

POLICY REPORT

COMBATTING GLOBAL RELIGIOUS INTOLERANCE

**The implementation of Human Rights
Council resolution 16/18**

by Marc Limon, Nazila Ghanea and Hilary Power



UNIVERSAL RIGHTS GROUP

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PREFACE

This report on the implementation of Human Rights Council resolution 16/18 is the result of a year long project led by Marc Limon of the Universal Rights Group and Nazila Ghanea of the University of Oxford. It reflects primary and secondary research, a policy dialogue in Geneva, participation in two Istanbul Process Meetings (2013 in Geneva, 2014 in Doha) and nearly forty interviews with key stakeholders, including diplomats and capital-based experts involved in the genesis and implementation of the resolution, staff of the Office of the High Commissioner for Human Rights, relevant Special Procedures mandate-holders, academics and human rights NGOs.

The conclusions reached in the report are entirely the authors' responsibility and do not necessarily reflect the views of their respective institutions, donors or partners.

Authors

Marc Limon
Nazila Ghanea (University of Oxford)
Hilary Power

Research Assistants

Shirley van der Maarel
Cecilia Chung
Felicity Ng

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EXECUTIVE SUMMARY

It is almost impossible to turn on the news today without witnessing scenes of hatred, violence and intolerance perpetrated in the name of religion or belief. The march of ISIL across Syria and Iraq, with associated reports of gross and systematic violations of human rights, may be an extreme example of such hatred, but it comes against a background of heightened religious hostility and discrimination in virtually every part of the world. According to a recent report by the Pew Research Center, violence and discrimination against religious groups by governments and rival faiths have reached new heights in all regions except the Americas.¹ This bleak picture is supported by the findings of the latest report on religious freedom by the US State Department, which concluded that 2013 saw 'the largest displacement of religious communities in recent memory,' with millions of individuals from all faiths 'forced from their homes on account of their religious beliefs' in 'almost every corner of the globe.'²

In the face of such trends, it is clear that the fight against religious intolerance and discrimination must be a key political priority for the international community, and in particular the UN and its Human Rights Council.

The main UN global policy framework for combatting intolerance, stigmatisation, discrimination, incitement to violence and violence against persons based on religion or belief is set down in Council resolution 16/18. Resolution 16/18 was adopted, with much fanfare, in March 2011 and hailed by stakeholders from all regions and faiths as a turning point in international efforts to confront religious intolerance. After more than five decades of failure, UN member states had, it was hoped, at last come together to agree a common, consensus-based approach and

practical plan of action.

Almost four years on, and against the aforementioned backdrop of heightened religious hostility, UN consensus around the '16/18 framework' is at breaking point. Rather than working together to implement the 16/18 action plan, states have returned to pre-2011 arguments over the nature of the problem,

the correct role of the international community, and whether the solution to intolerance lies in strengthening the enjoyment of fundamental human rights or in setting clearer limits thereon.

These divisions have re-emerged in large part because of conceptual confusion among policymakers about what implementation of


resolution 16/18 means and what it entails. Linked to (and indeed flowing from) this conceptual opacity, states – especially states from the Western Group (WEOG) and the Organisation of Islamic Cooperation (OIC) – argue over whether resolution 16/18 is being effectively implemented or not and, if not, who is to blame.

The present policy report aims to help put the 16/18 framework 'back on track' by cutting through the political rhetoric to understand the different positions of key actors and how to bridge them, and by providing an impartial assessment of levels of implementation.

The report ends by proposing a set of recommendations designed to 're-energise' the 16/18 process and thereby strengthen the international community's ability to respond effectively to rising intolerance and discrimination. Recommendations include:

- States – especially EU and OIC states – should cooperate to dismantle the artificial divide that currently separates the

1. Pew Research Center, *Religious Hostilities Reach Six-Year High*, January 2014.
2. U.S. Department of State, *International Religious Freedom Report for 2013*.



UN's work on promoting respect for freedom of religion from its work on combatting religious intolerance. In the medium- to long-term, this would mean agreeing on a single, coherent policy covering the mutually interdependent issues of freedom of religion, religious discrimination and religious intolerance;

- Linked with this point, states should avoid a return to the initiative on 'defamation of religions,' which achieved little beyond the polarisation of East and West. They should also avoid establishing new instruments or mechanisms on religious discrimination or intolerance in the absence of solid evidence showing that such measures would help;
- Because arguments over implementation are central to the current difficulties faced by the 16/18 process, it would be useful for relevant Council mechanisms, especially the Special Procedures, to undertake an independent and impartial analysis of steps taken by states, religious leaders and civil society, together with related best practice;
- Better use can and should be made of the UPR process and Treaty Body dialogues to promote implementation of the 16/18 action plan and to report on progress;
- States should 're-energise' the Istanbul Process by agreeing in advance on a schedule of future meetings – a series that would allow all parts of the 16/18 action plan to be addressed; and
- The format of Istanbul Process meetings should be reformed, so that for each meeting a geographically balanced group of states, religious community representatives and civil society leaders are invited to present information about their national experiences, challenges faced and future plans.

INTRODUCTION

On 9th June 2014, the Islamic State of Iraq and the Levant (ISIL) captured Mosul in northern Iraq and unleashed a brutal crackdown against any individual or community that did not share its own 'narrow and unyielding' views.¹ Beyond the mass evictions and forced migrations perpetrated against Christians, Yazidis, Shia Muslims (including Shabak and Turkmen) and others, ISIL's advance resulted in heart-breaking reports of extrajudicial and mass killings, beheadings, abductions, forced conversions, torture, rape and sexual assault, using women and children as human shields, and people being burned or buried alive. Since June, these barbaric acts, perpetrated in the name of religion, have been repeated across wide swathes of Iraq and Syria, forcing religious communities into a stark choice – either vacate the lands they have called home for centuries or be killed.

As the new United Nations (UN) High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, said during his inaugural address to the Human Rights Council ('the Council') in September 2014, ISIL's actions 'reveal only what a Takfiri state would look like, should this movement actually try to govern in the future. It would be a harsh, mean-spirited, house of blood, where no shade would be offered, nor shelter given, to any non-Takfiri in their midst...only annihilation to those Muslims, Christians, Jews and others [altogether the rest of humanity] who believe differently to them.'²

The human rights violations committed by ISIL are, of course, an extreme manifestation of religious hatred and intolerance. Yet the march of its extremist ideology comes against a background of heightened religious hostility and discrimination in virtually every part of the world. According to a recent report by the Pew Research Center,³ violence and discrimination against religious groups by governments and rival faiths have reached new highs in all regions except the Americas.

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Social hostilities involving religion, such as attacks on minority faiths or pressure to conform to certain norms, were strong in one-third of the 198 countries and territories surveyed. Across the Middle East, North Africa, Europe and Asia, levels of religious hostilities have roughly doubled since 2007.⁴ Religious-related terrorism and sectarian violence occurred in one-fifth of countries in 2012, while states imposed legal limits on worship, preaching or religious wear in almost 30 per cent of them.

This bleak picture is supported by the findings of the latest report on religious freedom by the US State Department, which concluded that 2013 saw 'the largest displacement of religious communities in recent memory,' with millions of individuals

from all faiths 'forced from their homes on account of their religious beliefs' in 'almost every corner of the globe.'⁵

In the face of such trends, it is clear that the fight against religious intolerance and discrimination must be a key political priority for the international community, and in particular the UN and the Council.

The main UN global policy framework for combatting religious intolerance, stigmatisation, discrimination, incitement to violence and violence against persons based on religion or belief is set down in Council resolution 16/18.⁶ Resolution 16/18 was adopted, with much fanfare, in March 2011 and hailed by stakeholders from all regions and faiths as a turning point in international efforts to confront religious intolerance. After more than five decades of failure, UN member states had, it was hoped, at last come together to agree a common, consensus-based approach and practical plan of action.

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These divisions have re-emerged, in large part, because of conceptual confusion among policymakers about what implementation of resolution 16/18 means and what it entails. Linked to (and indeed flowing from) this conceptual opacity, states – especially states from the Western Group (WEOG) and the Organisation of Islamic Cooperation⁷ (OIC) – argue over whether resolution 16/18 is being effectively implemented or not and, if not, who is to blame.

The present policy report, based on a thorough appraisal of all relevant UN documents going back to 1947, interviews with

around 40 government officials, UN experts and religious leaders, a policy dialogue with key UN stakeholders, an independent appraisal of state policy since 2011, and a quantitative analysis of available data on religious hostility, aims to help put the 16/18 framework 'back on track' by providing an impartial assessment of levels of implementation, and by offering recommendations for strengthened compliance in the future.

PART I

THE UN'S STRUGGLE AGAINST RACIAL AND RELIGIOUS DISCRIMINATION

From the very beginnings of the UN human rights system, states identified the fight against racial and religious discrimination as a key policy priority.

In February 1946, the Economic and Social Council (ECOSOC) laid down the terms of reference of the Commission on Human Rights ('the Commission') and identified the 'prevention of discrimination on grounds of race, sex, language or religion' and 'the protection of minorities' as two of its four areas of focus (the others being preparation of an international bill of rights, and 'international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters').⁸

During its first session, in January 1947, the Commission decided to establish two Sub-Commissions (made up of individual experts) to work on three of the areas outlined in the Commission's terms of reference. At the behest of the US, it created a Sub-Commission on Freedom of Information and, at the behest of the USSR, a Sub-Commission on the 'Prevention of Discrimination and Protection of Minorities' (henceforth 'the Sub-Commission').⁹ In a rare example of US-USSR cooperation, the Sub-Commission on Freedom of Information was later dissolved by mutual consent.¹⁰

In 1952, the Sub-Commission began setting down its programme of work including, as an immediate priority, 'discuss[ing] and

suggest[ing] measures to be taken for the cessation of any advocacy of national, racial or religious hostility that constitutes an incitement to violence.'¹¹ Another key outcome of the 1952 meeting was a proposal to commission a United Nations study on 'the existence and background' of 'erroneous views which have contributed to discriminatory and hostile treatment directed against certain religious groups.'¹² The proposal was, however, later rejected by the Commission¹³ on the grounds that 'while the question of fostering religious tolerance and eliminating religious discrimination was not outside the scope of the United Nations, the proposed studies could be undertaken only by theologians and philosophers.'¹⁴

Taking note of this rejection, at its next session (January 1954) the Sub-Commission decided to adopt a more cautious approach, merely appointing one of its members (Philip Halpern from the US) to prepare proposals on the procedure to be followed in carrying out a study of 'discrimination in the matter of religious rights and practices.'¹⁵

The following year, Mr. Halpern presented his preliminary report, which predicted (with admirable foresight) that 'problems created by discrimination in matters of religion are likely to become more and more acute in the years immediately ahead,' given the 'great diversity among the people of the world as to the precise content and form of religious beliefs and practices.'¹⁶

THE KRISHNASWAMI REPORT

Building on the Halpern report, in 1956 the Sub-Commission asked one of its members, Arcot Krishnaswami (India), to prepare a study on discrimination in the matter of religious rights and practices.¹⁷ When the final report was delivered in 1960, members of the Sub-Commission hailed it as 'the classic work in an extremely delicate and controversial field,' and said it should 'serve as a guide for action by Governments, non-governmental organizations and private individuals.'¹⁸

The report's final chapter – 'a programme for action' – contained a series of 'basic rules'¹⁹ and suggested steps to be taken in order to eradicate discrimination in the matter of religious rights and practices.²⁰ Some members felt that 'a decision should be taken at an early stage as to whether the rules, when revised, were to be incorporated in a recommendation of the United Nations, a declaration, or an international instrument or instruments.'²¹ However, 'the prevailing view [...] was that no final decision should be taken as to the disposition of the rules until a later stage, after their exact contents had been more fully agreed upon.'²²

The basic rules were therefore considered one-by-one by the Sub-Commission, and formed the basis of 'draft principles,'²³ which it transmitted to the Commission along with the Krishnaswami report.²⁴

The Commission considered the draft principles in 1960, and passed resolution 4 (XVI) requesting the Secretary-General to transmit them to member states and specialised agencies, 'so that they may submit [...] their comments on the substance [...] and the form in which such principles should be adopted.'²⁵

By 1962, fifty-three governments and three NGOs had submitted comments. There was wide support for the view that the principles should eventually be embodied in some form of international declaration,²⁶ though others²⁷ felt a recommendation or resolution of the General Assembly (GA) or of ECOSOC would be more appropriate.²⁸ The idea of incorporating the principles into a legally binding convention was put forward by Pakistan.²⁹

After considering these submissions, the Commission proceeded to examine the draft principles in earnest, but quickly realised that the 'difficulties of the subject-matter'³⁰ would make intergovernmental progress difficult. Indeed, the 18th session would be the first and last time that the draft principles were actively examined by the Commission, which repeatedly deferred further consideration 'due to time constraints' in 1963, 1964, 1965, 1966, 1967 and 1968, before removing the matter from its agenda entirely in 1969.



Dr. Arcot Krishnaswami (India) and Mr. Richard Hiscocks (United Kingdom), members of the Sub-Commission, 1959. ©United Nations.

THE 'SWASTIKA EPIDEMIC'

These developments came against a global backdrop of resurgent anti-Semitism, especially during the late 1950s and early 1960s. Concerned by such outbursts of religious hatred (which the Sub-Commission called 'reminiscent of the crimes and outrages committed by the Nazis prior to and during the Second World War'³¹), the Commission adopted resolution 6 (XVI) on 'manifestations of anti-Semitism and other forms of Racial Prejudice and Religious Intolerance of a Similar Nature' (16th March 1960). The resolution, in common with related GA texts from this time (e.g. GA resolution 1510 (XV) on 'manifestations of racial and national hatred,' passed in December that same year)³² addressed racial prejudice and religious intolerance as joint and interlocking issues. It concluded by asking the Secretary-General to gather information from states on manifestations of racism and religious intolerance and measures taken to combat them, to be analysed by the Sub-Commission.

In January 1961, the Sub-Commission proceeded to evaluate the information gathered pursuant to Commission resolution 6 (XVI). It offered its view that 'anti-Semitism was only a particular phase of racism, and that it should be dealt with not as a separate phenomenon but in the context of general problems relating to manifestations of racial and religious hatred.'³³ The meeting saw members debate what steps the UN should take. Some thought the GA should be asked to pass a resolution, while others said

it should be 'encouraged to undertake the preparation of an international convention.'³⁴ In the end, the Sub-Commission erred towards the former view, and recommended that the GA pass a further resolution.³⁵

DISCRIMINATIONS DIVERGE

The GA moved to consider this recommendation at its 17th session in 1962. This was to be a key moment in the early history of the UN human rights system – the moment when the UN's efforts to confront religious intolerance became irrevocably split from its efforts to confront racial discrimination.

While the Sub-Commission had merely recommended the adoption of a further GA resolution on 'manifestations of racial prejudice, and national and religious intolerance,'³⁶ a group of newly independent former French colonies (Central African Republic, Chad, Dahomey, Guinea, the Ivory Coast, Mali, Mauritania, Niger and Upper Volta) went further and proposed the adoption of a draft convention. Crucially, the proposed draft³⁷ only covered 'the elimination of all forms of racial discrimination' – i.e. it ignored religious discrimination and intolerance.

Throughout the ensuing debates in the Third Committee, the place of religious intolerance, either in the proposed new



convention or in a separate instrument, was hotly debated. As a consequence, the first revised version of the draft resolution proposing a new convention replaced the words 'race and colour' in the preamble of the draft with the words 'race, colour and religion.' Saudi Arabia, however, challenged this change, arguing that it made no sense to include religion in the preamble of a resolution dealing with racial discrimination.³⁸ A further important discussion at around this time was whether the new convention should be supplemented by a (soft law) declaration.

The cause of including religious intolerance was subsequently taken up by Liberia, which proposed—during discussions on the fourth revised draft—that religious discrimination be included in the operative parts of the draft resolution, as well as in the preamble. According to this proposed amendment, the GA would 'decide [...] to prepare international conventions³⁹ on the elimination of all forms of racial *and* religious discrimination' (emphasis added).⁴⁰

Although this proposal was not accepted by the resolution's main sponsors, Liberia kept pressing, tabling another amendment (to the sixth revised draft) insisting that both the convention and the declaration (a call for which was now also included in the draft) should cover 'all forms of racial *and religious* discrimination.' Liberia's amendment was supported by Pakistan (which, it will be recalled, was also arguing for a convention on religious discrimination in the Commission) and New Zealand.⁴¹ The UK, Ukraine and Saudi Arabia,⁴² however, argued against the inclusion of religion in the scope of the new convention on the grounds that the Commission was still considering the draft principles on religious intolerance. Chile, Iraq and Poland also opposed the amendment.⁴³

In the face of growing divisions, and on behalf of some of the sponsors, Mali proposed an oral amendment according to which the UN would decide to draft two declarations, one on racial discrimination and one on the 'elimination of religious intolerance,' and two (corresponding) conventions.⁴⁴

The proposal was, again, opposed by Saudi Arabia, which suggested that religious discrimination should be completely detached from the current negotiations, and made 'the subject of a separate draft resolution.'⁴⁵ Based on this suggestion, three days later (5th November), a group of 16 developing countries from Africa and Asia (including Iraq, Liberia, Mali, Nigeria, Pakistan and Syria) tabled a draft resolution proposing 'the preparation of a declaration and an international convention on the elimination of all forms of religious intolerance.' Later that same day, the draft was unanimously adopted in the Third Committee.

However, even at this moment of (apparent) triumph, there was a clear sense of the difficulties that lay ahead. For instance,

before the vote on the draft, Tunisia and Egypt said religious intolerance should not distract from the UN's 'more important' work on racism.⁴⁶ During the voting itself, Greece moved to delete the paragraph calling for a declaration,⁴⁷ while Argentina tried to remove mention of the convention.⁴⁸ Both were unsuccessful. During the same meeting, states such as Russia and Venezuela expressed disquiet 'in light of the Commission's experience' about the 'difficulties in the way'⁴⁹ of drafting a convention 'that would be acceptable to all countries.'⁵⁰

On 7th December 1962, the GA thus proceeded to adopt two resolutions: resolution 1780 (XVII) on 'the preparation of a draft declaration and a draft convention on the elimination of all forms of racial discrimination,' and resolution 1781 (XVII) on 'the preparation of a draft declaration and a draft convention on the elimination of all forms of religious intolerance.'⁵¹ This sundering of UN efforts to combat racism and religious intolerance was a key moment for both processes, with the former able to culminate rapidly (1965) into the adoption of a UN convention—the UN's first core human rights convention—and the latter the subject of increasingly politicised and divisive debate, with opponents now able to 'delay, if not prevent, the adoption of special instruments on religious intolerance.'⁵²



RELIGIOUS INTOLERANCE: 'THE NEGLECTED DISCRIMINATION'?

In 1964, the Commission, with a draft text prepared by the Sub-Commission (based on the draft principles) before it,⁵³ began work on the 'draft declaration on the elimination of all forms of religious intolerance.'⁵⁴ Although it only had time to consider the first six articles, it nevertheless asked the Secretary-General to submit the document to governments for comment, and thereafter to the GA.⁵⁵ The GA, however, declined to consider the semi-completed text and referred the matter back to the Commission.⁵⁶

Despite this lack of progress on the Declaration, in 1965 the Sub-Commission set up an informal working group to begin work on the draft Convention. According to one observer, even these early discussions highlighted the acute difficulties inherent in legislating 'on religious intolerance [...] since a convention on religious freedom impinged upon the most intimate emotions of human beings.'⁵⁷

Later in 1965, the Sub-Commission submitted a draft Convention to the Commission.⁵⁸ From the very start of the negotiations, it was clear that delegations were deeply divided on key issues. For example, delegates argued over the definition of, and balance between, the terms 'religion' and 'belief'; they became bogged down in discussions on the 'specificities of different religions'; and even found it difficult to agree on the primary objective of the Convention. Nonetheless, by 1967, the Commission had completed its review and submitted the draft Convention to the GA.⁵⁹

Debate in the GA was, if anything, even more polarised.⁶⁰ An article-by-article review in the Third Committee saw states struggle even to agree on a definition of 'religion or belief.' Soviet bloc countries insisted that the definition should cover 'theistic, non-theistic and atheistic' beliefs,⁶¹ but various Islamic states joined the Catholic Church in fiercely rejecting this view. As a consequence, despite devoting 29 meetings to the matter, the Third Committee was only able to adopt a new title,⁶² the preamble⁶³ and article 1⁶⁴ of the draft Convention. It also agreed, following a fight between Arab states and Israel over the inclusion of 'anti-Semitism' in article 6, not to draw attention to or prioritise any specific manifestations of religious intolerance.

