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A decade of revitalizing UN work concerning freedom of religion or belief (2010–2020)

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ABSTRACT

The first decade of the 21st century had annual United Nations (UN) resolutions on the defamation of religion, followed by a shorter period with resolutions on promoting human rights and fundamental freedom through a better understanding of traditional values of humankind. However, in 2011, the strongest promoter of the defamation of religion resolutions, the Organization of Islamic Cooperation (OIC), chose to shift the focus in the UN on individual victims, not the religions as such, resulting in the Istanbul Process. Moreover, the exploration of links between Articles 18, 19 and 20 of the International Covenant on Civil and Political Rights resulted in the Rabat Plan of Action. Other progress within freedom of religion or belief include the Faith4Rights resources, acknowledging the right to change one's religion and stopping violations in the name of "honour," as well as other approaches, that so far have inadequate impact on the domestic level.

Introduction

Freedom of religion or belief in the world is under constant threat, particularly for religious minorities (Fox, 2020, 2016). Despite this reality, I will argue that two bodies of the United Nations, the General Assembly (UNGA) and Human Rights Council (HRC), have better receptivity—defined as openness to new ideas or norms—of freedom of religion or belief compared to the situation 13 years ago. Receptivity on a UN level might lead to changes domestically. There is, however, no necessary connection between the two levels.

Among the recent changes on the level of the United Nations are (1) new initiatives, not merely the adoption of resolutions; (2) stronger involvement of religious actors, facilitated by the United Nations; (3) new understandings of the crucial linkages between freedom of religion or belief and other essential human rights; (4) affirmations of the right to change one's religion; and (5) less emphasis on protection of religions. The efforts of the two UN Special Rapporteurs, Heiner Bielefeldt (2010–2016) and Ahmed Shaheed (2016–2022), have contributed positively, but there are other explanations as well.

Freedom of religion or belief includes theistic, nontheistic, and atheistic beliefs, and is recognized in Article 18 of the International Covenant on Civil and Political Rights (ICCPR) in tandem with freedom of thought and freedom of conscience.

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No detailed analysis of the content of the biannual reports of the UN Special Rapporteur is included in this article. Rather, it provides an analysis of how the reports of the UN Special Rapporteur are received and how new initiatives and tools are introduced. Some elements of ICCPR Article 18 and of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (UNGA, 1981; hereafter, 1981 Declaration) are also analyzed.

It is relevant that the resolutions (and declarations) can be characterized as nonbinding, soft law, and these might have a more expansive wording than treaties that constitute binding law for the ratifying states. Such soft law norms might harden into customary international law, and hence binding international legal norms, by the requirements of consistent state practice and *opinio juris*.

This article seeks to answer this research question: Focusing on the decade 2010–2020, do nonbinding resolutions from the UN Human Rights Council and General Assembly—and action plans adopted in other intergovernmental forums—include new norms applying to freedom of religion or belief, and which challenges emerge when seeking to ensure broad acceptance of existing norms and recognition of emerging norms?

In order to answer this, this article is organized as follows. The second section identifies relevant theoretical perspectives on freedom of religion and belief and on international human rights norms diffusion. The third section identifies deteriorations regarding freedom of religion or belief in the United Nations in the years leading up to 2010. A new series of resolutions were adopted from 2011 onward that shifted focus from protection of religion to protection of individuals, complementing the resolutions on freedom of religion or belief. The fourth section highlights these resolutions, and the fifth analyzes initiatives and action plans outside the HRC and UNGA in the same decade. The sixth section identifies challenges when acknowledging new dimensions of human rights and promoting better human rights observance among religious conservatives, before a conclusion.

Even if the research question does not include norms development on the domestic and regional levels, such examples will be given, primarily from states recognizing Islamic *shari'a* and the role of the Organization of Islamic Cooperation (OIC). Hence, even if the emphasis is on UN processes, this article gives examples of whether and how these normative developments result in changes in certain states dominated by Islam, identifying whether norm diffusion takes place.

Freedom of religion or belief and diffusion of international human rights norms

Freedom of religion or belief is characterized by its vertical dimension—our relationships to the state—emphasizing unrestricted exercise of religion or belief, termed an internal, committed perspective (Khaitan and Calderwood Norton, 2019, 2020; see also Trispiotis, 2019). The horizontal dimension—the relationships between members of religious or belief groups—emphasizes nondiscrimination resulting from the fact of belonging to any religious or belief group. This latter dimension concerns “noncommittal interests” (Khaitan and Calderwood Norton, 2019). Whereas ICCPR Articles 18(3) and 20(2) specify the conditions under which freedom of religion or belief can justifiably be restricted, freedom from nondiscrimination is, in principle, more absolute. Although being distinct rights, these two are mutually interdependent. When this article refers to freedom of religion or belief, both these rights are encompassed.

Moreover, freedom of religion or belief is about protecting everyone’s rights and facilitating empowerment (UN Committee on the Rights of the Child and UN Committee on the Elimination of Discrimination Against Women, 2014, paras. 55 and 69; Ghanea, 2017). A strategy for effective prevention and elimination of harmful practices should include a broad range of actors—most notably, religious authorities (Ghanea, 2017, pp. 33–34).

On international human rights norms diffusion, there are two opposing positions. One position emphasizes that the international state-driven human rights regime has generally failed to bring changes domestically (Hafner-Burton, 2013, 2008). Another position asserts that domestic and transnational mobilization and pressure on governments have resulted in better human rights outcomes than if such pressure were absent (Simmons, 2013). Sikkink (2017) argued for assessing changes in relative gains or losses over time, rather than comparing with the optimum. Social constructivism in international relations—more specifically, how norms, knowledge, and culture develop through human interaction to form “collectively held or intersubjective ideas and understanding on social life” (Finnemore & Sikkink, 2001, p. 393)—will guide the analysis.

