Inaugural Statement by
His Excellency Iyad Ameen Madani,
Secretary General of the OIC
during 5th Meeting of Istanbul Process,
held in Jeddah Kingdom of Saudi Arabia 3-4 June 2015
His Excellency Mr. Faisal Muammar, Secretary General of KAIICID
His Excellency, Amb Joachim Rocher, President of Human Rights Council,
His Excellency Prof. Ibrahim Alnaimi, Chairman Doha Interfaith Centre,
Distinguished Ambassadors, honourable States' representatives,
Respected members of NGOs, Media and civil society,
Excellencies, Ladies and Gentlemen,

On behalf of the Organization of Islamic Cooperation (OIC), I would like to warmly welcome you all at the OIC Headquarters in Jeddah. We are indeed privileged to host such a diverse gathering of intellectuals, lawyers, human rights practitioners and civil society representatives. At the outset, I would like to put on record OIC’s appreciation to the government of Chile for letting the OIC host this meeting. We also look forward to attending the next 6th Istanbul Process meeting in Santiago.

The warm response received to OIC’s invitation to this fifth meeting of the Istanbul Process has actually outshined the warm weather of Jeddah. It also reflects the importance international human rights community attaches to the subject of combating incitement to hatred, discrimination and violence based on one’s religion or belief, which has become a growing contemporary manifestation of racism and needs to be addressed by all at all levels; including the much debated question of where freedom of speech ends, and hate speech begins.

Excellencies, Ladies and Gentlemen,

We live in an increasingly globalized and interconnected world, where events in one part of the world are not only relayed instantly to all corners of the globe but also have corresponding impact on reaction and behavior of people and communities near and far. Be it an earthquake in Nepal or sinking boats of Rohirgyas in the Andaman Sea, the international community’s reaction compelled relevant authorities to take appropriate actions. Similarly, the impact of news of discrimination or violence based on religion not only affects the targeted people or community but also impacts the broader international community as well as evinces corresponding reactions.

With growing migratory trends that have changed the socio-cultural make up of most of our countries and societies, discrimination based on
race; and announcements of the failure of multi-culturalism are recipe for insecurity, conflict and radicalization. Events over the past two decades including recent examples of incitement to hatred and discrimination based on religion such as devastating and despicable killing of non-Muslims by ISIS, appalling treatment of Rohingya Muslims in Myanmar, desecration of holy scriptures and sites in different parts of the world, printing of senseless caricatures of Prophet Mohammad (PBUH), have all resulted in promoting a culture of discrimination and violence that has also led to loss of innocent lives and wider sense of alienation, isolation, rejection, polarization and exclusion among affected communities.

Distinguished Participants,

While the international community has long recognized the importance of addressing the challenges stemming from religious intolerance, due to its sensitive nature and different perspectives of States as to how best to tackle the problem, it has not been able to address these challenges appropriately. Precisely to address these concerns and to ensure a global order that is based on mutual respect, tolerance and acceptance of religious diversity, the OIC has been on the forefront of international efforts to combat intolerance, discrimination and violence based on religion.

In response to the growing acts of hatred based on religion, the OIC first presented a text in 1999 that aimed at providing protection against all forms of human rights violations resulting from defamation of religions. Though first adopted by consensus, over the years, the discussion on this resolution became overtly intense and controversial on the grounds that it unduly limits freedom of expression and seeks to protect religions or set of beliefs instead of individuals and communities.

In order to make progress, the OIC embarked on a different approach by addressing the issue from the lens of existing human rights law. The underlying reason for this new approach was the necessity to address the core issue of growing discrimination based on religion, through a consensual approach that shuns the ideological divide and suggests an action-oriented policy framework. OIC recognizes with appreciation the positive role played by key international partners such as the United
States and the EU countries who helped us craft the new document, commonly known as Res. 16/18, adoption of which was hailed by all stakeholders as the triumph of multilateralism and a milestone achievement in the UN's history of combating intolerance and discrimination based on religion.

Excellencies, Ladies and Gentlemen,

HRC Resolution 16/18 has been rightly dubbed as the most balanced and focused UN global policy framework to combating intolerance, discrimination, incitement to hatred and violence against persons based on religion or belief. It also has the unique distinction to have a follow up process. In July 2011, OIC Secretary General, US Secretary of States, EU High Representative and other key Western and OIC countries' leaders met in Istanbul and agreed to have an informal follow up mechanism to give effect to the action plan of this resolution. As agreed under Istanbul process, regular meetings are held in different parts of the world to follow up implementation of the Action Plan by different stakeholders at different levels.

So far four meetings have been held in Washington, Wilton Park, Geneva and Doha, which were extremely useful in sharing first hand experiences and perspectives of different stakeholders including problems faced and best practices used to implement various aspects of the Action Plan contained in Res 16/18. While there continue to be differences of opinion among different countries on finer aspects of specific points in the Action Plan, both the Resolution and Istanbul Process provide the most practical, consensual and theoretically workable framework for addressing intolerance or discrimination based on religion.

There is a general agreement that difference of opinion on one or some aspects of Action Plan should not restrict implementation of other agreed points. At the same time, there is a need to address every aspect of the Action Plan with a uniform and universal approach that can be applied across the board in all situations. All stakeholders must stand united, reaffirm their commitment to this global policy framework and redouble their efforts to fully and effectively implement this consensus Action Plan at all levels.
Excellencies, Ladies and Gentlemen,

As you are all aware, today’s meeting is the continuation of the ongoing Istanbul Process that will pursue the legitimate aims and objectives of this landmark resolution i.e. full and effective implementation of its Action Plan. After four meetings that focused on different aspects of the Action Plan, we intend to have a general review in this meeting that hopefully will give us an overall perspective of progress on different fronts of the Action Plan. We have divided the 8 points Action Plan in three broader groups, which will be addressed through three Panel discussions. We have invited a wide range of stakeholders including legal practitioners, whom we hope will be able to provide useful examples on how the core issues of hate speech and incitement to hatred based on religion have been dealt with in different countries.

It is important to highlight that OIC has always upheld the principle of openly discussing all ideas, values or beliefs in an environment of tolerance and respect. It stresses the importance of avoiding defamation and insults to religions and their symbols to avoid negative stereotyping and profiling of their adherents that directly impinges their human rights. Islam like other religions recognizes the role of critical thinking. However, there must be a distinction between criticism and constructive discussion, which is a legitimate part of freedom of expression, and sheer disrespect, defamation, insult and negative stereotyping that falls into the category of inciting religious hatred.

I recognize that proponents of freedom of expression legitimately argue that prohibition on free expression would lead to a reversal of many of the positive democratic developments in the contemporary world. However, I tend to humbly disagree when this freedom is stretched into the realm of hate speech. I fail to understand how the right to offend or to insult, discriminate or negatively stereotype can produce a positive outcome.

The New York Times in its recent editorial on 6 May 2015 entitled “Free Speech Vs Hate Speech” rightly stressed that “Some of those who draw
cartoons of the Prophet Muhammad may earnestly believe that they are striking a blow for freedom of expression, though it is hard to see how that goal is advanced by inflicting deliberate anguish on millions of devout Muslims who have nothing to do with terrorism”. The Editorial further stressed that “it is equally clear that the Muhammad Art Exhibit and Contest in Garland, Texas was not really about free speech. It was an exercise in bigotry and hatred posing as a blow for freedom.”

The underlying reason for freedom of expression is to provide the space for developing progressive, mutually respectful and tolerant societies. Hate speech or incitement to hatred or discrimination does exactly the opposite. Precisely for that reason it has been prohibited under international human right law and a number of countries have imposed legitimate restrictions on this freedom when it indulges into incitement to hatred, discrimination or violence.

Excellencies, Ladies and Gentlemen,

I urge you all to have frank, open and constructive discussions that will help find practical solutions to the difficult issues that can be universally applied across different legal regimes. The key message is to ensure equal treatment and extend universal protection for the rights of all targeted individuals, groups and communities. Our discussions should also focus on strengthening universal consensus on this Resolution. We must also deliberate on practical ways and means that could help ensure full and effective implementation of this text at different levels.

A number of ways have been suggested in the past including use of Universal Periodic Review, involvement of Treaty Bodies and UN Special Procedures as well as establishment of a mechanism under OHCHR to follow up its implementation. I hope discussions in these meetings will give effect to some concrete agreements on these or other useful ideas. To conclude, I wish you all fruitful discussions and positive outcomes in line with the spirit of this important resolution.

Thank you.
Excellencies, colleagues, ladies and gentlemen,

It is a privilege and a great honor for me to participate in this 5th session of the Istanbul Process. Actually, the aspiration of this process – and this meeting here in Jeddah – matches perfectly with one of my main concerns as President of the Human Rights Council – and that is the reason why I am particularly glad to be here.

Let me explain: Before I was elected President, I had a number of talks with my colleagues in Geneva and other Human Rights Experts [– some of you, as I see, are also present today]. And in these conversations, I was basically asking one question: Which are the main challenges the HRC has to tackle in order to better fulfill its function as the main political forum for the promotion of Human Rights within the UN system?

These conversations allowed me to outline three baskets to focus on throughout the year:

1. Relationship Geneva/ NY
2. Efficiency of the HRC
3. The Council’s effectiveness and its impact on the ground.

I don’t want to elaborate on the first two points – as we in Geneva have had good and substantive discussions on both points. With
regard to Geneva and New York, as well as with regard to efficiency, many ideas are on the table, and I am optimistic that we can achieve some substantial progress. But of course, the litmus test for the work of the HRC is its effectiveness, its impact beyond Room XX and on the ground.

And this is what the Istanbul Process is about: To better implement one of the Council’s landmark resolutions. This Process is a fine example for states not just negotiating and tabling a resolution – which often is, as we all know, difficult enough – but for taking ownership of its very implementation. If each State focuses on implementation of the resolution, we can also overcome the politicization of this important subject-matter more easily.

Religious intolerance and violence committed in the name of religion rank among the most significant human rights challenges of our times. Examples are plentiful: The murderous attacks against the French magazine “Charlie Hebdo” and the kosher supermarket in January this year were followed by several acts of violence against Muslim places of worship. Just a few days before this incident, two Egyptian policemen were killed during an attack against a Coptic church near Cairo. In 2014, more than 200 Christian schoolgirls were kidnapped by the terrorist group Boko Haram. Rohingya Muslims fled persecution in Myanmar, which led to the latest migration crisis in South-East Asia. And it becomes almost impossible to count the victims of the abhorrent crimes of the so-called “Islamic State” – and these victims, as you know, are mainly Muslims.

It would be easy to continue this saddening list. But I think one thing has become clear: Acts of discrimination, intolerance and violence concern members of almost all religious groups in all different regions of the world – as well as those who convert or who choose not to be affiliated to any religion at all.
Freedom of religion, as enshrined in Art. 18 ICCPR, protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. And religious tolerance implies tolerance for all religions and beliefs everywhere. It is essential for us to learn that tolerance in its truly universal sense can only be achieved by all of us together.

Resolution 16/18 is considered by some as “one of the most important texts ever adopted by the Council”\(^1\). It was drafted to overcome the old antagonism existing between the resolutions on “Freedom of religion or belief” and “Defamation of religions”.

Fighting religious intolerance while safeguarding the freedom of religion or belief is not a contradiction; both are aspects of the same fundamental rights. Therefore, it is paramount that the Council remains unanimous on both resolutions – 16/18 as well as “Freedom of religion or belief”. And maybe, one fine day, these important subjects can be even jointly addressed in one single text.

With its detailed, build-in action plan, resolution 16/18 provides a useful framework for combating religious intolerance. Concerning the implementation, some advances have been made in the previous four Istanbul process events. But still a number of challenges lie ahead.

\(^1\) URG report, p. 15
These include

- the need to accord balanced importance to all parts of the 16/18 action plan,
- to ensure balanced discussion about implementation across all States from all regions,
- the sharing of successful good practices, and
- measures to achieve a wider ownership of Istanbul process events.

One proposal which, to me, seems to lead in the right direction would be the creation of a roadmap for the further implementation of resolution 16/18. This could include a series of sessions in the Istanbul Process which would ensure that all aspects of the action plan will be properly addressed.

The three themes proposed for this meeting stem from resolution 16/18. These issues are as complex as they are important in today’s world. We therefore need to be vigilant not to allow inter-governmental political debates to occur in a vacuum, namely without taking stock of what is happening on the ground and similarly without taking account of what human rights norms and the work of international human rights mechanisms have to offer.

Drawing on such international standards will help us overcome unnecessary obstacles such as the erroneous assertion that freedom of expression and freedom of religion were in competition and therefore could not be fully guaranteed at the same time. Instead, the international human rights norms teach us that the opposite is true: freedom of expression and freedom of religion or belief are mutually enhancing and beneficial. We have to put the respect of human rights at the heart of all responses to religious intolerance.
Res. 16/18 calls upon States to take concrete and effective measures against discrimination on the basis of religion or belief. But although States are primarily addressed by Res. 16/18, it seems evident to me that the combat against religious intolerance is a task for society as a whole. A strong civil society can help to foster an atmosphere of tolerance and mutual respect. Therefore, it is important to include the actors of civil society in this process of implementation. [*This is why I am particularly pleased to see that the representatives of NGOs participate in today’s meeting.*]

Last not least: Also the UN system as a whole – and especially the OHCHR – can and should make important contributions to the process of implementation of 16/18. One example of how the OHCHR has helped advance political discussions and stimulated implementation of the human rights norms is by means of the series of expert workshops on the prohibition of incitement to hatred in 2011 and 2012. This, as you know, led to the adoption of the Rabat Plan of Action which has been welcomed by stakeholders across the board.

The reports of the special rapporteurs and the Universal Periodic Review also provide important information and might serve as indicators for the progress made in implementing 16/18.

The working results of these institutions and mechanisms – and please excuse me for stating the obvious –, these working results depend on the cooperation of all states. Therefore, broad participation in these mechanisms appears to me as a relatively easy

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way to contribute to the success of the Istanbul Process and the combat against intolerance\textsuperscript{3}.

I wish us all fruitful discussions in the next two days and every success for this session.

Thank you.