Lacking time to complete its review, the GA decided to defer the matter until its next session, when it would 'give priority

to the drafting of both the Declaration and the Convention.'⁶⁵ However, when states reconvened in 1968, they decided to defer the matter for another year – a decision they would repeat on an annual basis until 1972.

In 1972, delegates began to question the merit of any further consideration of the draft Declaration and draft Convention, or even of maintaining the now apparently 'obsolete'⁶⁶ agenda item on the 'elimination of all forms of religious intolerance.' According to one contemporary observer, by this time 'political confusion was so great' that even those states and NGOs that had been 'the most committed to the completion of the instruments [...] began to have second thoughts,' wondering whether the results would be worth the effort.⁶⁷

Against this background of growing ambivalence, in September 1972 a group of 35 NGOs presented a letter to the President of the GA calling for priority to be given to finalising and adopting the draft Declaration.⁶⁸ Taking its lead from this intervention, the Third Committee passed resolution 3027 (XXVII),⁶⁹ which decided to 'accord priority to the completion of the Declaration [...] before resuming consideration of the International Convention on this subject.'⁷⁰

Progress, however, continued to be slow. Rather than adopt the Declaration as it then stood, the GA concluded at its 28th session that 'the preparation of a draft Declaration [...] requires additional study,' and passed the matter back to the Commission, which was invited to rework the draft 'as a matter of priority.'⁷¹

Thus, in 1974—twelve years after the GA's original request for it to prepare a draft—the Commission renewed its work on the Declaration. States began by underlining the importance of 'accelerating the process of preparing a draft declaration,'⁷² before limping along for seven more years, with certain delegations (according to a contemporary observer) determined to 'hamstring the entire process.'⁷³

An interesting example of the difficulties that confronted negotiators (especially because it remains a key source of disagreement today) relates to the right to criticise religion. The USSR sought to include this right in article 1 of the Declaration.⁷⁴ Several Muslim-majority states (e.g. Egypt, Libya) however, found the suggestion problematic on the basis that 'criticism of religious beliefs [leads] to religious intolerance,' and that 'from the point of view of Islam, criticism of religions [is] not acceptable.'⁷⁵

In 1979, in the face of mounting pressure from the GA and concern that 'discrimination based on religion or belief was [becoming] the neglected discrimination,'⁷⁶ the Commission finally began to make significant progress, and by 1981 was able to complete

its work. Resolution 20 (XXXVII), forwarding the completed draft to ECOSOC and then to the GA, was adopted on 10 March 1981, with 33 in favour, none against and 5 abstentions.⁷⁷

On 25th November 1981, the GA adopted resolution 36/55 by consensus, proclaiming the 'Declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief,' thereby bringing to an end almost twenty years of negotiation. For the first time, the UN had established an international human rights instrument, albeit a soft law one, on religious intolerance and discrimination.⁷⁸

UN DECLARATION ON RELIGIOUS INTOLERANCE AND DISCRIMINATION

Three things about the 1981 Declaration are particularly noteworthy.

First, as noted above, it is a soft law rather than a hard law instrument, meaning it offers normative guidance rather than providing a set of binding obligations for states to ratify.

Second, and perhaps linked to the first point, today the vast majority of state delegates to the Council are completely unaware of the Declaration's existence, let alone what it contains. Even for the UN, this represents a quite spectacular failure to translate almost 20 years of international negotiation into real-world relevance and impact.

And third, the 1981 Declaration focuses, as its title suggests, on religious intolerance and discrimination. Like its long-separated sibling, the Convention on the 'elimination of all forms of racial discrimination,' the emphasis of states was to create an instrument that responded, from a victim's perspective, to a clear global problem, namely religious intolerance and discrimination, rather than one that called in a more abstract way for states to uphold the enjoyment of certain rights (e.g. freedom of religion). As a Treaty Body member explains: 'the process that led to the adoption of the 1981 Declaration originated in a desire to respond to the plight of the victims of religious intolerance and discrimination, rather than a wish to fulfil article 18 of the Universal Declaration. To say otherwise would be akin to arguing that the Convention against Torture should have been called the Convention on the right to life, liberty and security of person [article 3 of the Universal Declaration].'⁷⁹

As we will see, these distinctions—that the primary objective of the international community at the time was to address violations of human rights by combating religious intolerance and discrimination, and that respect for freedom of religion or belief was just one, albeit important, part of the 'policy mix' prescribed to achieve that objective—are key to understanding the future evolution of efforts by the international human rights system to address matters of religion, as well as the political divisions that continue to beset the international community to this day.

It did not take long for the UN to realise that member states were largely ignoring, if not already ignorant of, the 1981 Declaration. Between 1981 and 1986, the GA repeatedly called on the Commission 'to continue its consideration of measures to implement the Declaration,'⁸⁰ and expressed deep concern about 'reports of incidents as well as governmental actions in all parts of the world which are inconsistent with the provisions of the Declaration.'⁸¹

Responding (eventually) to these exhortations, in March 1986 the Commission decided to establish a new mechanism: a Special Rapporteur to oversee 'the implementation of the Declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief.'⁸² The Special Rapporteur was mandated to examine 'incidents and governmental actions in all parts of the world' which were 'inconsistent with the provisions of the Declaration,' and to 'recommend remedial measures.'⁸³ The UK delegate hailed the Commission's decision to appoint a Special Rapporteur as 'responsible, objective and timely,'⁸⁴ saying the time had come 'for the Commission to go beyond the study of causes' and to proceed to 'consider questions of implementation.'⁸⁵

The resolution was finally adopted by 26 votes in favour, 5 against and 12 abstentions. Those voting in favour included all Western countries, plus Muslim majority states such as Bangladesh, Mauritania and Senegal. A year later, in 1987, the mandate was renewed by consensus.⁸⁶

2000/2001: A FORK IN THE ROAD

Between 1960, when the Commission adopted resolution 6 (XVI), and the turn of the century—a period of nearly forty years—the UN's approach to securing the elimination of all forms of religious intolerance and discrimination was notably ineffective. But at least the UN and its members had followed a *single* approach. That changed at the turn of the century, when two ostensibly unrelated events – the renaming of the Special Procedure mandate (2000-

2001) and growing concern among OIC member states over the rise in 'Islamophobia' – combined to create a deep schism in the UN's efforts to combat religious intolerance and discrimination, a schism that remains with us to this day.

In 2000, at the suggestion of the Special Rapporteur at the time, Abdelfattah Amor, the delegation of Ireland presented a resolution altering the title of the mandate from 'Special Rapporteur on religious intolerance' to its current title: 'Special Rapporteur on freedom of religion or belief.' Echoing the rationale put forward by Mr Amor, Ireland suggested the change was intended 'to reflect the more positive side of (the) mandate.'⁸⁷

From this time, the Special Rapporteur began to implement his (renamed) mandate in a way that gave greater emphasis to 'the promotion of the freedom of religion and on prevention activities,' rather than the traditional task of 'combating all forms of religious intolerance.'⁸⁸

A year earlier (1999), Pakistan, on behalf of the OIC, had presented a draft resolution to the Commission on the 'defamation of Islam.' According to Pakistan's ambassador in Geneva, Munir Akram, the new resolution was needed in response to growing concerns over 'new manifestations of intolerance and misunderstanding, not to say hatred, of Islam and Muslims in various parts of the world.'⁸⁹

The draft was initially opposed by Western states, which said it was 'not balanced since it referred exclusively to the negative stereotyping of Islam.'⁹⁰ After Pakistan agreed to change the scope to cover the 'defamation of [all] religions,' the text was adopted by consensus, though with a warning from the EU that it 'did not attach any legal meaning to the term 'defamation' as used in the title.'⁹¹

A further resolution, tabled in 2000, was likewise adopted by consensus. However, when, in 2001, the OIC tabled a text encouraging states to 'provide adequate protection against all human rights violations resulting from defamation of religions,'⁹² the West called a vote.⁹³ From that point on, all 'defamation of religions' resolutions were adopted through increasingly acrimonious votes.⁹⁴

On 11th September 2001, al-Qaeda terrorists flew planes into the World Trade Centre in New York and the Pentagon in Washington DC. In the aftermath of the attacks, OIC concerns about rising Islamophobia were amplified. As a result, the draft 'defamation of religions' text tabled in 2002 (re)introduced a much sharper and more explicit focus on Islamophobia. The final resolution (2002/9) mentioned the words 'Islam' or 'Muslims' ten times in the context of negative stereotyping, media incitement and attacks on places of worship, compared to just one reference in 2001.⁹⁵

As we have seen, 2001 also saw the title of the 'Special

Rapporteur on religious intolerance' changed to the 'Special Rapporteur on freedom of religion or belief' while the title of the annual resolution was also amended, dropping mention of the 1981 Declaration.

FREEDOM OF RELIGION VS. DEFAMATION OF RELIGIONS

The stage was now set for two competing visions of how to confront and eliminate religious intolerance and discrimination. Over time, these visions coalesced into two different political 'streams' at the UN.

One, led by the EU and supported by Western states, emphasised and promoted a more 'positive'–or 'liberal'–agenda focused on strengthening the enjoyment of individual rights and freedoms, especially freedom of religion and freedom of expression. The basic worldview of this 'Western stream' is that the best way to reduce and eventually eliminate religious intolerance and discrimination is by strengthening the universal enjoyment of these core rights by individuals, and certainly not by protecting religions or belief systems.

In 2007, the West took further steps in this direction when the mandate of the Special Rapporteur was substantively amended to match the changed title. The mandate-holder was now called upon to focus on 'the adoption of measures at the national, regional and international levels to ensure the promotion and protection of the right to freedom of religion or belief.'⁹⁶ Tellingly, the paragraphs setting down the new 'more positive' focus of the mandate were placed above the (retained) paragraphs on the implementation of the 1981 Declaration.⁹⁷

The second (competing) vision, led by the OIC, sought to maintain international attention on symptoms (religious intolerance, stereotyping and incitement–specifically in the context of Islamophobia) and to make the case that in order to confront and eliminate these phenomena, states would need to take steps beyond merely respecting core freedoms, including by agreeing on and applying permissible restrictions to those rights–especially to freedom of expression. For the OIC, in a post-9/11 'war on terror' environment, the political imperative was, and indeed remains, the fight against Islamophobia and related 'hate speech,' especially in the West.

For five years after the establishment of the Council (2006), the EU and the OIC continued to press ahead according to these parallel and mutually incompatible 'streams.' The EU tabled resolutions reflecting an increasingly clear departure

from the UN's traditional emphasis on the implementation of the 1981 Declaration and towards a greater emphasis on the promotion and protection of freedom of religion or belief. The OIC, meanwhile, continued to table annual resolutions on 'defamation of religions.' Both 'sides' settled into a pattern of trading rhetorical blows and 'playing the two sets of resolutions off against each other.'⁹⁸

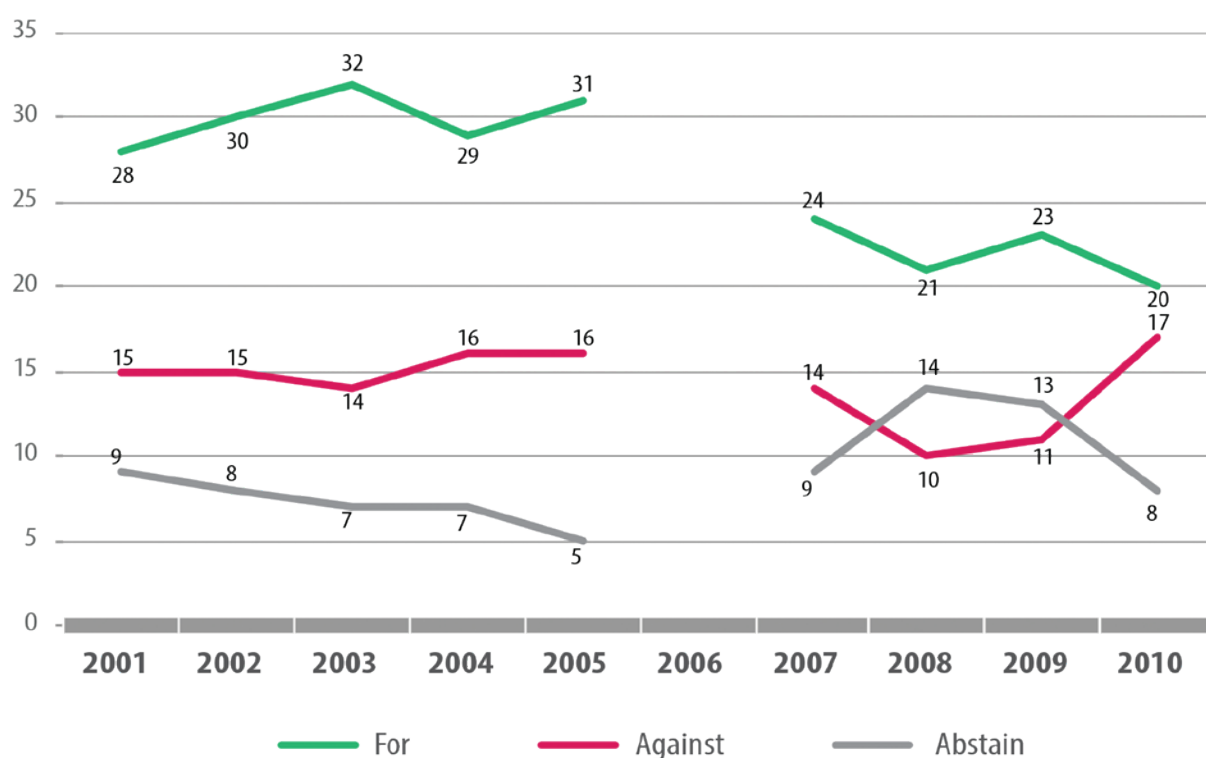
It was, however, becoming clear that this uneasy status quo could not last. In particular, the OIC stream was coming under increasing pressure at both a legal-theoretical and a political level.

Regarding the latter, even though the 'defamation of religions' resolutions were voted on from 2001 onwards, the OIC had been able to maintain a healthy level of support for its texts in both the Commission and the Council (see Figure 1). However, after the US became a member of the Council in 2009, the OIC's political influence began to wane, as did support for its defamation resolutions. In 2010, the OIC's text was adopted by a margin of only three votes. It was clear that the following year it could well be defeated.

During the same period (2006 to 2010), theoretical and legal attacks against the OIC's approach also increased. For example, in a 2006 joint report with the Special Rapporteur on contemporary forms of racism, the then Special Rapporteur on freedom of religion or belief, Asma Jahangir, expressed concern over the criminalisation of defamation of religions, which she said could be 'counterproductive,' given that such an approach 'may create an atmosphere of intolerance and can give rise to fear and may even provoke the chances of a backlash.'⁹⁹

Echoing these concerns, in 2008 a joint statement issued by various international and regional Special Rapporteurs on freedom of expression¹⁰⁰ stated that the concept of 'defamation of religions' does not 'accord with international standards regarding defamation, which refer to the protection of reputation of individuals.' Restrictions on freedom of expression, they continued, 'should never be used to protect particular institutions, or abstract notions, concepts or beliefs, including religious ones.'¹⁰¹

FIGURE 1: VOTING ON 'DEFAMATION OF RELIGIONS' RESOLUTIONS AT THE COMMISSION/COUNCIL



Data source: Reports of the Commission on Human Rights, Human Rights Council Extranet.



PART II

RESOLUTION 16/18: PATHS RE-CONVERGE

By the start of 2011, it had become clear to key actors in the OIC that its initiative on 'defamation of religions' was no longer sustainable. Effective US diplomacy made it highly likely that further resolutions would be defeated, while expert criticism had undermined the theoretical and legal underpinnings of the OIC's approach. At the same time, the murder of Salman Taseer, the Governor of Punjab, for his opposition to Pakistan's blasphemy laws (January 2011), followed, soon afterwards, by the killing of the country's Minorities Minister, Shahbaz Bhatti, created a sense among some OIC states that it was time to set aside 'abstract arguments over, for example, whether or not religions have rights,'¹⁰² in favour of a consensual approach premised not on international politics but on identifying a practical framework for combatting intolerance.

The contours of such a framework had already been proposed a few months earlier by the then Secretary-General of the OIC, Professor Ekmeleddin Ihsanoğlu. Speaking during the 15th session of the Council (September 2010),¹⁰³ he laid the ground for a *rapprochement* between the OIC and the West by presenting an eight-point vision for a new, consensual approach to combatting religious intolerance (see box 1). The fact that

those eight points reflected key Western concerns suggests behind-the-scenes negotiations were already underway during the second half of 2010.

During the Council's 16th session (March 2011), Pakistan, Turkey, the UK and the US launched a carefully-choreographed diplomatic offensive to secure support for a new resolution on 'combatting intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief.' The precisely drafted text sought to reconcile the positions of the OIC and the West and set down a clear action plan, based on the OIC Secretary-General's eight points.

Negotiations on the draft did not proceed without difficulty; some Western states (especially from the EU) were unhappy that they had been excluded from the process. The text agreed between the quartet was considered so finely balanced that it was not opened for wider consultations. Within the OIC, a group of countries led by Egypt fought a rear-guard action to block the new approach.¹⁰⁴

BOX 1: OIC SECRETARY-GENERAL'S SPEECH TO THE 15TH SESSION OF THE HUMAN RIGHTS COUNCIL

“ I take this opportunity to call upon all states to consider taking specific measures aimed at fostering a domestic environment of religious tolerance, respect and peace, including but not limited to:



- a. encouraging the creation of collaborative networks to build mutual understanding, promoting dialogue and inspiring constructive action...;
- b. creating an appropriate mechanism within the government to, *inter alia*, identify and address potential areas of tension between members of different religious communities...;
- c. encouraging training of government officials on effective outreach strategies;

d. encouraging efforts of community leaders to discuss within their communities causes of discrimination and evolving strategies to counter them;

e. speaking out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence;

f. adopting measures to criminalise incitement to imminent violence based on religion;

g. underscoring the need to combat denigration or negative religious stereotyping and incitement to religious hatred...;

h. recognising 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. ”

Notwithstanding these intrigues, a draft text was eventually presented to the Council by Pakistan (on behalf of the OIC) under agenda item 9 (racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action).¹⁰⁵ On 24th March 2011 the Council adopted the draft by consensus. It was a moment the OIC Secretary-General later called a 'triumph of multilateralism.'¹⁰⁶ The diplomats involved in this achievement deserve enormous credit. Their willingness to reach across the political divide and join hands in the fight against religious intolerance was as inspiring as it was significant. Resolution 16/18 remains one of the most important texts ever adopted by the Council. The resolution at last afforded the international community a chance – its best chance since the UN began considering the issue in the 1940s – to strike a decisive blow against discrimination, intolerance and hatred based on religion or belief.

But would the international community be able seize that chance?

PART III

RESOLUTION 16/18: EXPECTATION AND IMPLEMENTATION

Resolution 16/18 was presented by its main backers as a balanced, focused and implementable response to one of the world's most significant contemporary human rights challenges. This created a sense of expectation among governments, religious groups and NGOs that it would deliver real changes and improvements on the ground – a sense made even more acute by the decision of key states to establish an inter-governmental implementation mechanism, the Istanbul Process. The key questions then are: have resolution 16/18 and the Istanbul Process delivered on this expectation? Have states implemented the eight-point action plan and have the steps they have taken made a difference on the ground?

In order to answer these questions, the Universal Rights Group (URG) has conducted an in-depth quantitative and qualitative analysis of what states have done to implement the '16/18 action plan' and thus to combat intolerance, discrimination, incitement to violence and violence against persons based on religion or belief.

