

## Which gets protection - belief or believer? The organisation of Islamic cooperation and the campaign against the 'Defamation of Religions'

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PRIF Report No. 136

# **Which Gets Protection – Belief or Believer?**

The Organisation of Islamic Cooperation  
and the Campaign against the ‚Defamation of  
Religions‘

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## Summary

In the mid-1990s, a number of different actors were seeking to defuse the increasing tensions between the Western and Muslim worlds. The new Iranian president, Mohammed Khatami, a moderate reformer, began a process of *rapprochement* with the West; the protagonists of the Oslo peace process were working towards a solution to the key conflict between Israel and the Palestinians; and the United Nations, responding to Samuel P. Huntington's warnings of an impending 'clash of civilizations', launched an initiative based instead on the 'dialogue of civilizations'. The Organization of the Islamic Conference (OIC) took advantage of this situation in order to promote one of its most cherished aims – the protection of Islam and Muslims from defamation, blasphemy, and discrimination – as a new human-rights norm within the Western-dominated, largely secular UN system. With fifty-seven Muslim or Muslim-influenced member-states, the OIC (renamed Organisation of Islamic Cooperation in 2011) is the second-largest intergovernmental body after the UN and claims to be the voice of the Muslim world. In 1999, Pakistan, acting on behalf of the OIC, for the first time brought before the Commission on Human Rights a resolution calling for a ban on the 'defamation of Islam'. After negotiations with Western states, this was adopted for the first time – without a vote – under the title 'Defamation of Religions'. The resolution condemns the negative, stereotypical depiction of religions, notably Islam, and calls on states to outlaw the 'defamation of religions'. It was adopted by various UN bodies (Commission on Human Rights, Human Rights Council, General Assembly) every year until 2011.

This report looks at the OIC's UN initiative in terms of an attempt to get a new norm established internationally using oppositional means. By opting for this strategy, the OIC set itself clearly apart from the sort of protests, boycotts, and threats of violence that had occurred at the end of the 1980s, in the wake of the publication of the novel *The Satanic Verses* by Indian-born British author Salman Rushdie. Whereas these protests can be seen as a form of international dissidence, in the sense of a radical resistance to the Western-dominated order, the path the OIC chose was one of opposition played out according to the rules of international institutions. Normatively, the OIC justified its initiative by reference to its role as one of the interpreters of Islamic tradition as it relates to human rights. In 1990, it had adopted the Cairo Declaration on Human Rights in Islam, a document advocating a notion of human rights bound to, and limited by, sharia – Islamic law.

Having initially prospered, the OIC initiative found itself under increasing criticism from Western countries in the wake of the terror-attacks of 11 September 2001. Chief amongst the criticisms was the claim that the concept of the 'defamation of religions' was in direct contradiction to the right to freedom of expression and freedom of the press. Human rights, it was claimed, afforded protection to individual believers, as repositories of human dignity; but shared ideas and beliefs, as exemplified in religions, were not exempted from defamation, satirical attack, or vilification. The OIC was also accused of using the UN initiative on defamation merely as a way of exporting the sometimes draconian blasphemy-laws of their member-countries to the international level. The OIC, for its part, argued that following the New York attacks, the situation of Muslims – particularly Muslim minorities

in Western societies – had suffered a massive decline because the ‘war on terror’ meant that they were now virtually under blanket suspicion. It was therefore necessary, they said, to use the resolution to provide these minorities with effective protection from discrimination, hatred, and defamation. But the OIC’s arguments did not cut any ice: after 2002, support for the resolution declined with each passing year.

Against the background of the gradual demise of the ‘defamation of religions’ resolution in the UN, the Danish cartoon crisis of 2005/2006 provided the OIC with a welcome opportunity to raise the matter from a different angle. Working in concert with the Egyptian government, the OIC played the key part, as an international body, in raising the status of the cartoon crisis from that of an internal Danish dispute to that of a worldwide political crisis. Although it cannot be accused of having deliberately endorsed the violent demonstrations and the arson-attacks on the Danish embassies in Syria and Lebanon, nonetheless, with its dogged campaign against the cartoons, the OIC facilitated the shift from UN-based attempts at opposition to a new phase of radical dissidence. After this, the protest against what was perceived to be the demeaning and defamation of Islam and its followers in the name of free speech and freedom of the press was to reignite itself repeatedly with further events and publications – from Pope Benedict’s supposedly anti-Islamic speech in Regensburg to the *Charlie Hebdo* cartoons.

In the meantime, attempts were being made at the international level to find a cooperative way to resolve the defamation versus free expression conflict. After phases of dissidence (Rushdie affair), opposition (OIC’s UN initiative), and renewed dissidence (cartoon crisis and subsequent events), the OIC, EU, and USA agreed to the introduction of a new, jointly drafted resolution that dropped the idea of the ‘defamation of religions’ and operated within the parameters of established human-rights legislation. Adopted by consensus for the first time in 2011, the new resolution – Resolution 16/18 – has brought with it the hope that some sort of compromise will be possible, at least at the diplomatic level, and that this compromise may result in relevant changes in national practice and legislation. But the consensus is still very fragile: at the various implementation-meetings relating to the resolution (what has become known as the Istanbul Process), the old dividing-lines between the OIC member-states and the West have once again opened up. Whether it will be possible to make any headway in finding an international solution that both satisfies the OIC and is capable of assuaging the international hostility to what is perceived as the defamation of Islam is as yet unclear.

As one of the major players in the Istanbul Process, the European Union should use every available opportunity to fight the latest attempts to reintroduce an anti-defamation agenda into the debate ‘through the back door’. Attention should in future be directed more towards getting the action-plan in Resolution 16/18 implemented and moving beyond the polarized theoretical debate.

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## 1. Introduction

When the authors of the Paris attack of 7 January 2015 opted for the editorial offices of the satirical magazine *Charlie Hebdo* as one of their targets,<sup>1</sup> this was not a random choice. Though not a high-circulation periodical, the magazine encapsulates, in a way that few others do, a culture of free speech in which neither politicians nor religious communities nor social institutions in general are spared from biting satire and criticism. And that includes Islam. Extremists had already carried out an arson attack on the offices in 2011, after the magazine had featured a cartoon of the Prophet Mohammed on its front cover. Refusing to be cowed by threatening letters and hate-mail, the editors had continued to put out their cartoons and articles, including some critical of Islam. The 7 January attack on the magazine's offices claimed the lives of twelve people, including four of France's best-known political cartoonists.

In France and far beyond, it was in exactly the symbolic sense suggested above that the terrorist attack on *Charlie Hebdo* was construed – in other words, as an attack on freedom of expression and freedom of the press, an attack on the basic rights at the heart of Western democracies. Previous events such as the 'Rushdie Affair' (1988) and the cartoon crisis (2005), which had also triggered violent protests and attacks, had been interpreted in the same way. At the funeral processions and solidarity rallies that took place following the acts of violence in Paris, millions of people demonstrated their determination to defend these freedoms by identifying themselves with the magazine, declaring 'Je suis Charlie' – 'I am Charlie'.

But the conflict between, on the one hand, the right to freedom of expression and freedom of the press and, on the other, the concern to protect religion – particularly Islam<sup>2</sup> – from denigration, insult, and blasphemy has not played out only at the level of social protest and acts of violence. Between 1999 and 2011, the OIC (Organization of the Islamic Conference – renamed Organisation of Islamic Cooperation in 2011) attempted to get the defamation of religion established as a new norm in the context of the UN human-rights

1 Their second target was a Jewish supermarket in Paris.

2 The conflict affects other religions as well – Christianity, for instance. Recent German examples here include a controversial cartoon of Jesus that was hung on the façade of the Caricatura Gallery in Kassel to advertise an exhibition and provoked massive criticism from the Christian churches (Spiegel Online, August 23, 2012, <http://bit.ly/1cRrK4j>). Witness also the controversy surrounding the award of the Hesse Culture Prize (Hessischer Kulturpreis) to Navid Kermani, who was accused by his fellow laureates Cardinal Karl Lehmann and the then Church President of the Protestant Church in Hesse and Nassau, the late Peter Steinacker, of defaming the Cross (FAZ, April 14, 2009, <http://bit.ly/1BfAAyM>). Again, in 2012, Pope Benedict XVI took the satirical magazine Titanic to court for its front-cover depiction of him with a yellow stain on his white cassock (Süddeutsche Zeitung, July 10, 2012, <http://bit.ly/1HQG5w7>). None of these events, however, triggered the same scale of transnational protest.



regime.<sup>3</sup> The OIC is the world's second-largest intergovernmental organization after the United Nations, currently comprising fifty-seven self-declared Muslim countries. In 1999, Pakistan, acting on behalf of the OIC, for the first time brought before the Commission on Human Rights a resolution calling for a ban on the 'defamation of Islam'. After negotiations with Western states, this was adopted for the first time under the title 'Defamation of Religions'. Variations of this resolution, with only minor modifications, were then introduced, and duly adopted, on an annual basis, initially in the Commission on Human Rights and later in the latter's successor, the Human Rights Council, and the UN General Assembly. Only in 2011 did the OIC give in to growing pressure from Western states and agree to an alternative draft resolution in which the notion of the 'defamation of religions' no longer figured.

What lies at the heart of both the OIC's UN initiative and the demonstrations, protests, and violent unrest is the clash between the right to freedom of expression and the demand that Islam be protected from denigration and blasphemy and that free speech be curtailed to achieve this. In this report, both forms of contestation will be interpreted as expressions of resistance by Muslim actors to the dominant Western secular world order and its underlying norms. In adopting this analytical perspective, the report pursues a line of argument put forward in a number of recent theoretical accounts in International Relations which assume that structures of rule exist at the international level as well, in the form of 'a structure of institutionalized superordination and subordination' which 'determines how life's goods and the potential to influence are distributed and stabilizes expectations in regard to compliance' (Daase/Deitelhoff 2014: 1). A necessary concomitant of political rule, irrespective of whether the latter has legitimate foundations and inspires voluntary allegiance or is imposed through coercion and oppression, is resistance – to particular policies, to structures and institutions, or to the order as a whole (Daase/Deitelhoff 2014: 11). Daase and Deitelhoff distinguish between two forms of resistance: opposition, which accepts the rules of the game imposed by the global system of rule; and dissidence, which operates outside these rules.