\textsuperscript{3} Only 15 member states contributed information to the latest report of the HC on combating intolerance.
Bismillah al Rahman al Raheem

I thank the organizers for inviting me to speak. This is indeed a historic moment the occasion of the fifth Istanbul Process meeting, the second in the Muslim World after Doha last year. I begin with the words of God Almighty in the Quran when he says to prophet Muhammad in Surah Nuh Verse 17 and 18.

God caused you to develop, bringing you forth from the earth. The same way, He will cause you to return into the earth and then bring you out from the earth again. (Nuh 17-18)

The Quran clearly gives a philosophy of creation of humans from earth. This is the basis of our common humanity. This is also the basis of treating each other with dignity and respect beyond race, nationality and tribe.

The Quran also clearly emphasizes the role of return to the earth as all humans have perished before us, reduced to dust, so shall we. And we will be brought out of the earth to be judged by the Almighty God about the way we conducted ourselves in our earthly life.

This understanding, at least for Muslims, should be the basis of mutual respect and tolerance of differences. We must respect each other’s ways of celebrating and worshipping God however our traditions have understood this. We must also extend this to celebrate the days that our traditions mark out as sacred holidays.

Every encounter is going to be judged by God, Muslims believe. Therefore, we should and must conduct ourselves in the best possible way with each other. Everything we say, everything we do with each other will be accounted for. We have to make sure that the person who is different from us does not feel injustice, discriminated against or
alienated through our conduct. This involves communication with others and dialogue.

The aspect of dialogue cannot be stressed enough in human life. Within and outside our intimate family, friends and work we should and must conduct dialogue in the best possible way with all those we encounter in our lives. The best exemplars have been lived by the founders of the world religions and other wise people. We can emulate our lives on the living examples of these sacred figures. There will be some among us who live exemplary lives based on these ancient archetypes. We can seek out such personalities and become like them because in so doing we become more God-like. In emulating good behavior we not only live a more God-conscious life, we also live a life as God wants us to live on earth, i.e. a life of humility and mutual respect.

Everyone is not of the same personality. Some would like to prove others wrong and choose the path of debate. While others like myself and the Center that I lead in Qatar, The Doha International Center for Interfaith Dialogue, we choose the way of dialogue. This involves seeking out similarities and common grounds across different traditions. Then we must move beyond these similarities to recognize differences and accept others with their differences. This is the more difficult challenge in the life of dialogue, especially for those of faith. We believe we at Qatar and our colleagues in the interfaith dialogue communities around the world are creating the possibility of a world of peace and acceptance. This is a step beyond tolerance and recognition.

We have been guided by the above inspiration and ideas rooted in our understanding of scripture and tradition. We feel this is a responsibility for people of faith in the 21st century.
While debate is encouraged in human societies we hope that dialogue would also find its institutional support in all societies of the world today. It is a necessity for living a life in our times with the challenge of managing diversity in our everyday life and not only by Governments.

I would point out that all our traditions have the resources in them to be useful today and speak to our lives challenges. The truth of our traditions based on revelation and inspired by God is taken for granted by people of faith. However, for non-adherents to our own faith we invite them to approach each tradition on its own terms, to study with sincerity and openness of heart and mind, and to approach people representing these traditions for guidance. This is the way to understanding, this and only this can help us overcome our prejudices. This approach should not scare us about bringing doubts towards our own tradition. To the contrary it would, I am sure, bring illuminating and fresh insights into our own tradition. Please try to approach other’s tradition with the respect we expect towards our own traditions.

Seventy-six participants took part in the previous Doha Meeting, the first Istanbul Process meeting in the Muslim world and the first where NGOs and non-state actors were invited. It is also the first collaborative document of its kind written by the interfaith community addressing an organ of the United Nations. The following were some of the important conclusions reached at the Meeting that are elaborated in the report that we published recently that I invite you all to read.

1. A philosophy of rights was discussed by Dr. Al-Qaradaghi from Qatar and Dr. Burhan Koroglu from Turkey based on earth as womb and rivers of civilizations.
2. Creation and protection of holy days and places was reaffirmed.
3. Educational interactions were highlighted as sources of generating interfaith understanding.
4. There should be dialogue encouraged amongst those who want to stress similarities and debate amongst those who want to stress differences.

5. There should be space made for discussing possibility of truth of revelation for true dialogue to occur.

I pray that these words will give encouragement to the efforts of the organizers of the Istanbul Process meetings. And I hope that you will come to visit us in Doha in our next annual conference.

Thank you,

Assalam o alakium wa rahmat ullah

Prof. Ibrahim Saleh Al-Naimi

Doha International Center for Interfaith Dialogue
Message from the High Commissioner for Human Rights, Mr. Zeid Ra’ad Al Hussein, on the occasion of the High-Level Meeting on Resolution 16/18 (Jeddah, 3 June 2015).

Distinguished Secretary-General of the OIC,
Excellencies,
Ladies and gentlemen,

I welcome this timely initiative by the Organisation of Islamic Cooperation, which aims to advance the milestone Human Rights Council resolution 16/18 on “Combating intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence, and violence against persons on the basis of their religion or belief”.

The richness of the many facets of our cultural identities coupled with increasing globalisation often leads to tensions and could be instrumentalised within conflicts. When the distances between communities is compressed, people may find themselves seeking to assert a group identity—religious or other—and their historic heritage, while they are simultaneously adapting to the instant sweep of modern communications, which bring almost every culture within reach.

Some see exposure to other cultures as a threat, and reject it. Most regard it as an opportunity, enabling them to embrace new ideas, to participate and contribute to global prosperity, knowledge, scientific advances, and welfare. What is clear is that it frequently generates friction and misunderstanding. We need to combat manifestations of intolerance, realise that human rights promote, strengthen and protect cultural diversity and understanding, and we need to avert the dangerous consequences of fomenting hatred. Such combat cannot be conducted within a normative vacuum and needs to be grounded in relevant international human rights norms and standards because otherwise there is a clear risk that tensions are exacerbated.
International human rights law offers protection to individuals and communities, including the right to choose to comply or not comply with specific religious dogma, and to freely profess the religion or belief of one's choice, including non-belief. While we may wish to protect cultural and religious diversity and the profound sense of identity of followers, human rights also require protecting the right to uphold and advocate ideas that question mainstream and traditional thought. The right to freedom of religion or belief does not preclude critical thinking with regard to the interpretation and application of a religion or belief, its practice, or indeed with regard to religion as a whole. The complexity of religion is how to distinguish between the sanctity of the sources of the dogma and the relativity of its interpretations by humans. This complexity entails another important realisation, namely the aggravated responsibility of all those who speak in the name of religion. Indeed, putting aside prophets nobody has the authority speak on behalf of the divine.

Your meeting is taking place in Jeddah, the principal gateway to Mecca, Islam's holiest city. Please allow me to state clearly here that Islamic values are not in contradiction with internationally recognised human rights norms and standards. Since time immemorial, religions such as Islam have sought to express not only the human relationship with the divine, but also the values of tolerance, compassion and solidarity that should underpin human beings' interaction with each other. Indeed, substantive reforms in many Muslim countries, far from contradicting Islamic values, even stemmed from these.

Ladies and gentlemen,

Resolution 16/18 is unequivocally a landmark in conceptual clarity and precision of needed actions. It should be used as a new consensual catalyst for collective action to counter intolerance, negative stereotyping, violence and discrimination against individuals and groups on the basis of their religion or belief. It is a clear call for action by all Member States.

The Istanbul Process is unique in the sense that it constitutes a collective follow-up by States of a Human Rights Council resolution. Indeed, a number of States have subsequently come forward to organise Istanbul Process events focusing on
selected aspects of Resolution 16/18. To date, four expert-level meetings, in Washington, London, Geneva and Doha, have gathered knowledge and expertise from across the world in this regard. Implementing this resolution to the fullest has however not been easy. Not all its recommendations have appealed to all groups in society, and some require resources, at a time of constantly competing budget priorities in all countries. However, we should bear in mind that the cost of non-action may be even higher. A successful Istanbul Process will need to give balanced importance to all parts of the 16/18 action plan, and ensure balanced discussion about implementation across all States, from all regions.

With a view to fostering a more effective Istanbul process, permit me therefore to suggest for your consideration a few guiding principles that I believe can strengthen the process and reflect its true spirit.

First, introspectiveness in the sense of honest self-evaluation should be the main objective and common denominator of the Istanbul process discussions, to stimulate real dialogue about practices that have been truly successful at the national level – and about practices that have failed.

Second, implementation, in the sense that resolution 16/18 is, more than a political statement, a plan of action that lends itself to changing realities at the national level. Indeed, as repeatedly stressed during the inaugural ministerial meeting of the Istanbul process, discussions should be practical and geared towards implementation. This means we can refrain from repeating essentially political discussions.

Third, concreteness in the sense of learning from practical experiences across the world. The methodology of Istanbul process events should essentially be centered around specific and properly elaborated case studies to be analysed at various events, through which States and other actors from all regions can be inspired to learn from each other.

Fourth, continuity is vital. I suggest that the forthcoming Istanbul process events should be complementary rather than duplicative. Adopting a forward agenda will also ensure that balanced importance is accorded to all parts of the 16/18 action plan.
Fifth, leadership, in the sense that continuity needs to be entrusted to a collective rotating leadership. For example, establishing a steering committee or Troika composed of officials from the previous, current and forthcoming events could ensure institutionalisation, shared ownership of the process, in a collective rotating transparent manner.

In my view, these five guiding principles would facilitate the notion that the Istanbul process should be “underwritten and monitored by the Human Rights Council through the available reporting mechanisms,” as was decided at the ministerial meeting which launched the Istanbul process.

As you are aware, between 2011 and 2015 a number of resolutions requested the Secretary-General and the High Commissioner for Human Rights to present reports on, for instance, steps taken by States to combat intolerance within the context of resolution 16/18. What is the value of these reports? Have they been useful to you? Let me offer my honest answer, I believe these reports have not reached their full potential. My Office, and the UN system as a whole, can and should play a more effective role in assisting Member States with the implementation of resolution 16/18.

Only few States have so far submitted information on steps taken to implement 16/18 which is probably explained by inter alia a reporting fatigue or lack of clarity on what the benefit of this reporting might be. Let me illustrate what the benefit to you would be. If all States were to provide more detailed information on steps taken, along agreed guidelines for reporting, that we can help you to design, and if the Istanbul process discussions generate more specific good practices, this would empower OHCHR to, for instance, be able to generate higher quality reports, containing better analysis of trends, compiling detailed good practices, or even map the progression of case law, to be submitted to the Human Rights Council, allowing delegations to take better stock of the state of implementation of resolution 16/18. This would also enable OHCHR to offer and implement more relevant technical assistance programmes for States. The benefit to States, in turn, flows from the fact that as reporting requires undertaking critical self-assessment and self-observing progress and challenges, it will help shed light on where the State has good practices to share and where it needs to remedy shortcomings.
Distinguished delegates,

We are not starting from a vacuum as indeed some progress has already been achieved. My Office, for instance, has already undertaken various activities to further issues covered in resolution 16/18. For instance, it has provided advice to Member States on draft legislation regarding racism, racial discrimination, and freedom of expression. We have also undertaken numerous training activities tailored for law enforcement officials and members of the judiciary.

Moreover, as many of you will know, my Office organised the series of expert workshops on the prohibition of incitement to hatred which led to the elaboration of the Rabat Plan of Action on preventing incitement to hatred, a document highly praised by States and civil society actors alike. The Rabat Plan of Action is much more technical than the Istanbul process and resolution 16/18, but as the Rabat Plan of Action itself states, resolution 16/18 “requires implementation and constant follow-up by States at the national level, including through the “Rabat Plan of Action” which contributes to its fulfilment”. Complementarity is the key link between both instruments. One could say that resolution 16/18 scopes the areas for action whereas the Rabat Plan of Action presents specific measures to be taken within those areas.

The Rabat Plan of Action is equally a platform through which civil society has been engaged on these topics. In effect one could consider that the Rabat PoA also forms the civil society track of the Istanbul process. Since I have taken up my mandate I have witnessed a number of pioneering initiatives by civil society organisations from the Muslim world and I encourage OIC States to support and help showcase such initiatives as I don’t believe that this is currently being done sufficiently. That is why I was keen to personally attend and support the recent launch, in Tunisia, of the Arab Civil Society Coalition against Incitement to hatred. While this initiative started in the Arab world for obvious reasons I am convinced of its potential to expand cross-regionally.

Distinguished participants,
Inter-religious and cross-cultural understanding can be a matter of life or death. No matter how disheartened we may become, faced with almost daily accounts of religious intolerance, discrimination or even persecution on the grounds of religion or belief all over the world, we cannot give in to inaction. It is the duty of States, regardless of their political, economic and religious characteristics, to ensure that individuals and groups can fully exercise their human rights. It is incumbent upon all of us to promote tolerance, to foster understanding for diversity, and to combat hatred so that even contrasting views and convictions can be freely and respectfully expressed in the public arena.

In our era of deepening interaction and mutual learning among people of different origins – and in a context of heightened political awareness and civic activism around the world – there is no doubt that common strategies are most effectively pursued when anchored in universal human rights standards. My Office is pleased to make its convening power, multi-stakeholder expertise resulting from the human rights norms, the work of independent mechanisms, State parties, and contributions of civil society in this regard available to all.

Thank you
Opening Remarks of the United States

Fifth Meeting of the Istanbul Process for Promoting Implementation of
UN Human Rights Council Resolution 16/18
on Combating Religious Intolerance, Discrimination, and Violence

JUNE 3-4, 2015, Jeddah, Saudi Arabia

Delivered By:
Arsalan Suleman, Acting U.S. Special Envoy to the Organization of Islamic Cooperation (OIC)

Your Excellency OIC Secretary General iyad Madani, Honorable Ambassadors, Excellencies, Ladies and Gentlemen, Assalamualaikum.

On behalf of Secretary of State John Kerry, we thank Secretary General Madani and the OIC for hosting the fifth meeting of the Istanbul Process for promoting implementation of UN Human Rights Council Resolution 16/18.

Ambassador at Large for International Religious Freedom David Saperstein and I are honored to be representing the United States at this meeting, and we look forward to our discussions over the next two days. Ambassador Saperstein will be joining us this afternoon due to some travel delays.

This meeting comes at a critical time. We are all sadly familiar with the challenges we face in terms of violence, discrimination, and intolerance on the basis of religion or belief. In many parts of the world, religious minorities, including Christian, Shia, Sunni, Yezidi, Ahmedi, and Baha'i communities, are facing discrimination and violence at the hands of state and non-state actors.