That analysis resulted in two main conclusions:

1. Expectations of the degree to which resolution 16/18 can result in policy shifts in UN member states should be tempered by an understanding that the primary political impetus behind

resolution 16/18 was international rather than domestic. In other words, when drafting and negotiating the resolution, states were responding, principally, to an international relations imperative rather than to on-the-ground human rights dynamics.

2. Nevertheless, resolution 16/18, with its in-built action plan and associated implementation mechanism does provide a useful and, in theory, workable framework for combatting religious intolerance. While it is difficult to identify a direct

causal relationship between resolution 16/18 and any concrete policy shifts at national level, it is possible to identify some domestic improvements *in-line* with parts of the resolution 16/18 action plan. Whether those improvements were caused by resolution 16/18 or whether resolution

16/18 represents a *reflection* at international-level of changes that were anyway taking place at national-level (in response to domestic political imperatives), is a difficult question to answer (and is, in any case, perhaps irrelevant).

The following two sections will explore these two conclusions in more detail.

By the start of 2011, it had become clear to key actors in the OIC that its initiative on 'defamation of religions' was no longer sustainable

PART IV

THE 'GENEVA GAME' AND THE POLITICS OF IMPLEMENTATION

The problems of religious intolerance and incitement to religious hatred did not suddenly emerge in 2011. Rather, as Part I of this policy report has shown, the history of international efforts to recognise and respond to these problems is almost as old as the UN itself.

However, while the international community has long recognised the importance of the challenges posed by religious intolerance, it has never successfully been able to address those challenges at either a normative or an institutional level. Part of the problem has been the highly charged and politically emotive nature of the subject: human rights, religion and belief. But equally important have been the very different perspectives of states as to how best to address the problem and what role the UN should play in that regard.

As a consequence of these inter-linked dynamics, the issue of religious discrimination and intolerance has come to be as much about international politics and ideological debate as it is about finding better ways to promote and protect the rights of individual people. Indeed, in a post-Cold War, post-9/11 world in which the pre-eminence of political-ideological conflict has largely been replaced by religious-ideological conflict, the UN has become a key theatre for polemics, especially between the West and the Islamic world, about the nature of the relationship between religion and human rights.

The diplomats involved in this achievement deserve enormous credit

From the late 20th Century until 2011, the key stage for this theatre was the Geneva-based Commission on Human Rights (from 2006, the Council) where the Western-led initiative on 'freedom of religion or belief' jostled for prominence with the OIC-led initiative on 'defamation of religions.' Understanding the importance of this 'Geneva game,' in which political sparring between East and West was (and remains) at least as important as improving human rights, is crucial to any analysis of resolution 16/18 and its implementation. As one Western diplomat has noted, '16/18 is, at heart, about international—and especially Geneva—politics.'¹⁰⁷

What changed in early 2011, as the seeds of what would become resolution 16/18 germinated in the minds of a handful of Western and OIC diplomats, was not the gravity of the global problem of religious intolerance, but rather a realisation or acceptance, on the part of those diplomats, that the politics of the 'Geneva game' had become all-consuming and a barrier to real-world progress. What was needed, instead, was a new, consensus-based approach in which ideological differences could be reconciled within an action-orientated policy framework.

According to one diplomat involved, resolution 16/18 'represented a de-escalation of international rhetoric on the issues of freedom of religion and defamation of religions,' and was 'a signalling mechanism between the Western Group and the OIC that they were ready to work together.'¹⁰⁸ In other words, it was a compromise.

The problem, of course, is that the compromise was always an uneasy one. The different perspectives and positions of the two sides were not so much reconciled as thrown together and balanced within a 'catch all' text.

The broad contours of those different positions and perspectives were clearly discernible in two speeches delivered in the run-up to the adoption of resolution 16/18.

The first, delivered by the Secretary-General of the OIC at the 15th session of the Council (September 2010),¹⁰⁹ is well known as the moment he presented his eight-point vision. However, at the same time as offering this 'olive branch' to the West, Professor İhsanoğlu made clear that, for the OIC, the key concern remained 'deliberate acts meant to defame religions [...] in particular Islam.' The international community must, he continued, take concrete steps to confront 'advocacy of [...] religious hatred that constitutes incitement to discrimination, hostility or violence,' such as 'the Burn a Koran Day.' In other words, for the OIC, the key issue was still Islamophobia in the West. Moreover, in terms of the steps the international community should take, the Secretary-General highlighted, above all else, the importance of criminalising incitement.

On the other hand, the 'Western' position was neatly summed up in a February 2011 speech by US Secretary of State Hillary Clinton, in which she rejected the more 'conservative' policy diagnosis and prescription offered by the OIC in favour of a more 'liberal' analytic focused on protecting and strengthening key freedoms such as freedom of religion and freedom of expression:

*'Some take the view that, to encourage tolerance, some hateful ideas must be silenced by governments. We believe efforts to curb the content of speech rarely succeed and often become an excuse to violate freedom of expression. Instead, as it has historically been proven time and time again, the better answer to offensive speech is more speech. People can and should speak out against intolerance and hatred. By exposing ideas to debate, those with merit tend to be strengthened, while weak and false ideas tend to fade away; perhaps not instantly, but eventually.'*¹¹⁰

Consequently, the diplomats who sat down ahead of the 16th session of the Council to agree a new consensual approach to combatting religious intolerance came to the table with markedly different negotiating briefs. The genius of resolution 16/18 lies in the fact these delegates succeeded, if not in reconciling those positions, then at least in incorporating and balancing them within a workable international policy framework.

Paragraph 5 of resolution 16/18, which lays down a series of actions to be taken by states 'to foster a domestic environment of religious tolerance,' is taken almost verbatim from the OIC Secretary-General's statement at the Council's 15th session (see box 1).

For the OIC (specifically, at the time, Pakistan and Turkey), the key provisions in this 'action plan' are contained in paragraph 5(f), which calls on states to adopt 'measures to criminalize incitement to imminent violence based on religion or belief,' and paragraph 5(e), which underscores the importance of political and religious leaders 'speaking out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.' These key points are supported by operative paragraph 3, through which the Council 'condemns any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, whether it involves the use of print, audio-visual or electronic media or any other means.'

16/18...created a sense of expectation...that it would deliver real changes and improvements on the ground

For its part, the West (specifically, at the time, the UK and the US), could accept 5(f) because it placed a high threshold on permissible legal limitations of freedom of expression (only speech inciting imminent violence should be criminalised – in line

with US law) and 5(e) because they agreed on the importance of encouraging political and religious leaders to speak out against intolerance. But they also required the overall text to be 'balanced' through the inclusion of an explicit reference to the positive role of freedom of expression in combatting intolerance. This became paragraph 5(h) in which the UN recognises that an 'open, constructive and respectful debate of ideas, as well as interfaith and intercultural dialogue at the local, national and international levels, can play a positive role in combatting religious hatred, incitement and violence.' This view was repeated in operative paragraph 4.

This broad Western stance was further supplemented by preambular paragraphs 2, 3 and 4, and operative paragraph 6 which reaffirm the importance of freedom of religion or belief and freedom of opinion and expression, and of non-discrimination and equal and effective protection before the law.

FROM GENEVA TO ISTANBUL

Recognising the importance of the achievement inherent in resolution 16/18, on 15th July 2011, the OIC hosted a ministerial meeting in Istanbul on implementation. In the words of the US Ambassador to the Council, Eileen Donahoe, 'this wasn't just going to be a landmark resolution, there is also going to be concrete follow-up, and the Istanbul ministerial was a symbolic and substantive manifestation of that.'¹¹¹

The meeting was co-chaired by the OIC Secretary-General and the US Secretary of State, and included foreign ministers and high-ranking officials from 28 countries. In his opening address, the Secretary-General explained the purpose of the meeting as two-fold: it offered a symbolic 'reflection of the requisite political will towards implementation of the resolution,' and would also 'put in place a process of sustained and structured engagement' in order to 'further consensus with emphasis on implementation in a results-orientated fashion.' Secretary of State Clinton echoed the Secretary-General's remarks, describing the meeting as 'one of those events that has great ramifications far beyond this room.' At the conclusion of the meeting, the co-chairs issued a joint statement in which they

...the issue of religious discrimination and intolerance has come to be as much about international politics and ideological debate as it is about finding better ways to promote and protect the rights of individual people

called upon 'all relevant stakeholders throughout the world to take seriously the call for action set forth in resolution 16/18' and 'go beyond mere rhetoric.'¹¹²

As delegates left Istanbul's Yıldız Palace, it was with a clear sense that a corner had been turned. Perhaps, after decades of failure, the international community had finally agreed on a workable framework for addressing religious intolerance, and established a process to promote and oversee compliance with that framework.

Unfortunately, the euphoria surrounding resolution 16/18 and the launch of the Istanbul Process masked persistent divergences of view about the nature of the problem and how best to confront it. As noted above, the negotiators of resolution 16/18 had not so much reconciled those differences

as accommodated them within a single, albeit clever, UN text. As Russia later observed, resolution 16/18 represented 'an agreement to disagree.'¹¹³

Indeed, the seeds of future discord were already apparent, for those who cared to look, during the Istanbul ministerial.

In her opening remarks, Hillary Clinton underscored what she (and the West) saw as the key achievement of 16/18; namely that the international community had finally set-aside 'the false divide that pits religious sensitivities against freedom of expression.' 'Under this



U.S. Secretary of State, Hillary Rodham Clinton, OIC Secretary General, Ekmeleddin Ihsanoglu, and Turkish Foreign Minister, Ahmet Davutoglu, participate in the OIC Conference on "Building on the Consensus" at the Research Center for Islamic History, Art and Culture (IRCICA) in Istanbul, Turkey, on July 15, 2011.



resolution,' she said, 'the international community is taking a strong stand for freedom of expression and worship, and against discrimination and violence based upon religion or belief.'¹¹⁴

Afterwards, on the fringes of the meeting, Ambassador Donahoe was asked by a journalist whether this broad US position meant there could never be a contradiction or conflict between freedom of expression and freedom of religion – what about incitement to religious hatred? In reply, she clarified the US view that 'there is only one instance in which freedom of expression can be restricted or prohibited by the state, and that is when it constitutes incitement to imminent violence.' Otherwise, she continued, the best way to deal with hate speech is for political leaders to speak out: 'when you have the President, the Secretary of State and public figures jointly condemning ['Burn a Koran Day'], it will be more effective than throwing the pastor in jail.'¹¹⁵

Yet, in the OIC's report of the meeting, printed in the June-August 2011 edition of its quarterly 'OIC Journal,' the editor prefaced a summary of the event with a piece entitled 'Free speech vs. Incitement,' in which was set out a markedly different view to that presented by US officials. In it, Maha M. Akeel wrote of 'a thin red line between free speech and incitement to hate.' 'In the West,' she noted, 'the law protects freedom of expression no matter how offensive, obscene or prejudiced it might be, unless it represents incitement to imminent violence. At the same time, the law also protects freedom of religion. But what happens when freedom of expression infringes upon freedom of religion through intimidation, threat and verbal abuse falling just short of clear incitement to violence? Is there no protection for those suffering from such humiliation and threat? And how

could imminent violence be anticipated and prevented?'¹¹⁶

THE GENEVA GAME

From the Istanbul ministerial to the present day, the predominant theme in the history of resolution 16/18 is of the gradual reassertion of 'politics as usual': an inter-state 'diplomatic game, played out largely in Geneva.'¹¹⁷

It is important to note, in this regard, that when it comes to resolution 16/18, there are indeed only two sides: the OIC and the West. This may seem unusual when one considers that the UN is a multilateral institution. However, resolution 16/18 has always been the jealous preserve of the OIC and the West. 'Resolution 16/18 is,' according to one Latin American diplomat, 'a fight between the West and the OIC. It's about each side trying to impose their views on how to deal with intolerance onto the other.'¹¹⁸

This 'Geneva game' has been played out within the various mechanisms and processes, set down in Istanbul and elaborated thereafter, ostensibly designed to promote domestic implementation of the resolution 16/18 action plan.

As agreed by the co-chairs in Istanbul, these mechanisms or processes would be two-fold.

First, there would be a 'process of sustained and structured engagement'¹¹⁹ on implementation: the Istanbul Process. To-date there have been four meetings of the Istanbul Process, one



convened by the US in Washington DC in December 2011, one convened by the UK and Canada in London in December 2012, one convened by the OIC secretariat at the UN in Geneva in June 2013, and one convened by Qatar during the Doha International Interfaith Dialogue in March 2014.

During the 3rd meeting in Geneva, Chile announced its intention to host an Istanbul Process meeting in Santiago during 2014, and during the 4th meeting in Doha, the new OIC Secretary-General, Iyad Ameen Madani, announced that the OIC secretariat would host a further meeting in 2015 in Jeddah. As of today, it seems unlikely that the Santiago meeting will go ahead, while there is talk that the Jeddah gathering may take place in April or May 2015.

Second, progress on implementation would be 'underwritten and monitored by the Human Rights Council through the available reporting mechanisms.'¹²⁰ To fulfil this need, between 2011 and 2013 the UN adopted a number of resolutions requesting the Secretary-General (on two occasions)¹²¹ and the High Commissioner for Human Rights (on one occasion)¹²² to present reports 'on steps taken by States to combat intolerance [...] as set forth in the present resolution.'¹²³

Thus far, the effectiveness of this reporting mechanism has been questionable. Less than 15% of UN member states have submitted information on implementation, while the reports themselves tend to be a superficial summary of national positions and pre-existing (i.e. irrespective of resolution 16/18) policies. Partly in response to these weaknesses, in March 2014 the Council commissioned a further report requesting the High Commissioner to prepare, on this occasion, a 'comprehensive follow-up report with

elaborated conclusions' on state implementation. The High Commissioner was also requested to collate the views of states on 'potential follow-up measures for further improvement of the implementation of [the action] plan.'¹²⁴

A further key characteristic of the 'Geneva game' is that, flowing from their very different starting points as to how to conceive of and deal with religious discrimination and intolerance as reflected in their different priority subparagraphs in resolution 16/18, the OIC and the West also retained corresponding differences of opinion on the objectives of the '16/18 process.'¹²⁵

For the OIC, while they may have, at least, set aside their resolutions on 'defamation of religion,' their ultimate objective remains the same: to draw attention to, and address, Islamophobia in the West. The OIC's decision to shelve 'defamation of religions' was not an abandonment of this objective, but rather an acceptance that the means of achieving it was not working. As an OIC diplomat has acknowledged: 'we do not see 16/18 as an abandonment of defamation. It is just that by 2010, defamation had become so divisive that to have a genuine discussion about Islamophobia, without Western diplomats saying 'religions don't have rights,' a new more consensual approach was needed.'¹²⁶

For the OIC, the goal was now to promote 'cultural understanding and sensitivities based on mutual respect.'¹²⁷ In particular, the OIC wanted to have a visible space or platform to highlight, discuss and find solutions to the issue of Islamophobia in the West, in particular through strengthening legal protections against religious incitement: 'for us, the key is religious incitement and paragraph 5(f).'¹²⁸

For the West, however, resolution 16/18 was never about Islamophobia alone, and it certainly wasn't about Islamophobia in the West. Indeed, to a large extent, resolution 16/18 was about 'putting to bed' the entire concept of 'defamation of religions.'¹²⁹ Nor was there ever a willingness to reconsider or even debate Western liberal views on the mutually reinforcing (and sacrosanct) nature of freedom of expression and freedom of religion.

For those Western states involved in the negotiation of resolution 16/18, the agreed text was an exercise in setting down universal parameters and common actions for tackling religious intolerance at the domestic level. As one Western diplomat has noted: 'we accepted and voted in favour of resolution 16/18 because we were confident we were already fulfilling all the steps envisaged in the action plan.'¹³⁰ The objective was not to have regular international-level debates with the OIC over each of the eight action points contained in paragraph 5. It was to have a process of dialogue involving, principally, national-level

stakeholders to share experience and best practice on the domestic *implementation* of the eight point plan.

This Western emphasis on domestic implementation was immediately in evidence at the 1st expert-level meeting of the Istanbul Process in Washington DC. The US chose to focus the meeting on the 'training of government officials on religious and cultural awareness'¹³¹ and effective outreach strategies and 'enforcing laws that prohibit discrimination on the basis of religion or belief.' These themes, as well as the composition of participants in the meeting ('practitioners from foreign government agencies')¹³² were chosen to emphasise the importance of on-the-ground implementation and the enforcement of laws on freedom of religion.

Whatever the real motives for this choice, to OIC observers it appeared that the US was deliberately avoiding inter-governmental discussion on religious incitement and other parts of the 16/18 action plan that they considered important. Such suspicions led the OIC Secretary-General to fire a shot across the bow of his American hosts, reminding them during the meeting that the '16/18 approach' must address 'the vital concerns of all parties,' in particular clarifying legal 'grey areas' such as the 'exact nature and scope of the complementarities between freedom of opinion and expression and the prohibition of incitement [...] as stipulated in articles 19 and 20 of the [ICCPR].'¹³³



Panelists participate in an Istanbul Process discussion during the 3rd expert meeting, organized by the OIC at the United Nations Office at Geneva in June 2013.

By the time of the one-year anniversary of resolution 16/18 in March 2012, there was a 'growing sense,' according to one OIC diplomat, 'fed by US rhetoric and the agenda of the Washington meeting, that the West was intent on avoiding any discussions on paragraph 5(f)'.¹³⁴

To mark the anniversary, the OIC Secretary-General returned to Geneva to address the 19th session of the Council. He used his speech to remind the West that the OIC had made sacrifices to 'build consensus on [this] most sensitive of international issues' and to express concern about a perceived lack of progress in effectively combatting the 'constitutionalization and institutionalization of Islamophobia'.¹³⁵

If Western states recognised these OIC 'warning shots' as such, they failed to heed them. In December 2012, the UK and Canada convened a second expert-level meeting of the Istanbul Process in London. The meeting addressed three parts of the 16/18 action plan: 'overcoming obstacles to the equal participation of all groups in society;' 'combatting intolerance through education;' and 'developing collaborative networks between government and civil society'.¹³⁶ To OIC participants, including the OIC Secretary-General, Egypt, Pakistan and Turkey, paragraphs 5(e) and 5(f) were again conspicuous by their absence.

The Secretary-General, speaking at a UK high-level meeting on religious intolerance held shortly afterwards, warned

participants of 'an alarming increase in intolerance and discrimination against Muslims.' He underlined the importance of effective implementation of resolution 16/18, without which 'consensus would [...] be fragile.' He ended by highlighting the 'mounting pressure on OIC Member States to take concrete action' including, for example, by giving consideration to 'an entirely new instrument'.¹³⁷

If tensions between the OIC and the West were now simmering, by the time representatives met again for the 3rd meeting of the Istanbul Process (convened by the OIC secretariat in June 2013 in Geneva), they exploded into the open.

As if in response to the omission of any discussion on hate speech in Washington and London, the OIC organised three panel debates, covering: speaking out against intolerance (paragraph 5(e)); adopting measures to criminalize incitement (paragraph 5(f)); and the positive role that an open, constructive and respectful debate of ideas can play in combatting intolerance (5(h)). What is more, by holding the meeting at the UN and by only sending out invitations a few days beforehand, the OIC ensured that the debate would be at inter-state level (i.e. between Geneva-based diplomats rather than involving 'on-the-ground practitioners').

During the meeting, the OIC Secretary-General and a handful of senior OIC ambassadors – many of the same people who had been involved in the crafting of resolution 16/18¹³⁸ – repeatedly made clear that the aim of the meeting and the Istanbul Process more broadly was to respond to the 'alarming increase in intolerance and discrimination against Muslims',¹³⁹ in particular by identifying the threshold for the criminalisation of incitement.