In promoting its initiative, the OIC has opted for the oppositional form of resistance. Its aim is to effect a change in the catalogue of human rights from within the UN system and it thus operates according to the rules of the established international institutions of global politics. By contrast, the protests, boycotts, and violent unrest in this area should be seen as expressions of dissidence, asserting itself outside the prevailing rules and institutions. The present report explores both forms of resistance but focuses particularly on the oppositional activities of the OIC, which have so far received little attention in the literature. What were

3 The international human-rights regime that has evolved within the framework of the UN is based essentially on three documents: the 1948 Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights (1966); and the International Covenant on Economic, Social and Cultural Rights (1966). In terms of institutions, the bodies chiefly responsible for implementing human-rights rules and norms are the UN Human Rights Council and the UN High Commissioner for Human Rights. See Donnelly 2013: 162.

the preconditions and motives for the OIC's anti-defamation campaign? What is the conflict essentially about? Why did the OIC campaign fail? And is there any interplay between the OIC opposition and the protests and violent behaviour engaged in by the dissident actors?

*Dissident and Oppositional Forms of Resistance to the Western Secular Order*

As mentioned at the outset, the attack on the offices of *Charlie Hebdo* was merely the latest in a series of clashes in which Muslim actors gave expression – on this occasion with lethal violence – to their disapproval and outrage at what they perceived to be the lack of respect shown by Western societies towards Islam. It should be noted that those who react to Western depictions of Islam<sup>4</sup> in this way are radicalized minorities. This is demonstrated, for example, in a study recently conducted by the Bertelsmann Foundation, which showed, in the case of Germany, that whilst Islamophobia is on the increase in German majority society, most Muslims actually place a high value on democracy and are open to the idea of religious diversity (Religionsmonitor 2015). Even in Muslim majority societies such as Tunisia, Lebanon, Pakistan, and Egypt, the picture is a much more diverse one than many media-reports suggest. Surveys indicate that there is a very high level of support for democracy and personal freedoms – and at the same time a desire that Islam should to some extent inform politics (Pew Research Center 2012).

The first clash between differing normative outlooks on freedom of expression came in the guise of the 'Rushdie affair'. 1988 saw the publication, by the Indian-born British writer Salman Rushdie, of his novel *The Satanic Verses*, in which, 'in a piece of ribald satire, [he] presents an allegorical dream-sequence involving the Prophet Mohammed' and recounts how 'twelve whores in a house of pleasure assume the names of the Prophet's wives in order to buck up custom'.<sup>5</sup> The book immediately prompted a wave of angry protest amongst Muslims all over the world, and many countries banned it. The strongest reaction, however, came from Iran: the revolutionary leader Ayatollah Khomeini issued a *fatwa* – an Islamic legal ruling – condemning Rushdie to death and calling on all Muslims to carry out the execution.<sup>6</sup> For Rushdie there followed years of fear and isolation: he was forced to hide away and regularly change his place of residence; his publishers received bomb threats; and the Japanese translator of *The Satanic Verses* was murdered. Relations between Iran and the West sank to an all-time low.

4 Countries such as Egypt and Iran also have political cartoonists. See Karim El-Gawahry, Wenn Bärtige zeichnen schwierig ist, in: taz online, January 24, 2015, [www.taz.de/!5023189/](http://www.taz.de/!5023189/) (January 25, 2015); see also Iranische Karikaturisten machen sich über IS lustig, in: Zeit Online, May 31, 2015, <http://bit.ly/1KSfzTA>, (July 2, 2015).

5 Almut Cieschinger (2009): Der Dichter und sein Henker. 20 Jahre Rushdie-Affäre, in: Spiegel Online, <http://bit.ly/1GjYHDD>, (January 16, 2015).

6 Other Islamic scholars – such as those from the Al-Azhar University in Egypt – objected to the *fatwa*.

In the mid-2000s, following the attacks of 11 September 2001, tensions once again arose between the Muslim and Western worlds, sparked by the issue of free speech. In 2005, the Danish daily newspaper *Jyllands-Posten* published a series of cartoons of the Prophet Mohammed, provoking a major diplomatic crisis and a series of violent disturbances and protests. In many Muslim-influenced countries, pictorial depiction of the Prophet is regarded as taboo. In 2006 in Regensburg, Germany, Pope Benedict XVI delivered a controversial lecture in which he cited a remark made by a Byzantine emperor to the effect that Mohammed had 'brought nothing but evil' because he preached that faith should be spread by the sword.<sup>7</sup> In 2008, the film *Fitna*, made by the right-wing populist politician Geert Wilders, caused outrage. In 2012, trailers for an amateur anti-Muslim film called *Innocence of Muslims*, made in the USA, appeared on YouTube. Furious protests erupted in the Muslim world and bomb attacks were carried out on US embassies and consulates in the Middle East, resulting in over thirty dead.

It was in the period between the Rushdie affair and the events of the mid-2000s that the OIC launched its initiative to establish a new UN-based norm requiring states to outlaw the 'defamation of religions'. To begin with, the initiative seemed to be a success for the OIC: in both 1999 and 2000, the Commission on Human Rights adopted the anti-defamation resolution without a vote. However, in the wake of the New York attacks, the concept of the defamation of religions came under increasing criticism, both from non-governmental organizations and from Western states, most notably the USA. From year to year, support for the resolution declined. In 2011, it was finally removed from the agenda and replaced with one entitled 'Combating Intolerance, Negative Stereotyping and Stigmatization of, and Discrimination, Incitement to Violence and Violence Against, Persons based on Religion or Belief',<sup>8</sup> which moved away from the concept of the defamation of religions. In 2005, in the same period during which the OIC was pursuing its internationally largely unremarked UN initiative, the Danish newspaper *Jyllands-Posten* published a collection of cartoons of the Prophet Mohammed and this marked a turning-point: the dissidence now entered a new phase of radical resistance in which the denigration of Islam in the name of free speech was met with protests and violence.

This report begins by describing the special status of the OIC in international relations as an organization which, since the 1990s, has increasingly intervened in the global human-rights debate as an exponent of Islamic tradition. Although from 2005 onwards there were signs that the OIC was aligning itself more closely to internationally codified human rights, the protection of the Muslim faithful from defamation, insult, and blasphemy and the struggle against Islamophobia remain amongst its key aims – even where they involve curtailment of press freedom and freedom of expression<sup>9</sup> In the sections that follow, I shall

7 For a verbatim version of the lecture, see <http://bit.ly/1GHhqXS> (March 7, 2015).

8 United Nations General Assembly, Human Rights Council, Resolution 16/18, April 12, 2011, <http://bit.ly/1Si1zVc> (October 14, 2015)

9 OIC Charter, Art. 1/12, <http://bit.ly/1HLe8RY> (January 16, 2015).

analyse the motives and conditions underlying the OIC campaign. In terms of motives: besides the concern to improve the situation of Muslim minorities beyond the borders of the Muslim world, the prime factor at work here is the often harsh blasphemy-legislation in force in many of the organization's member-states, which serves the governments in question as a repressive instrument for maintaining power. A new norm prohibiting defamation would lend these laws international legitimacy. From this point of view, the initiative in the UN serves to consolidate authoritarian regimes in the member-states. But it was the historical context in the 1990s – which brought with it an at least partial opening-up of the UN to dialogue and compromise with the Muslim world – that first enabled the OIC to express its objections to particular Western secular norms from within the system, using the tools of opposition. This tends to confirm the hypothesis that where there is increased opportunity for involvement and increased space for objection, there will be a de-radicalization of dissidence into opposition (Daase/Deitelhoff 2014: 13).

This process, however, is not irreversible. After only a few years, following some initial successes in the relevant UN forums, the OIC initiative began to lose support amongst other UN members. The increasing rejection of the initiative by other states reduced the scope for involvement. Although the OIC did not itself subsequently become a dissident actor, it played a decisive stimulatory role in the escalation of events during the 2005 cartoon crisis. Against this background, the present report reconstructs the course of the OIC's UN campaign between 1999 and 2011, examines its political, historical, and human-rights context, and explores the interplay between the campaign and the international protests and violent unrest that occurred in the wake of what were perceived to be blasphemous depictions of Islam in Western societies.

## **2. The OIC and International Human Rights**

Whether modern human rights, as laid down in the Universal Declaration of Human Rights and subsequent UN conventions, have universal validity is a matter of dispute. For differing cultural, intellectual, and religious reasons, critics argue that human rights are a product of Western culture and tradition and therefore cannot simply be transposed onto societies of different cultural or religious stamp. Thus, in the 'Asian values' debate of the 1990s, Asian countries claimed to have a culturally determined value-system of their own, in which collective rights were accorded preference over the individualism of human rights. In Islam too there are many who advocate a particularist interpretation of human rights, one derived from Islamic tradition and differing in a number of points from the international human rights of the UN system. One of the most important human-rights declarations to have emanated from the Muslim world is the 'Cairo Declaration of Human Rights in Islam', adopted by the OIC in 1990. In the sections that follow here, I describe the OIC, discuss its position in the human-rights debate, and, in conclusion, examine the blasphemy-laws in certain OIC member-states, which have exerted considerable influence on the OIC's anti-defamation campaign inside the UN.