There is an urgent need to enhance global efforts to protect the rights of minorities, including religious minorities. In some cases, like for the Burmese Rohingya population, discrimination has reached such proportions that it has led to a regional humanitarian emergency. Non-state attacks against members of religious communities are also an urgent challenge. In April, for example, we were appalled by the murders of Christians in Libya and Kenya by terrorist groups.

We were shocked and saddened by the deplorable bombings in the past weeks of a mosque in Qatif, Saudi Arabia, where at least 21 people died and over 80 were injured, and the attempted attack on a mosque in Dammam, which killed four
people. We condemn such deplorable, criminal acts and express our condolences to the families of the victims and the people of Saudi Arabia. Sadly, these are just the latest in a succession of actions seeking to foment sectarian tensions. Such terrorist acts, as well as divisive sectarian rhetoric, seek to tear societies apart.

We are also faced with intolerance and societal discrimination against members of religious communities in various parts of the world, including for Muslim communities in Europe and the United States. We have seen provocative demonstrations and efforts seeking to target such communities, and sadly we have also seen isolated incidents in which individual criminals have engaged in terrorist violence purportedly in response to certain forms of peaceful expression.

Effective implementation of Resolution 16/18 by governments can help address many of the challenges relating to religious intolerance, discrimination, and violence. Resolution 16/18 is a comprehensive action plan -- it explicitly defines the shared values and commitments that serve as our foundation and guiding principles when dealing with religious intolerance. The resolution acknowledges that there is no justification for violence in response to peaceful expression.

It calls on governments to foster religious freedom and pluralism, to protect places of worship, to enforce anti-discrimination laws, to engage with members of religious communities, and to promote conflict resolution. It also encourages leaders in government and civil society to speak out against religious intolerance and to form collaborative networks to address these challenges.

The blueprint is clear and has the consensus of the international community. As the purpose of this gathering indicates, we must focus our attention on implementation. This discussion is both timely and necessary.

We must reaffirm our core values and strengthen political and civil rights protections for the members of all our communities, including members of religious and ethnic minority groups. Reaffirming our commitment to human rights will prevent the political marginalization that can drive members of vulnerable communities toward violent extremists. Freedom of expression, freedom of religion, and respecting religions and religious beliefs of others are critical to promoting peace and understanding worldwide.

President Obama and his Administration are wholly invested in this approach worldwide, and we are working with partners, including all of you, to promote peace and stability in the region and around the world.
Though the challenges are daunting, we’ve seen recent examples of how governments have responded to terrible tragedies in ways that further the values enshrined in Resolution 16/18. In Afghanistan, a young woman named Farkhunda was brutally killed by a mob following false allegations of blasphemy. On May 6, after an investigation and prosecution, an Afghan judge sentenced four of the individuals involved in the violence to death, with other participants receiving prison terms for their participation. Although we have concerns regarding due process, we welcome the Afghan justice system addressing the mob lynching of Ms. Farkhunda. In Pakistan, a mob beat, killed, and burned the bodies of a Christian couple, also on allegations of blasphemy. And on May 21, an anti-terrorism court charged 106 individuals involved with the crime.

As demonstrated in these cases, the appropriate way for governments to respond to such injustices is to take the necessary steps to ensure that perpetrators of violence are held accountable, and that there is no impunity for such crimes. Governments must act quickly, but they must also ensure that defendants are afforded due process and fair trial guarantees. That is the true essence of 16/18.

As to the way forward, it is important for us to continue having experts-focused meetings to discuss best practices for implementing each step of Resolution 16/18. Governments should then follow through and implement the experts’ findings and recommendations as appropriate. And that implementation should focus on all aspects of the comprehensive action plan, not just one prong.

We encourage greater and more effective state reporting on implementation activity. Civil society can play a important role in promoting and monitoring implementation, as well as contributing to implementation directly as appropriate. For example, the Universal Rights Group’s recent study on 16/18 implementation has provided useful analysis on the lack of reporting and gaps in implementation.

As we will discuss in further detail during the meeting, the United States has partnered with other states, namely Bosnia, Indonesia, and Greece, on workshops to discuss practical approaches to implementation. These technical engagements have focused in particular on best practices for promoting engagement with minority religious communities and enforcement of anti-discrimination laws. We welcome the opportunity to work with others on such workshops as a cooperative way to promote implementation of Resolution 16/18.
In closing, I'd like to thank the OIC and all participating countries and organizations for their commitment to this dialogue and to have this renewed focus on implementation. This gathering in itself is an achievement. Let us make the most of our collective experiences, expertise, and passion to realizing the full potential of Resolution 16/18 and all the key principles therein that we all value deeply.
5th International Expert Meeting on the follow-up of Implementation of HRC Resolution 16/18
Opening Session

Jeddah – 03 June 2015

Remarks by Ambassador Adam KULACH
Head of the European Union Delegation to the Kingdom of Saudi Arabia

Excellencies, dear colleagues,

First of all let me thank the OIC, and His Excellency, Mr. Iyad Ameen Madani, the OIC Secretary General, for convening this meeting, and inviting the EU representative to address the participants. I would like to welcome the presence of a very diverse audience, diplomats, academics, experts from international and regional institutions as well as from civil society organisations, which brings every prospect of dense and thorough debates.

Frederica Mogherini, the EU High Representative for Foreign Affairs and Security Policy, who attaches a great importance to the issues under discussion and to the fight against religious intolerance, wishes us fruitful exchanges over these two days.

These discussions, aiming at finding ways to strengthen the implementation of HRC resolution 16/18, must build on open exchanges and examples of good practice. Sadly, resolution 16/18 on combating intolerance, discrimination, incitement to violence or violence against persons based on religion or belief, remains at least as relevant today as at the time of its adoption. Recent events worldwide, including in
Europe, remind us how easily religion or belief can be instrumentalised for the worse, and in turn, lead to further radicalisation and intolerance.

The EU remains committed to the full implementation of resolution 16/18, whose underlying principles are very much in line with article 2 of the Treaty of European Union which states that: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities". The Treaty adds that "These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women must prevail".

The non-discrimination principle, including on grounds of religion or belief, is also firmly anchored in the Treaties (see Article 10 and 19 TFEU) and in Article 21 of the EU's Charter of Fundamental Rights.

Racism, xenophobia and all other forms of intolerance, including on grounds of religion or belief, strike at the very heart of our common European project and run against the common values upon which the EU is founded.

Hate crimes motivated by racism, xenophobia and related intolerance, coupled with impunity for perpetrators, not only create a climate of fear, but also promote marginalisation and social exclusion of the persons targeted by those crimes.

A firm response is needed, which leaves no room to complacency and requires political leadership and strict enforcement.

At EU level, we are strongly committed to uphold our responsibilities and we are determined to make use of all available tools.

A solid legal framework has been developed over the years to address racism, xenophobia and hate crimes, including on grounds of religion and belief. The EU is equipped with specific legislation on combating racism and xenophobia by means of criminal law, for which the Commission acquired enforcement powers as of
December 2014. The EU Framework Decision on combating racism and xenophobia by criminal means obliges the EU's Member States to criminalize hate speech, i.e. the public incitement to violence and hatred based on race, colour, religion, descent or national or ethnic origin as well as hate crimes based on a racist or xenophobic motivation (including on grounds of religion or belief). In 2014, the Commission adopted an implementation report taking stock of measures adopted by Member States and is currently holding bilateral dialogues with some of them in order to speed up the transposition process.

The EU is also equipped with an ambitious Directive to support the victims, including all victims of hate crime, due to enter into effect as of November 2015. The European Commission is committed to give priority to the effective enforcement of both instruments. At the same time, the Commission is working together with the Member States and other actors, including civil society organisations and relevant international monitoring bodies, to make a real difference on the ground through the establishment of expert fora and platforms facilitating the exchange of best practices. The worrying phenomena, such as hate speech on line, are also addressed in this context. This is particularly important in the area of combating hate crime and hate speech since it remains for the national authorities to determine, according to the circumstances and context of each situation, whether the case amounts to incitement to racist or xenophobic violence or hatred.

The Commission further supports the activities of national authorities and civil society partners active in the area of the fight against racism and xenophobia on the ground through a number of financial programmes. For the period 2014-2020 the Rights, Equality and Citizenship Programme with a proposed budget of 439 million EUR will support in particular the development of efficient monitoring and reporting mechanisms for racist and xenophobic hate speech on the internet and hate crime as well as the exchange of best practices to prevent and combat racism, xenophobia and other forms of intolerance focusing in particular on criminal law tools.

The legal framework is key but it is not enough. We have been promoting a holistic approach, which also includes education, dialogue, the promotion of understanding and tolerance. Accompanying and promoting education, in particular human rights
education and encouraging interfaith and intercultural understanding play a crucial role. The European Commission will hold in June this year high level meetings with religious leaders and non-confessional organisations to discuss the issue of tolerance, respect and living together.

The European Commission also decided to devote its first ever Annual Colloquium on Fundamental Rights, scheduled for 1-2 October 2015, to fostering tolerance and respect, with a focus on preventing and combating anti-Semitic and anti-Muslim hatred.

Living together in a pluralistic society is not possible if its members feel threatened, discriminated and insecure: every citizen must feel that he/she has a place in the society where he/she lives. Fostering an open, pluralistic and inclusive society, which is based on fundamental rights, is key in this respect. Being able to 'agree to disagree' and fostering a mutual understanding, is another key feature.

The Colloquium will look at trends and underlying reasons of antisemitic and anti-Muslim incidents in the EU, and their impact on people's lives and rights. It will explore the most relevant avenues to address these phenomena. Focus will be put on projects, policies and legislation designed to combat hate crime, hate speech and discrimination. Discussants will look at the role of EU and international institutions, Member States, local authorities, civil society, community leaders, the media, education and the world of employment in developing a culture of inclusive tolerance and respect in the EU.

Our answer to the challenge of religious intolerance has to be comprehensive and multifaceted, building on the values we want to defend and on full respect for human rights.

Defending and promoting Freedom of Religion or Belief (aka "FoRB") is a key area of the EU' human rights policy. Over the past years, the EU has been increasingly focusing on the promotion and defense of this fundamental right, which is essential for the development of free and tolerant societies. As stated in the EU guidelines on FORB which were adopted in June 2013, freedom of religion or belief safeguards
respect for diversity. Its free exercise directly contributes to democracy, development, rule of law, peace and stability. Violations of freedom of religion or belief may exacerbate intolerance and often constitute early indicators of potential violence and conflicts. Fostering FORB and pluralism "by promoting the ability of members of all religious communities to manifest their religion and to contribute openly and on an equal footing to society" is one of the actions highlighted in the 16/18 resolution.

Let me also highlight the fundamental role religious leaders can play in defeating intolerance and discrimination. In many conflict situations, religious leaders have been key in strengthening the resilience of societies against fundamentalist threats. Strong religious leaders and their support to peace processes, their calls for public support to resist radicalisation, violent extremism and terrorism, their commitment to provide a counter-narrative to fundamentalism, which we can witness worldwide, are strong indicators for the positive peacebuilding role that they can play. The UN Special Rapporteur on Freedom of religion or belief – and I am pleased to see that he is with us here today - in his latest report is precisely underlying that role, and encourages religious leaders to speak out against violence committed in the name of their religion.

The positive force of religion when it is centred on the human being and its dignity also can serve to promote cohesion in conflict-driven societies. Traditional religious reconciliation mechanisms, the role of faith-based communities, the credibility of religious leaders are all drivers of peace. Religion can therefore be a force for conflict prevention, if allowed to play that role.

The EU’s work to promote interreligious dialogue and mediation in many conflict areas worldwide is an example of how we all strive to foster peaceful societal relations. Let me give some examples of this work.

Since August 2013 in the Central African Republic (CAR) the EU has fostered inter-community dialogue and the de-escalation of the tensions and conflicts between Christians and Muslims, mainly through assistance to the Inter-faith Commission and civil society networking and through the establishment of twenty Peace Cells throughout the country.
With regard to Mali, the EU has strongly encouraged and supported civil society and religious organisations to promote mediation as a tool to reconcile divided communities.

In Indonesia, the EU has supported a project to create a network of religious leaders and preachers committed to tolerance and to developing peaceful and inclusive lives;

In the former Yugoslav Republic of Macedonia (fYROM), the EU has promoted inter-religious dialogue through capacity-building for media and religious representatives.

I hope this meeting and future meetings of this process will further strengthen our collective dedication to tackle/fight against intolerance and extremism.

Thank you for your attention.
Chile on Freedom of Religion and Religious Tolerance: the Istanbul Process
5th Meeting sponsored by OIC
Jeddah, 3 and 4 June, 2015
Message delivered by Amb. Marta Mauras

On behalf of President Michelle Bachelet and the people of Chile allow me to thank the Organization of Islamic Cooperation and its Secretary General for hosting this meeting and inviting us.

Chile has an open and fluid space for religious dialogue, and we fully realize the need to preserve it. In this context, we follow with special attention and hope to contribute to debates that link religion and democracy, religion and freedom of expression, religion and women, religion and terrorism and religion and various stereotypes and discrimination, among others. The framework of the Istanbul Process – and this meeting in Jeddah – afford another opportunity to understand better and appreciate different thinking and to open spaces for advancing the principles of tolerance, and beyond, the principles of respect and unity in diversity in a peaceful world. Let us take advantage of it and build on the appeal by the High Commissioner on Human Rights to not only continue our dialogue but also learn from each other and exercise leadership.

Chile has often intervened particularly in Geneva and New York to highlight the value of freedom of religion and belief, always stating its concern over acts of violence tied to religious intolerance. Likewise, we have expressed the will to participate and cooperate in initiatives to promote respect, tolerance and freedom of expression. Chile upholds freedom of expression and opinion as a fundamental right of all people as we do for freedom of religion and belief, including the right to not believe or to convert to another belief.