Muslims were repeatedly presented as the sole victims of global religious intolerance. Ambassador Idriss Jazairi, the former Permanent Representative of Algeria, stated that 'the current victims of incitement today are indeed Muslims',¹⁴⁰ while the Chair of the opening session, OIC Ambassador Slimane Chikh, went further: 'the victim is Islam'.¹⁴¹ The OIC also placed the blame for this rising intolerance squarely at the door of the West. Ambassador Ömür Orhun, OIC Special Envoy, identified the source of Islamophobia as being 'a profound identity crisis, especially in Western Europe, shaped through redesigning the enemy against which the identity is built'.¹⁴²

The Ambassador of Pakistan, Zamir Akram, a key architect of resolution 16/18 and the Istanbul Process, made clear that the Istanbul Process had, to date, failed to address incitement against Muslims and consensus was now at breaking point. He argued that freedom of expression has clear limitations and must not be abused, pointing out that even the main proponents of this right [i.e. Western states] apply limitations when it's in their interests [e.g. European laws on holocaust denial].¹⁴³



OIC speakers therefore called for the establishment of new soft law instruments (e.g. a further UN declaration)¹⁴⁴ and/or mechanisms (e.g. an observatory, an open-ended working group of experts to discuss ICCPR article 20, a 16/18 support unit in OHCHR, or a new Special Rapporteur on hate speech) to strengthen implementation and address incitement.

Unsurprisingly, the meeting was characterised by ill-tempered exchanges between the OIC and key Western delegations. Sweden expressed concern that the meeting was ignoring the universality of human rights and focusing solely on Islamophobia or, as the Russian delegation saw it, 'creating a hierarchy of phobias.'¹⁴⁵ The US delegation, led by Ambassador Michael G. Kozak, expressed its disappointment that the discussion had returned to 'essentially the same debate we have witnessed for years prior to 16/18,' with the same states and individuals 'saying the same things,' a narrative 'reminiscent of the Cold War: the West against the Rest, and accusations that the West is failing to adequately limit freedom of expression.' It is assumed, he noted, that getting the 'so-called West' to adopt stricter implementation of article 20 of the ICCPR would 'somehow be a magic bullet to fix religious intolerance.'¹⁴⁶

Today, some diplomats wonder whether the Geneva meeting signalled the death knell of the Istanbul Process. One Latin American diplomat called it a 'disaster,'¹⁴⁷ while another said his country (an important member of the Council) would no longer participate.¹⁴⁸

Yet interviews with OIC representatives, conducted for this report, reveal a different reaction. According to one: 'the Geneva meeting may have been difficult, but we thought it was good, it was the first time we had had the opportunity to debate the issue of criminalising incitement with our Western partners.'¹⁴⁹

This difference of perspective goes back to the two sides' markedly different expectations of resolution 16/18 and the Istanbul Process.

For the West, in the words of Ambassador Kozak at the Geneva meeting, 'the goal of the Istanbul Process is to bring together and mobilise national expertise, discuss challenges, and develop best practice [...] we need to return to having meetings focused on domestic contexts, as the purpose is domestic implementation.'

For OIC states on the other hand, the goal is to have a 'space' for a 'candid and frank exchange of views'¹⁵⁰ on 'points of disagreement'¹⁵¹ – 'it is important not to side step difficult issues but to make an effort to address them.'¹⁵² Moreover, any discussion should be 'between states,'¹⁵³ at a political level, and not 'a local interfaith thing.'¹⁵⁴ This reflects the importance, for OIC diplomats, of 'being seen to be doing something – to show domestic audiences that we are having discussions with Western countries on these important issues.'¹⁵⁵

Today, as delegates look ahead to the Council's 28th session in March 2015, they do so with a palpable sense that resolution 16/18, and all that it stood for, may have reached the end of the line.

In the OIC, support for the '16/18 process' has been weakened by the departure from Geneva of most of the diplomats who crafted and defended the resolution. Partly as a consequence of this, and partly due to a perceived 'lack of progress on implementation,' there is a growing sympathy with the argument offered by sceptics that 'we are not getting anything from this process.'¹⁵⁶ The OIC has therefore begun to adopt a harder line. That position can be summarised as follows:

- the 16/18 action plan represents a package, not an *à la carte* menu;
- there should be a more regularised platform (i.e. Istanbul Process) for debate on areas of disagreement;
- there should be an international debate on freedom of expression limitations under articles 19 and 20 of the ICCPR;
- legal measures (in the West) against Islamophobia should be brought to the same level as anti-Semitism;
- there should be a balance between the Council's treatment of freedom of religion or belief, which has its own compliance mechanism – a Special Rapporteur – and its treatment of religious intolerance; and
- there should be a new international monitoring mechanism (e.g. an observatory).

Western countries, for their part, continue to attach importance to maintaining consensus on the '16/18 approach,' partly because they genuinely see the resolution as a useful framework for combatting intolerance, and partly because they wish to avoid a return to defamation of religions. But there is little desire to continue discussions on articles 19 and 20 of the ICCPR (which, in their view, should in any case be dealt with elsewhere, namely as part of the Rabat Plan of Action – see box 2), and there is frustration with the OIC's continued insistence that Islamophobia in the West is somehow of greater concern than intolerance towards religious minorities in OIC states. This view was neatly summed up by President Barack Obama in a speech to the General Assembly in September 2012: 'the future must not belong to those who slander the prophet of Islam. But to be credible, those who condemn that slander must also condemn the hate we see in the images of Jesus Christ that are desecrated, or the churches that are destroyed, or the Holocaust that is denied.'¹⁵⁷

BOX 2: THE RABAT PLAN OF ACTION

by Andrew Smith, Legal Officer at ARTICLE 19

To ensure the effective implementation of resolution 16/18, further work is needed at international and regional levels to deepen states' understanding of the international human rights standards that underpin it.

The scope of protection that should be afforded to the right to freedom of expression remains one of the most divisive issues at the Council. Initiatives to give strong recognition to the right are resisted by states pushing for greater controls over offensive or intolerant expression.¹⁵⁸ In particular, these efforts to qualify freedom of expression often misrepresent the scope of Article 20(2) of the ICCPR requiring states to prohibit any advocacy of national, racial or religious hatred constituting incitement to hostility, discrimination or violence ('the obligation to prohibit incitement.') 'Responsibilities' are emphasised while 'rights' are abrogated with deliberate purpose.¹⁵⁹

The Rabat Plan of Action, drawing on the work of the Treaty Bodies and a series of expert seminars convened by the Office of the High Commissioner for Human Rights (OHCHR), provides a framework for understanding the obligation to prohibit incitement and a blue print for its implementation in-line with international human rights standards. Its significance in this regard has been recognised in recent iterations of resolution 16/18.¹⁶⁰

The Rabat Plan of Action advances an understanding of the obligation to prohibit incitement that regards proscription of expression constituting incitement as serving a very limited role as a last resort and stresses that there must be sufficient safeguards against abuse. Instead it focuses on promoting a climate of free and open discourse to prevent incitement, recommending a series of legislative, jurisprudential and policy responses to strengthen tolerance.



Several points of principle must be kept in mind when understanding both resolution 16/18 and the relationship between Articles 19 and 20(2) of the ICCPR, in particular that:

- Any prohibition on incitement must meet the three-part test set out in Article 19 (3) of the ICCPR;¹⁶¹
- Only the most severe forms of incitement warrant restrictive measures on expression, and only in the most extreme cases is criminalisation compatible with international human rights law. The Rabat Plan of Action advances a six-part test for use by prosecutors and judiciary for identifying the most serious forms of incitement that may warrant sanctions. The six considerations are: 1) the social and political context; 2) the speaker, for example his or her status and influence; 3) the intent of a speech act, as opposed to mere negligence; 4) its content or form, for example style or degree of provocation; 5) the extent of the speech, for example its public nature and the size of its audience; and 6) the likelihood and imminence of actually causing harm;
- Blasphemy laws are unproductive as they censure inter-religious dialogue and healthy debate about religion. International human rights law does not protect religions as such, or shield the feelings of believers from offence or criticism, and therefore laws on blasphemy must be repealed;¹⁶²
- It is impermissible to abuse prohibitions on incitement as a pretext to curtail criticism of the state, expressions of protest or dissent, or open debate, including in relation to politics and religion.¹⁶³

There is also, across the Western group, deep scepticism about the merit of establishing new international mechanisms to monitor religious intolerance, especially when state engagement with the existing reporting mechanisms has been so poor.¹⁶⁴ And finally, a significant number of Western states (particularly EU states) are deeply suspicious of any moves that (as they see it) might 'weaken' the Council's focus on freedom of religion (i.e. their own policy stream).

The conflict inherent in these two mutually-incompatible positions and worldviews lies at the heart of contemporary fragility of international consensus around resolution 16/18 and the current 'drift' apparent in the Istanbul Process.

PART V

DOMESTIC IMPLEMENTATION

While resolution 16/18 must be understood in the context of international politics, and expectations calibrated accordingly, it is equally clear that religious intolerance remains an enormously important human rights concern and the '16/18 action plan' is the international community's best and only¹⁶⁵ framework explicitly designed to confront it. It is also worth recalling that resolution 16/18 and its follow-up resolutions explicitly call on states 'to take (...) actions to foster a *domestic* environment of religious tolerance.'

So have they?

To answer this question, the URG has analysed the policy steps taken by 22 'focus countries'¹⁶⁶ to implement key parts of the 16/18 action plan, namely:

- paragraph 5(b): establish 'appropriate mechanisms within governments to, *inter alia*, identify and address potential areas of tension between members of different religious communities, and assisting with conflict prevention and mediation';
- paragraph 5(f): adopt measures 'to criminalise incitement to imminent violence based on religion or belief';
- paragraph 5(e): speak out 'against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence';

- paragraph 5(h): promote an 'open, constructive, and respectful debate of ideas, as well as interfaith and intercultural dialogue at the local, national and international levels.'

DOMESTIC IMPLEMENTATION: GENERAL PATTERNS

Before assessing the degree to which the 22 focus states have implemented these parts of the 16/18 action plan, it is useful to take note of four points.

First, resolution 16/18 is just that: a resolution. It is not an instrument of international (hard) law (e.g. a human rights convention) or even a very strong instrument of soft law (e.g. a UN declaration). When compared with the enormity of the contemporary challenge presented by religious intolerance, and the entrenched positions, practices and laws of many countries on matters of religion, it is clear that expectations of what a single human rights resolution can achieve should not be taken too far. 'It's just a resolution,' according to one Geneva diplomat; 'like many UN resolutions, it has hardly any impact at all on the ground.'¹⁶⁷

Second, linked with the above, no country surveyed for this policy report has established, or even co-opted, a dedicated domestic

process to oversee or coordinate domestic implementation of resolution 16/18. Indeed, of the countries interviewed, only Indonesia appears to have taken domestic steps beyond the norm for a UN human rights resolution—by translating the resolution into all local languages and sending it to over 400 different committees at national, provincial and local levels.¹⁶⁸ Notwithstanding, a number of states did organise inter-ministry consultations to assess their compliance with resolution 16/18 in the context of preparing for the first and second meetings of the Istanbul Process.

Third, as resolution 16/18 is, to a significant extent, a ‘diplomatic game, largely played out in Geneva,’ knowledge and awareness of the resolution among domestic policy-makers is extremely limited, particularly outside foreign ministries. Even among the resolution’s main sponsors, there is an admission that ‘16/18 is a foreign policy issue, led by the Foreign Ministry—other ministries don’t know about it.’¹⁶⁹

Fourth, again mirroring the ‘Geneva game,’ states have tended to ‘externalise’ the implementation of resolution 16/18 to fit their different pre-conceptions of what the resolution is, and what it is designed to achieve. For OIC states, the resolution is about combatting Islamophobia in the West, and thus implementation is something to be done by Western governments and other stakeholders (e.g. the Western media). For Western states, religious intolerance occurs where governments fail to respect freedom of religion and freedom of expression, with key OIC states featuring prominently on both counts.

During the negotiation of 16/18, and at the time of the launch of the Istanbul Process, there was perhaps a greater understanding that ‘implementation’ was something to be undertaken by all states on all sides. For example, during the Istanbul ministerial, Ambassador Zamir Akram of Pakistan acknowledged that: ‘at the same time we are asking for protection for Muslims living in the West, we must also be prepared to give the same treatment to minorities living in Muslim countries.’¹⁷⁰ Yet by the time of the Geneva meeting of the Istanbul Process, such introspection was conspicuous by its absence: ‘not one country said anything about implementation at home.’¹⁷¹

This externalisation of the fight against religious intolerance is illustrated by an analysis of statements mentioning religious intolerance delivered by 16 OIC and Western states¹⁷² during the second cycle of the Council’s Universal Periodic Review (UPR). Of 27 comments by Western states on the issue of religious intolerance, only 7 focused on the situation in fellow WEOG members; while of 20 comments by OIC states, 19 were directed at the West.

Western diplomats, in particular, appear to be losing patience with this, as they see it, ‘hypocritical situation.’¹⁷³ ‘The OIC

attacks the West and yet refuses any semblance of self-reflection or self-criticism,’ says one. ‘Sure, we can talk about profiling and harassment at European airports. But then we must also talk about the targeting of religious minorities in Pakistan. Unfortunately, OIC countries don’t seem to see this mismatch.’¹⁷⁴

Fifth, it is important to say a word about cause and effect. As will be seen, in some of the 22 ‘focus countries’ selected for this report, there is a discernable trend to change domestic policy in-line with parts of resolution 16/18. However, it is difficult to draw, with any degree of certainty, a direct causal link between the resolution and those domestic policy shifts. Rather, resolution 16/18 appears to be part of a complex feedback loop driven principally by developments on the ground and domestic political pressures. Those imperatives drive national policy responses and both are then reflected in international deliberations and the international community’s consensus position on the matter (encapsulated in resolution 16/18). This consensus position may then influence and guide further domestic change (though it is difficult to pinpoint evidence to this effect). ‘Resolution 16/18,’ according to a Western civil servant, ‘was reflective of policy-making, not *determinative*.’¹⁷⁵

Denmark offers a good example of this non-linear causal relationship. Over the past five years, the country has taken a number of important steps consistent with the provisions of resolution 16/18 paragraph 5. However, as a Danish observer concedes, ‘the motivation for acting on this wasn’t 16/18, it was domestic politics: the former government had already launched the anti-radicalisation plan before 16/18 was adopted, but, of course, the plan was in response to the same issues covered by—and which gave rise to—16/18, especially the fall-out from the Mohammed cartoons.’¹⁷⁶ Other examples include ‘16/18-consistent’ policy steps taken by Pakistan following the murders of Salman Taseer and Shahbaz Bhatti; steps taken by Norway after the mass-murders committed by Anders Behring Breivik; and actions by the UK in response to the murder of Lee Rigby.

And finally, where some level of ‘16/18-consistent’ policy change is discernable, it is generally at the level of strengthening the enforcement of existing laws, rather than introducing new ones. The report of the first meeting of the Istanbul Process in Washington DC recognised that ‘participating countries already have in place legal prohibitions of discrimination and violence based on religion or belief [...] Given the prevalence of these legal provisions, their effective enforcement was seen as more pressing than the need to adjust extant legal frameworks.’¹⁷⁷

IMPLEMENTATION OF PARAGRAPH 5(b): MECHANISMS WITHIN GOVERNMENT

No state surveyed for this report has established a dedicated mechanism within their government explicitly in response to the adoption of resolution 16/18. Nevertheless, many have established national mechanisms to address religious intolerance or—giving the issue a more positive spin—to promote religious harmony. In some cases these mechanisms have been established or strengthened in reaction to the same events and concerns that gave rise to resolution 16/18.

Indonesia, for example, has an elaborate institutional architecture to deal with religious intolerance. The Ministry of Religious Affairs has a dedicated section responsible for promoting religious harmony, and the government has also created an ‘Inter-religious Communication Forum’ that brings together leaders of local government and local religious leaders ‘to identify potential conflict among different religious followers and provide conflict prevention and mediation.’¹⁷⁸

In the **US**, the challenge of identifying and addressing potential areas of tension between members of different religious communities was particularly acute in the aftermath of 9/11. In that context, the government launched a number of initiatives to combat intolerance, especially against ‘members of Muslim, Arab-American and South Asian communities,’ including the formation of a ‘9/11 Backlash Taskforce’ in the Department of Justice.¹⁷⁹

Denmark has also taken steps to establish a dedicated national mechanism to identify and address potential areas of tension in reaction to a traumatic domestic experience. In the context of the backlash against the Mohammed cartoons, the government established a task force charged with monitoring incidences of intolerance and incitement, and engaging in outreach and mediations with religious leaders and communities.¹⁸⁰

In Latin America, **Argentina’s** National Institute Against Discrimination, Xenophobia and Racism (INADI), the board of which includes representatives of all major religious groups, investigates cases of religious discrimination, supports victims and assists with conflict prevention measures.¹⁸¹ **Chile’s** Oficina

Nacional de Asuntos Religiosos (ONAR);¹⁸² and **Mexico’s** General Directorate for Religious Associations (DGAR) and National Council to Prevent Discrimination (CONAPRED) play similar roles.¹⁸³

The benefit of establishing efficient national mechanisms to identify and respond to potential inter-religious flashpoints was made clear by the **UK** government’s handling of the murder of Lee Rigby in Woolwich in 2013, with national political leaders and religious communities effectively coordinating their efforts to promote calm and ‘change the narrative from division to tolerance.’¹⁸⁴

IMPLEMENTATION OF PARAGRAPH 5(f): CRIMINALISING INCITEMENT TO IMMINENT VIOLENCE

Taken at face value, paragraph 5(f) is already widely implemented by states, with the High Commissioner for Human Rights reporting that ‘advocacy of incitement to hatred is for the most part criminalized and often prohibited on several grounds, including on the grounds of religion or belief.’¹⁸⁵

It should again be pointed out that the introduction of measures to criminalise incitement was not necessarily caused by resolution 16/18. States already criminalised religious incitement before the adoption of resolution 16/18, either through constitutional provisions, the penal code (e.g. Canada, Malaysia, Turkey) or through specific legislation (e.g. UK Racial and Religious Hatred Act, 2006). This includes the US, which ‘contrary to what some states suggest [...] does criminalise incitement to imminent violence under the constitutional free speech standard is set down in *Brandenburg vs. Ohio*.’¹⁸⁶

Notwithstanding this apparently positive picture, it is important to underscore (following the Rabat Plan of Action) that when looking at ICCPR articles 19 and 20 and the prohibition of incitement to hatred, one should address both ‘incidents which reach the threshold of article 20’ but which ‘are not prosecuted and punished,’ as well as incidents where members of minority groups ‘are *de facto* persecuted, with a chilling effect on others, through the abuse of vague [...] domestic legislation,



Protest against the Danish cartoons, 2006.

jurisprudence and policies' (i.e. blasphemy laws).¹⁸⁷

In other words, for many (especially Western) stakeholders the effective implementation of resolution 16/18 also requires the repeal of domestic blasphemy laws (see box 3).

BOX 3: BLASPHEMY LAWS

As this report has shown, a key part of the UN debate over how best to combat religious intolerance is the relationship between freedom of expression and freedom of religion or belief. Sitting at the epicentre of this debate lie the world's 'blasphemy laws,' which prohibit forms of expression insulting or disrespecting to a religion, the religious feelings of individuals, forms of religious representation and/or religious figures or leaders.

An analysis of national blasphemy laws by Human Rights First has shown that 51 countries (over a quarter of all states) maintain them on their statute books.¹⁸⁸ 38 of these countries are members of either the UN's Asia Pacific (21) or Western Groups (17).

The implementation of blasphemy laws varies wildly, however. In some countries, such laws are in place but are rarely – if ever – applied. In Europe, for example, while 12 states¹⁸⁹ maintain blasphemy laws, the last formal prison sentence for blasphemy was in 1922.¹⁹⁰ In Ireland, there has been just one prosecution for blasphemy since 1855,¹⁹¹ despite recent controversy over the 2009 Defamation Act.¹⁹² In other states, however, blasphemy laws are frequently (and increasingly) implemented. Pakistan, for example, is reported to have charged an estimated 1,274 individuals with blasphemy between 1986 (when the constitution was amended to criminalise blasphemy) and 2010.¹⁹³ This marks a considerable increase on previous levels of prosecution, with just 14 blasphemy cases recorded between 1860 and 1986.¹⁹⁴

There is also considerable variation in the maximum penalties for blasphemy offences, ranging from a fine in 5% of cases, to imprisonment in 54% of cases (with sentences ranging from 1 month to 7 years), to the death penalty in 7% of cases.