## 2.1 The Voice of the Ummah? The OIC between Religion and Politics

As an international organization, the OIC is an anomaly. With fifty-seven member-states, it is the second-largest intergovernmental body after the UN.<sup>10</sup> At the same time, in contrast to regional organizations such as the African Union (AU) and the Association of Southeast Asian Nations (ASEAN), it does not represent a geographically definable area, its membership being distributed across four continents. Many OIC states, for example, are also members of the Arab League, a classic regional organization, but a good many are not. Again, the OIC is not held together by some functional interest, as is, say, a free trade zone. What is distinctive about the OIC, rather, is that it is defined by the Islamic orientation of its member-states – though this ranges in degree from constitutional embodiment of Islam as the state religion to the presence of a substantial Muslim minority and encompasses all the widely differing trends within Islam. Although in many respects the OIC functions in the same way that secular intergovernmental organizations do within international relations, its religious aspect sets it apart from other bodies: '[T]he idiosyncrasy of the OIC is categorical, for whilst adhering to the secular logic of multistate functionalism, its ideological source is reflected solely in terms of a religious attribute, that of Islam, and its purpose is guided by a single imperative, that of pan-Islamism' (Sheikh 2003: 16). Decisions are made by two-thirds majority of the assembly of member-states, regardless of whether the states that vote are Islamic by constitution or, like Turkey and Lebanon, explicitly secular. The 1972 OIC Charter stipulates absolute respect for the sovereignty, independence, and territorial integrity of member-states, bringing the OIC into line with the standards of the UN, from which it seeks recognition as a legitimate association of states.

The OIC came into being in the 1960s, at a time when allegiances in the Middle East were defined, as elsewhere, by the Cold War. From the 1950s, the pro-US Saudi royal house suffered a marked decline in power by comparison with the pro-Soviet revolutionary regimes such as those in Egypt and Syria. Towards the end of the 1960s, however, two events occurred which turned the tide. The defeat of the Arab armies in the 1967 June War against Israel was perceived as a gross humiliation and resulted in a weakening of the secular pan-Arabism of the pro-Soviet regimes. Then in August 1969, an Australian tourist carried out an arson attack on the Al-Aqsa mosque in the old quarter of Jerusalem, but neighbouring Arab countries suspected that Israel itself had masterminded this assault on one of Islam's most important holy places.<sup>11</sup> Both events seemed to testify to the inability of secular ideologies to defend the interests of Muslims and to the need to return to a pan-Islamic vision (Sheikh 2003: 36). Within the societies concerned, conservative interpretations of Islam began to gain in importance during this period, one of their most prominent exponents being Sayyid Qutb, the guiding light behind the Muslim Brotherhood

<sup>10</sup> [www.oic-oci.org](http://www.oic-oci.org) (October 14, 2015).

<sup>11</sup> See Haug von Kuenheim (1969), *Die Brandfackel von El-Aqsa*, in: *Die Zeit*, August 29, 1969, <http://bit.ly/1yRAJHE> (October 14, 2015).

in Egypt. On the international stage, it was primarily Saudi Arabia that pushed through the creation of the OIC, as a way of diminishing the influence of the secular pan-Arabists in the region.

The first Islamic summit – convened by Saudi Arabia, the Shah's Iran, Morocco, and Pakistan – was held in Rabat as early as September 1969. Twenty-four countries plus the Palestinian Liberation Organisation (PLO) took part in the meeting, which saw the foundation of what was then known as the Organization of the Islamic Conference. The founding members cherished widely differing national ambitions; the only thing that kept the OIC together in its founding period was its members' shared hostility to Israel. As a result, the issue of the holy places of Islam in Jerusalem – and thus also of the Israeli–Palestinian conflict – remained core themes of the OIC for decades.

Beyond this, however, the OIC hardly ever managed to speak with one voice. On the contrary, it was marked by a host of internal tensions and conflicts, reflecting the culturally, politically, and socially highly diverse nature of the countries that composed it. The early period was itself marked by internal rifts between Saudi Arabia, Iran, and Pakistan over the leadership of the OIC. Later on, member-states repeatedly found themselves on opposing sides in international events, crises, and (sometimes violent) conflicts. Examples here include the peace between Egypt and Israel, the conflict between Iran and Iraq, the Iraqi invasion of Kuwait, and the war in Afghanistan (Petersen 2012: 12; Wastnidge 2011). Again, the very different approaches of individual member-states to Islamist and Jihadist groups continue, even today, to be a source of tension. Whilst the OIC officially promotes a tolerant, moderate form of Islam and has vowed to combat terrorism, individual member-countries such as Sudan and Iran are suspected of lending support to terrorist groups (Haynes 2012: 54–55).

This lack of unity between member-states means that the OIC has not succeeded in achieving its goal – that of improving the status of Muslims worldwide – to the extent suggested by its own claims. As a result, its influence in international relations falls short of what one would expect from the second-largest intergovernmental organization in the world – a state of affairs reflected in the paucity of scholarly literature on the OIC (Haynes 2012: 53).

This still low level of visibility in international politics should not, however, blind us to the fact that since 2005 the OIC has been undergoing a remarkable transformation. In that year, the foreign ministers of the member-states elected the OIC's first General Secretary – the Turkish science historian Ekmeleddin İhsanoğlu. A ten-year action-plan was drafted, as a result of which sustainable development in the member-states, emergency aid, closer cooperation with other international organizations, and the fight against violent, extremist ideologies made their way onto the OIC's agenda.<sup>12</sup> The OIC's charter was also overhauled:<sup>13</sup>

12 <http://bit.ly/1FxcS4E> (October 14, 2015).

13 For the new version, see <http://bit.ly/1FhQRV1> (October 14, 2015).

it now made reference, for the first time, to human rights, to democracy and the rule of law, to equality before the law, and to women's rights (Hermann 2013) – though always in the context of Islamic values and without calling the sovereignty of member-states into question. It was also during Ihsanoğlu's tenure that the OIC's name was changed from 'Organization of the Islamic Conference' to 'Organisation for Islamic Cooperation' – a programmatic title signalling the upgrading of the organization from conference to distinct entity. Since this time, the OIC has increased its humanitarian help for people in regions of crisis and conflict such as Bangladesh and Somalia. Also remarkable have been its efforts to mediate between warring parties in conflicts such as those in Palestine, Afghanistan, and Niger (Hermann 2013). How the OIC will develop from here, under its new General Secretary Iyad Madani, the former Saudi Minister of Culture and Information, remains to be seen. Madani is reported to be a good deal more conservative than his predecessor Ihsanoğlu.

## 2.2 The OIC and Islamic Human Rights

Whether and to what extent a particular religion, or religion per se, is compatible with modern human rights as codified in the Universal Declaration of Human Rights and follow-up documents has been extensively discussed in the literature.<sup>14</sup> The present report, by contrast, will leave this issue to one side and instead follow the line adopted by Cismas (2014) in her book *Religious Actors and International Law*. Cismas makes the criticism that studies which pose the basic question of the compatibility of religion and human rights tend overwhelmingly to portray religions as static, monolithic entities. The scriptures of many religions have indeed remained unchanged over centuries, she says, but the interpretations and practices of religious communities are 'dynamic over time and diverse across space' (Cismas 2014: 2). As a result, religions encompass a broad spectrum of complementary, and sometimes contradictory, views on specific topics and issues: 'It is here where the role of religious actors as interpreters of religion(s) becomes central, because through interpretation they generate the dynamism and diversity of religions' (Cismas 2014: 3). Cismas construes religious actors such as the Holy See or the OIC as interpreters of religious tradition who also claim validity for their interpretations. Rather than simply extending the debate over the basic compatibility of religion, law, and politics, this approach allows one to analyse real actors and their interpretations of religious traditions as they relate to politics and law.

The OIC has been playing the role of interpreter of Islamic tradition as it relates to human rights since at least the time of the adoption of the Cairo Declaration on Human Rights in Islam in 1990<sup>15</sup> – despite the fact that such a function is not really provided for in

14 See Bucar/Barnett 2005; van der Vyver, Johan D./Witte Jr., John 1996; Runzo et al. 2003; Lerner 2006.

15 Text available at [www.oic-oci.org/english/article/human.htm](http://www.oic-oci.org/english/article/human.htm) (March 25, 2015).

its charter (Mayer 2015: 13).<sup>16</sup> The phenomenon of Muslim writers taking it upon themselves to justify human rights from an Islamic perspective is a recent one and can be seen as a reaction to the formulation of political and civil rights in Western societies. The various trends within Islam, taken in all their diversity, certainly have the philosophical concepts, humanistic values, and moral principles needed to construct a set of human-rights principles. However, the historically determined predominance of conservative strains of philosophy and theology in Muslim-influenced countries has pushed these potential sources into the background (Mayer 2013: 44).

In the discourse between Muslim and Western conceptions of human rights, there is, as in the ‘Asian values’ debate, disagreement as to whether such rights should be defined collectively or individually. As currently recognized at the international level, human rights are founded on the kind of individualism that has been a feature of Western societies since the dawn of the modern age.<sup>17</sup> Of course, this does not mean that such rights do not have an inherent social, communitarian dimension. The right to religious freedom, for example, always also encompasses the right to shared worship and the right to establish religious communities. Again, one of the goals of freedom of expression is, not least, to make it possible for citizens to engage in public discourse (Bielefeldt 1995: 591–592). Nonetheless, the assumption is that respect for human rights is something that applies to the individual and not to a collectivity – whatever its nature. In many Muslim societies, by contrast, traditional, communally oriented notions of rights held sway for many years (Donnelly 2013: 79–81).<sup>18</sup> This fundamental tension continues, even today, to be detectable in the various blueprints for Islamic human rights:<sup>19</sup> ‘[P]roponents of Islamic human rights schemes have tended to associate the defense of Islamic values with the rejection of individualism, and they have espoused principles – such as a ban on converting from Islam – that are designed to protect the collective at the expense of the individual’ (Mayer 2013: 44). The upshot has been a series of documents which, whilst cleaving to the prevailing

16 The claim to be offering an exposition of Islamic tradition that is applicable to present-day problems is, of course, one that is advanced by many other actors – the Leader of the Revolution in Iran, for example, or the Al-Azhar University in Egypt. On the other hand, there is no central authority of the kind that exists in Catholicism.