This is supported by the laws and institutions of a secular state such as Chile by virtue of the 1925 Constitution of the Republic that separated the State from the church. So, why are we engaged in this process and want to participate in building the dialogue even if seemingly in our region we do not have a major problem? Let me give you at least two reasons:

- Because tensions exist not only between religions but also, in many cases, within a particular creed, and we in Latin America are not free from this,
- Because the balance achieved in our societies needs to be nurtured as we evolve. Today we face a declining economic growth and mounting frustration and we are not free from the kind of radicalization emerging from the financial crisis or the failures of governance in some parts of the world that has given rise to expressions of nationalism and terrorism, often in the name of religion,
- Because freedom of expression and freedom of religion - both consecrated in our Constitution - are human rights, and by their essence, indivisible and interrelated. The debate on the limits of freedom of expression is philosophical
and political but also very real and it concerns Chile that this right may be abused particularly as a reaction to violent extremism of any kind.

The central elements of our national position are:

1. The only subjects of international law of human rights are the human beings. Norms apply to human beings. Human beings must be protected in the exercise of their rights, among which are the freedom of expression or freedom to believe in a faith or creed, especially if that of minorities, or the right not to believe.

2. Religions are not the subject of international law of human rights. The Joint Declaration on Defamation of Religions and Anti-terrorism and Anti-extremist Legislation of the Special Procedures of the UN, OSCE, Organization of American States and the Africa Commission emphasizes the fundamental difference between criticism of a religion, creed or school of thought, and the attacks against individual persons because of their allegiance to any of these. The latter are violations to human rights. Likewise, the cited Declaration states that the concept of defamation of religions is incompatible with international standards regarding defamation, which refer to the protection of the reputation of individual persons and not to religions or beliefs.

3. Chile has systematically opposed any discrimination based on a person’s religion or belief, in conformity with Art. 26 of the International Pact on Civil and Political Rights which establishes that the law will prohibit all discrimination and will guarantee to all people equal and effective protection against any form of discrimination, among others those relative to the religion espoused or not espoused by a person. Also Chile subscribes to Art. 2 of the same Pact, which directs that the law should prohibit all apology of national, racial or religious hate that incites to discrimination, hostility and violence.

4. Chile has always promoted in the multilateral arena all efforts to establish alliances to build common understandings, respecting legitimate differences between different worlds while ensuring that fundamental rights internationally recognized are not construed as relative but as universal. In this respect, the Council of Human Rights can complement international initiatives such as the Alliance of Civilizations. At the same time, all of us members of the international community need to apply these concepts to our own communities, national and local, promote concrete examples and learn from them.

5. In this vision, the multicultural, multi-ethnic and multireligious character of many States —not only in the Middle East— is a global public good to be preserved.

6. This vision would be incomplete and is not sustainable if it does not include women. There must be particular attention to abolishing practices and legislation that discriminate against women, including in the exercise of their right to freedom of thought and belief, or that discriminate based on any
religion. This process that convenes us for the fifth time must have a gender approach.

Because of all of the above, Chile supports Resolution 16/18 with its Istanbul Process and the Rabat Plan of Action that supports it. Chile believes that the Freedom of Religion resolution of the HRC is also extremely important and see both as complementary in concepts and proposed actions. Therefore, Chile renews its committed to host the next meeting of experts in 2016 to continue sharing experiences and build on our common understanding.
1530-1700 Second Panel Discussion: Theme Two:
Countering and combating advocacy to religious hatred that constitute incitement to discrimination, hostility or violence through affirmative/positive measures:

Professor Nazila Ghanea

In her remarks, Nazila recalled that the term ‘religious discrimination’ has always had a ‘dual aspect’. It has addressed discrimination suffered by a victim due to his/her religion or belief and secondly it is discrimination that is perpetrated in the name of religion or belief. This is clear from the language of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief as well as from the mandate practice of the UN Special Rapporteurs on freedom of religion or belief.

Nazila then addressed ‘speaking out’ against acts of provocation, stereotyping and insult – as captured in paragraph 5(e), noting from the Universal Rights Group report that it has become a lot more established since 2005 and has been one of the most tangible effects of resolution 16/18 and the momentum that led to its adoption. Political and religious leaders are now much more willing to speak out against intolerance. Here States and other actors agree both on this provision’s importance and on how it should be implemented. As the US and Pakistan delegations noted during the Geneva meeting of the Istanbul Process (2013), ‘leaders have a duty to speak out against intolerance’ in order to set a ‘baseline from which society should operate.’ Specifically, since the publication of the Mohammed cartoons in Denmark in 2005, the speed and sophistication with which leaders speak out against intolerance has improved markedly. (Figure 2, p.32-33) During the 3rd meeting of the Istanbul Process in Geneva (2013), the Secretary-General of the OIC acknowledged this improvement, noting ‘a tremendous change … since 16/18 was adopted.’ To illustrate this, he compared the muted reaction to the [Jyllands-Posten] cartoons with the more robust response to the 2011 ‘Innocence of Muslims’ film, where there was a joint statement condemning “any message of hatred and intolerance” and reiterating “strong commitment to take further measures” to maintain the international consensus in 16/18. In the Universal Rights Group research, it was also found that Promoting interfaith and intercultural dialogue at different levels – as captured in paragraph 5(h) – had become a lot more widespread. The High Commissioner’s report on the implementation of resolution 16/18 and debates during the four Istanbul Process meetings show that states have taken a wide range of steps, and the report mentions efforts by Indonesia, Pakistan, Mexico, Saudi Arabia, the US, Denmark, Argentina, Doha and the UK.¹ These were all indicative of ‘more numerous, more robust and more confident’ interfaith dialogues taking place.

But paragraph 5(h)–in conjunction with operative paragraphs 4 and 6–is also a call for States to promote and protect freedom of religion and freedom of expression. In the absence of the effective enjoyment of freedom of religion or belief and freedom of opinion and expression, ‘interfaith and intercultural dialogue[s]’ risk being nothing more than public relations exercises that paper over deeper issues within and across societies.

¹ From the Universal Rights Group report: The US Office of Faith-Based Community Initiatives, the UK Inter-Faith Network, Denmark’s ‘Your Faith – My Faith’ campaign, the Inter-faith Bridging programme in British Columbia (Canada), Argentina’s monthly religious freedom forum, Mexico’s network of Interfaith Councils, Indonesia’s domestic and bilateral interfaith dialogues, Pakistan’s National Conference on Interfaith Harmony and the Islamabad Declaration, the King Abdullah Bin Abdulaziz International Centre for Inter-religious and Inter-cultural Dialogue in Vienna (established in 2011), and the annual Doha Conference for Interfaith Dialogue in Qatar
She then observed that in continuing to encourage both speaking out and promoting dialogue as best practices, though, it was worth raising a couple of further questions. The first is to recall why international human rights law protects freedom of religion or belief in the first place. Why has ‘freedom to believe’ been so well-established in human rights standards for so long? Isn’t it out of recognition of the power religion can have to capture the commitment of individuals to contribute to the advancement of society, to social and economic development, in pursuit of their personal spiritual obligations? Isn’t it out of recognition of the power of religion to reach the roots of human motivation, to allow them to overcome prejudice, love, forgive and sacrifice and build social relationships? It is also in recognition of the contribution of religion and belief to the causes of peace, sisterhood and to preferring others to ourselves.

In this context, freedom of religion or belief is essential for the full development of the human person; in recognition of the unique impulse in developing the individual and sparking and maintaining their service to humanity and the greater good - this within a framework for internal nourishment and an external reflection of that is service. Here, I believe we need to give attention to whether our selectivity in protecting this for some, rather than for all, can possibly be sustainable? Is there any coherence in denying the equal validity of the right of others to believe? Can we set to one side claims of privileged access to truth to acknowledge the opportunity for others to pursue their truths too, and afford others too the possibility of live according to the truths of which they have been persuaded?

The second was to revisit why interfaith dialogue? The purpose is not dialogue as an end in itself. It cannot just be a rehearsed showcasing by the authorities of the existence of select diversity. It cannot be the displaying of conditional and shallow respect – I acknowledge you if you acknowledge me. Mere calls for tolerance by religious leaders behind closed doors are not enough, especially when it is perceived by a susceptible public that the call to hate and destroy other religious claims enjoys divine sanction. We therefore need a fundamental rethink. This is not something that State authorities can easily manoeuvre and control. It’s not a puppet show. To enjoy legitimacy dialogue needs to be much more deeply rooted and will require a much deeper reflection. So I propose we give some thought to a number of issues here, especially: what is the role of State authorities, civil society, religious and belief bodies, religious leaders, interfaith organisations, etc. here to ensure that the effort rings true and is persuasive? And how do we build up a strong spiritual resilience in the vulnerable masses so they reject charismatic appeals to hate and reject others, to fundamentalism and blind fanaticism and to the perversion of religion towards destruction? How do we address the failure of our responsibility to leave the believing masses exposed and vulnerable to these influences?
Heiner Bielefeldt

Fifth Session of the Istanbul Process (Jeddah, 3-4 June, 2015)

Short input for second panel

I. The role of "positive speech"

Positive speech is the best antidote to speech-acts inciting to religious hatred. Positive speech can include different levels of activities, such as:

- Civil society initiatives. Example: The great number of Anti-Pegida demonstrators expose the slogan of the Islamophobic Pegida movement ("we are the people") as a ridiculous posture. More generally: Entrepreneurs of hatred, who often claim to act in the name of "the silent majority" must be challenged publicly by as many people as possible.

- Community outreach programmes, with the purpose of preventing violent escalation. Examples were presented in the second session of the Istanbul Process in Washington D.C., including by the US homeland security ministry who staged a fictitious crisis situation, in order to demonstrate how the communication channels between administration and communities work.

- Media work. Example: Radio Benevolentia produces soap-operas, including stories playing across the (alleged) boundaries of different communities, with the purpose of building trust in post-conflict situations. People should regain empathy and recognize that members of a different community have similar experiences, stories, tragedies, comedies like themselves.

- Interreligious communication. Example: The Interreligious Council in Sierra Leone (an OIC member State) brings together Sunnis, Shias, Ahmadis, Catholics, Anglican, Methodists and others to jointly build resilience against the voices of religious extremism. The Interreligious Council also played a key role within the Truth and Reconciliation Commission set up after the end of the civil war.

Clarification: All these initiatives require an enabling environment facilitated by the State, e.g. the guarantee of freedom of assembly, freedom of expression and freedom of religion or belief; an adequate media infrastructure that allows the flourishing of professional journalism and broad participation in public discussions; efforts in education and other positive investments. While give space for other stakeholders to take an active role, the government itself has the framework responsibility to create suitable conditions.

II. Freedom of expression and freedom of religion or belief

It is often assumed that these two human rights go in different directions. Sometimes people even wonder whether and how they could ever be "reconciled". Instead, these two human rights are
"twins", as it were. Although not identical, they share a common origin and a common destiny. Without freedom of expression, i.e. without the possible of people to speak out frankly and publicly for their own rights and the rights of others, human rights cannot develop. This includes freedom of religion or belief, which can only flourish in conjunction with freedom of expression. At the same time, the whole enterprise of human rights would become meaningless without freedom of religion or belief, which acknowledges religion and/or belief as a fundamental dimension of human life, with implications for all aspects of human societies.

Right holders of freedom of religion or belief are human beings – as individuals and in community with others. Giving legal protection to religions themselves would always mean to single out some religions (or one religion) for privileged treatment. By contrast, the human rights approach takes religions and beliefs seriously in their broad diversity by focusing on the common denominator, i.e. human beings who profess their different faiths and aspire to lead their lives accordingly.

III. Limitations

In our discussions the issue of limitations to rights of freedom came up repeatedly. When dealing with limitations a high degree of precision is necessary. In “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family” (preamble of the 1948 Universal Declaration of Human Rights) everyone is entitled to exercise their fundamental freedoms without asking for a special permission. The relationship between freedom and limitations should thus be understood and operationalized as a relationship between rule and exception. Accordingly, the onus of argumentation always falls on those who deem specific limitations necessary, not on those who wish to exercise their rights to freedom (or support others in their freedoms). Moreover, limitations must do justice to all the specific criteria set out in international human rights law.

The Rabat Plan of Action, which spells out in more detail many of the recommendations included in HRC res. 16/18, clarifies that the threshold for limitations of freedom of expression must be very high and precisely defined, in keeping the relevant provisions of international human rights law. The Rabat Plan of Action therefore calls upon States to repeal anti-blasphemy laws. The thrust of the Rabat Plan of Action is generally on non-restrictive measure of countering incitement to hatred, which brings us back to the various forms of positive speech, mentioned in the beginning.

IV. Inclusivity

Agendas against incitement to religious hatred can only be credible if they address the concerns of all religious or belief communities and their members. Human rights are right held by all human beings in respect for their inherent dignity. Hence, the human right to freedom of thought, conscience, religion or belief must be broadly conceived. As the Human Rights Committee clarified in its general comment 22, this right covers theistic, non-theistic and atheistic beliefs, and it furthermore includes traditional or new religious communities and their followers. The language of respect, by which we replace the hateful slogans of narrow-mindedness, must be an inclusive language, in respect for the dignity, rights and freedoms of all human beings, across religious and denominational lines.
Statement of Knox Thames  
Director of Policy and Research  
U.S. Commission on International Religious Freedom  

5th Session of Istanbul Process Meeting  
Jeddah, Saudi Arabia  
June 3-4, 2015

Session II: Countering and combating advocacy to religious hatred that constitute incitement to discrimination, hostility or violence through affirmative/positive measures

The Human Rights Council’s adoption of Resolution 16/18 by consensus in March 2011 was a breakthrough, as it replaced the “defamation of religions” resolutions that had annually created serious cleavages between different voting groups. Despite legitimate concerns about religious intolerance, discrimination, and violence, the approach of these resolutions resulted in delegations focusing on winning votes instead of improving the situation on the ground in countries of concern. Instead of concrete improvements to protect people, the “defamation of religions” debates created greater enmity, not solidarity.

Resolution 16/18 was different, approaching the subject within the framework of universally accepted international human rights standards and outlining a comprehensive Action Plan. The Resolution 16/18 approach focuses on positive measures to counter religious intolerance and protect individuals from discrimination or violence, rather than on criminalizing expression. No small feat, the resolution bridged what some called civilizational gaps around how best to promote tolerance and combat intolerance. Resolution 16/18 paved the way for representatives of the OIC, United States and the European Union to initiate the Istanbul Process in July 2011, to discuss ways to implementing the resolution’s Action Plan.