IMPLEMENTATION OF PARAGRAPH 5(e): SPEAKING OUT AGAINST INTOLERANCE

One area where things have undoubtedly changed in-line with resolution 16/18 relates to the willingness of political and religious leaders to speak out against intolerance – largely because, unlike other parts of the action plan, states agree both on the 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'¹⁹⁵ in order to set a 'baseline from which society should operate.'¹⁹⁶

While it is yet again unclear to what extent 16/18 has been determinative or reflective of events on the ground, Figure 2 (p.32-33) nevertheless shows that 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.

During the 3rd meeting of the Istanbul Process in Geneva (2013), the Secretary-General of the OIC acknowledged this

improvement, noting 'a tremendous change in the position of the two sides [on matters covered by paragraph 5(f)] since 16/18 was adopted.' To illustrate this, he compared the muted reaction to the 'uncivilised [Jyllands-Posten] cartoons – a weak joint [EU-UN-OIC] declaration which satisfied no one,' with the more robust response to the 2011 'Innocence of Muslims' film – a response that had, equally importantly, been initiated 'in Brussels, not Jeddah.'¹⁹⁷ The February 2006 EU-UN-OIC statement had merely said the international community shared 'the anguish' of the Muslim world 'at the publication of these offensive caricatures,' and noted that 'freedom of the press entails responsibility and discretion.'¹⁹⁸ Faced with a similar situation six years later (and a year and a half after adoption of resolution 16/18), a joint statement by the EU, OIC, Arab League and African Union took a much stronger line:

*'We are united in our belief in the fundamental importance of religious freedom and tolerance. We condemn any advocacy of religious hatred that constitutes incitement to hostility and violence. While fully recognizing freedom of expression, we believe in the importance of respecting all prophets, regardless of which religion they belong to...We condemn any message of hatred and intolerance...We reiterate our strong commitment to take further measures and to work for an international consensus on tolerance and full respect of religion, including on the basis of UN Human Rights Council resolution 16/18.'*¹⁹⁹





IMPLEMENTATION OF PARAGRAPH 5(h): PROMOTING DEBATE AND DIALOGUE

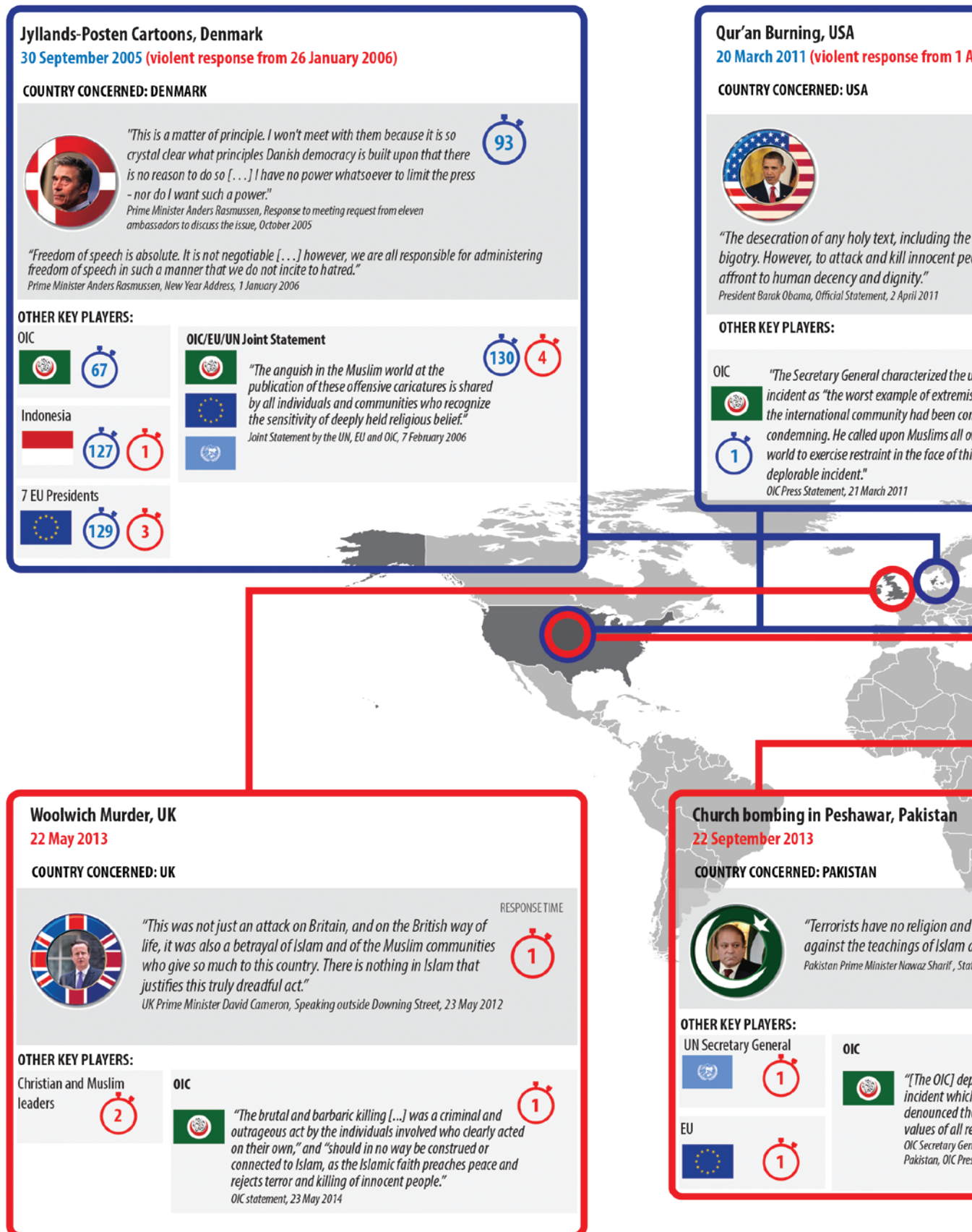
Paragraph 5(h) should be read at two levels. First, it should be read as an encouragement to states to promote interfaith and intercultural dialogue. Here, reference to the High Commissioner's report on the implementation of resolution 16/18 and debates during the four Istanbul Process meetings show that states have taken a wide range of steps. The US Office of Faith-Based Community Initiatives,²⁰⁰ the UK Inter-Faith Network,²⁰¹ Denmark's 'Your Faith – My Faith' campaign, the Inter-faith Bridging programme in British Columbia (Canada),²⁰²

Argentina's monthly religious freedom forum,²⁰³ Mexico's network of Interfaith Councils,²⁰⁴ Indonesia's domestic and bilateral interfaith dialogues, Pakistan's National Conference on Interfaith Harmony and the Islamabad Declaration,²⁰⁵ the King Abdullah Bin Abdullaziz International Centre for Inter-religious and Inter-cultural Dialogue in Vienna (established in 2011), and the annual Doha Conference for Interfaith Dialogue in Qatar²⁰⁶, are all indicative of 'more numerous, more robust and more confident'²⁰⁷ interfaith dialogues taking place across many of the focus countries analysed for this report.

Secondly, 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 these rights, it is clear that 'interfaith and intercultural dialogue[s]' risk being nothing more than public relations exercises that paper over deeper issues within and across societies.

FIGURE 2: SPEAKING OUT AGAINST RELIGIOUS INTOLERANCE

GLOBAL TRENDS IN SPEAKING OUT AGAINST 'INTOLERANCE, NEGATIVE STEREOTYPING AND STIGMATIZATION OF, AND DISCRIMINATION



Note: For image credits see inside front cover.

MINIATION, INCITEMENT TO VIOLENCE AND VIOLENCE AGAINST, PERSONS BASED ON RELIGION OR BELIEF.

(April 2011)

RESPONSE TIME



"Koran, is an act of extreme intolerance and people in response is outrageous, and an

"unfortunate sm" that consistent in over the s

UN Secretary General



Innocence of Muslims Video

Violent response from 11 September 2012*

COUNTRY CONCERNED: USA



"[The video's] message must be rejected by all who respect our common humanity. It is an insult not only to Muslims, but to America as well."

President Barack Obama, 25 September 2012

RESPONSE TIME



OTHER KEY PLAYERS:

European Union (EU)



UN Secretary General



EU/OIC/Arab League/AU (joint statement):



"We must ensure that the recent events do not undermine the relationships of trust and respect we have built up over so many years among our peoples, communities and state [...] We will continue our efforts to show that what joins us together across regions and religions is far greater than what separates us."

EU High Representative, OIC Secretary General, Arab League Secretary General, and AU Commissioner for Peace and Security, Joint statement on Peace and Tolerance, 20 September 2012

*Note: Since high-level statements were issued in response to the protests and violence, rather than simply the video itself, they tended to condemn both.

LEGEND

- Intolerant speech or action
- Acts of violence
- Response issued within x day(s) of intolerant speech/action
- Response issued within x day(s) of violence

targeting innocent people is and all religions."

Statement, 22 September 2013

RESPONSE TIME



explores the inhuman and dastardly targeted a place of worship act as a negation of the peaceful religions."

General Condemns Attack on Church in Peshawar, Statement, 22 September 2012



ISIL Beheading of James Foley, Iraq

19 August 2014

COUNTRY CONCERNED: USA



"ISIL speaks for no religion. Their victims are overwhelmingly Muslim, and no faith teaches people to massacre innocents. No just God would stand for what they did yesterday, and for what they do every single day."

President Barack Obama, Statement, 20 August 2014

RESPONSE TIME



OTHER KEY PLAYERS:

EU



FATWA issued by UK imams and scholars



OIC



"...the practices of ISIL have nothing to do with Islam and its principles that call for justice, kindness, fairness, freedom of faith and coexistence."

Statement by OIC, 22 August 2014





PART VI

UN POLICY TO COMBAT RELIGIOUS INTOLERANCE: HAS IT MADE A DIFFERENCE?

This policy report sought, at the outset, to understand whether—and how—the UN’s strategy to combat religious intolerance, incitement to violence and violence against persons based on religion or belief is working. In this context, it has paid particular attention to the implementation of resolution 16/18, as the latest incarnation of UN policies in this area that stretch back almost seventy years.

When considering this question, it is not enough to merely draw links (whether causal or not) between important UN policy initiatives such as the 16/18 action plan and shifts in government policy. It is also necessary to go one step further and ask the question: has international policymaking in the area of religious discrimination and intolerance, together with associated reforms at national level (where they exist), had a measurable impact on the ground? Have states, working at international and local levels, been able to ‘eliminate,’ ‘combat’ or, even, make a dent in global religious intolerance?

To help answer this question, the URG has undertaken a quantitative analysis of global trends in the area of religious discrimination and intolerance. Using data gathered by the Pew Research Center on government restrictions on freedom of religion (i.e. discrimination), and social hostilities involving

religion (i.e. manifestations of intolerance) for the periods mid-2006 to mid-2007, 2011, and 2012, the analysis suggests that despite decades of UN work to promote and protect freedom of religion and to combat religious discrimination and intolerance, both government restrictions and social hostilities continue to rise at an alarming rate, (see Figure 3).

In 2012, the year after the passage of resolution 16/18, acts of intolerance (i.e. ‘acts of religious hostility by private individuals, organisations or groups in society’) reached a new peak, with 33% of countries worldwide recording ‘high’ or ‘very high’ levels of social hostilities relating to religion—up from 29% in 2011 and 20% in 2006/7.²⁰⁸

Broken down, this dramatic worsening of the situation between 2006 and 2012, was the result of, inter alia, a significant increase in killings motivated by religious hatred or bias (such killings were recorded in 20% of states worldwide in 2012, up from 17% in 2011, and 13% in 2007)²⁰⁹; an increase in levels of physical violence resulting from religious tensions (such incidences were recorded in 29% of states in 2012—up from 21% in 2011, and 11% in 2006/2007)²¹⁰; and a significant growth in mob violence relating to religion (recorded in 25% of countries in 2012, up from 18% in 2011, and 12% in 2006/7).²¹¹

Similar patterns can be discerned in the evolution of government legal or policy restrictions on freedom of religion (i.e. discrimination). Such restrictions are both widespread and growing. According to Pew data, at the end of 2012, 76% of the world's population lived in countries with high-or very high-levels of government restrictions on freedom of religion,²¹² an 8% increase on 2006/7²¹³. 2012 saw 48% of governments use force against religious groups or individuals (up from 41% in 2011 and 31% in 2006/7).²¹⁴

This worsening of the global situation for freedom of religion fell particularly hard upon religious minorities. Abuse of religious minorities ('by private individuals or groups in society for acts perceived as offensive or threatening to the majority faith') was reported in almost half (47%) of all states in 2012 – a major increase on levels in 2011 and 2006/7 (38% and 24% respectively)²¹⁵ and a clear indictment of international efforts to 'eliminat[e] discrimination based on race, sex, language or religion' and 'protect [...] minorities' – two of the four priority human rights issues presented by ECOSOC in 1946.²¹⁶

Broken down by region (see figure 4), the highest levels of religious intolerance are to be found in the Asia-Pacific Group (APG). Nearly half (48%) of all states in the region have either 'high' or 'very high' levels of 'social hostilities involving religion.' The next highest is the Eastern European Group (EEG), with 43%. For the Western Group and the African Group, the figure is 31% and 29% (respectively), while in GRULAC it is just 6%. Across all regions, the problem of religious intolerance is getting worse over time: between 2007 and 2012, the APG saw a 28% increase in (average levels of) social hostilities related to religion (from an already high level), the African Group saw a 64% increase, and the Western Group saw a massive 99% increase.

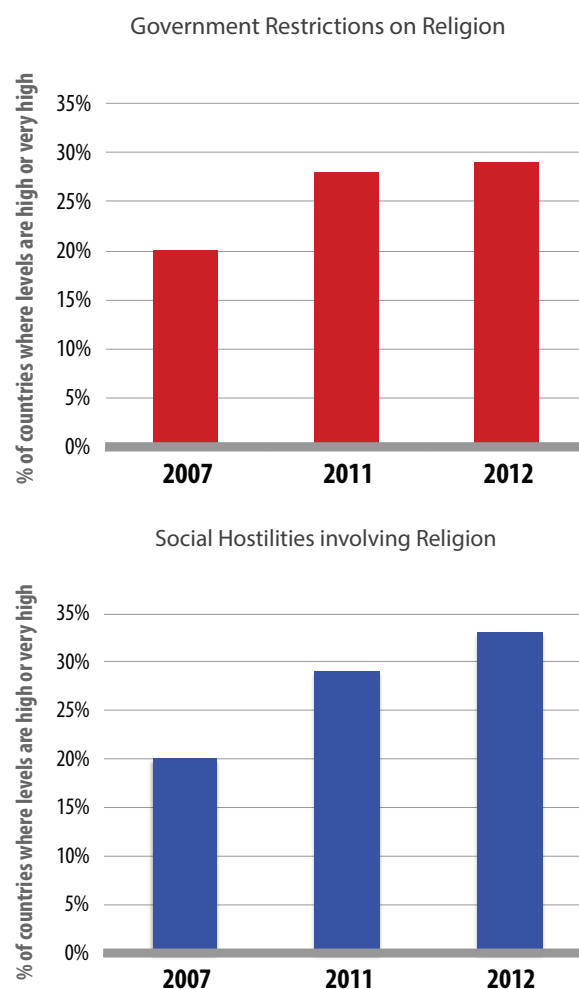
Broken down by some of the most important political and sub-regional groupings, 50% of OIC states display high/very high levels of intolerance, 67% of North African states,²¹⁸ 50% of Gulf Cooperation Council (GCC) states, 88% of South Asian Association for Regional Cooperation (SAARC) states, 50% of ASEAN states, and 36% of EU states.

Not coincidentally, the Asia-Pacific Group (APG) and the Eastern European Group (EEG) (the UN regional groups with the highest levels of religious intolerance) also have the highest levels of government restrictions on freedom of religion, along with the African Group (AG): 'high' or 'very high' levels of government restrictions were recorded in 58% of APG states and 26% of EEG and AG states in 2012. The Western Group and Latin America have relatively low levels of government restrictions on religion (14% and 3% of states, respectively, have 'high' levels of such restrictions, and no states have 'very high' levels).

Broken down by some of the most important political and sub-regional groupings, 63% of OIC states display 'high'/'very high'

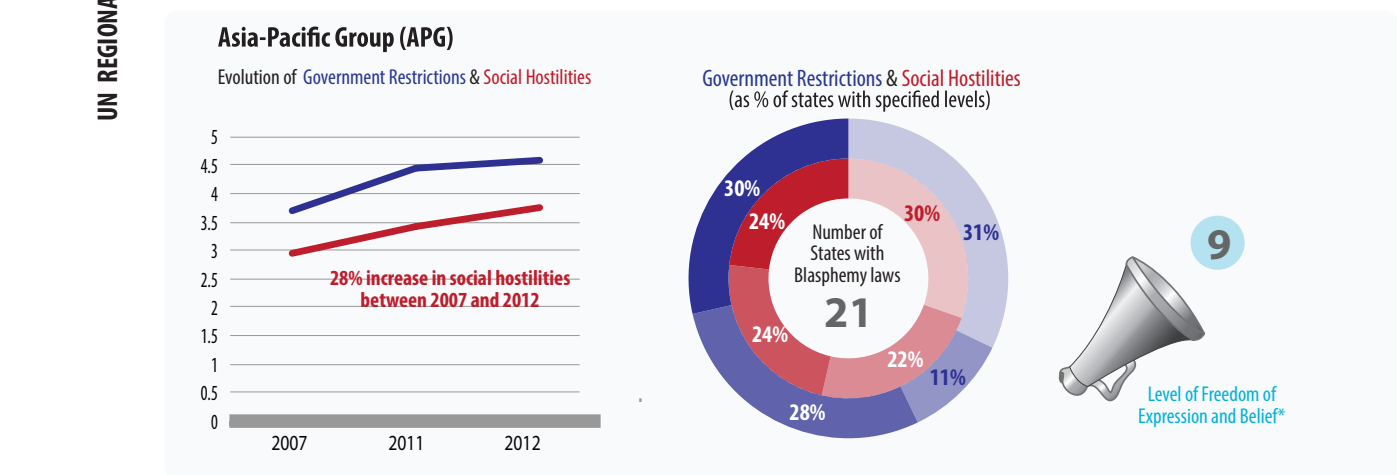
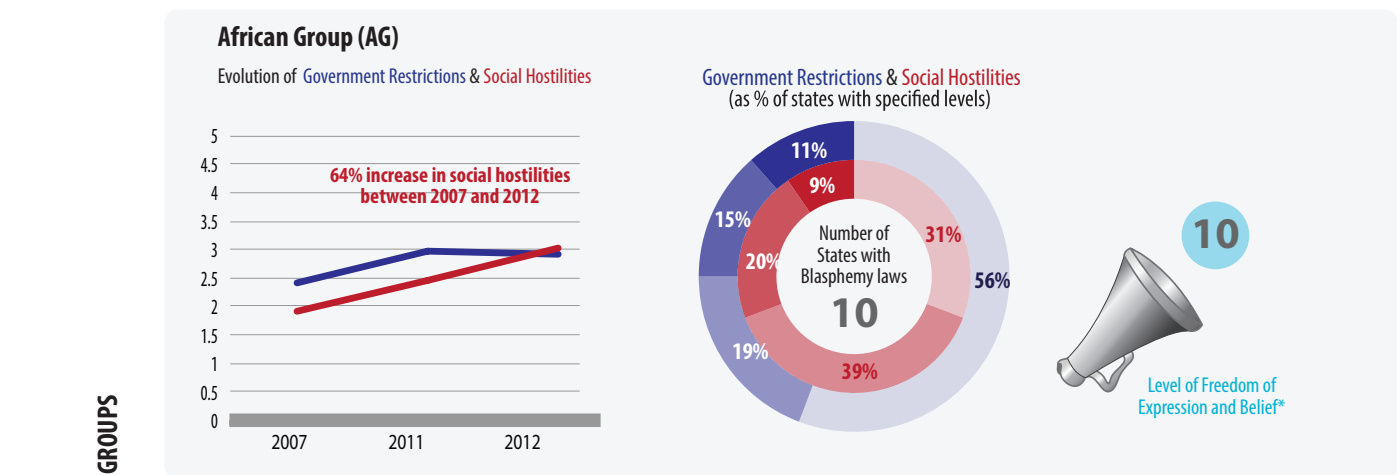
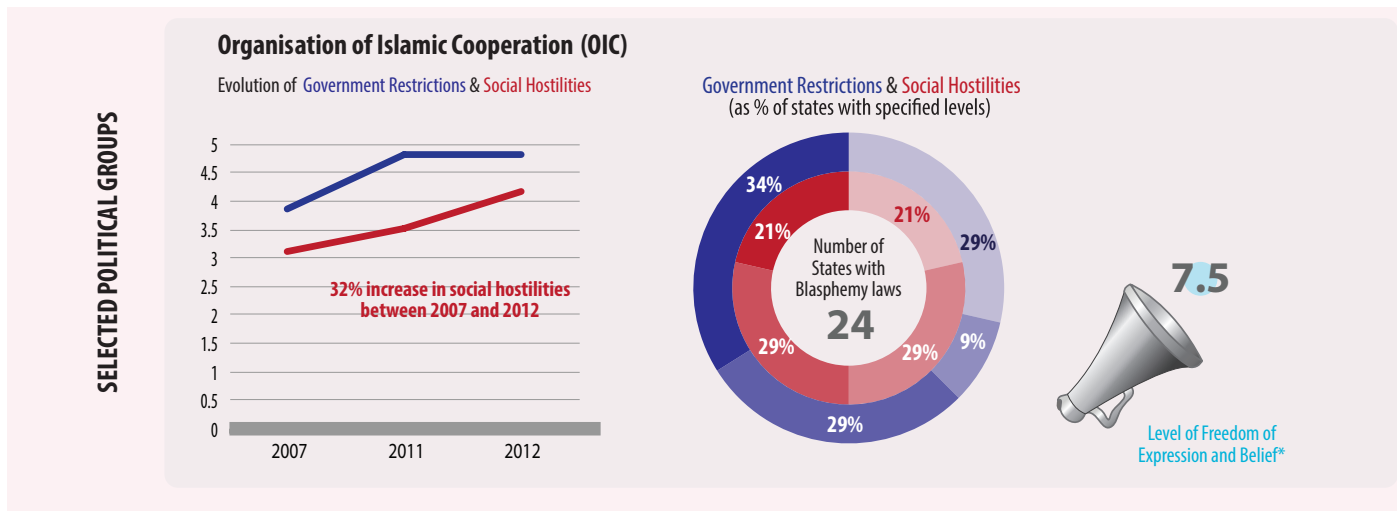
levels of government restrictions on freedom of religion, 100% of North African states, 100% of GCC states, 88% of SAARC states, 70% of ASEAN states, and 11% of EU states.