17 Donnelly points out that in view of phenomena such estate-based society, wars of religion, and, at a later stage, imperialism and slavery, Western culture could not be said to have been particularly predestined to give birth to human rights: ‘What we think of today as Western culture is largely a result, not a cause, of human rights ideas and practices’ (Donnelly 2013: 107).

18 Islam is not the only religion in a relationship of tension with modern human rights. It was not until the Second Vatican Council of 1962–65 that the Catholic Church finally made its peace with human rights, and particularly with religious freedom. See Heimbach-Steins 2012.

19 Examples are: the Universal Islamic Declaration of Human Rights, [www1.umn.edu/humanrts/instate/islamic\\_declaration\\_HR.html](http://www1.umn.edu/humanrts/instate/islamic_declaration_HR.html) (March 17, 2015), which was published in 1981 by the Islamic Council of Europe, a private organization based in London; and the legal provisions contained in the 1979 Draft Islamic Constitution for Egypt drawn up by the Islamic Research Academy in Cairo and in the 1979 Constitution of the Islamic Republic of Iran. See Mayer 2013.



orthodox-conservative interpretation of Islamic traditions, embraces and imitates the language of international human rights.

This is true of the Cairo Declaration on Human Rights in Islam, a non-binding OIC instrument adopted by the foreign ministers of the OIC member-countries in 1990. There is no challenge to Islamic law or sharia – deriving mainly from the Qur'an and the Sunna<sup>20</sup> – in the Cairo Declaration. On the contrary, the document cites it as the yardstick that determines the extent and substance of Islamic human rights (Bielefeldt 1995: 605). The last two articles (24 and 25) explicitly state that all the rights and freedoms contained in the Declaration are subject to sharia and that only sharia can serve as the basis for interpretation and exposition. At the same time, the Declaration forgoes any attempt to indicate exactly what is meant by 'sharia' and how the latter should be interpreted. This is a matter on which Islam's various schools of legal and theological thought disagree.

The Declaration's tie-in to sharia means that although many of its provisions seem at first sight virtually identical to those in the relevant UN human-rights agreements, they turn out to be limited by various restrictive clauses. By way of example: Article 2 prohibits the killing of other human beings – except for reasons prescribed by sharia; Article 7 allows parents a free choice in selecting the education they want for their children – provided this accords with the principles of sharia; and Article 22 guarantees freedom of expression – insofar as this does not violate the provisions of sharia, and safeguards freedom of information – provided this causes no detriment to the sanctity and dignity of the Prophet (Cismas 2014: 254–265; Mayer 2013: 80–81). A number of provisions present, for example, in the Universal Declaration of Human Rights and other UN documents, are simply absent from the Cairo Declaration.<sup>21</sup> Others fall markedly short of international human-rights standards. This is particularly true of the articles dealing with equality of the sexes and the protection of the family (Articles 5, 6, and 7). Also problematic from the point of view of UN human rights is Article 10, which prohibits any attempt to persuade a person to turn away from Islam (apostasy) and convert to other religions or to atheism. This directly contradicts the right to freedom of religion. By according absolute priority to sharia, the Cairo Declaration weakens or negates some of the fundamental provisions of international human-rights law (Bielefeldt 1995: 606). Although the Declaration itself does not sanction any human-rights violations, it opens the door to particular interpretations of sharia that allow for measures such as corporal punishment or the unequal treatment of women (Cismas 2014: 265).

Although to begin with the Cairo Declaration was enthusiastically promoted by the OIC, there were very few follow-up initiatives aimed at getting the catalogue of Islamic human rights implemented in member-states. This is largely explained by the fact that member-states are by no means agreed as to how sharia should be interpreted for the present age. In

20 Ways of the Prophet.

21 The right of free assembly, for example, or freedom of religion.

fact, the objections which the OIC countries have expressed in regard to human-rights conventions in the UN context reveal a wide spectrum of opinions here: '[S]haria law limitation clauses in the Cairo Declaration are not representative of the views and approaches of all OIC member states' (Cismas 2014: 274). Whereas some states indicate a willingness gradually to move closer to the international understanding of human rights, and regard a new interpretation of sharia as possible and necessary, others stick to a conservative exposition of sharia that reflects their own systems of justice. Equally, the regular reports in which the OIC states give details of the measures they have taken to implement UN human-rights agreements very rarely mention the Cairo Declaration as a benchmark. As a result, the influence which the Declaration has had on member-states has been minimal (Cismas 2014: 279).

It was only with the advent of the OIC's 2005 self-prescribed 'Ten Year Program of Action' that the approach to human rights, along with much else, was revised. One product of the processes of reform set in train by the action-plan was the creation, in 2011, of the Independent Permanent Human Rights Commission. It was hoped that the establishment of the Commission would see the OIC align itself more closely to international human-rights standards. Although the Preamble to the Commission's Statutes<sup>22</sup> still makes generalized reference to the Cairo Declaration, the rest of the text promises a new approach: '[T]here can be no doubt that the Commission relies on a conception of human rights that is closer to the UN Declaration on Human Rights than the Cairo Declaration, based as it is on an understanding of civil, political, cultural and economic right as outlined "in universally agreed human rights instruments"' (Petersen 2012: 29). The former General Secretary of the OIC Ihsanoglu had already stated, in a 2009 interview, that the Cairo Declaration needed to be revised 'in keeping with the current global human rights discourse' (quoted in Petersen 2012: 29). According to its Statutes, the new Commission is to be geared not so much to establishing an alternative system of human rights but more towards achieving integration into the existing system of human-rights legislation in the UN (Petersen 2012: 30). Its job, as a consultative body, is to support OIC member-states in fulfilling their human-rights obligations. The Commission is made up of eighteen independent human-rights experts from various member-countries. It does not itself have the power to issue binding directives, but it does have the right to make recommendations to the OIC Council of Foreign Ministers, who, where applicable, convert these into resolutions. In addition, it is charged with: overseeing cooperation between member-states on matters relating to human rights; facilitating the involvement of civil society; and strengthening cooperation with international institutions. By contrast, it is not mandated to investigate human-rights violations in OIC member-countries (Petersen 2012: 21).

To date, the Commission has held seven regular sessions. Initial analyses of its work from the point of view of the UN catalogue of human rights are not reassuring. The hope,

22 Statute of the OIC Independent Permanent Human Rights Commission, OIC/IPCHR/2010/STATUTE, <http://bit.ly/1IncUjo> (May 21, 2015).

cherished early on, that the establishment of the Commission would result in the OIC's aligning itself more closely to international human-rights standards is, it seems, not being fulfilled. Doubts in this regard are being fuelled, not least, by the changes in personnel at the top of the OIC and the Independent Permanent Human Rights Commission: in 2013, Ihsanoğlu was replaced by Iyad Madani as the OIC's General Secretary; and the Nigerian diplomat Kawu Ibrahim took the place of the Indonesian scientist and women's rights campaigner Siti Ruhaini Duhayatin at the head of the Commission. Whereas Ihsanoğlu and Duhayatin stood for an opening-up of the OIC to international human rights, the two new chiefs downplay the universality of human rights in favour of Islamic teachings (Kayaoglu 2015). At the opening of a 2014 session of the Commission, for example, Madani criticized the right to free expression and emphasized the determination of Muslim countries to ensure respect for the sanctity and integrity of religious values, scriptures, and personages (Kayaoglu 2015: 14).

Also of note is the Commission's almost exclusive focus on issues in which non-member-states are viewed as instigators of human-rights violations: the human-rights situation in the Israeli-occupied territories; the fight against Islamophobia in Western states; the effects of sanctions (especially US sanctions) on human rights in affected member-states; the human-rights violations perpetrated on the Muslim Rohingya minority in Myanmar as victims of discrimination (Kayaoglu 2015: 16). Meanwhile, the often none too impressive human-rights records of the OIC's own member-states have so far elicited only peripheral interest from the Commission. In addition, many of the Commission's official documents lack any reference to the basic UN human-rights conventions. Kayaoglu fears that this latest phase in the development of the Commission may bring with it a return to the OIC's anti-defamation campaign in the UN: 'The IPHRC's prioritization of combating Islamophobia also harkens back to the OIC's anti-defamation of religions efforts. Revisiting this campaign will be unhelpful and will also raise skepticism about the OIC's commitment to Resolution 16/18' (Kayaoglu 2015: 16).

### **2.3 Freedom of Religion and the Laws on Blasphemy in OIC Member-Countries**

The OIC's UN-based campaign against the 'defamation of religions' does not spring solely from OIC ideas and initiatives; it is also rooted in the national legislations of many of its member-states, under which blasphemy and apostasy – the renunciation of faith – is prohibited and in some cases subject to draconian penalties. Because of this, the specialist legal literature on the resolutions relating to defamation of religions often alleges that influential OIC member-states are merely using the organization to get their own blasphemy-laws internationally legitimized via the relevant UN bodies (Marshall 2011; Rehman/Berry 2012; Dobras 2008; Belnap 2011). They are thus choosing the path of opposition in the UN as a way of bolstering their power at home.

Laws that treat blasphemy as a punishable offence are by no means the preserve of the Muslim world. Traditionally, it has been mainly Christian countries that have legislated either to ban blasphemy altogether or to protect the particular religious community or

church that was dominant at the time. It is only recently that states such as Britain, Ireland, Greece, and Sweden have done away with their blasphemy-laws or begun largely to ignore them (Temperman 2008: 519–521; Siddique/Hayat 2008: 354–357). The German penal code makes blasphemy a punishable offence in cases where it occasions a breach of the peace. Convictions, however, are few and far between. By contrast, in India, Russia, and Sri Lanka, blasphemy-laws continue to be used as a means of preserving the religious monopoly of the dominant group (Graham 2009: 81).