Finally, a regional approach, which is also involving civil society and national human rights institutions, can make international human rights law more effective (Hafner-Burton, 2013). The regional approach was also supported by Petkoff, who argued for a shift from religious exceptionalism to religious regionalism (2015); another term is “minilateralism” (Naím, 2009). The work of the United Nations will become more effective by building coalitions with regional and nongovernmental actors.

Deteriorating recognition of freedom of religion or belief in the years leading up to 2010

Ongoing concerns over restrictions in freedom of religion or belief were becoming more serious due to five deteriorations within the United Nations’ activities concerning freedom of religion or belief work in the last years of the 2000s.

First, in October 2009, a three-year process was initiated by the Russian Federation in the HRC on promoting human rights and fundamental freedom through a better understanding of traditional values of humankind (HRC, 2009a). The process ended in 2012–2013 with two studies that were never formally endorsed or acted on by the HRC, one by the HRC Advisory Committee (2012; mandated by HRC, 2011a) and one by the Office of the High Commissioner for Human Rights (OHCHR, 2013a; mandated by HRC, 2012). The last report, by the OHCHR, found that some states held that traditional values could provide for a better linkage between human rights and human dignity, whereas other states asserted that traditional values could “justify the status quo and undermine the rights of the most marginalized and disadvantaged” (OHCHR, 2013a, para. 84), listing freedom of belief, women’s rights, as well as rights relating to sexual orientation and gender identity as particularly threatened by a traditional values approach.

Second, the OIC issued in 2008 the first of its 14 annual observatory reports on Islamophobia (Organization of Islamic Cooperation, 2022). However, in 2009, the UNGA for the *last* time adopted a resolution titled, “Combating the Defamation of Religions” (UNGA, 2010; adopted in 2009; the vote was 80 for, 61 against, and 42 abstentions). This was the fifth resolution adopted by the General Assembly. A resolution with the same title was adopted by the HRC for the last time three months later (HRC, 2010a; the vote was 20 for, 17 against, and eight abstentions); and there was gradual decline in support (Limon et al., 2016, p. 37). This was the 12th resolution adopted by the UN Commission on Human Rights (HRC). Their wording was almost identical over the years, but the three first resolutions stand out. The title of the third included “harmony” and “diversity” (UN Commission on Human Rights, 2001). The two first were adopted without a vote. They asked two Special Rapporteurs—on religious intolerance and on racism, racial discrimination, xenophobia, and related intolerance—to take the resolutions into account in their subsequent reporting (UN Commission on Human Rights, 1999: para. 6, 2000, para. 6). The fact that there was no voting in 1999 and 2000 conceals the fact that there was considerable resistance to the wording of the resolution from Western states from when the first draft was presented. The first report expressed concerns about censuring legitimate criticism (UN Special Rapporteur, 2000, para. 111) and the second was even stronger, asserting that “blasphemy or defamation are increasingly used by extremists to censure all legitimate critical debate” (UN Special Rapporteur, 2001, para. 187).

Third, a freedom of expression resolution stating that “abuse of the right of freedom of expression constitutes an act of racial or religious discrimination,” with a follow-up mandate given to the UN Special Rapporteur on freedom of expression, was adopted *once* (HRC, 2008a, para 4(d)). A related seminar was held the same year (OHCHR, 2009).

Fourth, there was gradually weakened support within the HRC when adopting resolutions titled, “Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.” The resolution adopted in March 2009 deviated from the others, as its title linked freedom of religion or belief to the enjoyment of economic, social, and cultural rights (HRC, 2009b; 22 for, one against, and 24 abstentions). In the UNGA, similar resolutions were usually adopted without a vote, with one exception (UNGA, 2005; adopted in 2004; 186 for, and no votes against and no abstentions).

Fifth, the Special Rapporteur was given a revised mandate in 2007 (HRC, 2007, para. 17), which is less explicit in its reference to the 1981 Declaration, resulting in resolutions with only one (noncommitting) reference to the 1981 Declaration (HRC, 2010b, para. 15).

Hence, five characteristics prevailing around 2010 have been identified: (1) traditional values, (2) defamation of religions, (3) restricting expression, (4) weakened voting support, and (5) weakened links to the 1981 Declaration. Particularly, the first three of these characteristics relate primarily to the vertical dimension, the state restricting individuals’ exercise of freedom of religion or belief.

2010 onward: Two different series of resolutions and related processes

Although the change of title of the Special Rapporteur to “Freedom of Religion or Belief” happened in 2001 (ECOSOC [UN Economic & Social Council], 2001, para. (a))—inspired by the 1998 Oslo Conference on Freedom of Religion or Belief (UN Special Rapporteur, 1999, para. 15(a))—new titles of the *resolutions* came in 2010 (HRC, 2010a) and 2012 (UNGA, 2013 [adopted in 2012]), respectively. These resolutions will be briefly analyzed below.

Then, 2011 saw the emergence of new annual resolutions titled, “Combating Intolerance, Negative Stereotyping and Stigmatization of, and Discrimination, Incitement to Violence and Violence Against, Persons Based on Religion or Belief” (HRC, 2011b; UNGA, 2012 [adopted in 2011]). As of September 2022, 23 resolutions had been adopted, all referring to the speech of the Secretary-General of the OIC at the 15th session of the Human Rights Council (HRC, 2022a, para. 7; UNGA, 2022a [adopted in 2021], para. 7). These resolutions are part of Agenda Item 9 of the HRC, titled, “Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance, Follow-Up and Implementation of the Durban Declaration and Programme of Action.”

Resolutions from the HRC and the UNGA can identify new initiatives, involving also nonstate actors, as well as clarifying and highlighting concerns and shared expressions, that might end up constituting customary international law, as specified in the introduction.