A core provision of Resolution 16/18 is to provide religious freedom and promote religious tolerance. Religious freedom, as defined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other international agreements, is a capacious right. The global community has agreed that individuals have unlimited freedom to believe or not to believe and to change religion, as well as the freedom to express religion or belief, either alone or in community with others, in public or in private, subject to only the narrowest of limitations. Religious freedom is also a unique fundamental freedom, as to be fully enjoyed it stands upon other rights, such as speech, assembly, and property rights. Freedom of religion is considered a basic building block of a progressive nation.

However, the intertwined relationship between freedom of religion and freedom of expression complicates the task of finding an agreement on the best way forward to combat religious intolerance, discrimination, and violence. Further complicating matters, these issues often arise in the

* The views expressed here are his own.

context of controversy and media frenzy. At the same time, the issues being discussed today are arguably some of the most pressing before the international community.
Addressing religious intolerance, discrimination, and violence is at the forefront of the international agenda out of necessity.

There are at least three reasons: First, peoples, cultures and faiths are intermixing as never before. Change is the new constant, with globalization irreversibly bringing people and cultures together in ways that were inconceivable just two decades ago, let alone two hundred years ago. The United States is increasingly religiously and ethnically diverse, as are every country represented here today, either from new beliefs held by citizens, naturalized citizens born abroad, or guest workers coming for better jobs and pay. At the same time, there has been an information revolution. With a click of a button, extremist networks can share videos extolling violent religious ideologies—and coreligionists can share messages of peace.

Second, the world is increasingly religious. Religion plays an important and necessary role in every society. Religious beliefs are irreducible and go to the very core of individuals’ lives and life decisions. Births, deaths, weddings, and questions about life all revolve around religious practice. Individuals have the fundamental right to believe what they want and to act on those beliefs in peaceful and non-coercive ways. Religious belief is, at its core, about freedom of thought. The freedom to believe or not believe in god or a higher power. To search for ultimate truth as one sees fit. A 2010 survey by the Pew Trust found roughly 84% of the global community believes in something greater than themselves. In other words, most people around the world believe in God or a higher power that directs and gives meaning to their lives. And of the 16% described as “unaffiliated,” Pew reported that many had personal religious belief systems, but just didn’t fit into one of the major religious categories. Similar studies have documented that religious practice is increasing globally. The authentic and comprehensive practice of faith is an increasing commonality.

Thirdly, while the world is increasingly religious, there are increasing limitations on its free practice. The Pew Forum for Religion and Public Life has conducted several empirical studies on governmental restrictions on religion and societal hostilities involving religion. Overall, Pew reported that approximately 3 out of every 4 people live in countries with high government restrictions on religion or high social hostilities involving religion, the brunt of which often falls on religious minorities. Not everyone is persecuted in those countries, but there are very narrow lanes of permissible activity condoned by the government and/or society. These statistics are important to consider because rising restrictions on religion overlaid with increasing religiosity is a recipe for human rights abuses, instability, and potentially violence.

So how can the Istanbul Process be preserved in light of emerging threats? How can the process advance in a meaningful and sustainable manner?

For sure, differences remain. Nevertheless, all stakeholders should reaffirm that Resolution 16/18 and its Action Plan are the right course of action to be followed in combating religious intolerance. New treaties, guidelines, or observatories are not needed, but rather a recommitment to the existing effort through deeper political and financial support. Before discussing building something else new, there is more work to be done under the current framework.

Here are some of the activities that need continual focus: The resolution committed nations to speak out against intolerance, including against advocacy of religious hatred that constitutes
incitement to discrimination, hostility or violence; to adopt measures to criminalize incitement to imminent violence based on religion or belief; to foster religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion, and to contribute openly and on an equal footing to society; to encourage the representation and meaningful participation of individuals, irrespective of their religion, in all sectors of society.

And what would this look like in practice? First is human security. A government’s first responsibility is to protect its citizens from violence and discrimination. With violent extremism on the rise globally, police resources are being stretched. Yet deterrence through prosecution and consequences is vitally important. Recently, in response to the mob lynching of a woman named Farkhunda for allegedly blasphemous activity, an Afghan court sentenced four individuals to death for her murder and 11 policemen to jail for failing to intervene. While there are due process concerns, these quick and serious verdicts sent an important message that — contrary to the Taliban’s message — that such violence will not be tolerated.

The 2015 Annual Report of the Commission highlighted other areas where there has been progress on these issues — although overall, it documented a global decline in the respect for freedom of religion or belief during 2014, including in OIC, European and other non-OIC countries. Regarding positive examples, in Pakistan, the Commission highlighted an important decision by the Supreme Court last summer. A far-ranging decision quoting the Quran and Alexis de Tocqueville, it mandated the creation of a special police force to protect religious minorities and a national commission on minorities.

In addition to security, a government must ensure that minorities are given equal rights, opportunities, and citizenship. Many religious communities bristle at being referred to as minorities, stressing that they are citizens of their countries, entitled to the same rights and privileges as others, regardless of their faith. And that is right. While faith can be all defining for billions of people, rights should not be conditioned on holding a particular faith. Non-Muslims have been given citizenship by several GCC countries, for instance. Practices of listing religion on identification cards can lead to discrimination and create problems when holders of new faiths wish to be recognized. Indonesia’s recent decision to allow the listing of recognized and unrecognized faiths on ID cards is a step in the right direction. Also, international standards do not forbid establishing a particular faith as the national faith, but that cannot be a basis for discriminating against minorities or limiting their rights, including the right to religious freedom.

And while citizenship rights are paramount, at times, due to historical reasons or current conditions, religious minorities need special mechanisms to advocate for their rights or to provide an avenue where they can safely and quickly approach government for redress of grievances. The Commission noted how the new government in Sri Lanka has created special focal points to interact with non-Buddhist religious minorities. The United States has an array of domestic offices where religious and ethnic minorities can interact with the federal government. Having a sensitivity to the unique needs of religious minorities during humanitarian events is also important. For the millions fleeing the ISIS advance, it is critical that host countries and countries of resettlement take measures to ensure that religious minorities are protected and able to practice their faith.
Education must be a part of the solution set. Ensuring that our children are religiously literate about world faiths and faiths specific to their country can help prepare them to engage in a 21st century that will be defined by diversity. Also instructing them about tolerance, so they do not view someone of a different faith as the religious “other,” but rather appreciate pluralism. In this regard, the Commission has welcomed efforts by Saudi Arabia to include passages promoting tolerance in the Kingdom’s school curriculum and hope this effort will be continued by the new King, as well as make efforts to ensure these new texts are circulated so as to compete against hateful materials.

Also, civil society involvement is critical. Countries need to strengthen local actors who can speak about benefits of religious pluralism — both interfaith and intrafaith. The religious diversity of the United States, and its history of grappling with discrimination, is a good story. While imperfect, it has much improved due to the efforts of civic and religious leaders like Martin Luther King, Jr. Integrating civil society and religious communities into efforts to combat intolerance and grow tolerance would enhance efforts across the board. For instance in Cyprus, religious leaders and civil society actors have been central to recent efforts to overcome decades of hostilities and improve relations between Greek Cypriots (who are Christian) and Turkish Cypriots (who are Muslim).

And leaders must speak about the importance of diversity of belief and thought. The recent UN Security Council session focusing on the plight of religious and ethnic minorities curing the ISIS onslaught was a moment of global consensus that minorities have rights and should be protected. The challenge is ISIS and other terrorists are trying to upend the global system. To push back, to change the narrative, government leaders and religious leaders, both national and local, need to speak of the importance of religious diversity and rights. Being silent in the face of false narratives of religious exclusivity is a recipe for increasing violations.

Despite all this, there will always be bigotry and hateful speech. It is not going away. If passing laws against hate speech could stop this, it would have been solved. In fact, such laws have been found to be counterproductive. The Pew Forum has found that societal hostilities are often higher in countries with restrictive legal regimes. Laws restricting speech are vague and subjective, making them ripe for abuse. They also help create a climate that can empower extremists by signaling it is permissible to attack those saying things deemed offensive.

And great faith traditions have counseled against a legal response, with Jesus Christ urging his followers to turn the other cheek and the Prophet Muhammed responding peacefully when non-Muslims treated him with disrespect. Hinduism speaks of welcoming all beliefs in god. Civic and religious leaders need to promote positive messages and marginalize the extreme voices. Open public debate of ideas, as well as interfaith and intercultural dialogue, at the local, national and international levels are among the best protections against religious intolerance and can play a positive role in strengthening democracy and combating religious hatred.

Resolution 16/18 and the Istanbul Process are positives. The challenge is to build on the areas of common concern and agreement, which are extensive, and focus on working together to increase political support and resources for this effort. Violent extremism is rising globally, and requires a global response that promotes interfaith understanding and respect
for human rights. Countries committed to 16/18 must not be drawn back into unproductive debates in New York or Geneva on topics that are known to be divisive, subjects that create heat but not light; doing so will only hinder the ability to make progress on the concerns shared by all.
FREEDOM OF EXPRESSION AND A COMBAT AGAINST NEGATIVE RELIGIOUS STEREOTYPING, DISCRIMINATION OF PERSONS AND INCITEMENT TO RELIGIOUS HATRED

Alexey Avtonomov

Speech attacking particular religious or ethnic groups may employ indirect language in order to disguise its targets and objectives. In the light of the principle of intersectionality, and bearing in mind that criticism of religious leaders or commentary on religious doctrine or tenets of faith should not be prohibited or punished, the attention should be engaged by hate speech targeting persons belonging to certain ethnic groups who profess or practice a religion different from the majority, including expressions of Islamophobia in certain European countries, for example, and other similar manifestations of hatred against ethno-religious groups, as well as extreme manifestations of hatred such as incitement to genocide and to terrorism. Stereotyping and stigmatization of members of vulnerable groups has also been the subject of expressions of concern and recommendations adopted by international human rights bodies and special procedures.

In my opinion the criminalization of forms of expression of religious, ethno-religious and racist intolerance should be reserved for serious cases, to be proven beyond reasonable doubt, while less serious cases should be addressed by means other than criminal law, taking into account, inter alia, the nature and extent of the impact on targeted persons and groups. The application of criminal sanctions should be governed by principles of legality, proportionality and necessity. To my mind, following deeds are worth declaring and effectively sanctioning by States as offences punishable by law:

a) all dissemination of ideas based on religious, ethno-religious ethnic or racial superiority or hatred, by whatever means;

b) incitement to hatred, contempt or discrimination against members of a group on grounds of their religion, belief, philosophical or any
other thought, race, colour, descent, or national or ethnic origin, connecting with the religion, belief or thought;

c) threats or incitement to violence against persons or groups on the grounds in (b) above;

d) expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination on the grounds in (b) above, when it clearly amounts to incitement to hatred or discrimination;

e) participation in organizations and activities which promote and incite racial discrimination.

Freedom of expression, indispensable for the articulation of human rights and the dissemination of knowledge regarding the state of enjoyment of civil, political, economic, social and cultural rights, assists vulnerable groups in redressing the balance of power among the components of society, promotes intercultural understanding and solidarity, assists in the deconstruction of racial and other stereotypes, facilitates the free exchange of ideas, and offers alternative views and counterpoints.

However, we might be trapped by those, who abuse freedom to prejudice the freedom itself. Freedom always means responsibility. And hate speech can take many forms and is not confined to explicitly hate remarks. That is why we may take into account following contextual factors to evaluate a speech if it might be considered hate or not.

- **The content and form of speech:** whether the speech is provocative and direct, in what form it is constructed and disseminated, and the style in which it is delivered.

- **The economic, social and political climate** prevalent at the time the speech was made and disseminated, including the existence of patterns of discrimination against religious, ethno-religious or
ethnic and other groups. Discourses which in one context are innocuous or neutral may take on a dangerous significance in another.

- **The position or status of the speaker** in society and the audience to which the speech is directed. We consistently should draw attention to the role of politicians and other public opinion-formers in contributing to the creation of a negative climate towards groups protected by international humans rights instruments, and has encouraged such persons and bodies to adopt positive approaches directed to the promotion of intercultural understanding and harmony. We all are aware of the special importance of freedom of speech in political matters and also that its exercise carries with it special duties and responsibilities.

- **The reach of the speech**, including the nature of the audience and the means of transmission: whether the speech was disseminated through mainstream media or the Internet, and the frequency and extent of the communication, in particular when repetition suggests the existence of a deliberate strategy to engender hostility towards ethnic, racial, religious and other vulnerable groups.

- **The objectives of the speech**: speech protecting or defending the human rights of individuals and groups should not be subject to criminal or other sanctions.

Independent, impartial and informed judicial bodies are crucial to ensuring that the facts and legal qualifications of individual cases are assessed consistently with international standards of human rights. Judicial infrastructures should be complemented in this respect by national human rights institutions in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).
Measures to eliminate incitement and discrimination must be made with due regard to the principles of the Universal Declaration of Human Rights and the rights expressly set forth in the international human rights instruments. I mean to say that the phrase due regard implies that, in the creation and application of offences, as well as fulfilling the other requirements in this regard, the principles of the Universal Declaration of Human Rights and the rights being stipulated in the international human rights instruments must be given appropriate weight in decision-making processes. The due regard clause should be interpreted in a way to apply to human rights and freedoms as a whole, and not simply to freedom of opinion and expression, which should however be borne in mind as the most pertinent reference principle when calibrating the legitimacy of speech restrictions.

The expression of ideas and opinions made in the context of academic debates, political engagement or similar activity, and without incitement to hatred, contempt, violence or discrimination, should be regarded as legitimate exercises of the right to freedom of expression, even when such ideas are controversial. The school systems in States parties represent an important focus for the dissemination of human rights information and perspectives. School curricula, textbooks and teaching materials should be informed by and address human rights themes and seek to promote mutual respect and tolerance among nations and racial and ethnic groups. The international community may encourage self-regulation and compliance with codes of ethics by Internet service providers.

Formal rejection of hate speech by high-level public officials and condemnation of the hateful ideas expressed play an important role in promoting a culture of tolerance and respect. The promotion of intercultural dialogue through a culture of public discourse and institutional instruments of dialogue, and the promotion of equal opportunities in all aspects of society are of equal value to educational methodologies and should be encouraged in a vigorous manner.

I’d like to stress that educational, cultural and informational strategies to combat racist hate speech should be underpinned by systematic data collection and analysis in order to assess the circumstances under which hate speech emerges, the
audiences reached or targeted, the means by which they are reached, and media responses to hate messages. International cooperation in this area helps to increase not only the possibilities of comparability of data but also knowledge of and the means to combat hate speech that transcends national boundaries.