In many OIC member-states too blasphemy-laws remain in force and are duly applied: countries such as Bahrain, Saudi Arabia, Morocco, Afghanistan, Iran, Jordan, Kuwait, Egypt, and Bangladesh have legal provisions – some of them of constitutional status – which either accord protection against defamation and blasphemy exclusively to Islam or else accord it *de jure* to all the Abrahamic religions (Judaism, Christianity, Islam) whilst *de facto* applying it for the most part only to Islam. Temperman concludes ‘that “the protection of religion” in some states – most visibly so in states that identify strongly with a single religion – functions as a ground for limiting fundamental rights, particularly the right to freedom of expression’ (Temperman 2008: 525). The prohibition of blasphemy has a long tradition in Muslim countries – just as it does in the European countries previously mentioned. The traditional schools of jurisprudence within Islam consider both blasphemy and apostasy to be grave breaches of the law. In their study on the correlation between the degree to which freedom of religion is either granted or denied by the state and the level of violent persecution of religious groups across the world, Grim and Finke (2011) identify apostasy and blasphemy as the areas in which Islamic law typically clashes with the UN conventions on religious freedom. This is because in the case of blasphemy the spotlight often falls on other religious minorities, who are accused of blaspheming against or insulting the dominant religion simply by virtue of practising their own religion. The fact that blasphemy-laws remain in force, and are regularly applied, in many Muslim countries, whereas in Europe they now have very little significance, is put down primarily to political motives. In general, governments across the world mostly place restrictions on the free exercise of religion when they see their own power or the prevailing social order under threat: ‘The state, of course, restricts the freedoms of religions perceived to be a threat to the social order or the ruling regime’ (Grim/Finke 2011: 6). Accusations of blasphemy or denigration of religion are generally directed against minorities that are perceived to be a threat to the ruling elite and the dominant religion and culture. As a result, blasphemy-laws become repressive instruments in the hands of authoritarian regimes (Belnap 2011: 13).

This is illustrated particularly clearly by the case of Pakistan, which has one of the most stringent blasphemy-laws in the world. It is also the country that first introduced the resolution on the ‘defamation of religions’ into the UN Commission on Human Rights on behalf of the OIC in 1999 and is its chief apologist. Like the resolutions on the defamation of religions, Pakistan’s blasphemy-laws are designed to protect not individual believers but religion per se – and in fact only Islam. It is not necessary to be able to prove discriminatory intent on the part of the alleged perpetrators and so, in Pakistan, the simple fact of religious minorities professing their own faith can be construed as an insult to, and a defamation of, Islam (Dobras 2008: 355–356). This is in direct contravention of the right to freedom of religion.

Blasphemy-legislation was first introduced into pre-partition India in 1927 by the British colonial authorities as a way of keeping religious tensions – chiefly between Hindus and Muslims – under control. After the partition of the subcontinent in 1947, the newly created state of Pakistan took over the legislation and incorporated it into its own legal system. However, during the military dictatorship of Mohammed Zia-ul-Haq (1977–1988), who sought to Islamize Pakistan and establish a theocracy (Siddique/Hayat 2008: 316), the legislation was narrowed to cover only the defamation of Islam and was massively tightened up. One of the paragraphs inserted into the law, for example, stipulates the death penalty for defamation of the Prophet Mohammed. In addition, since the time of the revision, those who have found themselves most often in the sights of the justice-system are the members of the Ahmadiyya community.<sup>23</sup> In Pakistan, Ahmadis are not considered to be Muslim and by describing themselves as such, or making reference to Islamic beliefs, they render themselves guilty of blasphemy (Rehman/Berry 2012: 460).

Between 1987 and 2012, 426 people were arrested for blasphemy. This figure only includes officially documented cases: according to press reports, the actual number is much higher. The majority of those accused are members of minorities (Nafees 2012: 51–52). Legal proceedings are often delayed, not least because judges and advocates are themselves afraid to become victims of persecution if they find in favour of the accused. Up to now, no sentence of death for blasphemy has ever been carried out. However, since 1990, more than fifty people have been murdered as a result of accusations of blasphemy. In November 2014 in Punjab, for example, an angry mob threw a Christian couple into the furnace of the brick-factory where they both worked because, so it was claimed, they had desecrated a copy of the Qur'an.<sup>24</sup> Again, in 2011, two high-ranking Pakistani politicians were murdered after speaking up for Asia Noreen, who was alleged to have insulted the Prophet and in 2009 had become the first Christian woman to be condemned to death in Pakistan, remaining to this day in prison. When charges of blasphemy are made, this often also leads to displays of violence against non-Muslim religious minorities in Pakistan – and sometimes also against Muslim minorities such as Shiites and Sufis. Although the country has ratified the International Covenant on Civil and Political Rights, and is therefore obligated to take action against this kind of incitement to religious hatred and to violence against minorities, perpetrators are often not prosecuted. This climate of impunity encourages religious extremists to make deliberate use of blasphemy charges in order to act against particular minorities.

One of the ways in which the Pakistani government justifies maintaining its blasphemy-laws is to point to its constitutionally enshrined right to restrict freedom of expression in cases where public order, decency, or morality are under threat in the Islamic state (Dobras

23 The Ahmadiyya movement is a trend that emerged within Islam in the late 19th cent. It traces its roots back to Mirza Ghulam Ahmad, self-styled 'mahdi' or 'messiah' (Schimmel 2010: 127).

24 [www.spiegel.de/panorama/justiz/pakistan-christen-nach-blasphemie-vorwurf-lebendig-verbrannt-a-1001040.html](http://www.spiegel.de/panorama/justiz/pakistan-christen-nach-blasphemie-vorwurf-lebendig-verbrannt-a-1001040.html) (September 29, 2015).

2008: 359). Zia-ul-Haq's instrumentalization of Islam as a way of legitimizing and bolstering power is a practice still in use in present-day Pakistan: "The legacy of using Islam for political purposes has persisted into independent Pakistan. [R]eligion – the "leitmotif of an otherwise variegated culture" – has continued to be used as an instrument for engendering unity, garnering support for unpopular regimes, and preventing backlashes that invariably arise against any regime that appears unacceptably un-Islamic' (Siddique/Hayat 2008: 318). In their detailed specialist assessment of blasphemy-legislation in Pakistan, Siddique and Hayat come to the conclusion that this legislation serves the autocratic interests of the regime, fuels the climate of intolerance and hatred, affords protection to religious zealots and fanatics, and is used as a means of settling personal scores (Siddique/Hayat 2008: 384).

### **3. The OIC and the 'Defamation of Religions'**

The OIC's attempt to establish the 'defamation of religions' as a new norm in the UN human-rights framework cannot be explained without reference to the historical and legal context. This UN-based initiative occurred at a time when various actors from the Western and Muslim sides were attempting to calm the increasingly tense situation through dialogue and cooperation. The UN itself was offering the Muslim states more opportunities to become involved and help shape outcomes, thus making it possible for the OIC to follow an oppositional course. Thus, during this phase, the OIC chose the path of resistance from within UN institutions as its preferred means of dealing with what it regarded as the rampant problem of Islamophobia and lack of respect for Islam in Western societies. Within these institutions, however, the resolution it proposed came up against an established structure of human rights with which the new concept of the 'defamation of religions' was clearly at odds. In what follows here, I shall begin by reviewing the historical context. After that, I shall describe the existing UN regulations on freedom of speech and freedom of religion and the new norm aimed at outlawing the 'defamation of religions'.

#### **3.1 The Historical Context of the OIC's UN Initiative**

The Western perception of particular political and ideological readings of Islamic tradition as problematic and dangerous did not begin with the emergence of the Islamic State (IS) in Syria and Iraq – though IS's geographical spread, brutality, degree of organization, and power to attract Western recruits<sup>25</sup> does represent something qualitatively new amongst Islamist movements. The real turning-point, and one that marked a re-politicization of

25 On the power of attraction exerted by Salafism in Germany, see Biene/Daphi/Fielitz/Müller/Weipert-Fenner (2015).

Islamic traditions, was the 1979 Islamic Revolution in Iran. For the first time ever, a class of conservative Islamic scholars assumed power, equipped the state with an Islamic-inspired constitution, and imposed Islamic law and a set of conservative Islamic rules of behaviour on the population – and this had huge repercussions far beyond the borders of Iran.<sup>26</sup> One particular activity in which the new Iranian leadership engaged was to rail against the godless, morally depraved West, to which, it claimed, Islam, with its high moral and religious standards, was far superior. In the Western world, the sentiments mostly evoked by the Iranian Revolution were those of alienation, fear, and rejection – not just in regard to the Shiite regime in Teheran but towards Islam in general, which was often portrayed indiscriminately as monolithic, backward, resistant to development, and inclined to violence. In neighbouring Arab countries too the Islamic Republic was mostly regarded with suspicion.

It was in this climate of mistrust and dubiousness between Western liberal and Muslim societies that the ‘Rushdie affair’ occurred, in the 1980s, and with it came the first transnational wave of protests and demonstrations by Muslims in response to allegations of blasphemy. The protests against Rushdie’s novel *The Satanic Verses* culminated in the issuing of a fatwa by the Iranian revolutionary leader Ayatollah Khomeini – at that time probably the most high-profile Muslim political figure on the world stage. In Britain in particular, the uproar surrounding the book and the issuing of the fatwa brought about a change in relations between Muslims and majority British society. Whereas previously the tensions between the ‘immigrant’ and ‘mainstream’ sections of the population had been discussed chiefly under the rubric of ethnic affiliation, religious identity now shifted into the foreground. Media accounts of the Rushdie affair not infrequently depicted Muslims as dangerous, irrational fanatics and there was a marked growth in hostility and violence towards them as a group. Muslims felt themselves increasingly discriminated against on account of their religious affiliation. At the start of the 1990s, the outbreak of the Second Gulf War reinforced these tendencies, with many Muslims across Europe demonstrating against the Western invasion of Iraq. It was during this time that the term ‘Islamophobia’ – denoting fear or hatred of Islam and Muslims – established itself, first in Britain and then internationally, and that the phenomenon itself began to be explored as a serious problem affecting Western societies, on a par with anti-Semitism (Bahçecik 2013; cf. Dobras 2008: 351). The increased tensions between Western states and Muslim-influenced countries eventually led the American political scientist Samuel P. Huntington to refer epigrammatically to a ‘clash of civilizations’, which he saw as being played out amongst all the major cultural groupings but above all between Islam and the West (Huntington 1993).<sup>27</sup>

26 This was also reflected in the sharp increase in scholarly literature on the theme ‘Islam and politics’. See e.g. Sivan (1985); Ali (1986); Piscatori (1983); Zakaria (1989).