FIGURE 3: GLOBAL LEVELS OF GOVERNMENT RESTRICTIONS ON RELIGION AND SOCIAL HOSTILITIES RELATED TO RELIGION



Data source: Pew Research Center, Religious Hostilities Reach Six-Year High, January 2014.
Note: Data for 12 month periods ending June 2007, December 2011 and December 2012.

FIGURE 4: REGIONAL ANALYSIS OF GOVERNMENT RESTRICTION



Legend

Government Restrictions
Social Hostilities

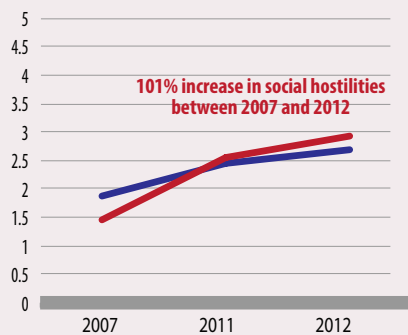
Very High
High
Moderate
Low

Data source: Pew Research Center, Religious Hostilities Reach Six-Year High, January 2014. Freedom House, Freedom in the World 2012.
Note: Data for 2012, unless otherwise specified.
*Freedom House "Freedom of Expression and Belief" index, 2012.

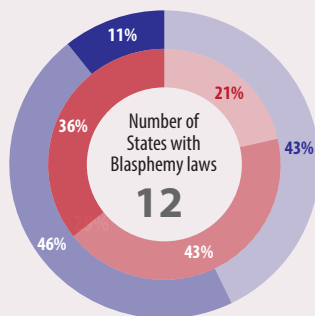
S AND SOCIAL HOSTILITIES RELATING TO RELIGION

European Union (EU)

Evolution of Government Restrictions & Social Hostilities

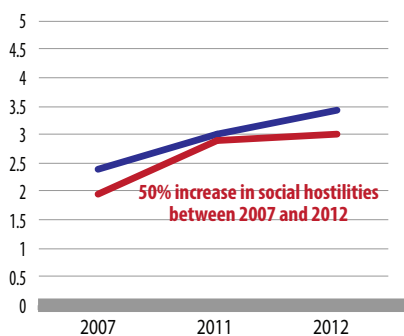


Government Restrictions & Social Hostilities
(as % of states with specified levels)

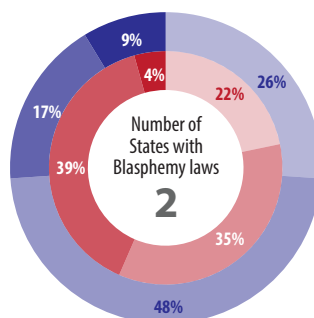


Eastern European Group (EEG)

Evolution of Government Restrictions & Social Hostilities

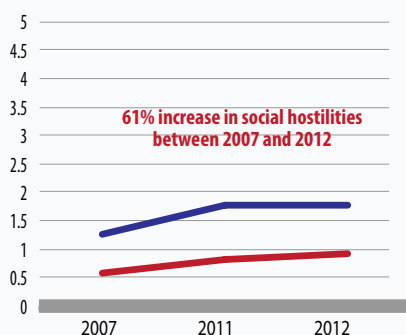


Government Restrictions & Social Hostilities
(as % of states with specified levels)

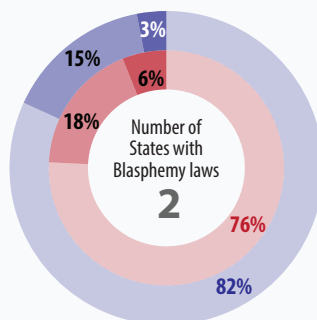


Latin American and Caribbean States (GRULAC)

Evolution of Government Restrictions & Social Hostilities

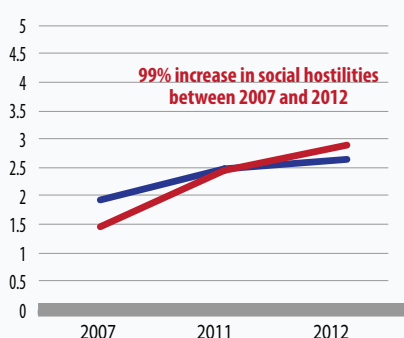


Government Restrictions & Social Hostilities
(as % of states with specified levels)



Western European and Others Group (WEOG)

Evolution of Government Restrictions & Social Hostilities



Government Restrictions & Social Hostilities
(as % of states with specified levels)

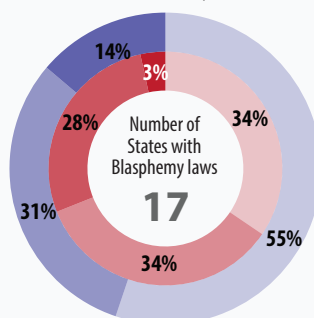
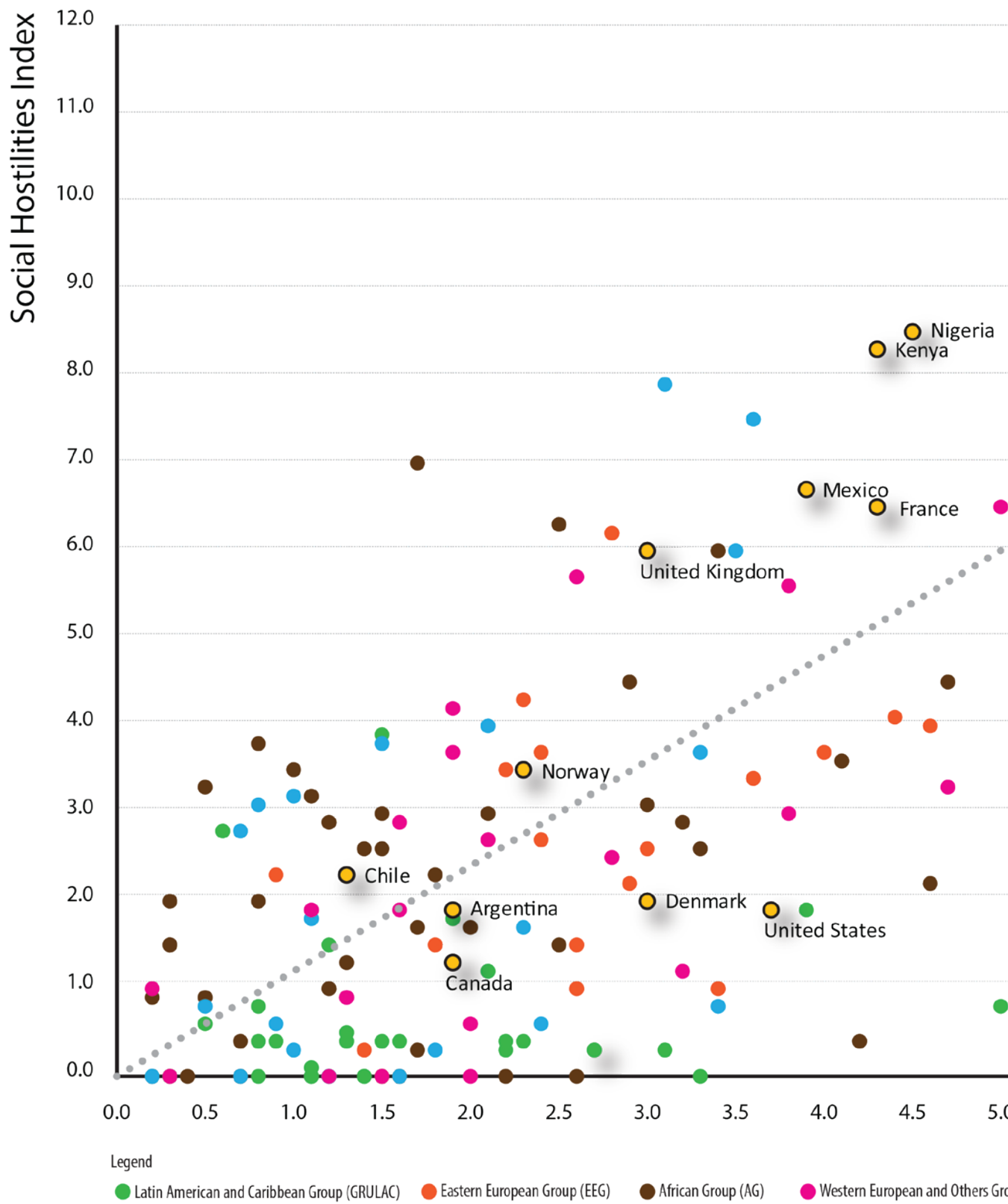
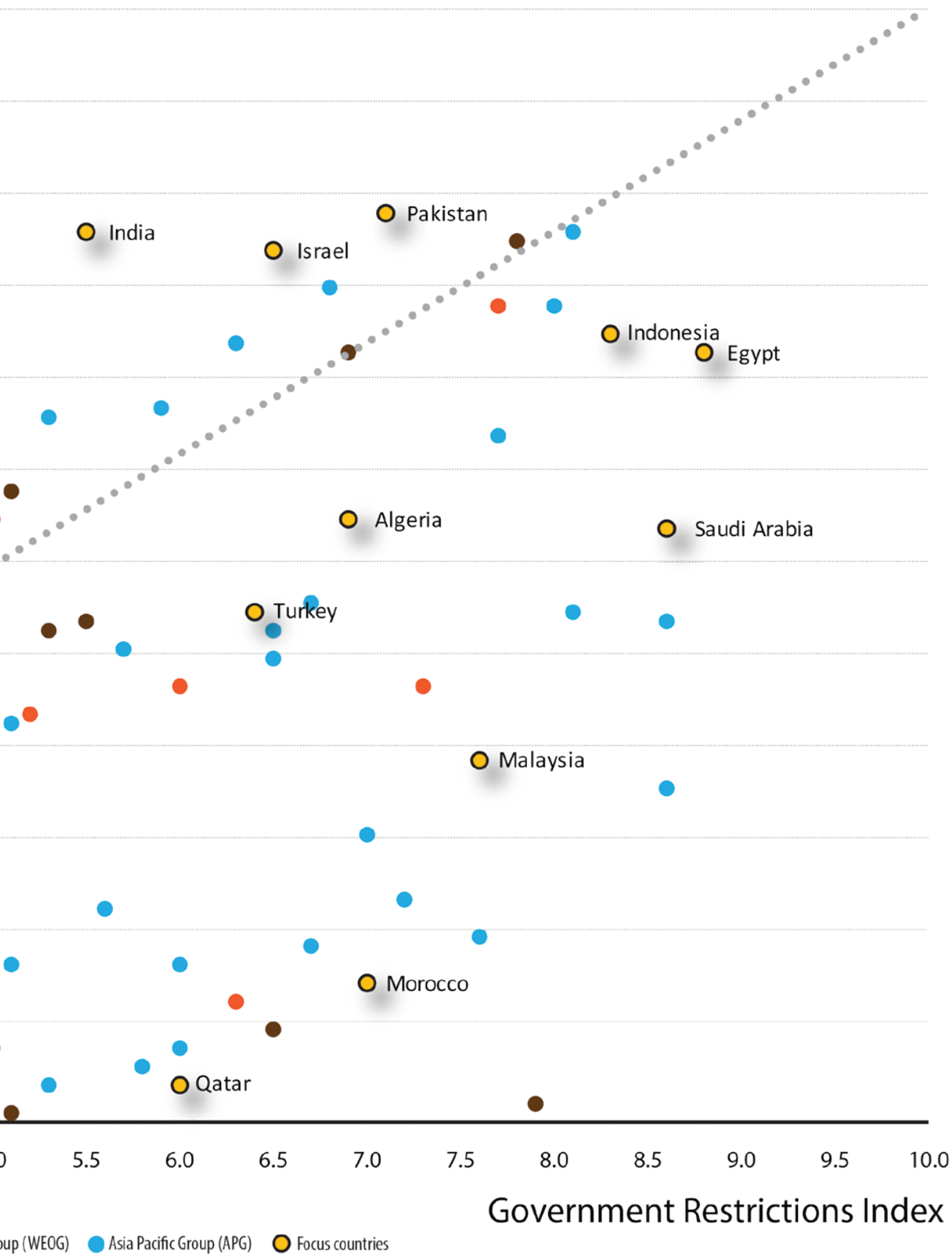


FIGURE 5: GOVERNMENT RESTRICTIONS ON RELIGION VS. SOCIAL HOSTILITIES



Data source: Pew Research Center, Religious Hostilities Reach Six-Year High, January 2014.
Note: Data for 2012.

AL HOSTILITIES INVOLVING RELIGION



Based on these figures, it is clear that there is a positive empirical relationship between levels of restrictions on freedom of religion, and levels of religious intolerance. Figure 5 demonstrates the strength of this relationship: where government restrictions on freedom of religion are very high, social hostilities tend to be very high also. Conversely, where government restrictions are low, levels of intolerance also tend to be low.

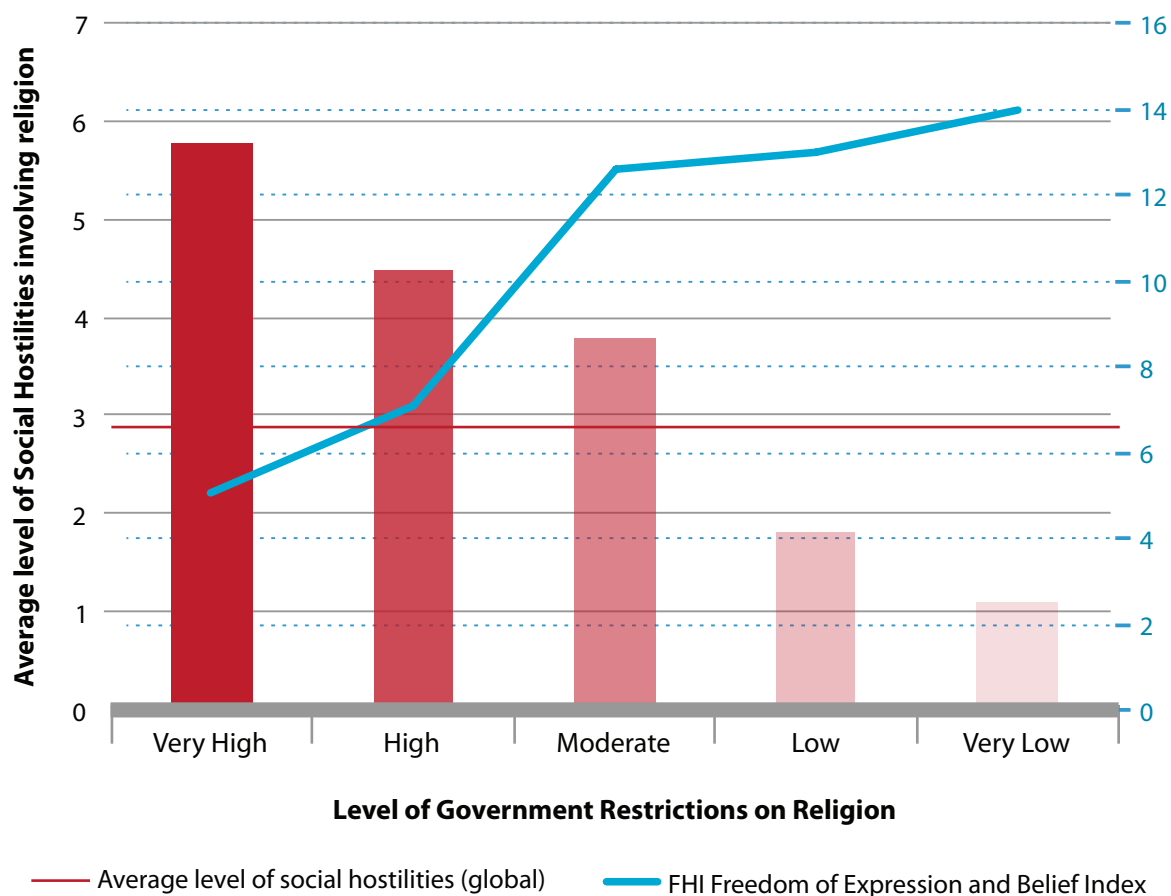
Furthermore, if one plots levels of freedom of expression (based on Freedom House's index for freedom of expression and belief²¹⁹) against these two variables, there is, again, a clearly discernible relationship (see figure 6): states which place high restrictions on freedom of religion also tend to place high restrictions on freedom of expression, and in states where both these core freedoms are restricted, incidences of religious intolerance tend, on average, to be far higher.

The political importance of this finding cannot be overstated. It strongly supports the Western contention that state efforts to combat religious intolerance must be built upon a foundation of respect for freedom of religion or belief, and for freedom of expression and opinion. URG's analysis also casts serious doubt over the OIC argument that government restrictions are necessary as a *response* to, and as a way of combatting, religious intolerance.

However, URG's analysis also supports the OIC argument that promoting respect for freedom of religion and freedom of expression is not enough on its own. As figure 4 shows, the Western Group has generally low levels of government restrictions on freedom of religion (86% of states have either low or medium levels of restriction) and low levels of restrictions on freedom of expression (a median score of 16 in the FHI ranking), yet still experiences a relatively high level of religious intolerance and hostility (31% 'very high'/'high'). What is more, levels of intolerance in the West have risen significantly over recent years – by around 99% between 2007 and 2012. This calls into serious question the West's (especially the EU's) default position in negotiations at the Council: that it is enough to keep passing annual resolutions about, and maintain a Special Procedure mandate focused on, freedom of religion or belief. If states are to strike a blow against intolerance, they must also take supplementary (and complementary) steps to strengthen policy (in line with resolution 16/18).