The relationship between proscription of hate speech, including hate speech aimed at religious, ethno-religious or ethnic groups or their members, and the flourishing of freedom of expression should be seen as complementary and not the expression of a zero sum game where the priority given to one necessitates the diminution of the other. The rights to equality and freedom from discrimination, and the right to freedom of expression, should be fully reflected in law, policy and practice as mutually supportive human rights.
Jeddah-2015
Member Human Rights Advisory Committee
Mr. Amer Bial Sool
By

Implementing 16/18
Advoacy of religious hatred
Islamophobia
Xenophobia
Inclusion of religious hatred
Religious intolerance
Negative stereotyping of religions
Integration and media education:

Projects in the fields of education, health, conflict prevention, employment, shared policy goals and the pursuit of tangible outcomes, such as serving understanding, promoting dialogue and inspiring constructive action towards encouraging the creation of collaborative networks to build mutual environment of religious tolerance, peace and respect.

By draws on his call on States to take the following actions to foster a domestic Islamic Conference at the eighteenth session of the Human Rights Council and Secretary-General of the Organization of the

A/HRC/RES 16/18
constitutes incitement to discrimination, hostility or violence.

Speaking out against intolerance, including advocacy of religious hatred that

causes of discrimination, and evolving strategies to counter these causes;

Encouraging the efforts of leaders to discuss within their communities the

Encouraging training of government officials in effective outreach strategies;

communities, and assisting with conflict prevention and mediation;

and address potential areas of tension between members of different religions

Creating an appropriate mechanism within Governments to, inter alia, identify

A/HRC/RES 16/18-Para 5
violence;

levels, can play a positive role in combating religious hatred, incitement and

interfaith and intercultural dialogue at the local, national and international

Recognizing that the open, constructive and respectful debate of ideas, as well

through, inter alia, education and awareness-building, and harmonizing actions at the local, national, regional and international levels

stereotyping of persons as well as incitement to religious hatred, by skepticaling

Understanding the need to combat denigration and negate religious

A/HRC/RES 16/18 - Para 5
Part II

16/18 is backed up by customary international law
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**UNGA Resolutions on „Manifestations of Racial Prejudice and Religious Intolerance“**
2005. A/RES 60/150
2006. A/RES 61/164
2007. A/RES 62/154
2008. A/RES 63/171
2009. A/RES 64/156

United Nations General Assembly Resolutions
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*Intolerance*

**UNGA Resolutions on Elimination of All Forms of Religious**
Forms of Intolerance and of Discrimination Based on Religion or Belief
Customary Law development
but needs wider acceptance in domestic laws

5(f) of 16/18 considerably reflected in certain jurisdictions
Precedents in other States.
religion to a fine of up to imprisonment for at most six months.

other similar religious proceedings or a funeral, shall be sentenced for a breach of the sanctuary of

(c) by making noise, acts of disrespect, or otherwise disturbs worship, ecclesiastical proceedings,

the freedom of Religion 267/1922), or

where is otherwise held, or to be sacred by a church or religious community, as referred to in the Act on

(1) publicly blasphemies against God, for the purpose of offending, publicly defames or deprecates

A person who

Section 10 - Breach of the sanctuary of Religion (563/1998)

Penal Code.

Finnish
Having regard to all the circumstances racial hatred is likely to be stirred up

the

thereby

be intended to thereby set up racial hatred or

or insulting, is guilty of an offence if: words or behaviour, or displays any written material which is threatening, abusive,

Sec. 18(1) of states that "a person who uses threatening, abusive, or insulting

the Public Order Act of 1986 (POA)

United Kingdom
R.S., C-34, s. 260.

(3) No person shall be convicted of an offence under this section for expressing in good faith and in decent language, or attempting to establish by argument used in decent language, an opinion on a religious subject.

(4) It is a question of fact whether or not any matter that is published is a blasphemous libel.

(5) A publication is not blasphemous libel and liable to imprisonment for a term not exceeding two years.

(6) Every one who publishes a blasphemous libel is guilty of an indictable offence.

Criminal Code

Canada
months.

community in this country shall be liable to imprisonment for any term not exceeding four

or scorns the religious doctines or acts of worship of any lawfully existing religious

Section 140 (Prohibition against Blasphemy) reads: Any person who, in public, mocks

CRIMINAL CODE OF 1866

Denmark
(2) Whosoever publicly or through dissemination of written materials (section 11 (3))

whoever commits an act in a manner that is capable of disrupting the public peace, shall

incur the same penalty:

institutions or customs in a manner that is capable of disrupting the public peace, shall
defame a church or other religious or ideological association within Germany, or their

(1) Whosoever publicly or through dissemination of written materials (section 11 (3))

Section 166, Defamation of Religious, Religious and Ideological Associations

Chapter II

STRAFGESETZBUCH, THE GERMAN CRIMINAL CODE

Germany
Para 5(i) of 16/18 offence

Part V
Proposed legal elements of offence of "defamation of religion"
Article 4

Discrimination (CERED).

International Convention on the Elimination of All Forms of Racial Discrimination (CERED).

Article 18, 19 and 20

International Covenant on Civil and Political Rights (ICCPR).

Instruments

offence of s(6) of 16/18 has space in international legal
Article 18

(ICCPR)

International Covenant on Civil and Political Rights
Article 19

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

2. Everyone shall have the right to freedom of expression; this right shall include freedom:
   a) 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, of through any other media of his choice.
   b) for the protection of national security or of public order (ordre public), or of public health or morals.
   c) for the protection of the rights or reputations of others.
   d) for respect of the privacy of correspondence.

3. The exercise of the rights provided for in paragraph 2 of this article cannot be subject to any restrictions, but these shall only be such as are provided by law and are necessary: 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.
Article 20

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.
Part VI

International Precedents related to 5(f) of 16/18
The Court declared the application inadmissible (inadmissible) and

been breached. The applicant argued, among other things, that his right to freedom of expression had

as a result he was convicted of aggravation hostility towards a religious group. The

was accompanied by the words „I am out of Britain – Project the British People”

party, of which he was a member, representing the Twin Towers in New York.
The picture

(applicant) had displayed in his window a poster supplied by the British National

Norwood v. the United Kingdom 16 November 2004 (decision on the admissibility)

Religious hate
Violation of his right to freedom of expression. He was disqualified from holding parliamentary office for 10 years. He alleged a violation to racial discrimination. He was sentenced to community service and incitement to racial discrimination. The applicant was convicted of "Send non-European job-seekers home. Stop the Islamification of Belgium. " against the Islamification of Belgium. Several types of leaflets were distributed carrying slogans including "Stand up party Front National/National Front in Belgium. During the election campaign, the applicant was a Belgian Member of Parliament and Chairman of the political

16 July 2009

Incitement to racial discrimination or hatred
The Court declared the application inadmissible (manifestly ill-founded).

expression

France, they will be in charge – had breached his right to freedom of
other things, that „the day there are no longer 5 million but 25 million Muslims in
France in an interview with the Monde daily newspaper – he had asserted, among
nation, race or religion, on account of statements he had made about Muslims in
nation of their membership or non-membership or a specific ethnic group,
discrimination, hatred and violence towards a group of people because of their
Front party. He alleged in particular that his conviction for incitement to
At the time of the facts, the applicant was president of the French „National

Le Pen a France 20 April 2010 (decision on the admissibility)

Inadmissible to racial discrimination or hatred
about the consequences of Muslim immigration in France.

was convicted of inciting racial hatred for comments made to Le Monde in 2003.

In 2005, politician Jean-Marie Le Pen, runner-up in the 2002 presidential election,

Initiating racial hatred.
 Freedoms of expression and terrorism: Braid and others v UK

freedoms of expression. Consequently, the application was manifestly ill
the aim sought to be pursued. Consequently, the application was manifestly ill-
interference with the applicants' freedom of expression was disproportionate to
importance of measures to combat terrorism, that it could not be said that this
case and bearing in mind the margin of appreciation permitted to States and the

The European Commission of Human Rights found, in the circumstances of the
views of several terrorist groups,

matter which consisted of or included statements expressing or supporting the
other broadcast journalists, to refrain at all times from sending any broadcast

The British Government ordered the applicant, a television producer and five

freedoms of expression.
Transnational issues

V

National measures
Supporters,

educational, cultural, and religious institutions by terrorists and their
by extremism and intolerance and to prevent the subversion of
international law to counter incitement of terrorist acts motivated
appropriately and in accordance with their obligations under
appropriate and in accordance with their obligations and cultures, and to take all measures as may be necessary and
effort to prevent the indiscriminate targeting of different religions
dialogue and broaden understanding among civilizations, in an
3. Calls upon all States to continue international efforts to enhance

UNSC RES 1624 (2005)
Conclusion/Way Forward
The International Federation for Human Rights (FIDH) extends its appreciation to the Organization of Islamic Cooperation (OIC) for hosting the 5th session of the Istanbul Process (“From Resolution to Realization – How to promote effective implementation of HRC Resolution 16/18”) (hereafter “IP5”) at its General Secretariat in Jeddah, Kingdom of Saudi Arabia, and for facilitating civil society participation. FIDH welcomes the intention of the organizers to have a “frank exchange of ideas” and to “frankly discuss practical problems and share best practices” and looks forward to meaningful engagement.

Background: international standards and consensus

2. FIDH reaffirms its steadfast commitment to promote and protect international standards on freedom of religion or belief, the right to freedom of opinion and expression, and prohibition of propaganda for war and advocacy of national, racial or religious hatred, as set out in articles 18 and 19 of the Universal Declaration on Human Rights (UDHR) and articles 18, 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR). FIDH reiterates its support to the work of international mechanisms, such as the United Nations (UN) Special Rapporteurs on freedom of religion or belief, on the right to freedom of opinion and expression, and on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, as well as to international consensus embodied in relevant texts and initiatives on these matters, including those providing guidance on implementation at the domestic level, including inter alia UN Human Rights Council (HRC) resolution 16/18, the Rabat Plan of Action, and relevant General Comments by treaty monitoring bodies, such as the UN Human Rights Committee’s General Comments no. 22 (on the right to freedom of thought, conscience and religion) and no. 34 (on freedoms of opinion and expression).

HRC resolution 16/18 and its action plan

3. In 2011, overcoming deep divisions between its members and observers, the Human Rights Council adopted resolution 16/18 on “Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief” by consensus, which was hailed by stakeholders from all regions and faiths as “a turning point in international efforts to confront religious intolerance” and remains “one of the most important texts ever adopted by the Council.”

In its preambular part, resolution 16/18 reaffirms states’ obligations with regard to freedom of religion or belief and the positive role that the exercise of freedom of opinion and expression and the full respect for the freedom to seek, receive and impart information can play in strengthening democracy and combating religious intolerance (preambular paras. 1-4). It expresses deep concern about incidents of intolerance, discrimination and violence against persons based on their religion or belief in all regions of the world, and deplores advocacy of discrimination or violence and all acts of violence against persons on the basis of their religion on belief, including cases motivated by discrimination against persons belonging to religious minorities (preambular paras. 5-9). It also recognizes the importance of dialogue among religious groups, the need

2 Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence: http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf
to enhance implementation of legal regimes protecting against discrimination and hate crimes, and the importance of interfaith and intercultural efforts (preambular paras. 10-11).

4. The operative part of HRC resolution 16/18 reiterates a series of concerns and condemns (in its paragraph 3) any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, in line with article 20(2) of the ICCPR but focusing on its religious aspect. The resolution's paragraph 4 unambiguously recognizes that the open public debate of ideas can be among the best protections against religious intolerance and can play a positive role in strengthening democracy and combating religious hatred.

5. One of the characteristics of the resolution (and its strength) is that its paragraphs 5, 6, read altogether, set out an action plan. It calls on states to, inter alia:
- Encourage the creation of collaborative networks to build mutual understanding, promote dialogue and inspire constructive action towards shared policy goals and the pursuit of tangible outcomes (para. 5(a));
- Create appropriate mechanisms within governments to, inter alia, identify and address potential areas of tension between members of different religious communities and assist with conflict prevention and mediation (para. 5(b));
- Encourage efforts of leaders to discuss within their communities causes of discrimination and evolve strategies to counter these causes (para. 5(d));
- Speak out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence (para. 5(e));
- Adopt measures to criminalize incitement to imminent violence based on religion or belief (para. 5(f));
- Understand the need to combat denigration and negative religious stereotyping of persons, as well as incitement to religious hatred (para. 5(g));
- Recognize that the open, constructive and respectful debate of ideas, as well as interfaith and intercultural dialogue can play a positive role in combating religious hatred, incitement and violence (para. 5(h));
- Take effective measures to ensure that public functionaries do not discriminate against individuals on the basis of religion or belief (para. 6(a));
- Foster religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion, and to contribute openly and on an equal footing to the society (para. 6(b)); and
- Encourage representation and meaningful participation of individuals, irrespective of their religion, in all sectors of society (para. 6(c)).

The resolution also encourages states to consider providing updates on efforts made in this regard as part of ongoing reporting to the Office of the UN High Commissioner for Human Rights (OHCHR).

Promoting and guiding implementation

6. A series of meetings on the implementation of HRC resolution 16/18, held every year since 2011 and known as the “Istanbul Process,” has allowed states and other stakeholders to meet regularly (see below). In parallel, OHCHR held a series of expert workshops on the prohibition of incitement to national, racial and religious hatred – i.e., on the border between free speech and hate speech. At the final meeting in Rabat, Morocco, a plan of action was adopted. It contains considerations on the context, relevant international standards and conclusions and recommendations with regard to national legislation, jurisprudence and policies, intended to provide guidance on the implementation of states' international obligations. As highlighted by the Rabat Plan of Action, freedom of expression and freedom of religion or belief are "mutually dependent and reinforcing." Indeed, "[t]he freedom to exercise or not one’s religion or belief cannot exist if the freedom of expression is not respected as free public discourse depends on respect for the diversity of deep convictions which people may have. Likewise, freedom of expression is essential to creating an environment in which a constructive discussion about religious matters could be held. Indeed, free and critical thinking in open

4 Operative paragraph 5 extensively refers to the speech given by the Secretary-General of the OIC, Ekmeleddin İhsanoğlu, at the fifteenth session of the Human Rights Council.
5 After an initial ministerial meeting held in Istanbul, Turkey at the invitation of the OIC on 15 July 2011, stakeholders successively met in Washington, DC in 2011 (meeting convened by the USA), London in 2012 (meeting convened by the UK and Canada), Geneva in 2013 (meeting convened by the OIC) and Doha in 2014 (meeting convened by Qatar). IPS has been convened by the OIC at its General Secretariat (3-4 June 2015).
6 http://www.ohchr.org/EN/NewsEvents/Pages/TheRabatPlanofAction.aspx
debate is the soundest way to probe whether religious interpretations adhere to, or rather distort the original values that underpin religious belief” (para. 10, emphasis added).