Resolutions on freedom of religion or belief

As one important normative source is the 1981 Declaration, a brief analysis of the content of the 1981 Declaration and the differences with the post-2010-resolutions seems warranted.

Article 6 of the 1981 Declaration includes the most substantive elements that are not explicitly addressed by Article 18 of the Universal Declaration of Human Rights (UDHR) and Article 18 of the ICCPR. It contains nine paragraphs specifying the following freedoms: (1) maintain places for worship, (2) keep charitable institutions, (3) make and use materials related to rites, (4) disseminate relevant publications, (5) teach a religion at suitable places, (6) receive voluntary financial and other contributions, (7) elect appropriate leaders, (8) observe days of rest and celebrate holidays and ceremonies, and (9) keep communications with individuals and communities in matters of religion at all levels.

Many states have not ensured these freedoms, such as the right to receive financial contributions from abroad or freely electing their leaders. How then do the freedom of religion or belief resolutions address these issues? The following wording has gradually become more explicit in the resolutions from the HRC and UNGA: First, when describing violence and extremism, currently terms such as “deep concern,” “increasing,” and “rise” are applied (HRC, 2022b, para. 3), whereas the 2010 resolution referred merely to concern, instances, and incidents (HRC, 2010b, para. 6).

Second, the right to change one’s religion or belief is explicitly recognized. Since its first recognition (UNGA, 2006 [adopted in 2005], para. 4(a)), the wording has gradually been strengthened. The phrase “Urges States” introduces the paragraph in which this wording is found. The right to change one’s religion is recognized in UDHR Article 18 and in General Comment 22, elaborating on the content of Article 18 of the ICCPR (UN Human Rights Committee, 1993, para. 5), as well as in the concluding observations from the HRC; its practice on this issue is termed “unequivocal” (Taylor, 2005, p. 33). Yet this crucial aspect of freedom of religion or belief was only implicitly included in the ICCPR Article 18, due to pressure from certain states with a Muslim majority population (Khaliq, 2012, p. 196; Taylor, 2005, p. 36).

Neither was the right to change religion explicitly recognized in the 1981 Declaration (Bielefeldt et al., 2016, p. 105). Both included the formulation “religion or ... belief of his choice,” but not explicitly the term “change.” Muslim scholars have challenged this restrictive line of thinking (Baderin, 2005, pp. 120–123; Saeed, 2018, p. 200). The phrase “of his choice” might, however, imply an implicit acceptance of the right to choose a different religion than one’s previous religion. Moreover, there are differences between the two. ICCPR applies the term “to have or to adopt.” The 1981 Declaration merely includes “have” and adds “whatever” before belief, implicitly acknowledging atheism. It is relevant to observe that the right to change one’s religion is not included in the Convention on the Rights of the Child.

Third, there is a strong emphasis on combating violence, intimidation, coercion, and advocacy of religious hatred, particularly against members of religious minorities, by “all necessary and appropriate action, in conformity with international standards of human rights” (UNGA, 2022b [adopted 2021], para. 14(k)). Hence, both the individual freedom of religion or belief and the right to be free from discrimination due to one’s membership in a religious group are covered. These concerns have been expressed since the 2000s, including, “condemns ... religious hatred” (UNGA, 2008, para. 7) and expressing “deep concern” over “violence ... motivated by Islamophobia, anti-Semitism and Christianophobia” (UNGA, 2005, para. 9).

The problems recognized—violence, restrictions of individuals’ change of or loss of religion, hatred, and attacks—relate primarily to the horizontal dimension, emphasizing the responsibility of the state authorities in providing adequate protection of those belonging to religious groups.

Resolutions and related processes on combating intolerance and violence based on religion or belief

As seen above, 2011 saw the first of these resolutions, and also in 2011, an OIC-initiated process outside of the HRC had already been planned. Hence, in July 2011, a meeting was held in Istanbul that initiated the so-called Istanbul Process on combating intolerance, negative stereotyping, and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief. Eight intergovernmental meetings have been held within the Istanbul Process, also termed 16/18, due to the number of the first HRC resolution.

This Istanbul Process benefited from another process that had been initiated by the OHCHR in 2008 on exploring the relationship between freedom of expression (Article 19 of the ICCPR), and prohibition of incitement to hatred (Article 20 of the ICCPR), described above as the third deterioration leading up to 2010—but this was later turned into an opportunity by the OHCHR, with the process leading to the 2012 Rabat Plan of Action on the prohibition of advocacy of

national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence (OHCHR, 2013b; hereafter, Rabat Plan of Action).

As seen above, in 2008, the OIC was successful in temporarily—and only once—amending the mandate of the UN Special Rapporteur on freedom of opinion and expression, encompassing “[t]o report on instances where the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination” (HRC, 2008b, para. 4(d)). The term “religious discrimination” is undefined, but from the context, it seems to be about criticism of religions as such. How religious leaders should respond to various criticism and of attempts of essentializing religion will be analyzed below.

Another series of regional workshops led to a global expert workshop in 2012 in Rabat, which adopted the Rabat Plan of Action. Crucial in both the Istanbul Process and the Rabat Plan of Action is the so-called threshold test: Any restrictions must aim to protect individuals from violence or discrimination, rather than protect religions or beliefs as such. OHCHR (n.d.) has specified the threshold test, by six requirements.

The Rabat Plan of Action’s recommendations come under three headings: legislation, jurisprudence, and policies. Four recommendations are worth emphasizing. First, “States are encouraged to ... remove any reservations” (OHCHR, 2013b, para. 24) made in the connection with the ratification of treaties. Second, “States that have blasphemy laws should repeal them” (OHCHR, 2013b, para. 25). Third, states are asked to give due attention to members of minorities, by “providing legal and other types of assistance” (OHCHR, 2013b, para. 32). Fourth, states are under a “duty to put an end to impunity” (OHCHR, 2013b, para. 43), hence protecting integrity and promoting justice. These and other recommendations give guidance for strengthening both the individual freedom of religion or belief and the right to be free from religious discrimination because of belonging to a religious group.