FIGURE 6: RELIGIOUS HOSTILITIES AND RESTRICTIONS, AND FREEDOM OF EXPRESSION

AVERAGE LEVEL OF SOCIAL HOSTILITIES AND AVERAGE FREEDOM OF EXPRESSION SCORE FOR STATES, GROUPED ACCORDING TO LEVELS OF GOVERNMENT RESTRICTIONS ON RELIGION



Data source: Pew Research Center, Religious Hostilities Reach Six-Year High, January 2014. Freedom House, Freedom in the World 2012.
Note: Data for 2012.



CONCLUSIONS AND RECOMMENDATIONS

As this report has demonstrated, the fight against religious discrimination and intolerance has been a top-level priority for the international community since the very foundation of the UN. When ECOSOC set down the terms of reference for the Commission on Human Rights in early 1946, it identified the ‘prevention of discrimination on grounds of race, sex, language or religion’ and ‘the protection of minorities’ as two of its four areas of focus. Taking up this mandate, one year later the Commission created the Sub-Commission on the ‘Prevention of Discrimination and Protection of Minorities’ as a focal point for driving international progress. Since that time, relevant organs of the UN have repeatedly reasserted the fundamental importance of effectively combatting religious discrimination and intolerance.

Unfortunately, as observers have regularly noted, the importance of the issue is matched by the ‘difficulties [inherent in] the subject-matter.’²²⁰ The consequences of these difficulties, and associated political and religious sensitivities, is evident in the slow – even stunted – evolution of UN action on religious intolerance when compared to the organisation’s relatively robust response to racial discrimination. To offer but one example of this dichotomy, after the GA decided to create instruments on racism and religious discrimination in 1962, states needed only three years to negotiate and adopt a (soft law) Declaration and a (hard law) Convention on the former, while it took 19 years of often arduous negotiation to adopt even a Declaration on the latter – a Declaration which, today, is largely forgotten.

The difficulties inherent in codifying matters of religion or belief have been amplified by deep and persistent political differences among and between states. Prior to 1990, the

epicentre of political friction sat at the junction of the Western and Communist blocs. Since then, politico-ideological tension has been increasingly replaced by politico-religious divergence – especially in the post 9/11 world.

Against this unpromising background, the scale of the achievement inherent in resolution 16/18 becomes clear. As this report has tried to demonstrate, the resolution’s in-built action plan, together with the Istanbul Process, offers a balanced and – in theory – workable normative framework for a more effective international response to religious discrimination and intolerance. The long and difficult history of the issue of human rights and religion at the UN should act as a warning to states to avoid further intergovernmental negotiation over the broad contours of that normative framework and instead focus on cooperating to promote compliance at a national-level.

That, after all, was the goal of the authors of resolution 16/18: to set aside old normative disputes in favour of practical action and progress. Yet today, as the international community looks ahead to the fourth anniversary of the resolution’s adoption, it is with a sense of *déjà vu* – the return of old arguments and grievances – and a related feeling that resolution 16/18 and the Istanbul Process may have reached the end of the line.

The core cause of these difficulties is a deep divergence of views on the question of implementation. The West and the OIC may agree that the 16/18 framework is not being implemented, but they disagree over why that is and who is to blame.

As the present report has shown, this difference of perspective goes back to the two sides’ markedly different expectations of

resolution 16/18 and the Istanbul Process. For the West, the goal is to take the normative base provided by resolution 16/18 – especially the call for states to improve respect for freedom of religion and freedom of expression – and implement it at national-level: to ‘mobilise national expertise, discuss challenges, and develop best practice [...] as the purpose is domestic implementation.’²²¹ For OIC states however, the agreement encapsulated in resolution 16/18 was the starting point for what they believed would be an on-going process of intergovernmental dialogue, especially on the issue of incitement. Flowing from this point, the goal of the Istanbul Process is to have a ‘space’ for a ‘candid and frank exchange of views’²²² on ‘points of disagreement.’²²³

If the 16/18 process is to survive, states – led by the original quartet of Council delegations – will need to come together to understand and acknowledge these differences, and find ways to accommodate them.

A useful starting point would be to dismantle the false divide that pits a Western-led initiative on freedom of religion against an OIC-led initiative on religious intolerance. Steps can also be taken to strengthen the Istanbul Process so that it retains its emphasis on domestic implementation, but also offers a ‘space’ for OIC countries to express and discuss their concerns about incitement. And government representatives must reverse the trend of ‘externalising’ the implementation of the 16/18 action plan, focusing instead on strengthening compliance at home.

If states choose to take these and related steps then, as this report has shown, the 16/18 process can deliver real change. Part IV identifies a wide-range of domestic best practices and policy reforms taken in-line with (though not necessarily as a direct result of) resolution 16/18. To offer but one example, there has been a clear and measurable improvement in both the willingness of political leaders to speak out against acts of intolerance, and the speed and sophistication with which they do so.

The human rights case for states to renew and re-energise the 16/18 process and build on these (albeit modest) on-the-ground

successes is overwhelming. Part V of this report shows that discrimination and intolerance directed against people of different faiths is getting steadily worse in almost every part of the world. Effective UN action to arrest and reverse such patterns, through the effective implementation of resolution 16/18 and through the complementary work of relevant human rights mechanisms, is urgently needed, especially in the globalised and interconnected world in which we live.

With the above in mind, the URG proposes the following set of recommendations for consideration by all stakeholders.

UN POLICY ARCHITECTURE

RECOMMENDATION 1 (STATES)

States – especially members of the EU and the OIC – should cooperate to dismantle the artificial divide that currently separates the UN’s work on promoting respect for freedom of religion from its work on combatting religious intolerance. This should include, as a first confidence-building step, decoupling the two sets of resolutions. Instead of the EU and the OIC both tabling their respective texts at each March session of the Council, drafts could be tabled on alternate years. A similar, complementary approach could be taken at the GA’s Third Committee. For example, in 2015, the OIC’s draft resolution on combatting religious intolerance could be considered (and adopted) by the Council, and the EU’s draft resolution on freedom of religion could be considered (and adopted) at the GA in New York. This arrangement would then be reversed in 2016.

RECOMMENDATION 2 (STATES)

In the medium- to long-term, states should consider ‘merging the two streams’²²⁴ so that the UN has a single, coherent policy covering the mutually-interdependent issues of freedom of religion, religious discrimination and religious intolerance. This might include tabling a single joint EU-OIC resolution each year

on 'human rights and religion or belief' and/or amending the current Special Procedure mandate to give greater weight to supporting the implementation of the 16/18 action plan. As well as promoting coherence, such steps would reduce the validity of arguments in favour of a new instrument (e.g. a new declaration or convention) or new mechanisms (e.g. an observatory).

Consideration might also be given as to whether 'it is necessary, in the long run, to have resolutions in New York as well as in Geneva.'²²⁵

RECOMMENDATION 3 (STATES)

Linked with recommendations 1 and 2, states should avoid a return to the initiative on 'defamation of religions.' The initiative achieved little beyond the polarisation of East and West and, as this report has shown, was unsound at a legal-theoretical level. That said, it is clearly important for the issue of incitement to be robustly - and transparently - addressed within the 16/18 process.

RECOMMENDATION 4 (STATES)

States should also avoid establishing new instruments or mechanisms on religious discrimination or intolerance in the absence of a solid evidential base showing that such measures would help. Regarding the former, it is clear from the history of UN efforts to address matters of religion and belief that the negotiation of a new UN declaration (as per the suggestion of the OIC Secretary-General at the Geneva IP meeting) would be fraught with difficulties. Similarly, a new mechanism such as an observatory may shed further light on the scale of the problem of religious intolerance, but would not help strengthen the international community's capacity to respond to such incidents.

MONITORING AND REPORTING

RECOMMENDATION 5 (RELEVANT SPECIAL PROCEDURE MANDATE-HOLDERS)

The current means of monitoring and reporting on the implementation of resolution 16/18 is weak. Relatively few states provide information on domestic steps taken, while the format of the resulting OHCHR report – essentially a compilation (with little analysis) of state inputs – does not support better implementation.

In truth, the nature of the relationship between OHCHR and the Council makes it doubtful that such reports will ever be able to fulfil the task required of them (i.e. to undertake an independent and impartial analysis of levels of implementation and to provide targeted advice on possible improvements). It would be better for this task to be assigned to a Council mechanism actually designed and established to undertake this kind of work:

namely, the Special Procedure mechanism.

With this in mind, relevant Special Procedure mandate-holders, including the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on freedom of opinion and expression, should consider preparing (if provided with the resources to do so) a joint report on the implementation of resolution 16/18.

RECOMMENDATION 6 (STATES, CIVIL SOCIETY)

Better use can and should be made of the UPR process to promote implementation of the 16/18 action plan and to report on progress. Concerned states should include information in their national reports on levels of implementation, and should make better use of UPR Working Group dialogues to make relevant recommendations to their peers (especially from their own groups and region).

National human rights institutions (NHRIs) and civil society should also include 16/18-specific analysis in their reports under the UPR.

RECOMMENDATION 7 (RELEVANT TREATY BODIES)

The Committee on the Elimination of Racial Discrimination and the Human Rights Committee may also wish to raise questions about 16/18 implementation during their regular dialogues with states.

ISTANBUL PROCESS

As Ambassador Donahoe noted in 2011, the strength and importance of the 16/18 approach lies not only in the resolution itself but in the fact that it is accompanied by a dedicated implementation mechanism: the Istanbul Process.

Unfortunately, over the course of four expert-level meetings, the Process has turned into a vehicle for repetitive arguments over what 16/18 implementation means in theory rather than what states need to do in practice. This has partly been down to the deliberate vagueness of the 16/18 action plan, but has also been caused by mistrust over the focus and agenda of the different meetings.

RECOMMENDATION 8 (STATES, CIVIL SOCIETY)

If the 16/18 process is to be re-energised, it is important for states to agree on a series of future Istanbul Process meetings – a series that would allow all parts of the 16/18 action plan to be addressed.

The meetings should remain expert-level, attended by 'real-world experts,'²²⁶ including 'capital-based experts from different

ministries,²²⁷ religious leaders, NGOs, NHRIs, journalists and academics. They should be focused on domestic implementation, though that does not mean that they should shy-away from political debate on the more sensitive or contentious parts of the action plan (for example, through high-level opening plenaries).

For example, future meetings of the Istanbul Process could include:

- A meeting in Rabat, Morocco focused on the relationship between the implementation of resolution 16/18 and the Rabat Plan of Action – one OIC diplomat suggested that such a meeting might promote a ‘convergence’ of views on the contentious issue of incitement.²²⁸
- A meeting at the European Commission (European External Action Service) in Brussels focused on experiences and lessons learned in the area of ‘speaking out’ against acts of intolerance.
- A meeting in Amman, Jordan, on how best to leverage and maximise the global impact of interfaith dialogue and understanding.
- A meeting in Santiago, Chile, focused on ‘mechanism[s] within governments to, inter alia, identify and address potential areas of tension.’²²⁹

RECOMMENDATION 9 (STATES)

The format of Istanbul Process meetings should also be reformed, so that for each meeting a geographically balanced group of states and civil society leaders are invited to present information about their national experiences, challenges faced and future plans.²³⁰ These case studies would form the basis of subsequent discussion and recommendation. As an OIC diplomat suggests, ‘Istanbul Process meetings should be more UPR-like, with states coming to present what they have done to implement 16/18 and then entering into a dialogue with other states.’²³¹

Some state representatives interviewed for this report suggested that, in order to make it more regularised and inclusive, the Istanbul Process should be transformed into a more formal process – such as a UN forum held each year in a different region. Others thought otherwise, suggesting that being outside the UN framework is an advantage.

RECOMMENDATION 10 (STATES)

As per the suggestion of the OIC Special Envoy at the Geneva meeting in 2013, each Istanbul Process meeting should end with a short communiqué reflecting progress made and ‘enumerating steps to be taken in the future.’²³²



NOTES

- 1 Opening Statement by Zeid Ra'ad Al Hussein United Nations High Commissioner for Human Rights at the Human Rights Council 27th Session, Geneva, 8 September, 2014.
- 2 Ibid.
- 3 Pew Research Center, Religious Hostilities Reach Six-Year High, January 2014.
- 4 Ibid.
- 5 U.S. Department of State, International Religious Freedom Report for 2013.
- 6 Council resolution 16/18, 'Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief,' 24th March 2011.
- 7 Named the 'Organisation of the Islamic Conference' prior to June 2011.
- 8 ECOSOC Resolution 1/5, 'Commission on Human Rights and Sub-Commission on the Status of Women,' 16th February 1946.
- 9 Commission on Human Rights, Report to the Economic and Social Council on the 1st session of the Commission, held at Lake Success, (New York, from 27th January to 10th February 1947), UN Doc. E/259(-SUPP), Chapter IV.
- 10 Ibid., Chapter III.
- 11 Report of the Fifth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights (New York, 22 September to 10 October 1952), UN Doc. E/CN.4/Sub.2/149, 'Resolution on Programme of Work of the Sub-Commission,' p.18-22.
- 12 Ibid., Annex I, Draft Resolution J.
- 13 Report of the Ninth Session of the Commission on Human Rights (Geneva, 7 April to 30 May 1953), UN Doc. E/2447, Annex IV, para. 15.
- 14 Ibid., para. 229, p.27.
- 15 Report of the Sixth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights (New York, 4 to 29 January 1954), UN Doc. E/CN.4/Sub.2/157, Resolution D, p.52-53.
- 16 Report of the Seventh session of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights (New York, 4 to 28 January 1955), UN Doc. E/CN.4/711, para. 114.
- 17 Report of the Eighth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights (New York, 3 to 20 January 1956), UN Doc. E/CN.4/721, para. 119.
- 18 Report of the Twelfth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights, (New York, 11 to 30 January 1960), UN Doc. E/CN.4/800, para. 35. The report itself can be accessed online at http://www.ohchr.org/documents/issues/religion/krishnaswami_1960.pdf.
- 19 Ibid., para. 51.
- 20 Ibid.
- 21 Ibid., para. 54.
- 22 Ibid. The term 'rules' was not accepted by the Sub-Commission, on the basis that its term 'normally connoted provisions which had a binding legal effect.'; Report of the Twelfth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights, (New York, 11 to 30 January 1960), UN Doc. E/CN.4/800, para. 51.
- 23 Ibid., para. 55.
- 24 Ibid., Resolution 1 (XII) 'Study in the Matter of Religious Rights and Practices,' p.51.
- 25 Commission resolution 4 (XVI) 'Draft principles on freedom and non-discrimination in the matter of religious rights and practices,' 15 March 1960.
- 26 Finland, India, the Netherlands, United Kingdom of Great Britain and Northern Ireland, Thailand and Venezuela.
- 27 Austria, Canada, Cameroun, Federal Republic of Germany, United States of America, Upper Volta and Yugoslavia.
- 28 'In this connexion (sic.) the Secretariat was requested by the Commission to give an opinion regarding the difference between a declaration and a recommendation as far as the legal implications were concerned. In response to this request the Office of Legal Affairs of the Secretariat submitted to the Commission a memorandum on the use of the terms 'declaration' and 'recommendation' (E/CN.4/L.610); Commission on Human Rights, Report of the Eighteenth Session (19 March-14 April 1962), UN Doc. E/CN.4/832/Rev.1, para. 105.
- 29 Ibid., para. 101.
- 30 Ibid., para. 108.
- 31 Sub-Commission resolution 3 (XII), 'Manifestations of anti-Semitism and other forms of racial and national hatred and religious and racial prejudices of a similar nature,' January 1960.
- 32 GA resolution 1510 (XV), 'Manifestations of racial and national hatred,' 12th December 1960. Despite its title, the resolution condemned 'all manifestations and practices of racial, religious and national hatred' as 'violations of the Charter...and the Universal Declaration of Human Rights.'
- 33 Report of the Thirteenth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights (New York, 10 January to 3 February 1961), UN Doc. E/CN.4/815, para. 172.
- 34 E.g. Mr. Sapozhnikov (USSR), in Summary Record of the Three-Hundred and Thirty-Fourth Meeting of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (13th Session), 27 January 1961, UN Doc. E/CN.4/Sub.2/SR.334, p.8. (This approach was not favoured by Mr. Hiscocks UK).
- 35 This was pursued through the Commission (resolution 5 (XVII), 10th March 1961) and ECOSOC (resolution 826 B (XXXII), 27th July 1961).
- 36 A suggestion which the GA did in fact act on, with resolution 1779 (XVIII) 'Manifestations of racial prejudice and national and religious intolerance,' 7th December 1962.
- 37 Draft A/C.3/L.1006 (see Report of the Third Committee 'Manifestations of Racial Prejudice and National and Religious Intolerance,' 22 November 1962, UN Doc. A/5305, p.4).
- 38 GA (17th session), Summary Record of the 1166th meeting of the Third Committee, 29 October 1962, UN Doc. A/C.3/SR.1166, para. 4.
- 39 The use of the plural 'conventions' here is interesting here and might suggest support for separate conventions on racism and religion; however when introducing the amendment, Liberia spoke of expanding the scope of the single proposed convention to include religion.
- 40 GA (17th Session), Summary Record of the 1168th meeting of the Third Committee, 31st October 1962, UN Doc. SR.1168, para. 38 (Liberia).
- 41 GA (17th Session), Summary Record of the 1171st meeting of the Third Committee, 2nd November 1962, UN Doc. SR.1171, para. 3 (New Zealand) & para. 8 (Pakistan).
- 42 Ibid., para. 17 (Saudi Arabia); GA (17th Session), Summary Record of the 1170th meeting of the Third Committee, 1st November 1962, UN Doc. SR.1170, para. 22 (UK) & para. 9 (Ukrainian SSR).
- 43 SR.1171, op. cit., para. 4 (Chile) & para. 19 (Iraq); SR.1170, op. cit., 1st November 1962, para. 29 (Poland).
- 44 SR.1171, op. cit., para. 23 (Mali).
- 45 Ibid., para. 32 (Saudi Arabia).
- 46 GA (17th Session), Summary Record of the 1173rd meeting of the Third Committee, 5th November 1962, UN Doc. SR.1173, para. 6 (Tunisia) & para. 12 (United Arab Republic).
- 47 Ibid., para. 19.
- 48 Ibid., para. 4 (Argentina).
- 49 Ibid., para. 33 (USSR).
- 50 Ibid., para. 5 (Venezuela).
- 51 This resolution, inter alia, took note that the Commission was 'preparing draft principles on freedom and non-discrimination in the matter of religious rights and practices.'
- 52 Bahiyyih G. Tahzib, Freedom of Religion Or Belief: Ensuring Effective International Legal Protection, (Kluwer Law International: The Hague, 1996), p.142.
- 53 Commission on Human Rights, Report of the 20th Session (17 February-18 March 1964), UN Doc. E/CN.4/874, para. 291.
- 54 Ibid., para. 10.
- 55 As requested by the Commission with resolution 2 (XX), 'Draft Declaration and draft Convention on the elimination of all forms of religious intolerance,' 13th March 1964.
- 56 GA resolution 2020 (XX), 1 November 1965.
- 57 Staff Study, UN Draft international convention on the elimination of all forms of religious intolerance, 6 J. INT'L COMM'N JURISTS 288, 292-93 (1965), p.293, quoted in Tahzib, op. cit., p.146.