27 Huntington’s simplistic analysis has been (quite rightly) criticized by many writers. For a representative sample from the German debate, see Müller (1998) and Senghaas (1998).

During the 1990s, various actors attempted to counter this strained situation through political negotiation, intergovernmental cooperation, social initiatives, and dialogue. After the Second Gulf War, the United States initiated a multilateral Middle East peace conference in Madrid. Stemming from this, secret talks were held between the PLO and Israel which ultimately led to the Oslo peace process. Israel's Foreign Minister, Shimon Peres, was soon talking enthusiastically of a 'new Middle East' in which peace and economic prosperity would prevail (Peres 1993). In Iran, 1997 saw the election to the presidency of the moderate politician Mohammed Khatami, who was regarded as a reformer and was promising a change of course in both external and internal affairs. Khatami laid greater stress on *détente* and dialogue and made use of the OIC as one of the forums through which to promote this policy. As a counter to the 'clash of civilizations', Khatami proposed a 'dialogue of civilizations', an initiative that eventually resulted in a corresponding UN General Assembly resolution and eventually also, in 2001, to the declaration of a 'UN Year of Dialogue among Civilizations', backed by UN Secretary-General Kofi Annan (Wastnidge 2011). The UN gradually opened itself up to involvement and input by Muslim states and organizations.

However, the 'dialogue of civilizations' initiative was not the only project that the OIC sought to realize within the framework of the UN. At more or less the same time as the 'dialogue' initiative was underway, the OIC began to make use of the UN's forums to raise the international profile of what it saw as the growing problem of Islamophobia and to try to secure a ban on blasphemy, discrimination, and defamation in respect of Islam. It brought before the UN Commission on Human Rights a resolution condemning 'the defamation of Islam' and calling on all states to combat such behaviour. In this way, it gave expression to its dissent from the dominant Western liberal order but did so by playing according to the rules of the established political institutions, not by initiating radical resistance and protest outside this order (Bettiza/Dionigi 2014).

### **3.2 The Human-Rights Context of the OIC's UN Initiative**

International human rights do not protect religions as such; rather, they uphold the right of individuals or groups freely to choose their religion or belief and to practise it. The most important document in which this right is set out is the Universal Declaration of Human Rights. Article 18 of the Declaration states that: 'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.'<sup>28</sup> Freedom of religion and belief are key provisions of the Declaration of Human Rights and are also a core

28 Universal Declaration of Human Rights, A/RES/217 A (III).



element of the 1966 International Covenant on Civil and Political Rights.<sup>29</sup> According to these provisions, an individual is not subject to any legitimate restriction in ‘the inner sphere of freedom of thought, conscience, religion, or belief [and this] freedom thus enjoys absolute sanctuary in its “forum internum”’ (Bielefeldt 2012: 15). But external manifestations of religion or belief – ‘which encompass both individual and community practices and may take place either in public or in private’ (Bielefeldt 2012: 15) – are also protected within the ‘forum internum’, though not to the extent of being entirely free of the possibility of restriction. In addition, the right to freedom of religion and belief also encompasses individuals who decide not to belong to any religion or to believe in anything: both positive and negative freedom of religion are valid – and only the combination of the two ‘[give] this human right its libertarian character’ (Bielefeldt 2012: 16).

By contrast, there is no right in international human-rights law to have one’s religion or belief excluded, across the board, from the possibility of criticism, denigration, or insult (Temperman 2008: 525). Respect for religious feelings and protection against defamation are not enshrined in the relevant human-rights documents. Although Articles 19 and 20 of the International Covenant on Civil and Political Rights contain provisions limiting the right to freedom of expression, these only take effect in exceptional cases. The level at which expression of an opinion is defined as unacceptable, and therefore as warranting prosecution, is pitched extremely high – such an expression would have to constitute a threat to national security, for example, or infringe the rights of others. Article 20 makes explicit reference to religious hatred: ‘Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.’<sup>30</sup> However, protection of religion is not in itself a legitimate ground for restricting the right to freedom of expression: ‘The ICCPR does not specifically target defamation of religion as an operative “carve-out” for protection’ (Foster 2009: 35). The right to freedom of opinion may only be restricted where there is incitement to religious hatred resulting in discrimination, hostility, or violence (Graham 2009: 19).

The Universal Declaration of Human Rights is a non-binding document; the International Covenant on Civil and Political Rights is binding on those states that have signed it. However, both the right to freedom of religion and belief and the right to freedom

29 International Covenant on Civil and Political Rights, CCPR/C/3/Rev. 6, Art. 18: ‘1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.’

30 UN General Assembly, International Covenant on Civil and Political Rights, March 23, 1976, www.ohchr.org, <http://bit.ly/Jz4HwZ> (October 14, 2015).

of expression are deemed part of customary international law, which is binding on all states, even those that have not ratified the Covenant (Dobras 2008: 342; Cismas 2014: 45–48).<sup>31</sup> The provisions relating to freedom of religion and freedom of opinion are based on philosophical principles that are generally recognized as having guided the course of the international human-rights regime since the foundation of the United Nations. The historic task of creating a normative framework for a universal system of human-rights legislation inevitably came up against the problem of getting the various cultures and religions represented in the UN to agree which points of reference they could all work to (Foster 2009: 19). Following extensive consultations, the idea of the dignity of the human person emerged as a viable basis for human rights. In the very first sentence of the UN's founding document – the UN Charter – the participating states affirm their 'faith in fundamental human rights, in the dignity and worth of the human person'.<sup>32</sup> All subsequent covenants, protocols, treaties, and declarations in which the concept of human rights is further developed echo this philosophical affirmation of the principle of personal human dignity.

That the concept of human dignity was able, despite the cultural heterogeneity of the UN's member-states, to bridge the differences between them was due not least to the fact that it was never precisely defined in any of the relevant UN documents (Donnelly 2013: 28–29). As a result, everyone could identify with it. The UN 'successfully drafted its formative documents based upon broad, largely undefined principles that member countries did not disagree with on a philosophical level at the very outset, given the open-ended nature of the definition' (Foster 2009: 38). The concept of dignity holds a special value that enjoins respect. Historically, it was closely tied to particular social positions or offices, but the shift to *human* dignity represents a democratization: 'The claim of human dignity is that simply being human makes one worthy or deserving of respect; that there is an inherent worth that demands respect in all of us' (Donnelly 2013: 29; Foster 2009: 21). A corollary of this philosophical rationale for human rights is that these rights only ever apply to the individual: only an individual human being, not a collectivity, can lay claim to them (Donnelly 2013: 30).

### 3.3 A New Norm: The Protection of Religion against Defamation

Both the rights involved here – the right to freedom of religion and belief and the right to freedom of expression – are thus based on the principle that it is the individual, as the repository of human dignity, that is afforded protection. The OIC's arguments in favour of a ban on the defamation of religions diverge from this basic principle: in place of the

31 The great majority of OIC member-countries have signed the Covenant. Amongst the exceptions are Saudi Arabia, the United Arab Emirates, and Malaysia, which have neither signed nor ratified it.

32 UN General Assembly, Charter of the United Nations, June 26, 1945, [www.un.org/en/documents/charter/preamble.shtml](http://www.un.org/en/documents/charter/preamble.shtml) (October 14, 2015).

individual in need of protection we have an idea or conviction – specifically, religion (Graham 2009: 78). The earliest draft of the anti-defamation resolution, introduced for the first time into the Commission on Human Rights by Pakistan in 1999, on behalf of the OIC, still went by the title ‘Defamation of Islam’. Supporters of the resolution argued that the Islamophobia now rife in the West necessitated measures to protect Islam from hostile treatment and insult. On behalf of the European Union (EU), Germany called for attention to be directed not just at Islam but at other religions as well (Blitt 2011: 353). After tough negotiations, the resolution – eventually adopted without a vote by the Commission – emerged bearing the title ‘Defamation of Religions’, but its focus remained very clearly on Islam. It expressed great concern at the ‘negative stereotyping of religions’ and underlined the way in which Islam was ‘frequently and wrongly associated with human rights violations and terrorism’. It was worrying, it said, that the media were ‘[being] used to incite acts of violence, xenophobia or related intolerance and discrimination towards Islam and any other religion’. It therefore called on states ‘within their national legal framework, in conformity with international human rights instruments to take all appropriate measures to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by religious intolerance’.<sup>33</sup>

Clause 3, with its mention of ‘acts of violence, xenophobia or related intolerance and discrimination towards Islam and other religions’, uses ideas and phraseology familiar from, for example, Article 20 of the International Covenant on Civil and Political Rights, which calls on states to outlaw ‘any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’.<sup>34</sup> The difference is that the defamation resolution spotlights discrimination and violence towards Islam and other religions – in other words towards a creed or idea – rather than towards individual people or groups of people.