A full review of the content of the 23 resolutions adopted so far is not possible here, but I will highlight three trends: First, the starting substantive paragraph of all resolutions adopted thus far contains a criticism of governments, by acknowledging that extremist organizations are sometimes condoned by governments (HRC, 2022a, para. 1; UNGA, 2022a, para. 2). Second, the strongest affirmation of the positive duties of governments is the wording, “To foster religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion and to contribute openly and on an equal footing to society” (HRC, 2022a, para. 8(b); UNGA, 2022a, para. 8(b)). This should encompass those who hold theologically conservative positions that do not legitimize any form of harmful practice, as will be further discussed toward the end of this article. Third, such promotion also applies to “promote full respect for and protection of places of worship and religious sites, cemeteries and shrines, and to take measures in cases where they are vulnerable to vandalism or destruction” (HRC, 2022a, para. 10; UNGA, 2022a, para. 9).

In summary, states are not only to respect but to *protect* every member of religious communities and every religious building of these communities. States are also asked to *promote* religious freedom and pluralism as well as ensuring *respect* of religious buildings. Hence, the problems are identified on the intergroup level, or horizontal dimension, with specific obligations for state authorities to mitigate these problems. Efforts of promotion must be done through schools, media, and any other form of communication to “build mutual understanding, promoting dialogue and inspiring constructive action towards shared policy goals and the pursuit of tangible outcomes, such as servicing projects” (HRC, 2022a, para. 7(a); UNGA, 2022a, para. 7(a)). The positive societal role of religious communities is hence acknowledged.

Comparing the two series of resolutions, and contrasting them with the defamation of religions and traditional values resolutions

Both series of resolutions go beyond what is provided for in Article 18 of the ICCPR. First, the freedom of religion or belief resolutions stand out for their strong affirmation of the right to

change one's religion, which is merely implicitly recognized by the ICCPR. Moreover, whereas the resolutions from the HRC emphasize protection of members of religious minorities, the General Assembly highlights Islamophobia, anti-Semitism, and Christianophobia in the *operative* paragraphs (UNGA, 2005, para. 9; for a preambular reference, see HRC, 2010a, preambular para. 9). This identification of these three “anti-ideologies”—which can be expressed through hate speech—in the resolutions’ *operative* paragraphs is unique to these resolutions.

Second, the combating intolerance and violence resolutions stand out by highlighting religious pluralism and expressing concern for the protection of religious sites, in a stronger manner than the freedom of religion or belief resolutions and the 1981 Declaration. Moreover, by referring to the 2012 Rabat Plan of Action, the combating intolerance and violence resolutions implicitly support both the removal of reservations to human rights treaties and the repeal of blasphemy laws. The combating intolerance and violence resolutions call on states to enhance minority members’ representation and participation, applying the term “equal footing” (HRC, 2022a, para. 8(b) and (c); UNGA, 2022a, para. 8(b) and (c)). Similar strong wording is not found in the freedom of religion or belief resolutions. The term “equality” is found in these resolutions only in the context of ensuring nondiscrimination in access to public services (HRC, 2022b, para. 9(e)).

Hence, the two series of resolutions have different strengths. Although both share a deep concern for religious extremism, the combating intolerance and violence resolutions have a wider scope than the freedom of religion of belief resolutions. First, states that perpetuate negative stereotypes about religions and their members are criticized. Second, the protection of religious sites is recognized in stronger terms. Third, religious communities and religious members’ participation in society is more explicitly acknowledged.

When comparing with the previous resolutions, there are several differences between the combating intolerance and violence resolutions (2011 onward) and the combating the defamation of religion resolutions (1999–2010). Two fundamental differences are highlighted.

First, the thematic scope is broader, by not merely being about alleged defamation; rather, by emphasizing positive manifesting of religion, participating in all sectors, ending religious profiling, and protecting religious sites (HRC, 2022a, paras. 8(b) and (d) and 10; UNGA, 2022a, paras. 8–9).

Second, the geographical scope in terms of support is broader. The so-called “Quartet” of the Istanbul Process consists of two states having a Christian tradition (the United Kingdom and the United States) and two states having a Muslim tradition (Pakistan and Turkey). It is highly interesting that Pakistan—which has blasphemy laws that are the world’s most frequently applied, with 1274 blasphemy charges in 1986–2010 (Dawn, 2012) and 184 blasphemy charges in 2014–2018 (US Commission on International Religious Freedom, 2020, p. 19)—is a central actor in the Istanbul Process. It could be understood as an attempt by its government to induce a change of its laws, or at least of the implementation of the laws. Hence, it seems that a consensus has emerged on the need to counter the negative impact of expressions of religion that can incite or condone various forms of violence.

Finally, the approach in the Istanbul Process and the Rabat Plan of Action, as well as the combating intolerance and violence resolutions, is also totally different from the traditional values resolutions (2009–2012). Although there are different views, several of the inputs to the traditional values process do link the notion of human dignity to the family (OHCHR, 2013a). Making one’s dignity conditional on one’s family relations—or any other characteristics—is not in line with the understanding of human dignity that is found in the preamble to the ICCPR and the UDHR.

Better norms adherence by UN cooperation with religious leaders and civil society

The middle part of the research question asks whether we see action plans adopted in other inter-governmental forums that include new norms applying to freedom of religion or belief. Although there are several examples of UN engagement with religious leaders for promoting freedom of

religion or belief or combating religious intolerance and violence, this cooperation has been strengthened in recent years. Two tracks deserve particular attention: one on promoting freedom of religion or belief, and one on combating intolerance and violence.

