech principles in the midst of controversy over the "Innocence of Muslims" video. The Secretary has asked me to reply on her behalf.

Since the time Eleanor Roosevelt negotiated the Universal Declaration on Human Rights, the United States has been the leading voice for the broadest possible protections for freedom of expression, including expression that may be unpopular or offensive. That remains the case to this day. As President Obama said in his speech to the UN General Assembly on September 25, 2012, the United States protects free speech, including offensive speech, not "because we support hateful speech, but because ... without such protections, the capacity of each individual to express their own views and practice their own faith may be threatened. We do so because in a diverse society, efforts to restrict speech can quickly become a tool to silence critics and oppress minorities. We do so because given the power of faith in our lives, and the passion that religious differences can inflame, the strongest weapon against hateful speech is not repression; it is more speech – the voices of tolerance that rally...and lift up the values of understanding and mutual respect."

As your letter notes, we also believe that public officials are correct in condemning speech such as the offensive video in order to influence the "marketplace of ideas." In carrying out the principles outlined in your letter, I encourage the ACLU to work with other governments and non-governmental organizations around the world to emphasize the importance of combating intolerance without banning speech. As you note, our strong constitutional protections for, and belief in, freedom of expression do not mean that we sit idly by as individuals and groups seek to spread toxic expressions of hatred. Rather, we deploy an array of policies to reach out to affected communities, provide conflict resolution services, and enhance dialogue. When such hateful expression transforms into acts of discrimination or violence, our civil rights and other laws deter and punish those who go beyond speaking and engage in acts of discrimination and violence. Such outreach and actions – as opposed to bans on offensive speech – are the types of measures that encourage tolerance.

The United States is working with the Organization of Islamic Cooperation, the European Union, and other governments to promote best practices to advance tolerance without banning speech by implementing the actions called for in the March 2011 Human Rights Council Resolution 16/18. We invite you to join with us in encouraging civil society support for this implementation effort so that other governments adopt our approach on this critical issue. The ACLU has unique and important experience on these issues and your work throughout the world will no doubt be invaluable in maintaining broad protections for freedom of expression.

Finally, let me agree with the principle you quote from the ACLU's founder Roger Baldwin and modify it to apply to freedom of expression: "If the speech you hate has no protection, then the speech you like may have no protection either. And in order to defend the speech you like, you have to defend the speech you hate." This is the message behind President Obama's address to the UN General Assembly about tolerance and underlies our ongoing work in all multilateral fora to maintain the broadest possible international protections for freedom of expression, including offensive expression.

Thank you for your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Harold Koh", written in a cursive style.

Harold Hongju Koh

Legal Adviser