### 3.4 The Failure of the OIC Initiative

The change of title to ‘Defamation of Religions’ deflected the criticisms initially expressed not only by Western states but also by India and Japan. The resolution, in its various subsequent permutations, appeared to be a success for the OIC – despite being non-binding, like all resolutions of the Commission on Human Rights. In 1999 and 2000 it was adopted by the Commission without a vote, but this event received scant attention internationally, probably because the Commission’s reputation was already suspect. A subsidiary organ of the UN General Assembly, the Commission set very low standards for membership, with the result that even states who were themselves accused of gross human-

33 Full text at E/1999/23E/CN.4/1999/167.

34 UN General Assembly, International Covenant on Civil and Political Rights, March 23, 1976, Art. 20, [www.ohchr.org](http://www.ohchr.org) (September 29, 2015), <http://bit.ly/Jz4HwZ> (September 29, 2015).

rights violations were admitted as members: ‘Because of these lax standards, the UNCHR became discredited by the United Nations’ (Dobras 2008: 353). In 2006, in response to ongoing criticism, the General Assembly dissolved the Commission and established the Human Rights Council in its stead.<sup>35</sup>

The attacks of 11 September 2001 in the United States, carried out by Al-Qaeda-sponsored terrorists, rekindled the dissension between Muslim and Western countries. The US administration, led by George W. Bush, declared the ‘War on Terror’, which was then prosecuted over a period of years using political, intelligence-based, and military means. Muslims frequently fell under blanket suspicion and many Western societies saw a growth in anti-Muslim tendencies. In the eyes of many, Huntington appeared to have been right in his prediction of a clash of civilizations, notably between Muslim societies and the West. The attacks in New York and Washington, and the increase in violence and discrimination against Muslims in many Western countries, were reflected in subsequent draft resolutions. These now made direct reference to the events of 11 September, to the latter’s negative repercussions on Muslim minorities, the negative media-depiction of Islam and its values and traditions, and the introduction of laws that discriminated against Muslims (Rehman/Berry 2012: 436–437). Inside the UN human-rights system itself a number of high-profile advocates of the ‘defamation of religions’ idea emerged post 9/11. One such was the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène. In his reports, Diène categorized Islamophobia alongside ‘Christianophobia’ and anti-Semitism as different forms of defamation of religion on a par with racism and xenophobia (Rehman/Berry 2012: 440; Kayaoglu 2014: 84–85). It was amidst all this tension, in 2001, that the Commission on Human Rights first subjected the anti-defamation resolution to a vote: 29 states voted for adoption, 15 against, and 9 abstained.

To start with, therefore, in the shadow of 11 September, there was clear support for the anti-defamation resolution. But this trend was not to last long:<sup>36</sup> because there was much greater interest in the OIC resolutions following the terror-attacks, they were subjected to much closer scrutiny and analysed from a human-rights perspective. The USA in particular, flanked by European countries and other Western states, criticized both the focus on Islam and the incompatibility with other human rights such as the right to free expression, and put a question-mark over the whole idea of using anti-defamation legislation to deal with conflicts involving religion. These criticisms were echoed by a range of non-governmental organizations, both religious and secular, who likewise underlined the incompatibility of the anti-defamation resolutions with other human rights and expressed concern that the blasphemy-laws in force in Muslim countries might be exported elsewhere. The OIC

35 Which, however, continues to attract the kind of criticism levelled at the Commission. See Besant/Malo (2009).

36 For an overview of the voting results in the various UN forums in the period from 1999 to 2010, see Kayaoglu (2015: 76–77).

responded to these charges by rewording the text of the resolution more inclusively, getting non-Muslim states on board to boost the supporters' camp, and stressing that its main concern was to protect Muslim minorities, not to protect religion per se (Kayaoglu 2015: 80–84).

Despite the OIC's efforts, however, by 2001, and perhaps even before this, it began to be clear that the anti-defamation resolution was destined for failure. Support waned, critical voices grew ever louder, and the OIC found itself increasingly in the position of having to strike compromises. The potential for involvement by Muslim states, and the prospect that a new norm would be successfully established, gradually diminished in the face of the negative attitude of the Western states and NGOs. Although it took until 2011 for the resolution to be completely removed from the agenda, the balance of power started to shift in favour of the Western liberal critics as early as the mid-2000s.

Why the OIC failed in its attempt to get a new norm established in human-rights legislation is a question that has so far received little treatment in the literature. Exceptions are the studies by Bettiza/Dionigi (2014) and Kayaoglu (2014). Bettiza/Dionigi's account draws on Habermasian post-secular theory. Whereas, they say, norm-research in International Relations has so far concentrated chiefly on the diffusion of Western liberal norms to the non-Western periphery, they themselves present the OIC initiative on the anti-defamation resolutions as an example of an attempt by a non-Western, religious actor to get a new norm established within the liberal international order. But for this attempt to succeed, they say, there has to be a process of institutional translation of the norm<sup>37</sup> that cuts across differing cultural and institutional contexts. Bettiza/Dionigi pick up on Habermas's notion of a translational proviso – in other words, the condition that religious content has to be translated into generally comprehensible, secular language before it can be included in formal decision-making processes in parliaments, governments, and judicial systems. They use this Habermasian condition as an analytical instrument which they can apply generally to assess translational processes in post-secular world society as processes of norm-contestation between actors of differing religious and cultural provenance. In the case of the OIC's UN initiative, the authors come to the conclusion that the process of translating the particularist Islamic norm outlawing blasphemy and the denigration of Islam into a norm comprehensible in secular terms was unsuccessful – and this despite the fact that in the years of tension following 9/11 it would undoubtedly have been in the West's interests to try to improve relations between the Western and the Muslim worlds. The specificity of the OIC norm enshrined in the resolutions, and the lack of the kind of interpretive leeway that would have allowed Western secular states also to lend their support, scuppered the process of translation, say the authors.

37 'Translation' here denotes the migration of ideas and their linkage into a different context, where they develop a new dynamic (Kaufmann/Rottenburg 2012).

Kayaoglu's analysis (2014) also picks up on the translational process. He describes the UN as a secular organization in which liberal, Western states and civil-society organizations dominate the discourse on norms and rights: 'Secular gatekeepers and liberal values dominate and have forced faith-based voices to shed their partisan religious sentiments and non-liberal arguments and translate their discourse into liberal values of diversity, individualism, science, and human rights' (Kayaoglu 2014: 70). Accordingly, says Kayaoglu, the OIC increasingly clothed its anti-defamation campaign in the terminology of the secular, liberal human-rights discourse. Initially, this secured attention for the initiative, but by adopting this approach, the OIC had ventured onto terrain in which secular, liberal actors hold sway on matters of interpretation, with the result that these actors retained the upper hand in the debate. Moreover, the OIC's main concern, according to Kayaoglu, was to stem the tide of Islamophobia that was threatening Muslim minorities in Western countries, but its concessions to the liberal discourse ultimately led to the tables being turned against it, with Western liberal actors in their turn accusing it of wanting to export blasphemy-legislation that was contrary to human rights, as practised in a number of its member-states.

### 3.5 From Opposition to Dissidence: The Cartoon Controversy

In January and February 2006, there was an undreamt-of escalation in the confrontation between freedom of expression and the concern to protect religion from defamation. Transnational protest, some of it violent, saw thousands of Muslims simultaneously take to the streets across the Muslim world. What triggered the protest was a series of twelve cartoons that had been published on 30 September 2005 in the Danish daily newspaper *Jyllands-Posten*. The cartoons depicted the Prophet Mohammed – in one case with a bomb in his turban, in another angrily wielding a scimitar, in another as keeper of the heavenly virgins reserved to the martyrs of the Jihad. Arson attacks were carried out on the Danish embassies in Syria and Lebanon; governments called for a boycott on Danish goods; and 'Denmark found itself in the biggest foreign policy crisis since the German occupation during the Second World War as the crisis rapidly exploded in a conflict of international dimensions' (Bonde 2007: 33).

In Denmark, the 'cartoon controversy' occurred at a time when the Muslim minority in this small European country was the butt of hostile rhetoric from right-wing and conservative politicians (Bonde 2007: 36). Prime Minister Anders Fogh Rasmussen's Liberal Party was governing in coalition with the Conservative People's Party and had the tacit sanction of the populist right-wing Danish People's Party. When the editors of *Jyllands-Posten* commented, in a companion-piece to the cartoons, that some Muslims rejected modern, secular society and that by insisting on respect for their religious feelings they were effectively demanding a special status, they were echoing the general mood. Such a demand, said *Jyllands-Posten*, was not compatible with secular democracy and the free expression of opinion, which required you, rather, to be prepared to put up with 'disdain, mockery, and ridicule' (Bonde 2007: 35).

The difficulties experienced by Denmark's Muslim minority do not, however, explain the transnational eruption of protest and violence that occurred at the start of 2006. In the first few weeks after the cartoons had been published, the demonstrations and protest-actions were indeed largely confined to Denmark. The Islamic Society, a Muslim umbrella-organization in Denmark, led the protest and filed charges of blasphemy and discrimination. In addition, in mid-October, eleven ambassadors from various Muslim countries wrote to Prime Minister Rasmussen complaining about the situation of the Muslim minority in Denmark and condemning the 'smear campaign' against Islam and Muslims in politics and the media. They called on the prime minister to work to promote dialogue and understanding and requested a meeting with him. But in his reply Rasmussen pointed to the right of free speech that existed in Denmark and declined the request for a meeting. This unreceptive attitude on the part of Rasmussen, being interpreted as an insult not only by the ambassadors but also by many Muslims in Denmark, contributed in no small measure to the further escalation of the conflict. Not until much later did Rasmussen attempt to de-escalate the conflict via interviews with Arab broadcasters and in various speeches.

The extent to which the conflict then spread transnationally was not down to Danish events alone, however. Drawing on theories of New Social Movements and conflict dynamics, Olesen (2007) has analysed the shift from the national to the transnational level. One of the prior conditions which Olesen identifies for the cartoon controversy was the changed political context after the events of 11 September 2001: political elites both across the Muslim and Arab world and in Europe and the USA now had much more incentive to tie their political messages to religious motives. In addition, with the advent of broadcasting channels such as Al Jazeera and Al Arabiya, a highly professionalized media landscape had emerged in which it was possible to reach vast swathes of the population in the Arab and Muslim world (Olesen 2007: 38).