The Faith4Rights toolkit specifying 18 Commitments on “Faith for Rights”

In the 2008 Hague Faith in Human Rights Statement, the right to change one’s religion was not explicitly acknowledged, as it only applied the ICCPR Article 18(1) formulation of “adopt” (The Hague Workshop attendants, 2008). As we have seen, the right to change one’s religion was, for the first time, included in the resolution adopted by the General Assembly in 2005. Two years later, a representative national Muslim association supported the right to change one’s religion (Islamic Council of Norway and Church of Norway Council on Ecumenical and International Relations, 2007).

However, when faith-based and civil society actors gathered in Beirut under the auspices of the OHCHR in 2017, one of the so-called 18 Commitments on “Faith for Rights” set forth explicit support for everyone’s freedom to change one’s religion or belief (OHCHR workshop attendants, 2017, Commitment XV). The signatories also urged states with blasphemy laws to repeal them, and “commit not to oppress critical voices and views on matters of religion or belief, however wrong or offensive they may be perceived” (OHCHR workshop attendants, 2017, Commitment XI). This was a strong endorsement of freedom of expression. The signatories of this Beirut Declaration represented faith-based actors and civil society organizations, many of which have connections to religious leaders.

To guide in the implementation of these 18 Commitments, a comprehensive Faith4Rights toolkit was developed (OHCHR, 2022), building on five principles that facilitators should observe when using the toolkit: (1) concrete action (for change on the ground), (2) avoid divides (challenge the manipulation of religions), (3) introspectiveness (be self-critical, on behalf of respective communities), (4) one voice (specifically remedial compassion and solidarity), and (5) independence (guided by one’s conscience).

The 2008 Hague meeting was a Dutch initiative. The Istanbul Process was initiated by the OIC, but reached well beyond the OIC. These processes can be seen as examples of transnational mobilization—that is, central in social constructivism’s emphasis on norms diffusion (Sikkink, 2017). The efforts of the OHCHR are also noteworthy—recently, with the 2017 Beirut meeting and the Faith4Rights toolkit, as well as the earlier process leading up to the 2012 Rabat Plan of Action and its implementation. It is to this implementation process we will now turn, to be better able to assess the possible existence of new norms.

Plan of action for combating intolerance and violence—and hate speech

In regard to the combating intolerance and violence track, the Fez Declaration on preventing incitement to violence that could lead to atrocity crimes was adopted by religious leaders in 2015. The signatories committed themselves to “[m]onitor, report and respond to all instances of incitement to atrocity crimes on the basis of religion or belief ... disseminated through places of worship and education” (UN Office for the Prevention of Genocide & Others’ Forum attendants, 2015, point 7). Atrocity crimes encompass three legally defined international crimes, falling under the jurisdiction of the International Criminal Court: genocide, crimes against humanity, and war crimes.

The Fez Declaration led to a 2017 Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes (2017 Plan of Action, UN Office on Genocide Prevention and the Responsibility to Protect, 2017). The Plan of Action has three headings and eight sections: (1) *prevent* incitement to violence, incitement to extremism, and gender-

based violence; (2) *strengthen* education, dialogue, media, and all other partners; and (3) *build* peaceful, inclusive and just societies through human rights (UN Office on Genocide Prevention & the Responsibility to Protect, 2017; see United Nations (UN), 2022 for a recommitment, particularly on enhancing the role of women and youth).

Three organizations are visible on the back of the 2017 Plan of Action: one umbrella organization formed in 2013, The Network for Religious and Traditional Peacemakers—with 97 members (2022), including the OIC and six UN organizations—as well as the World Council of Churches (WCC) and the International Dialogue Center (KAICIID; the acronym stands for King Abdullah Bin Abdulaziz International Center for Interreligious and Intercultural Dialogue). Both WCC and KAICIID are members of the Network for Religious and Traditional Peacemakers.

The 2017 Plan of Action repeated the 2012 Rabat Plan of Action call for repealing of blasphemy laws (UN Office on Genocide Prevention & the Responsibility to Protect, 2017, p. 17). Moreover, the 2017 Plan of Action specified the need to “[e]nsure respect for freedom of opinion and expression while preventing incitement to religious hatred, in line with Articles 19 and 20 of the ICCPR” (UN Office on Genocide Prevention & the Responsibility to Protect, 2017, p. 17). It also asked academic institutions and organizations to train religious leaders and actors on human rights monitoring and reporting (UN Office on Genocide Prevention & the Responsibility to Protect, 2017, p. 16).

Blasphemy laws and apostasy laws are obviously tools on the vertical dimension, allowing state organs to sanction certain expressions and acts. However, these laws can easily be abused by bigoted persons and groups taking the laws into their own hands, leading to violence along the horizontal dimension. The state authorities cannot be blind to these high incidents of violence and associated impunity for the violators. The active participation of Pakistan in the Istanbul Process, keeping in mind that Pakistan has the highest number of (often unjustified) blasphemy charges (US Commission on International Religious Freedom, 2020), is at least an indication of Pakistan’s willingness to reduce religiously based violence.

Moreover, religious leaders and actors were asked to “[c]ontribute to changing discriminatory social norms and ideas relating to women and sexual minorities” (UN Office on Genocide Prevention & the Responsibility to Protect, 2017, p. 20). These requirements on religious leaders will be further discussed below.

Two years later, the United Nations issued a Strategy and Plan of Action on Hate Speech (UN, 2019). In addition to being explicitly mentioned under the section “Leveraging Partnerships,” religious actors are implicitly mentioned in the section entitled, “Fostering Peaceful, Inclusive and Just Societies to Address the Root Causes and Drivers of Hate Speech.” This section refers to interfaith and intrareligious dialogue, and the United Nations cannot promote this without religious actors.