- 58 Sub-Commission resolution 1 (XVII), Jan 1965.
- 59 Commission resolution 3 (XXIII), 'Draft convention on the elimination of all forms of religious intolerance,' 9th March 1967.
- 60 See summary records of 1486th (17th October 1967)-1514th (14th November 1967) meetings of the Third Committee (UN Docs. A/C.3/SR.1486-1514).
- 61 e.g. see comments of USSR delegate (paras 5-7) and Polish delegate (paras 21-22); GA 22nd Session, Summary Record of the 1489th meeting, UN Doc. A/C.3/SR.1489.
- 62 Adopted at 1505th meeting of the Third Committee, 3 November 1967.
- 63 Adopted at 1511th meeting of the Third Committee, 10 November 1967.
- 64 Adopted at 1511th meeting of the Third Committee, 10 November 1967.
- 65 GA resolution 2295 (XXII), 'Elimination of all forms of religious intolerance,' 11th December 1967.
- 66 Tahzib, op.cit., p.153.
- 67 H.A. Jack, *Eliminating all forms of religious intolerance: what the UN has done and can do*, New York: WCRP (1972), quoted in Tahzib, op. cit., p.153-4.
- 68 For more on this, see Tahzib, op. cit., p.154.
- 69 Third Committee resolution 3027 (XXVII), 18 December 1972.
- 70 This despite the fact that the draft of the Convention was more advanced, given that it had already been considered by the Commission.
- 71 GA Resolution 3069 (XXVIII), 'Elimination of all forms of religious intolerance,' 30th November 1973.
- 72 Commission on Human Rights, Report of the 30th Session (4th February-8th March 1974), UN Doc. E/CN.4/1154, para. 56.
- 73 B.B. Beach, *One S-L-O-W Step Forward: the UN Declaration on religious liberty, LIBERTY*, 1981, quoted in Tahzib, op. cit., p.157.
- 74 Commission on Human Rights, Report of the 34th Session (6 February-10 March 1978), UN Doc. E/CN.4/1292, para. 259 [33].
- 75 Ibid., para. 259 [39].
- 76 Warwick McKean, quoted in Tahzib, op. cit., p.159.
- 77 With Bulgaria, Belarus, Poland, Mongolia and the USSR abstaining.
- 78 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted by GA resolution A/RES/36/55 on 25 November 1981.
- 79 Interview with a Treaty Body member.
- 80 Commission resolution 1986/20, 'Implementation of the Declaration of All Forms of intolerance and of Discrimination Based on Religion or Belief,' 10 March 1986 (adopted by a roll-call vote of 26 to 5, with 12 abstentions), preambular para. 2.
- 81 Ibid., operative para. 1.
- 82 Ibid., operative para. 2.
- 83 Ibid.
- 84 Commission on Human Rights (42nd Session), Summary Record of the 29th Meeting, 24 February 1986, UN Doc. E/CN.4/1986/SR.29, p.16.
- 85 Ibid., para. 76.
- 86 Commission resolution 1987/15, 'Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,' 4th March 1987.
- 87 Commission on Human Rights (56th session), Summary Record of the 60th Meeting, 20th April 2000, UN Doc. E/CN.4/2000/SR.60, para. 34.
- 88 Michael Wiener, *The Mandate of the Special Rapporteur on Freedom of Religion or Belief – Institutional, Procedural and Substantive Legal Issues*, Religion and Human Rights 2 (2007) 3-17, p.4 & 11.
- 89 Commission on Human Rights, Summary record of the 61st meeting (29 April 1999), UN Doc E/CN.4/1999/SR.61, 3 May 1999, para. 1.
- 90 Amendments to draft resolution E/CN.4/1999/L.40 (by Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, UK), 22nd April 1999, UN Doc. E/CN.4/1999/L.90.
- 91 Commission on Human Rights, Summary record of the 62nd meeting (30 April 1999), UN Doc E/CN.4/1999/SR.62, 18 June 1999, para. 9.
- 92 Commission resolution 2001/4, 'Combating defamation of religions as a means to promote human rights, social harmony and religious and cultural diversity,' 18 April 2001, para. 3.
- 93 Commission resolution 2001/4 was eventually adopted by 28 votes in favour, 15 against and 9 abstentions.
- 94 Commission resolution: 2002/9 of 15 April 2002 was adopted 30-15-8; 2003/4 of 14 April 2003 was adopted 32-14-7; 2004/6 of 13 April 2004 was adopted 29-16-7; 2005/3 of 12 April 2005 was adopted 31-16-5. Human Rights Council resolution 4/9 of 30 March 2007 was adopted 24-14-9; 7/19 of 27 March 2008 was adopted 21-10-14; 10/22 of 26 March 2009 was adopted 23-11-13 and resolution 13/16 of 25 March 2010 was adopted 20-17-8. The General Assembly resolutions, however, were adopted by consensus, namely: 60/150 of 16 December 2005; 61/164 of 19 December 2006; 62/154 of 18 December 2007; 63/171 of 18 December 2008; 64/156 of 18 December 2009 and 65/224 of 21 December 2010.
- 95 Commission resolution 2001/4, op. cit., para. 2.
- 96 Council resolution 6/37, 'Elimination of all forms of intolerance and of discrimination based on religion or belief,' 14th December 2007, para. 18(a).
- 97 Ibid., para. 18(c).
- 98 Interview with an OIC diplomat.
- 99 Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance, 20th September 2006, UN Doc. A/HRC/2/3, para. 42.
- 100 The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information.
- 101 International Mechanisms for Promoting Freedom of Expression, Joint Declaration on Defamation of Religions, and anti-terrorism and anti-extremism legislation, available online at <http://www.osce.org/fo-m/35639?download=true>.
- 102 Interview with former OIC diplomat.
- 103 Statement of the OIC Secretary General, His Excellency Professor Ekmeleddin Ihsanoğlu before the 15th Session of the Human Rights Council (16 September 2010, Palais des Nations, Geneva).
- 104 The impasse in the OIC was only overcome when Pakistan, as co-ordinator, put the issue to a roll-call vote. This was the first and only time this has happened in the OIC to date. Tabling the resolution under the agenda item specifically concerned with racism and racial discrimination was a clear throwback to the days when the UN considered the issues of racial and religious discrimination jointly.
- 105 The OIC's previous resolutions on defamation had also been tabled under this agenda item, while EU's resolutions on freedom of religion or belief had been tabled under item 3, which deals with more general thematic issues.
- 106 Opening remarks by His Excellency the Secretary General during the High Level meeting on intolerance, January 22, 2013.
- 107 Interview with a Western diplomat.
- 108 Interview with a Western diplomat.
- 109 Statement of the OIC Secretary General, His Excellency Professor Ekmeleddin Ihsanoğlu before the 15th Session of the Human Rights Council (16 September 2010, Palais des Nations, Geneva).
- 110 'Internet Rights and Wrongs: Choices & Challenges in a Networked World,' remarks by Hillary Rodham Clinton, US Secretary of State, George Washington University (Washington, DC), February 15, 2011.
- 111 US Ambassador Eileen Donahoe, quoted in 'A roadmap for implementing UNHRC resolution on combating religious intolerance,' OIC Journal, Issue 18 (June-August 2011), p.5.
- 112 Joint Statement by the Co-Chairs of the Ministerial on Implementation of UN Human Rights Council Resolution 16/18 on Combating Intolerance, Discrimination, and Violence Based on Religion or Belief (Washington D.C.), July 15, 2011.
- 113 Remarks by the Russian delegation during the second working session of the 3rd Istanbul Process Meeting, Geneva, 20th June 2013.
- 114 Secretary Clinton on Combating Religious Intolerance, U.S. Department of State, Office of the Spokesperson, July 15 2011.
- 115 Ambassador Eileen Donahoe, quoted in 'A roadmap for implementing UNHRC resolution on combating religious intolerance,' OIC Journal, Issue no.18 (June-August 2011), p.5.
- 116 Maha Akeel, 'Free Speech vs. Incitement,' OIC Journal, Issue no.18 (June-August 2011).
- 117 Interview with a Western diplomat.
- 118 Interview with a Latin American diplomat.
- 119 Statement of HE Prof. Ekmeleddin Ihsanoğlu, the OIC Secretary General, at the Ministerial Meeting, held on 15 July 2011 at the IRCICA in Istanbul-Turkey.
- 120 Ibid.
- 121 GA resolution 66/167, 'Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief,' 19th December 2011; GA resolution 67/178, 'Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief,' 20th December 2012.
- 122 Council resolution 22/31, 'Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief,' 22nd March 2013.
- 123 GA resolution 66/167, op. cit.
- 124 Council resolution 25/35, 'Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against persons based on religion or belief,' 28th March 2014.
- 125 This is how it is often referred to by Pakistan.
- 126 Interview with an OIC diplomat.
- 127 Maha M. Akeel, 'Free Speech vs. Incitement,' in OIC Journal, Issue

- no. 18, p.2.
- 128 Interview with an OIC diplomat.
- 129 Interview with a Western diplomat.
- 130 Interview with a Western diplomat.
- 131 'The Istanbul Process for Combating Intolerance and Discrimination Based on Religion or Belief,' Implementing Human Rights Council (HRC) resolution 16/18, December Expert Level Meeting, background note, U.S. Department of State, Diplomacy in Action, www.humanrights.gov.
- 132 U.S. State Department, The 'Istanbul Process for Combating Intolerance and Discrimination Based on Religion or Belief' Implementing Human Rights Council (HRC) resolution 16/18 December Expert Level Meeting, p.2.
- 133 H.E. the OIC Secretary General's Message to the Washington Meeting on the Istanbul Process, 14th December 2011.
- 134 Interview with an OIC diplomat.
- 135 Statement by H.E. Prof. Dr. Ekmeleddin İhsanoğlu, Secretary General Organization of Islamic Cooperation at the High Level Segment of the 19th Session of the UN Human Rights Council, 28th February 2012.
- 136 Announcement: Conference on freedom of religion or belief, Foreign and Commonwealth Office. Available online at <https://www.gov.uk/government/news/conference-on-freedom-of-religion-or-belief>.
- 137 Opening remarks by His Excellency the Secretary General during the High Level meeting on intolerance, 22nd January 2013.
- 138 The Panel discussion on religious incitement (paragraph 5(f)) was chaired by H.E. Mr. Zamir Akram of Pakistan and one of the three panellists was Ambassador Idriss Jazairi of Algeria. The latter expressed regret that only three OIC members participated – Algeria, Pakistan and Indonesia.
- 139 Remarks by the OIC Secretary General during the opening session of the 3rd Istanbul Process Meeting, Geneva, 19th June 2013.
- 140 Remarks by Ambassador Idriss Jazairi (Former Permanent Representative of Algeria to the UN in Geneva) during the third working session of the 3rd Istanbul Process Meeting, Geneva, 20th June 2013.
- 141 Remarks by OIC Ambassador Slimane Chikh during the opening session of the 3rd Istanbul Process Meeting, Geneva, 19th June 2013.
- 142 Remarks by Ambassador Ömür Orhun (OIC Special envoy on combating intolerance and discrimination against Muslims) during the first working session of the 3rd Istanbul Process Meeting, Geneva, 19th June 2013.
- 143 Remarks during the opening session of the 3rd Istanbul Process Meeting, Geneva, 19th June 2013.
- 144 Proposed by the OIC Secretary-General, supported by Egypt, during the 3rd Istanbul Process Meeting, Geneva, 19th – 21st June 2013.
- 145 Remarks by Swedish and Russian representatives during the second working session of the 3rd Istanbul Process Meeting, Geneva, 20th June 2013. . In this regard, note Nazila Ghanea, 'Free Speech vs. Incitement,' in 'Phobias and 'Isms': Recognition of Difference or the Slippery Slope of Particularisms?' in N. Ghanea, R. Walden and A. Stephens (eds), *Does God Believe in Human Rights?* (The Hague: Martinus Nijhoff, 2007).
- 146 Remarks by US representative during the closing session of the 3rd Istanbul Process Meeting, Geneva, 21st June 2013.
- 147 Interview with a Latin American diplomat.
- 148 Interview with a Latin American diplomat.
- 149 Interview with an OIC diplomat.
- 150 Opening remarks by His Excellency the Secretary General [of the OIC] during the High Level meeting on intolerance, London, January 22, 2013.
- 151 Interview with an OIC diplomat.
- 152 Interview with an OIC diplomat.
- 153 Interview with an OIC diplomat.
- 154 Interview with an OIC diplomat.
- 155 Interview with an OIC diplomat.
- 156 Interview with an OIC diplomat.
- 157 Remarks by the President to the UN General Assembly, United Nations Headquarters, New York, 25th September 2012.
- 158 See, for example, 'UNHRC rejects attempts to dilute internet freedoms,' 26 June 2014, available at: <http://www.article19.org/resources.php/resource/37602/en/unhrc-rejects-attempts-to-dilute-internet-freedoms>.
- 159 See, for example, 'UNHRC must reject hostile amendments to resolution on peaceful protest', 27 March 2014, available at: <http://www.article19.org/resources.php/resource/37502/en/human-rights-council-states-must-reject-proposed-amendments-to-resolution-on-peaceful-protest>.
- 160 Council Resolution 25/34, 'Combating intolerance, negative stereotyping and stigmatization of, and discrimination against, persons based on religion or belief,' 28 March 2014 [adopted without a vote], operative paragraph 5.
- 161 General Comment No. 34, Human Rights Committee, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 52. According to Article 19(3) of the ICCPR, any restriction on the right to freedom of expression must be (i) provided for by law (ii) in pursuit of a legitimate aim, namely for respect of the rights of reputations of others or for the protection of national security or of public order (ordre public), or of public health or morals (iii) necessary in a democratic society and proportionate.
- 162 General Comment No. 34, op. cit., para. 48: '[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant' and that it would be impermissible 'for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.'
- 163 Committee on the Elimination of Racial Discrimination, UN Doc. CERD/C/GC/35, 26 September 2013, para. 20: 'broad or vague restrictions on freedom of speech have been used to the detriment of groups protected by the Convention [...] measures to monitor and combat racist speech should not be used as a pretext to curtail expressions of protest at injustice, social discontent or opposition.'
- 164 Just 24 states provided information 'on the efforts and measures taken by them for the implementation of the [16/18] action plan' and 'their views on potential follow-up measures for further improvement of the implementation of that plan' to the High Commissioner for her March 2014 report (submitted pursuant to Human Rights Council resolution 22/31), and 21 provided such information to the Secretary General for his 2012 report (submitted pursuant to GA resolution 66/167).
- 165 With the 1981 Declaration now largely forgotten, and the Special Procedures mandate increasingly focused on freedom of religion.
- 166 The 22 countries were selected based on two considerations. First, the level of their involvement and engagement with resolution 16/18 and the Istanbul Process, and second, the need for a somewhat balanced regional cross-section of states, representative of different religious traditions [notwithstanding the fact that most countries with an interest in resolution 16/18 and the issues it addresses are from just two regional/political groups: the Western Group and the Organisation of Islamic Cooperation (OIC)]. The countries chosen are: Argentina, Algeria, Canada, Chile, Egypt, Israel, Kenya, Mexico, Morocco, Nigeria, Denmark, India, Indonesia, Malaysia, France, Norway, Pakistan, Qatar, Saudi Arabia, Turkey, UK, US.
- 167 Interview with a Western diplomat.
- 168 Interview with an Asian diplomat.
- 169 Interview with an OIC diplomat.
- 170 'A Roadmap for Implementing UNHRC resolution on Combatting Religious Intolerance,' OIC Journal, Issue No.18 (June-August 2011), p.5.
- 171 Interview with a Western diplomat.
- 172 The OIC and Western 'focus countries' selected for this Policy Report.
- 173 Interview with a Western diplomat.
- 174 Interview with a Western diplomat.
- 175 Interview with a Western civil servant.
- 176 Interview with a Danish NGO.
- 177 Report of the United States on the First Meeting of Experts to Promote Implementation of United Nations Human Rights Council Resolution 16/18, December 2011.
- 178 Report of the High Commissioner for Human Rights, Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief, 6th March 2014, UN Doc. A/HRC/25/34, para. 53.
- 179 National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1 : [Universal Periodic Review]: United States of America, 23rd August 2010, UN Doc. A/HRC/WG.6/9/USA/1, para. 35.
- 180 Interview with Western capital-based expert; UK presentation at 3rd meeting of the Istanbul Process.
- 181 U.S. Department of State, International Religious Freedom Report for 2012.
- 182 Ibid.
- 183 Ibid.
- 184 Interview with Western capital-based expert.
- 185 Report of the High Commissioner for Human Rights, Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief, 6th March 2014, UN Doc. A/HRC/25/34, para. 127.
- 186 Interview with a Western capital-based expert.
- 187 Rabat Plan of Action, op. cit., para. 11.
- 188 Estimates vary, due to the varying definitions of the laws, but this analysis is based the Human Rights First 'Compendium of blasphemy laws,' available at <http://www.humanrightsfirst.org/resource/compendium-blasphemy-laws>. Pew Forum data suggests the figure for 2012 was 22%.
- 189 According to Human Rights First analysis, Ibid.
- 190 Brett G. Scharffs, International Law and the defamation of religion conundrum, *The Review of Faith & International Affairs*, 11:1, 67.
- 191 U.S. Department of State, International Religious Freedom Report for 2012.
- 192 What's more, the 2009 legislation was merely a legal clarification of the prohibition of blasphemy contained within the Irish constitution,

which could only be removed by referendum.

193 U.S. Department of State, International Religious Freedom Report for 2013.

194 Ibid.

195 Statement by US delegation during 3rd meeting of the Istanbul Process, Geneva 2014.

196 Statement by Pakistan delegation during 3rd meeting of the Istanbul Process, Geneva.

197 Statement by Secretary-General of the OIC during 3rd meeting of the Istanbul Process, Geneva 2014.

198 Press Release: 'Joint UN, European Union, Islamic Conference Statement shares "anguish" of Muslim World at Mohammed Caricatures, but condemns violent response,' 7 February 2006.

199 Joint statement on Peace and Tolerance by EU High Representative, OIC Secretary General, Arab League Secretary General, and AU Commissioner for Peace and Security, 20th September 2012.

200 Report of the High Commissioner for Human Rights, Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief, 6th March 2014, UN Doc. A/HRC/25/34, para. 125.

201 See <http://www.interfaith.org.uk>.

202 See <http://www.embracebc.ca/embracebc/funding/bridging/index.page>.

203 U.S. Department of State, International Religious Freedom Report for 2012.

204 Ibid.

205 Report of the High Commissioner for Human Rights, 6th March 2014 (UN Doc. A/HRC/25/34), op.cit., para. 71.

206 See http://www.dicid.org/english/10th_conference.php.

207 Interview with a Western diplomat.

208 Pew Research Center, op. cit., Overview, p.7.

209 Ibid., Appendix 5: Summary of Results, SHI.Q.1.a, P.84.

210 Ibid., SHI.Q.6, P.87.

211 Ibid., SHI.Q.2, P.85.

212 This is defined as 'government laws, policies and actions' restricting religious beliefs, practices and expression.

213 Pew Research Center, op. cit., Overview, p.8.

214 Ibid., p.14.

215 Ibid., p.10.

216 ECOSOC Resolution 1/5, 'Commission on Human Rights and Sub-Commission on the Status of Women', 16th February 1946. Note the two recent UN reports on religious minorities by the UN Special Rapporteur on freedom of religion or belief and the UN Special Rapporteur on minority issues: UN Docs. A/HRC/22/51 and A/68/268.

217 This data related to 2012.

218 African countries of the MENA region.

219 'Belief' in the context of the FHI index, refers to the freedom of people to express opinions on matters of religion or belief in public and in private.

220 Commission on Human Rights, Report of the Eighteenth Session [19 March-14 April 1962], UN Doc. E/CN.4/832/Rev.1, para. 108.

221 Remarks by Ambassador Michael G. Kozak (US) at the Third Istanbul Process meeting (Geneva, June 2014).

222 Opening remarks by His Excellency the Secretary General [of the OIC] during the High Level meeting on intolerance, London, January 22, 2013.

223 Interview with an OIC diplomat.

224 Interview with an EU diplomat.

225 Interview with an OIC diplomat.

226 Remarks by Professor Evelyn Aswad during the second working session of the 3rd Istanbul Process Meeting, Geneva, 20th June 2013.

227 Interview with an OIC diplomat.

228 Interview with an OIC diplomat.

229 Council resolution 16/18, op. cit., paragraph 5(b).

230 An approach advocated, at the 2013 Geneva meeting, by the OIC Secretary General, the EU delegation and Professor Evelyn Aswad.

231 Interview with an OIC diplomat.

232 Remarks by Ambassador Ömür Orhun (OIC Special envoy on combating intolerance and discrimination against Muslims) at the first working session of the 3rd Istanbul Process Meeting, Geneva, 19th June 2013.



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Universal Rights Group
Ch. du Grand-Montfleury 48
CH-1290 Versoix
Switzerland

T +41 22 755 14 56

info@universal-rights.org
www.universal-rights.org
@URGThinkTank

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