Without these two preconditions, the cartoon controversy would probably not have spread with such virulence beyond the Danish borders. Another factor necessary for the spread, however, was the action of a number of players who – for differing reasons and not always deliberately – drove the escalation forward. In December and January of 2005/6, a delegation from the Muslim communities in Denmark undertook a tour of Egypt, Lebanon, and Turkey. In their suitcases they had copies of the cartoons and an account they had drawn up of the situation of Muslims in Denmark. This dossier focused on the religious aspect of the cartoon episode, in other words the blasphemy committed against the Prophet. The delegates addressed the accompanying letter to anyone 'who wants to support our fight to defend and support the holy prophet and with all legal means fight for the passing of a general law, which ensures respect for all things sacred, particularly the Muslim, in a time which allows attacks on Muslim sanctuaries using "war against terror" as an excuse' (quoted in Bonde 2007: 44).

The Danish delegation's message fell on fertile ground, both in the countries they visited and further afield: 'The cartoon case was a window of opportunity for the Muslim governments to defend religion upfront without allowing room to the growing religious opposition within their communities' (Bonde 2007: 44). Of key significance in the further

escalation were Egypt and the OIC: ‘The data indicate that the main force behind the escalation was the brokerage of institutional actors. Two of these are of critical importance: Egypt and the OIC’ (Olesen 2007: 47). As early as October 2005, Egypt involved itself in the attempt by the eleven ambassadors to secure a meeting with the Danish prime minister. The Egyptian government made deliberate use of the OIC to get the issue into the public eye. The OIC, in its turn, showed itself more than willing to stoke the cartoon controversy, dispatching protest-letters to the Danish government, urging the UN to outlaw attacks on religion, and, in January 2006, calling for a Danish-financed festival of Islamic culture to be boycotted. This prompted prominent European and American politicians and heads of government – including former US president Bill Clinton – to make their first critical comments about the publication of the cartoons.

Thus, the transnational escalation of the protest was preceded by a period of months during which Egypt and the OIC, as governmental and intergovernmental entities respectively, had prepared the ground for large-scale resistance to Western societies’ defamation and disparagement of Islam in the name of freedom of expression (Olsen 2007: 48). Inside the UN, the chances of the ‘Defamation of Religions’ initiative succeeding grew steadily smaller. Faced with this situation, the OIC adopted the alternative strategy of initiating protests in its member-states. The closing-off of opportunities for involvement by the OIC was thus a contributing factor in causing the cartoon controversy to escalate to the extent described here.

Another contributing factor, however, was the large-scale exposure given to the issue by Al Jazeera and Al Arabiya. According to Olesen: ‘The conflict started gathering force in the last five days of January and . . . this development largely coincided with growing attention to the conflict by Al-Jazeera’ (Olesen 2007: 48). Shortly after this, demonstrations took place in Palestine, Yemen, Indonesia, Turkey, Syria, Lebanon, Afghanistan, Iran, Egypt, and the Philippines. In Lebanon and Syria there were arson attacks on the Danish embassy.

#### **4. Is an International Solution Possible?**

In 2011, after twelve years of bitter wrangling over the ‘Defamation of Religions’ resolutions, the OIC, in conjunction with the United States and the European Union, put forward a new draft resolution. Resolution 16/18, entitled ‘Combating Intolerance, Negative Stereotyping and Stigmatisation of, and Discrimination, Incitement to Violence, and Violence against Persons Based on Religions or Belief’, was adopted for the first time by the Human Rights Council in 2011, by consensus. It aims, not to protect religions per se, but to safeguard individuals against discrimination and violence on the grounds of their religion or belief and to do so without curtailing the right to free speech.

Did this mean that, following the expressions of opposition and dissidence, there was now to be some kind of concord that would resolve the normative conflict between the right to freedom of expression and the protection of religions from denigration and blasphemy – and thus also stem the recurrent tide of violence for the long term?



Initial reactions were uniformly positive: critics of the defamation motions lauded the new resolution as ‘an important breakthrough for human rights and the promotion of religious tolerance’ (Aswad et al. 2014: 141; Kayaoglu/Petersen 2013); the OIC too presented the resolution as a success and as proof of positive cooperation with the United States and Europe. The aspect that came in for the most praise was the inclusion, as one of the cornerstones of the resolution, of an action-plan designed to help deal on a long-term basis with intolerance, discrimination, and violence based on religion or belief – for example, through education, through specialist training for government officials, and through inter-faith dialogue. Curtailment of the right to freedom of expression by criminal sanction was specified by the resolution as being permissible only where the opinion expressed constituted an incitement to imminent violence.

In the sphere of politics too, considerable importance was attached to the new resolution. This is clear from the invitation issued jointly by the General Secretary of the OIC, Ekmeleddin Ihsanoglu, and the US Secretary of State, Hillary Clinton, in July 2011, proposing an initial meeting in Istanbul to work out a coordinated approach to implementing the action-plan. Participants to this meeting included the EU’s High Representative for Foreign Affairs and Security Policy, Catherine Ashton, plus foreign ministers and other representatives from a total of twenty countries. In December of the same year, the United States convened the first implementation-meeting of what was dubbed the ‘Istanbul Process’ in Washington. Further meetings took place in London (2012, convened jointly by Britain and Canada), Geneva (2013, convened by the OIC), Doha (2014, convened by Qatar), and Saudi Arabia (2015, convened by the OIC). Chile has announced that it will be hosting a further Istanbul Process meeting in 2015. In autumn 2012, in a complementary move, the Office of the High Commissioner for Human Rights (OHCHR) unveiled the ‘Rabat Plan of Action’,<sup>38</sup> the product of a process of intensive worldwide consultation with experts in the field. The plan specifies the duties which Article 20 of the International Covenant on Civil and Political Rights imposes on states in regard to the protection of individuals against ‘any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’. With this instrument, which lays down very strict criteria for the criminal sanction of hate speech and at the same time proposes mechanisms for dialogue, the OHCHR seeks to get past the debate on the ‘defamation of religions’. The plan openly opposes national blasphemy-legislation.

Despite all this, as Elizabeth Cassidy, Deputy Director for Policy and Research at the United States Commission on International Religious Freedom, points out (Cassidy 2013), consensus on Resolution 16/18 remains fragile. By the third meeting of the Istanbul Process – for which the OIC was the chief organizer – representatives of the OIC and the Western states were already dividing along familiar lines. Thus, whilst OIC member-states

38 UN OHCHR, Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence, October 5, 2012, [www.ohchr.org](http://www.ohchr.org), <http://bit.ly/1zk6n2S> (October 14, 2015).

considered the criminalization of hate speech, intolerance, and discrimination relating to religion to be the most important tool for getting the resolution enforced, Western states argued for ‘soft measures’ such as education and cultural exchange, because, they said, the use of legal means often proved counterproductive. There was also disagreement as to what should constitute hate speech and incitement to violence: whilst Western states interpreted these concepts narrowly, OIC countries considered that even public support for hate speech – and not just direct incitement to actual violence – should be made a criminal offence. Finally, states were also at odds with one another as to which groups at the present time were primarily affected by religious intolerance and thus fell within the resolution’s purview. In the opinion of Pakistan, Algeria, and other OIC countries, Muslims in Western countries were the chief victims of discrimination. The United States and the EU acknowledged that these kinds of anti-Muslim trends did indeed exist in Western societies, but at the same time called for the situation of threatened religious minorities in the OIC states also to be improved (Kayaoglu/Petersen 2013).

Whether it will be possible, in the long term, for the Istanbul Process to bring about a political compromise that embraces OIC opposition in the UN and also channels the dissidence of countless Muslims across the world in a cooperative direction remains to be seen. Given the latest change of leadership within the OIC and the adoption of a distinctly more conservative orientation as compared with the period from 2005 to 2013, it seems increasingly likely that the OIC will keep up its anti-defamation rhetoric – and that many of its member-states will cleave to their repressive blasphemy-laws.

Even before the June meeting in Saudi Arabia, the non-governmental organization International Federation for Human Rights (FIDH) was warning that the OIC might renew its attempts to push through a global blasphemy-law. In particular, FIDH voiced its concern that the OIC representatives would try to reopen the discussion as to where prohibited hate speech ends and permitted free speech begins. The relevant UN agreements, said FIDH, and documents such as the International Covenant on Civil and Political Rights, Resolution 16/18, and the Rabat Plan of Action, provided sufficient guidance as to where this distinction lay: ‘Attempting to go beyond what has been agreed and to criminalize acts that do not fall under the scope of article 20(2) of the ICCPR would be tantamount to attempting to criminalize freedom of expression with regard to religious issues’ (FIDH 2015). An attempt of this kind to restrict the right to freedom of expression, said FIDH, would essentially mark a return to the ‘defamation of religions’ idea. A report by the NGO Universal Rights similarly concludes, in light of the resurgent conflicts, that the OIC’s decision not to pursue its ‘defamation of religions’ idea merely indicates its acceptance of the fact that its selected strategy has not worked; its commitment to its substantive goals, however, remains unchanged (Limon/Ghanea/Power 2014).

As one of the principal players in the Istanbul Process, the EU should use every available opportunity to fight these latest attempts to reintroduce an anti-defamation agenda into the debate ‘through the back door’. To do this, the successes that have already been achieved – in other words, Resolution 16/18 and the Rabat Plan of Action – need to be firmly established as a valid framework, adopted, not least, with the concurrence of the OIC. This approach could succeed if, in future, attention were focused more on the implementation of

the very concrete plan of action detailed in Resolution 16/18 (Limon/Ghana/Power 2014). At the moment, this kind of focus is lacking. In 2014, only twenty-four states – one of them being Germany – presented reports on the implementation of the resolution. Future Istanbul meetings should be used to move beyond theoretical debates and promote the implementation of the resolution in all its aspects. To achieve this, greater use could be made of established UN mechanisms and instruments such as the Universal Periodic Review.

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