Other forms of cooperation and implementing the tools and plans

The Special Rapporteur cooperates with several organizations to enhance knowledge and insight into what impedes and promotes freedom of religion or belief, most notably the FORB Learning Platform, being developed in cooperation with the previous Special Rapporteurs and having 55 global partners in addition to the 13 Nordic members (NORFORB, 2022).

Both the FORB Learning Platform and the tools and plans listed above provide important resources for fostering shifts in knowledge, awareness, and conduct among religious leaders and everyone entrusted to enforce laws. This article cannot analyze the actual use of these resources, but two concerns are relevant to mention. First, who is invited to meetings at which these tools and plans are drafted and adopted? The best participants are those who can both link human rights and religious norms and argue for why it is wrong that cultural practices and religious norms override human rights norms. Second, who takes responsibility for the reception processes

in the various faith communities? At least the participants at the relevant conferences must seek to influence their constituencies and make alliances for new perceptions of norms. These issues need to be discussed in greater detail.

Discussion: Challenges when acknowledging new dimensions of human rights and promoting better human rights observance among religious conservatives

The discussion will focus on the last part of the research question, identifying which challenges emerge when seeking to both ensure broad acceptance of existing norms and recognition of emerging norms.

OIC's role in shifting its priorities in the United Nations from the defamation of religion approach (1999–2010) to the combating of intolerance and violence approach (2011 onwards) is a crucial explanation for the more constructive approach that characterized the 2010s as compared to the early 2000s. The rationale is building broad international alliances and focusing on protection of adherents of religions, not religions as such. The 2012 Rabat Plan of Action and the 2017 Plan of Action go beyond the 1981 Declaration in their emphasis on protecting religious adherence. Moreover, many resolutions and the 2017 OHCHR workshop attendees have explicitly acknowledged the right to freely change religion, as affirmed by the OHCHR itself in *Rapporteurs' Digest* (OHCHR, 2011, pp. 6–11).

Similar emphasis is not explicitly included in the 1981 Declaration, which has been identified as too centered on the state–religion relationship (Ghanea, 2015). There are new challenges that are not covered by the 1981 Declaration. Whether the weaknesses imply that a new UN declaration reflecting these new understandings should be promoted or not is not for this article to discuss.

Two main issues are analyzed. First, how to gain support for new dimensions of human rights, acknowledging that these can be contrary to traditional religious doctrine. Second, how to promote an understanding of religion that does not constitute essentialization of religion?

How to gain support for new dimensions of human rights among religious conservatives?

The 2017 Plan of Action for Religious Leaders and Actors asks these leaders to “[c]ontribute to changing discriminatory social norms and ideas relating to women and sexual minorities” (UN Office on Genocide Prevention & the Responsibility to Protect, 2017, p. 20). This is interesting, given that *religious* norms regarding women and sexual minorities are perceived as core doctrines of most religions, with considerable nuances, however.

Does this imply that the norms diffusion through religious communities will always be a less effective strategy for norms change compared with fostering change through other actors? Bringing in the international dimension, will fostering change happen best through transnational mobilization and pressure, as foreseen by social constructivism, or will such pressure often backfire, making religious leaders more opposed to new norms if these are promoted by external pressure, being told by others what to do?

Although the “traditional values” process within the United Nations ended rather quickly in 2013, traditional values mobilization has certainly not ended on the domestic level in several states. Rather, concerted efforts of three so-called antigender movements, consisting of conservative governments, religious, and civil society organizations (UN Working Group on discrimination against women & girls, 2018, p. 7) have countered what they term “gender ideology” (UN Independent Expert, 2021, paras. 7–18). According to the UN Independent Expert, their efforts have resulted in a “system of oppression at the expense of the individual” (UN Independent Expert, 2021, para. 17).

A discussion concerning the way forward in regard to women will be followed by a discussion on the way forward in regard to sexual minorities. In the freedom of religion or belief resolutions, there are three references to women: (1) ending human rights violations; (2) abolishing discriminatory practices and legislation; and (3) enhancing women's participation in promoting tolerance, respect, and mutual understanding (HRC, 2022b, paras. 9(d) and 10; UNGA, 2022b, paras. 14(d) and 16). In the combating intolerance and violence resolutions, there are no references to women.

Women and girls are more exposed to human rights violations, as compared to men and boys. Forced marriage and forced conversion are practices that particularly harm women and girls. Exercising one's freedom of religion or belief cannot be done in ways that directly or indirectly justify violations of the human rights of women and girls (UN Special Rapporteur, 2016, para. 64), with a particular concern regarding so-called "honor killings" (UN Special Rapporteur, 2013, para. 30). Different emphasis in the protection of women and girls, particularly as concerns honor killings, is seen by the adoption of regional instruments (Petkoff, 2015; Naím, 2009; on protection of women and girls, see Ghanea, 2017 and Simmons, 2013). The 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention; 34 parties), prohibits in paragraphs 12(5) and 41(1) any references to religions or "honor" as justifications for acts of violence. However, there are no references to "honor" in the African Union's 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol; 42 parties) or the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará; 32 parties). "Honor" perceptions can lead to the worst forms of harmful practices (Ghanea, 2017, p. 9), and can also impede women's participation in various realms and hence impede their empowerment.

Turning to sexual minorities, it is relevant that the mandate of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity was established in 2016 (HRC, 2016; the vote was 23 for, 18 against, and six abstentions). Stronger support was expressed when the mandate was renewed in 2019 (HRC, 2019; the vote was 27 for, 12 against, and seven abstentions). The first UN Independent Expert, while acknowledging religious laws as a challenge for same-sex relations (UN Independent Expert, 2017, para. 52), emphasized the constructive role that religious leaders could play in nurturing protection against violence and discrimination on the basis of sexual orientation and gender identity (UN Independent Expert, 2017, paras. 50, 60, 66(h)).