7. In this context, the Rabat Plan of Action, inter alia:
- Quotes the UN Human Rights Committee in saying that prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are counter-productive, since they may result in the de facto censure of all inter-religious/belief and intra-religious/belief dialogue, debate, and also criticism, most of which could be constructive, healthy and needed ( paras. 17 and 19);
- Calls on states to repeal blasphemy laws, as such laws have a stifling impact on the enjoyment of freedom of religion or belief and healthy dialogue and debate about religion;
- Recalls that article 20 of the ICCPR requires a high threshold for limitations because, as a matter of fundamental principle, limitation of speech must remain an exception. Therefore, the three part test for restrictions (legality, proportionality and necessity) also applies to incitement cases that may fall under the scope of article 20(2) of the ICCPR (para. 18); and
- Recalls the distinction to be made between three types of expression: (i) expression that constitutes a criminal offence; (ii) expression that is not criminally punishable but may justify a civil suit or administrative sanctions; and (iii) expression that may raise concern in terms of tolerance, civility and respect for the rights of others but that does not give rise to criminal, civil or administrative liability.

8. With regard to advocacy of hatred, as stated in the Rabat Plan of Action, “[it] is of concern that incidents, which indeed reach the threshold of article 20 (of the ICCPR), are not prosecuted and punished. At the same time members of minorities are de facto persecuted, with a chilling effect on others, through the abuse of vague domestic legislation, jurisprudence and policies. This dichotomy of (1) no prosecution of ‘real incitement cases and (2) persecution of minorities under the guise of domestic incitement laws seems to be pervasive” (para. 11). Because of inadequate domestic legal frameworks, in particular vague terminologies, and their arbitrary application, risks of misinterpretation of international standards are significant. In this regard, the Rabat Plan of Action proposes a six part threshold test for defining limitations on freedom of expression, for defining incitement to hatred, and for the application of article 20 of the ICCPR, including analysis of the: (i) context of the speech (social and political); (ii) speaker (his/her position in the society); (iii) intent; (iv) content or form (provocative and direct nature, form, style, nature of the arguments deployed); (v) extent of the speech (reach, public nature, magnitude, size of the audience); and (vi) likelihood of resulting harm (i.e., degree of risk of violence) (para. 22).

9. Finally, the Rabat Plan of Action contains recommendations to states and other stakeholders with regard to policies to be put in place to create and strengthen a culture of peace, tolerance and mutual respect and to combat intolerance and address its root causes, including ensuring space for minorities to enjoy their fundamental rights and freedoms. It makes reference to HRC resolution 16/18 as a “promising platform for effective integrated and inclusive action by the international community” but warns that “this resolution requires implementation and constant follow-up by States at the national level” ( paras. 23-29).

The international community at a crossroads

10. The international community is therefore at a crossroads. Since the added value of HRC resolution 16/18 lies in its action-oriented character, making it a success (in terms of actual impact on the ground) requires urgent and full implementation at the domestic level in the face of rising religious intolerance and human rights violations and abuses committed in the name of religion. Further delays in implementing the package of practical measures contained in HRC resolution 16/18, as well as in the Rabat Plan of Action, risk bringing the international community back to the pre-2011 situation. This sense of urgency is fully shared by FIDH, which calls on states and other relevant stakeholders to move up a gear and implement HRC resolution 16/18 in a comprehensive and holistic manner, addressing obstacles, bad practices and the needed reforms at the domestic level.

11. Indeed, as highlighted in the process that led up to the Rabat Plan of Action and in previous sessions of the Istanbul Process, in particular the last two meetings (Geneva 2013 and Doha 2014), states have applied provisions of HRC resolution 16/18 selectively, and few have reported on the efforts they have made to
implement it. According to the Universal Rights Group, as of the end of 2014 less than 15% of states had submitted information on implementation, while the reports tend to be superficial summaries of national positions and pre-existing policies. In the first four sessions of the Istanbul Process, unequal attention has been paid to the various components of the action plan contained in HRC resolution 16/18. Throughout the sessions, the following topics were discussed, inter alia:

- Prohibition of discrimination and violence on the basis of religion or belief, engagement with religious minorities, prevention of religious discrimination by state and non-state actors, prosecution of crimes of violence motivated by religion or belief, community engagement and outreach, training of government officials (Washington, DC, 2011);
- Equal participation of all groups in society, combating intolerance through education, development of collaborative networks between government and civil society (London, 2012);
- Speaking out against intolerance, criminalization of incitement, role that an open, constructive and respectful debate of ideas can play in combating intolerance (Geneva, 2013);
- Religious freedom for all, national experiences and frameworks on religious freedom, community interdependence, making common ground (supporting and developing better understanding) (Doha, 2014).

Therefore, paragraphs 5(a), 5(c), 5(d), 5(e), 5(f), 5(g), 5(h), 6(a), 6(b) and 6(c) of HRC resolution 16/18 have already been addressed, somehow, in the framework of the Istanbul Process.

**IP5: Jeddah**

12. The mere fact that states and other stakeholders hold a regular dialogue on how best to combat religious hatred, within a structured framework, is an achievement. Discussions that have taken place as part of the Istanbul process so far have allowed to tackle many of the core issues. Nevertheless, some key aspects of HRC resolution 16/18 have not been given sufficient attention within previous sessions of the Istanbul Process. For instance, paragraph 5(b), which deals with identifying and addressing potential areas of tension between members of different religious communities, seems about to be addressed for the first time at IP5 (in Panel I – with sub-elements of the panel referring to elements from HRC resolution 16/18 paras. 5(c), 5(a) (outreach strategies, collaborative networks) and 5(c), 5(d) and 6(a) (training, addressing discrimination)).

The holding of this panel is welcome in itself, and it should allow best practices to be shared in order to establish effective outreach strategies and collaborative networks in all countries. In this regard, countries that have not yet endeavored to develop collaborative networks to build mutual understanding, promote dialogue and inspire constructive action between religious groups and communities (as was envisioned by HRC resolution 16/18) should do so as a matter of urgency. Against this backdrop, the expressions “religious communities” and “discrimination based on religious and belief” (cf. Panel 1.ii.) should be interpreted broadly, and networks should be fully inclusive of members of religious/belief groups that are deemed non-traditional or non-mainstream.

13. It is also to be welcomed that IP5 Panel II (on “countering and combating advocacy to religious hatred that constitute incitement to discrimination, hostility and violence through affirmative/positive measures”) has a positive tone, thanks to the adjunction of the expression “affirmative/positive measures.” Emphasis is placed on dialogue and positive strategies to counter religious hatred, rather than on judicial measures. Emphasis is also placed on dialogue and sharing of best practices. Sub-elements of the panel include speaking out against hate speech (para. 5(e) of HRC resolution 16/18) and interfaith/intercultural dialogue (para. 5(h)). In this regard, “speaking out against hate speech” should truly address all instances of punishable hate speech (as per international standards) in all countries, as it is a moral duty of political and religious leaders to condemn such acts, whoever the authors and the targets are. Leaders should speak out against everyone, including extremist clerics from a country’s religious majority, who incite violence against religious minorities and independent voices. Furthermore, “interfaith and intercultural dialogue” (cf. Panel II.ii.) should be construed widely so as to include members of non-traditional, non-mainstream religious/belief groups, including religious minorities, atheists and agnostics. Last, in the context of Panel III, which focuses on criminalization of incitement, discussions should take place within the perimeter of, and be guided by, international standards, in particular the Rabat Plan of Action (see above, paras. 6-7 and below, para. 15). An open discussion is needed as a matter of urgent priority in order to tackle real-world issues and keep the process meaningful and action-oriented. It is therefore important to keep key conclusions of the

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7 Supra note 2, p. 21.
Rabat Plan of Action in mind when engaging in discussions, in particular (see above, paragraph 7):
- that prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are counter-productive, and that inter-religious/belief and intra-religious/belief dialogue, debate, and also criticism, are constructive, healthy and needed;
- that a high threshold is required for limitations because, as a matter of fundamental principle, limitation of speech must remain an exception; and
- that a distinction should be made between three types of expression, based on the principle that freedom must remain the rule, and criminalization the exception. In this regard, although some forms of expression may raise concern in terms of tolerance, civility and respect for the rights of others, they should not give rise to sanctions.

In Jeddah, and at future sessions of the Istanbul Process, the quality of discussions will be measured against the ability of stakeholders to interact within the perimeter of international standards and consensus, in particular the Rabat Plan of Action and its abovementioned conclusions.

Moving forward

Realizing religious freedom and pluralism

14. Firstly, “fostering religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion” (para. 6(b) of HRC resolution 16/18) has yet to be addressed as such and in-depth in the Istanbul Process. In the face of growing intolerance and numerous incidents of violence against members of minority religious groups or beliefs, including atheists and agnostics, pluralism needs to be addressed in the framework of the Istanbul Process if states are serious about implementing HRC resolution 16/18. In this regard, under international law official domestic characterizations (“religion”, “belief”, “sect”, etc.) and their positive or negative tone, as well as their political usage, are irrelevant for the sake of protection. States that recognize a specific religion or belief as official need to address issues that arise from this situation, in particular the fact that members of religious minorities or free thinkers, atheists and agnostics may be prevented from manifesting their religion or belief for fear of being targeted by state and non-state actors. In this regard, state authorities have not only an obligation to respect the fundamental rights and freedoms of every individual but a duty to protect all individuals from discrimination, hostility and violence, including from non-state actors. In this regard, a wide range of rights fall within the scope of discussions related to HRC resolution 16/18, in addition to rights protected under articles 18 and 19 of the UDHR and 18, 19 and 20 of the ICCPR. The rights to freedom of peaceful assembly and of association, in particular, are inherently linked to the realization of the rights to free opinion and expression and to freedom of religion or belief; they also provide a structured framework within which discussions can take place.

Protecting religious minorities and independent voices (including protecting them from religious majorities)

15. Secondly, while religious hatred disproportionately affects religious minorities all over the world, "speaking out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence" (para. 5(e)) needs to include incitement to such acts when it is committed in the name of a religion or belief that has a state or official status, and when it targets followers of religions

8 “Religion” does not have a legal definition in international law. And there is no satisfactory definition of religion or belief. Therefore, international human rights standards provide for a broad view of what is protected. According to the Human Rights Committee, “[t]he terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community” (General Comment no. 22, para. 2). In terms of protection, all religions and beliefs benefit from the same fundamental principle (i.e., protection) and in terms of their manifestation, all religions and beliefs are subjected to the same rule (one has the right to manifest one’s religion or belief) and to the same permissible limitations (which, according to international law, must meet a number of conditions; they must be lawful (according to certain aims), necessary, proportionate, and not discriminatory, i.e. applied in an objective manner). The Human Rights Committee has elaborated on these limitations in its General Comment no. 22, adding that “[i]n interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination […]”.
or beliefs that are not recognized as such by national authorities." However, "the freedom to 'have or to adopt' a religion or belief" necessarily entails the freedom to choose a religion or belief, including, inter alia, the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief."10 This is particularly relevant in a context in which free thinkers and independent voices are targeted for peacefully exercising their rights to free opinion, expression, thought, conscience and religion, as in the case of Saudi blogger Raif Badawi and human rights lawyer Waleed Abu Al-Khair.11 Indeed, as was previously mentioned, domestic legal provisions that criminalize peaceful criticism of religion is based on overly broad and vague terms; as such, they are arbitrary and in contradiction with international human rights law. And official or state-sponsored religions, as well as blasphemy laws (see below), may be used to target religious minorities, dissenting voices and free thinkers and to justify discrimination (direct and indirect), for instance against the Bahá'í community in Iran. In particular, "certain measures discriminating against adherents of other religions or non-believers", such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26 [of the ICCPR]."12

16. In other cases, discrimination and violence are committed by non-state actors (sometimes with the acquiescence of the authorities). In the last few months, a member of the Human Rights Commission of Pakistan, Rashid Rehman, was murdered because he represented a person accused of blasphemy. In Mauritania, Aminatou Mint El-Moctar, Chair of the Association of Women's Heads of Households, was the target of a fatwa simply because she defended those prosecuted for apostasy. In Vietnam, Bui Thi Minh Hang, Nguyen Van Minh and Nguyen Thi Thuy Quynh were sentenced to several years of imprisonment for "causing public disturbances" because they defended freedom of religion. In parallel, in many parts of the world, there has been an upsurge of movements targeting religious groups in the name of religious or cultural protectionism, sometimes promoting or taking part in violent attacks. In Burma/Myanmar, the Muslim Rohingya minority has been subjected to discriminatory laws and policies and to increasingly blatant mob violence with impunity. In Sri Lanka, violence has been incited by a range of actors against non-Buddhist religious minorities. In Europe, anti-Muslim groups like PEGIDA in Germany have taken hate speech to the streets. In the United States, three Muslim students were murdered at the University of North Carolina. Members of the Jewish community have been targeted in several countries across the world. All of the issues related to the protection of religious minorities and independent voices (including protection from violations and abuses perpetrated in the name of religion or religious majorities) therefore need to be addressed, as a matter of priority, as an integral part of the Istanbul Process and in any discussion about religious hatred and incitement to discrimination, hostility or violence.