The second UN Independent Expert identified "demands to separate human rights-based approaches on sexual orientation from those on gender identity" (UN Independent Expert, 2021, para. 8). This can at least indicate that there is a generally stronger recognition of human rights challenges for persons belonging to sexual minorities, whereas a similar recognition is presently not evident for persons with a gender identity that does not correspond to one's biological sex. Moreover, even if not written explicitly, attitudes about persons belonging to sexual minorities have been subject to norms changes. Promoting changing norms and ideas, as emphasized by the 2017 UN Plan of Action, will inevitably foster broader participation of persons belonging to sexual minorities in various realms.

In summary, there are three levels on which support for new dimensions of human rights among religious conservatives can be developed. First, as most religious communities have awareness of the common good of society, arguments can be made that discrimination, exclusion, and violence are not only harmful to the individuals but are also damaging for societies that have a certain standing. Second, efforts on the level of religious communities to promote new norms reception in religious communities should concentrate on identifying texts in holy books that affirm human dignity and compassion. Third, on the individual level, religious adherents are, in many instances, good at treating persons with care and compassion—even if not approving of all

elements of the lives of persons—and religious leaders are called, under the 2017 Plan of Action, to prevent any religiously motivated incitement to harassment and violence.

Hence, although promoting changed norms by working through religious authorities will take time, and many such authorities prefer the *status quo* rather than change, working through religious communities should not be discouraged. There might be movements within religious communities that are able to influence the leaders more effectively than what can be achieved through external pressure, and these can refer to new research by Muslim scholars (Khalid Masud et al., 2021). Nevertheless, religiously justified bigotry exists and will continue to exist, with too little protection in violent situations and too few sanctions in the aftermath of such violent situations (Hafner-Burton, 2013).

There is a substantial difference in keeping conservative attitudes and arguing against legislative changes, on the one hand, and either engaging in violence against or promoting harassment or intimidation of persons, on the other. The former can be considered as legitimate ways of expressing religious convictions. By being entitled to such expressions, one should accept others' views, whether they are embedded in a religious or a nonreligious conviction or belief system.

How to promote an understanding of religion that does not constitute essentialization of religion?

There might be reasons to be concerned with the momentum of the Istanbul Process—even if COVID-19 might be to blame; note that eight meetings scheduled in 2020 in Pakistan were postponed and held online February 16, 2022. Four of the speeches can be found by searching “8th Meeting of the Istanbul Process 2022.”

In 2019, the European Union and Danish UN Missions in Geneva and the NGO Universal Rights Group, in cooperation with the original co-sponsors of the resolution—Pakistan, Turkey, the United Kingdom, and the United States—held a so-called “stock-taking exercise.” It noted rising Islamophobia and anti-Semitism around the world. We see that the term “Christianophobia” was not applied. The Istanbul Process can be one of the many arenas in which new understandings of certain terms within Islamic thinking can be discussed and nuanced. Organizations, states, and all persons of good will should contribute to avoiding essentialization of both Islam and other religions.

Most crucial is a broader reception of the new understandings of apostasy that has emerged among Muslim scholars (Baderin, 2005, pp. 123–125; Saeed, 2012, 2018, pp. 200–207). In connection with the launch of the “Joint Declaration” (Islamic Council of Norway and Church of Norway Council on Ecumenical and International Relations, 2007), the then-chairperson of the Islamic Council of Norway stressed that the term “apostasy” should not be applied for the voluntary act of accepting a different faith; rather, apostasy should be reserved for disloyalty and acts intending to undermine and destroy the societal structures of society. Moreover, strict assumptions about what was necessary for maintaining these societal structures “no longer hold now that peace is the norm in international law, modern nation-states have equal citizens, and the new paradigm of human rights forbids religious discrimination and cruel punishment” (Oslo Coalition on Freedom of Religion or Belief, 2021, p. 8; see also Khalid Masud et al., 2021).

Still, the common understanding is that apostasy is about the individual's abandonment or renunciation of a religious belief. This understanding implies that everyone who freely chooses to accept another religion has committed apostasy, which is a serious charge in several countries. Several Muslim-dominated states expressed reservations and declarations on freedom to change one's religion or belief, in connection with their ratifications of the ICCPR (Bielefeldt et al., 2016, pp. 98–105; see also Khaliq, 2012, p. 196 and Taylor, 2005, pp. 32–42). One Muslim member of the UN Human Rights Committee stated that Mauritania's reservation to ICCPR Article 18 “was based on an archaic interpretation of Islam” (quoted in Bielefeldt et al., 2016, p. 103).

There are five arguments—in addition to the Qu’ran’s own emphasis on no compulsion in religion (sure 2:256), and the distinction between apostasy and voluntary change of religion specified above—for why individuals’ voluntary change of religion should be accepted by states.

First, the opposition to changing religion was framed in the context of opposition to Western colonial presence and the perception that missionaries were a part of this colonial system (Khaliq, 2012, pp. 188–189; on the UDHR drafting story, see Scheinin, 2000, p. 7, quoting UN General Assembly (UNGA), 1948, p. 404; see also Baderin, 2005, p. 119., and Scheinin, 1999, p. 381; for an overview, see Bielefeldt et al., 2016, pp. 56–58). This context is currently different.

Second, the last time reservations were expressed by a ratifying state to the ICCPR was when Pakistan ratified in 2010, only to withdraw those reservations in 2011 (Bielefeldt et al., 2016, p. 104), but without amending Pakistani legislation in the same process.

Third, the wording of the series of resolutions on combating intolerance and violence, which refer to the 2010 speech by the Secretary-General of the OIC and the 2012 Rabat Plan of Action, provides a justification for both withdrawing reservations and amending domestic legislation.

Fourth, the wording of the series of UN resolutions on freedom of religion or belief—adopted without a vote—acknowledges the right to change one’s religion, in addition to recent court cases from India and Malaysia (George, 2016; Sarwar, 2012; Supreme Court of India, 2018). In this context, increased tensions in India over marriage and conversion issues must, however, be noted.

Fifth, due to the norms development internationally (Khalid Masud et al., 2021; Oslo Coalition on Freedom of Religion or Belief, 2021, p. 8), arguments used in the 1940s–1980s cannot be considered to have similar weight in the 2020s.

Nevertheless, notwithstanding Sikkink’s (2017) emphasis on comparing *actual* outcomes influenced by human rights treaties and monitoring bodies with *potential* outcomes in their absence, international consensus is not adequately reflected, either in legislation or in mainstream cultures in several states. Ghana (2017) argued well for why equality and other human rights norms have a normative hegemony over cultural practices and religious norms. Added to this is that religions build on widely shared notions of human dignity, and bodily integrity is an essential part of this dignity.

If one accepts that there might be a need for a revised understanding of religion, ensuring that the collective dimension of religion is not essentialized and exercised to the detriment of the individual dimension of religion, how can this practically be promoted?

Three avenues might be identified, all relating to the vertical dimension, focusing on state restrictions of freedom of religion or belief. The first, being a soft approach, emphasizes the potentials that exist within human rights for reconciling collective religious convictions and human rights. The second, being an intermediate approach, emphasizes that religious believers have a right to maintain their individual religious convictions. The third, being the hard approach, emphasizes that all human rights are indivisible and interrelated; hence it is unjustified to implicitly allow religious communities or religious believers to maintain a practice that others perceive as discriminatory. Each of these will now be analyzed.

First, human rights provide a basis for reconciling collective and conservative religious convictions and the individual exercise of human rights, even if not all outcomes will be satisfactory for all involved. Although equality is a basic norm, jurisprudence from the European Court of Human Rights (ECtHR) implies that a distinction must be made between discrimination and unequal treatment. The brief explanation is that unequal treatment and favoring one above others can be justified in given situations, in order to promote equality of opportunity. The ECtHR accepts that religious communities and religiously owned institutions can apply distinct requirements for “liturgical, ritual and doctrinal teaching positions” (Trispiotis, 2019, p. 899). Hence, religious communities can maintain certain requirements for their employees that might result in unequal treatment and still be promoters of human rights.

Second, expressions of conservative religion should generally be permitted, with limited exceptions as specified by ICCPR Article 18(3) and 20(2)—even if conservative religion can, in some

instances, lead to an overall sentiment of intolerance. Freedom of religion or belief implies that religious believers or nonbelievers should not be restricted in their *nonharmful* practice, termed “decisional autonomy” (Khaitan and Calderwood Norton, 2020) or “ethical independence” (Trispiotis, 2019). Being allowed to keep this conviction falls under freedom of conscience, and conscience is not included in ICCPR Article 18(3), which specified the legitimate restrictions. Hence, ICCPR has a clear distinction between *forum internum*—one’s inner convictions, which cannot be restricted—and *forum externum*—how these convictions are expressed in concrete encounters with others, which can be subject to restrictions (Bielefeldt & Wiener, 2020, pp. 32–36).

Third, maintaining a religiously justified practice that others perceive as discriminatory might, for some, lead to calls for a strict secularism, implying that state objectives or state principles are perceived to be “undermined” or “threatened” by religiously justified practices. Even if legal prohibitions on religious dressing have been accepted by the ECtHR, there are Asian states with a much stricter secularism than what can be found in Europe.

Hence, promoting secularity as a level playing field will provide a basis for allowing religious expressions and fostering better tolerance between religious adherents. Upholding secularity as a level playing field will ensure freedom of expression and of religion, and the right to criticize religions. This is a situation that is substantially different from what results from an illiberal and intolerant secularist ideology. Although Bielefeldt and Wiener did apply the term “secularism,” they specified requirements of an inclusive and nondoctrinal secularism (Bielefeldt & Wiener, 2020, pp. 115–118, 122–125).

Conclusion

This article has shown that there are, indeed, new norms applying to freedom of religion or belief and that there are challenges emerging when seeking to ensure both broad acceptance of existing norms and recognition of emerging norms.

A recognition of the core of religious convictions can be maintained, distinguishing this from religiously motivated expressions that might negatively affect others’ enjoyment of their human rights. Potentially negative attitudes and practices between those belonging to different religions apply to what has been termed the horizontal dimension and might, in certain instances, require state protection. The main responsibility for countering such intolerant expressions should be on religious leaders. The new forms of cooperation and alliance-building are more evidence of a new norm.

Moreover, there is a higher acknowledgment of balancing between freedom of expression and freedom of religion that is related to the vertical dimension and state interference. This article has also identified the stronger recognition of the positive role of religious persons and religious communities.

Particular attention has been devoted to Islam and the role of the OIC. There is no other international organization than the OIC that is better positioned to undertake the task of creating a culture in Muslim-dominated countries for the welcoming of all elements within freedom of religion or belief, including the right to change one’s religion and to be allowed to criticize religion, and to advise states on how to legislate. Such an approach is in line with religious regionalism (Petkoff, 2015), similar to the regional approach advocated by Hafner-Burton (2013).

Finally, although, for instance, the 2012 Rabat Plan for Action did not address the situation of women, the 2017 UN Plan of Action calls on religious leaders to contribute to new norms and ideas relating to women and sexual minorities, in line with the basic thinking of social constructivism. Too few states, however, have engaged in comprehensive efforts to eliminate gender stereotypes, as required by Articles 2(f) and 5(a) of the UN Convention on the Elimination of All Forms of Discrimination against Women.

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