Moving beyond criminalization of hate speech

17. Thirdly, debates on the border between free speech and hate speech, and on what type of hate speech should be criminalized, already reached conclusions. Concomitant reading of international texts (notably the UDHR and ICCPR), HRC resolution 16/18, international jurisprudence (notably case law developed by treaty monitoring bodies) and texts providing guidance on implementation of international standards, such as the Rabat Plan of Action and treaty body general comments, provides answers. Attempting to go beyond what has been agreed and to criminalize acts that do not fall under the scope of article 20(2) of the ICCPR would be tantamount to attempting to criminalize freedom of expression with regard to religious issues, i.e., to break the relationship between freedom of religion or belief and freedom of expression — two sets of rights

9 As a general rule "[t]he fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers" (Human Rights Committee, General Comment no. 22, para. 9).
10 Ibid., para. 5.
12 Human Rights Committee, General Comment no. 22, para. 9. The paragraph goes on: "The measures contemplated by article 20, paragraph 2, of the Covenant constitute important safeguards against infringements of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed toward those groups."
that are interdependent and mutually reinforcing. Unnecessary confrontation and polarization should be avoided. Renewing attempts to challenge international standards and consensus, through phrasing or terminology that would be different from, but intrinsically tantamount to, the human rights incompatible concept of "defamation of religion," would be the worst option. Indeed, this concept was clearly invalidated by UN special procedures and experts from various regions, notably in a joint statement issued by UN and regional special rapporteurs on freedom of expression on 10 December 2008, which stated that the concept of "defamation of religion" does not accord with international standards regarding defamation, which refer to the protection of reputation of individuals" – while religions, like all beliefs, cannot be said to have a reputation of their own.  

18. Another key topic that has already been adequately addressed – i.e., for which answers were provided at the international legal level, is "incitement to imminent violence." And indeed, it is already adequately criminalized in most countries. Open, public debate of ideas (including on religions or beliefs) can include criticism of religion; it cannot be equated with advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence. All religions and beliefs can be subject to criticism, and none is "shielded" by international law. Thus, criticism cannot be equated with expression that constitutes a criminal offence, unless the six part threshold test set out in the Rabat Plan of Action is met. Attempts to single out specific religions or beliefs by arguing that they should be subjected to another type of, or lower, threshold test, are tantamount to introducing cultural relativism and to challenging international human rights standards. The six part threshold test set out in the Rabat Plan of Action provides for objectivity. Other criteria or tests (e.g., the level of attachment of people to religion in different parts of the world) for assessing the admissibility of restrictions to free speech would be subjective – and inconsistent with the universality of human rights. Besides, it should be reaffirmed that criminalization of incitement to imminent violence, albeit needed to protect individuals, should not be regarded as a "magical weapon" to eliminate hate speech and incitement to discrimination, hostility or violence. It is one of the tools – but one of last resort – that states should use to counter hate speech.

Moving towards the repeal of blasphemy laws

19. Religions or beliefs are not protected from criticism or ridicule. Rather, it is individuals, as rights holders, who are protected from incitement, in line with article 20(2) of the ICCPR. An additional study on the implementation of national laws based on article 20(2) of the ICCPR, through an "observatory" (as has been proposed) or otherwise, is not necessary as this was the very purpose of the Rabat Plan of Action. The latter is an authoritative tool with regard to the relationship between freedom of speech and hate speech (advocacy of hatred that constitutes incitement to discrimination, hostility or violence) and to what states should do at the domestic level (in terms of legislation, jurisprudence and policies) to fulfill their obligations. There is no need for supplementary mechanisms. Rather, the Istanbul Process should tackle difficult, yet fundamental, topics that have not been adequately addressed so far, such as blasphemy laws, whose repeal is called for by the Rabat Plan of Action and various international bodies. In addition to being incompatible with international standards, blasphemy laws are often abused to target and punish religious minorities,

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13 Be it “conceit of religion,” “conceit of religious symbols,” “denigration of religion,” or “vilification of religion.”
14 The first resolution on “defamation of religion” was adopted by the UN Commission on Human Rights in 1999 (CHR resolution 1999/82). It was renewed each year, including at the Human Rights Council, until 2010.
15 The statement went on to state that restrictions on free speech “should never be used to protect particular institutions, or abstract notions, concepts or beliefs, including religious ones.” In his first address to the UN General Assembly as Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, Githu Muigai reiterated one of the recommendations of his predecessor, Doudou Diène, namely that states should “move from the concept of ‘defamation of religion’ to the notion of ‘incitement to racial and religious hatred’.”
16 Context, speaker, intent, content of form, extent of the speech and likelihood of the resulting harm, including imminence. See above, para. 6.
17 Regarding proposals for an “observatory” on hate speech, the mandate of such a body would bear the risk of either being too narrow (and not including, for instance, aspects related to religious freedom and tolerance) or overlapping the mandate of the UN Special Rapporteur on freedom of religion or belief. In any case, “voluntary” contributions to an observatory could be counter-productive, as self-reporting by those states where problems are the most acute might be non-existent, while states with a better record would be more likely to report, thus furthering the divide and increasing the risk of a lack of meaningful dialogue between groups of states. In this context, the absence of an observatory would be preferable to a narrowly defined, and thus biased, observatory.
political opponents and independent voices, including civil society and journalists. And they are prone to being manipulated by non-state actors, as in the case of Asia Bibi in Pakistan, as well as by state actors. In the face of growing use of blasphemy provisions (an offense which is punishable by death in some countries), the Istanbul Process needs to address the use and abuse of blasphemy laws and discuss steps to be taken by states towards their repeal.

Engaging in meaningful dialogue

Real-world examples

20. The purpose of the Istanbul Process is to meet regularly to engage in meaningful dialogue, in good faith, to discuss implementation of HRC resolution 16/18 in order to bring national legislations, policies and practices into compliance with international standards. It concerns all states and should not be seen as a tool for targeting a specific region or group of countries. This would defeat the whole purpose of the process. In this regard, the use of examples to illustrate implementation of HRC resolution 16/18 at the national level (best practices, but also challenges and counter-examples or bad practices) is indispensable. It would be a nonsense, and a mistake, to refrain from mentioning domestic examples to illustrate implementation, or lack thereof, of HRC resolution 16/18 in all its components (including aspects that have been under-addressed so far, namely religious freedom and pluralism, the freedom to manifest one’s religion, and violence committed in the name of state or official religions). Aspects of HRC resolution 16/18 that have so far been under-addressed in terms of national implementation should be addressed as a matter of priority. Resolution 16/18 is a package and its implementation can only have an impact on the ground if comprehensive and holistic.

Participation and inclusiveness

21. Regarding participation in the Istanbul process, states should be represented by inter-ministerial delegations in order to fully reflect the contents of HRC resolution 16/18, challenges involved, and ways of addressing them. At the same time, state delegates should have an understanding of Human Rights Council dynamics and an in-depth knowledge of HRC resolution 16/18, while being able to move away from the “Geneva politics” and focus on domestic dynamics and how to overcome obstacles and best achieve implementation. States should continue to meaningfully engage in the Istanbul Process with all stakeholders, including states, UN bodies and mechanisms, legal experts and civil society organizations.

22. At the same time, the Istanbul Process should be truly inclusive. At each session, invitation should be extended to all stakeholders, including civil society organizations, which express an interest in working on issues related to HRC resolution 16/18, including faith-based organizations that represent religious minorities in all countries, as well as organizations representing members of non-religious, atheist or agnostic groups. Several NGOs that have been active around HRC resolution 16/18 and its implementation have not been invited to IP5 in Jeddah, which is regrettable.

Reporting

23. States should report on implementation, at the domestic level, of HRC resolution 16/18, systematically highlighting the measures they have taken (legislative, policy or otherwise) since the adoption of the resolution, the progress made against specific paragraphs of the resolution’s action plan and against objectives (with targets and indicators) for the next period (for instance: up to the following IP session). States should commit to address all aspects of HRC resolution 16/18 in their reporting, including religious freedom and pluralism and the protection of religious minorities.

Conclusion

24. FIDH re-affirms the universal value of all human rights. Challenges to the universality of human rights on the basis of so-called national, regional, cultural or religious “particularities” should be syste-

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matically exposed, deconstructed and combated. The Istanbul Process should not be used to divert attention from states' obligations under international law. It should be, as it was designed, a forum for discussing and advancing implementation of HRC resolution 16/18 – not for attempting to reopen old debates that already received answers based on international law. In this regard, it is the responsibility of all government and religious authorities to appease, rather than to exacerbate, tensions. In particular, political leaders should refrain from using religion for political gains. Rather than attempting to reopen old debates or advance uncompromising agendas, they should promote domestic implementation of international standards, including the high threshold required for limitations to free speech – even if it means, in the short term, running the risk of losing popularity or support from some of their constituencies. It is a matter of legal obligation, moral responsibility and, ultimately, statesmanship.

25. In this context, there is a need for international vigilance for the protection of fundamental rights and freedoms. In the aftermath of the publication by French satirical newspaper Charlie Hebdo, on 14 January 2015, of a caricature of Prophet Muhammad, several demonstrations took place across the world to protest against "blasphemy," some of which were incited or encouraged by state authorities, as in Chechnya, Russia. While the right to peacefully assembly is inalienable – and reflection and debates about religious matters, held in good faith and in an open manner, should be encouraged – unacceptable attacks against religious minorities took place during these protests, adding deaths to the killings committed in Paris early January 2015.\(^{19}\) Unfortunately, these have been followed by other attacks in Copenhagen, North Carolina, Tunis, Northern Nigeria and, most recently on 22 May 2015, in Qatif, Saudi Arabia. The list is endless. And the atrocities perpetrated on a daily basis by the so-called “Islamic State” in Iraq and Syria, in particular against Christians, Yazidis and Shia Muslims, are yet another evidence of the urgent and critical need for a comprehensive and holistic approach to tackling religious intolerance, of which promoting and protecting international standards on freedom of religion or belief and freedom of expression is a key part. In this regard, the Istanbul Process needs to get back on track, and it needs to do it now.

Recommenda tions

In this context, states should, at this and the next sessions of the Istanbul Process:

- Reaffirm their commitment to promote and protect international standards on freedom of religion or belief, freedom of opinion and expression, and prohibition of advocacy of national, racial or religious hatred;
- Support international mechanisms such as the UN Special Rapporteurs on freedom of religion or belief, on the right to freedom of opinion and expression, and on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, including by cooperating with them, accepting their requests for country visits and responding to individual communications and urgent appeals;
- Reiterate their commitment to international consensus, embodied, inter alia, in HRC resolution 16/18 and the Rabat Plan of Action; in this regard, unambiguously reaffirm, as a matter of urgency, their commitment to implement the action plan contained in HRC resolution 16/18 in a comprehensive and holistic manner and to pay equal attention to the various components of the action plan;
- Share best practices in order to establish effective outreach strategies and collaborative networks and, for those countries that have not yet done so, develop collaborative networks to build mutual understanding, promote dialogue and inspire constructive action between religious groups and communities; in this regard, interpret the expressions “religious communities” and “discrimination based on religious and belief” broadly and fully include members of religious/belief groups that are deemed non-traditional or non-mainstream in all relevant processes;
- Truly address all instances of punishable hate speech in all countries and speak out against everyone, including extremist clerics from religious majorities, who incite violence against religious minorities and independent voices (including atheists or agnostics);
- Interpret “interfaith and intercultural dialogue” broadly so as to include members of non-traditional, non-mainstream religious/belief groups, religious minorities, and atheists and agnostics;

- At future sessions of the Istanbul Process, inscribe topics such as “fostering religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion” on the agenda in order to allow for a frank discussion of these issues;

- States that recognize a religion or belief as official should address issues that may arise from this situation, in particular the fact that members of religious minorities or free thinkers, atheists and agnostics may be prevented from manifesting their religion or belief for fear of being targeted by state and non-state actors; in this context, “speaking out against intolerance” should include incitement to such acts when it is committed in the name of a religion or belief that has a state or official status, and when it targets followers of religions or beliefs that are not recognized as such by national authorities, as well as free thinkers, atheists and agnostics;

- Address, as a matter of priority, all of the issues related to the protection of religious minorities and independent voices (including protection from violations and abuses perpetrated in the name of religion or religious majorities) as an integral part of the Istanbul Process;

- Commit to put an end to attempts to challenge international standards and consensus, through phrasing or terminology that would be different from, but intrinsically tantamount to, the human rights incompatible concept of “defamation of religion,” as well as attempts to equate criticism of religion/belief with expression that constitutes a criminal offence, when the six part threshold test set out in the Rabat Plan of Action is not met;

- Those states that have not yet criminalized incitement to imminent violence should do so in line with international standards (treaty law (article 20(2) of the ICCPR) and the customary rule evolved from it) and the Rabat Plan of Action's six part threshold test;

- Condemn attempts to criminalize free expression (including criticism of religions or beliefs) on the basis of laws criminalizing incitement to hatred or blasphemy laws but failing to meet the high threshold set out in international law;

- Put an end to attempts to single out specific religions or beliefs by arguing that they should be subjected to another type of, or lower, threshold test than the one set out in the Rabat Plan of Action;

- Refrain from creating additional mechanisms with regard to the relationship between free speech and hate speech and to what states should do at the domestic level to fulfill their obligations, as these were adequately covered by the Rabat Plan of Action; instead, use the latter as a guide for implementing obligations at the domestic level;

- Address, as part of the Istanbul Process, fundamental topics that have not been adequately addressed so far, such as blasphemy laws, whose repeal is called for by the Rabat Plan of Action and various international bodies;

- Move towards the repeal of blasphemy laws at the domestic level;

- Use real-world examples to illustrate implementation of HRC resolution 16/18 at the domestic level, including best practices but also challenges and counter-examples or bad practices;

- Be represented by inter-ministerial delegations to sessions of the Istanbul Process in order to fully reflect the contents of HRC resolution 16/18, challenges involved, and ways of addressing them;

- Continue to meaningfully engage in the Istanbul Process with all stakeholders, including states, UN bodies and mechanisms, legal experts and civil society organizations;

- States and organizations hosting sessions of the Istanbul Process should extend invitation to all stakeholders, including civil society organizations, that express an interest in working on issues related to HRC resolution 16/18, including faith-based organizations that represent religious minorities, as well as organizations representing members of non-religious, atheist or agnostic groups;

- Report on implementation, at the domestic level, of HRC resolution 16/18, systematically highlighting the measures taken (legislative, policy or otherwise) since the adoption of the resolution, the progress made against specific paragraphs of the resolution’s action plan and against objectives (with targets and indicators) for the next period; and

- Commit to address all aspects of HRC resolution 16/18 in state reporting, including religious freedom and pluralism and the protection of religious minorities.