



Engagement with regional multilateral organisations

Case study: OIC and League of Arab States

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Executive Summary

This paper will examine the contours of EU cooperation with the LAS and the OIC in the specific case of human rights. In doing so, this paper argues that this cooperation, apart from being at an incipient stage, is understood instrumentally by the actors involved, although in different ways.

While the EU has a longstanding and varied record on human rights, the LAS and the OIC are, if anything, latecomers to the human rights politics sphere. In section III, the EU human rights foreign action is presented. The EU has an intricate fabric of institutions that lay the agenda, decide, and implement human rights actions. Its foreign action is not an exception, and the EEAS is now leading the interregional dialogue with the LAS and the OIC.

After revising the current dialogues between the considered regional organisation, sections IV and V focus on the LAS and the OIC's understanding of human rights respectively. In both cases, the lack of intention from member states to deposit sovereignty on their organisations is responsible for flawed declarations on human rights, full of references to respect domestic law, an attitude which affects the universal interpretation of human rights. In the case of the OIC, and to a lesser extent the LAS, religious references are numerous, limiting again the universality and indivisibility of human rights. This is fully contrasted not only when analysing their speeches and actions, but also through careful understanding of their human rights charters. It has been found, however, that in both cases, human rights rhetoric and language has been gradually incorporated in the work of the organisations, with the launching of institutions dedicated to human rights.

When the cooperation with the EU is observed, other issues come to the surface. In section VI these dialogues are considered, finding that human rights are included in most communications, and that human rights are part of concrete common actions, including workshops and conferences. However, in the recently adopted Memoranda of Understanding between the EU and the two organisations at hand, no mention is made of human rights whatsoever, while other spheres of cooperation enjoy far more traction. The latter include security, counter-terrorism, migration and crisis management.

As such, we conclude that EU cooperation with 'Arab' and 'Muslim' regional organisation is not founded, on a *common* interest to advance human rights promotion and protection. In view of the above mentioned 'hard interests', human rights are left to occupy, if any, a mere rhetorical role in the dialogues.

List of abbreviations

ACHR	Arab Charter on Human Rights
AFET	Committee on Foreign Affairs of the European Parliament
CCDH	Advisory Council on Human Rights
CDHRI	Cairo Declaration of Human Rights in Islam
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFSP	EU Common Foreign and Security Policy (1993, enhanced after 1999)
CoE	Council of Europe
COHOM	Council Working Party on Human Rights
DCFTA	Deep and Comprehensive Free Trade Area (or Agreements) (ALECA in French)
EAEC	European Atomic Energy Community
EEAS	European External Action Service
EEC	European Economic Community
ECSC	European Coal and Steel Community
EEAS	European External Action Service (launched 2011)
EIDHR	The European Instrument for Democracy and Human Rights
EMP	Euro-Mediterranean Partnership (or Barcelona Process) (1995)
ENI	European Neighbourhood Instrument (2014)
ENP	European Neighbourhood Policy (2004) (PEV in French)
ENPI	European Neighbourhood and Partnership Instrument (ended 2013 see ENI)
EP	European Parliament (of the European Union)
EU	European Union (and predecessor organizations)
FDI	Foreign Direct Investment
FTA	Free Trade Agreements
GMP	Global Mediterranean Policy

HR/VP	High Representative of the European Union and Vice-President of the European Commission
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPHRC	Independent Permanent Human Rights Commission of the OIC
MEDA	Mediterranean Agreements (ceases 2011 with ENPI)
MTC	Mediterranean Third Countries
OIC	Organisation of the Islamic Conference (until 2011) Organisation of Islamic Cooperation (after 2011)
PACE	Parliamentary Assembly of the Council of Europe
PEV	Politique Européenne de Voisinage (ENP in English)
RMP	Renewed Mediterranean Policy (RMP) (1990-1996)
SMCs	Southern Mediterranean Countries
UDHR	Universal Declaration of Human Rights
UfM	Union for the Mediterranean (2008) (43 countries)
UN	United Nations

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I. Introduction

This paper will examine the human rights dialogues between the European Union (EU) and the League of Arab States (Arab League or LAS) as well as between the EU and the Organisation of Islamic Cooperation (OIC) (formerly the Organisation of the Islamic Conference).¹

The EU has long maintained diplomatic and economic ties with countries from the Muslim and Arab worlds.² Most of the interactions have been through bilateral engagements between the EU and individual countries, including, for example, Turkey, Morocco, Albania, Jordan, Egypt, and Saudi Arabia. Since 2011, with the establishment of the European External Action Service (EEAS), the principal loci of diplomatic discussions have been between the EU and the individual member states of the OIC and LAS rather than with the intergovernmental organisations to which they belong.

Nevertheless, the EU has been involved diplomatically with the Arab and Muslim worlds in multilateral fora, particularly the United Nations, but also through channels such as the Euro-Arab Dialogue (1974-1989) and the Euro-Mediterranean Partnership (EuroMed) (beginning in 1995). Although the EU has long had such relationships with the Muslim and Arab worlds, there have been *relatively* few occasions in which the EU as an institution has engaged directly with either the Arab League or the OIC. Probably the most intense series of negotiations between the EU and either of the other two intergovernmental organisations on a human rights issue during the last decade was with the OIC at the United Nations with regard to the OIC-sponsored series of resolutions on the 'Defamation of Religion'. Nevertheless, from the outset, it is important to note that EU dialogues with the Muslim and Arab worlds take place largely outside of the framework of the LAS and OIC.

As of the beginning of 2016, it appears that the EU is now preparing to give additional attention to the LAS on several fronts, although the most significant focus of the new attention appears to be counterterrorism. Thus we may be observing the first signs of a heightened interest in the role that the LAS might play with regard to the promotion of EU interests. Although official EU policy promotes 'mainstreaming' human rights and integrating human rights at all levels of discussions with EU interlocutors, the indications are that human rights discussions are a 'soft issue' that takes a 'back seat' to the 'hard issues' of combatting terrorism, ensuring political stability in the Middle East, and dealing with the problem of migration. These 'hard issues' of counterterrorism, stability, and migration, as well as other 'hard issues' such as trade, appear to overwhelm if not subvert 'soft issues' such as human rights,

¹ The term 'EU' will be used generically to refer to the European Union as well as its predecessor institutions, including the European Economic Community.

² At this point the terms 'Arab world' and 'Muslim world' are being used loosely to signify countries that identify themselves with populations that are majority Arab or majority Muslim. All Arab-majority countries are Muslim-majority countries (including Lebanon), although not all Muslim-majority countries have significant Arab populations (such as Pakistan and Indonesia). There are between 350 and 400 million Arabs (the clear majority of which are Muslim) and approximately 1,600,000,000 Muslims, meaning that Arab Muslims are a minority in Islam. The country with the second or third largest Muslim population in the world is India – which obviously is not a majority-Muslim country.

good governance, transparency, and the rule of law. Although the ‘soft issues’ continue to be promoted rhetorically in official EU declarations, the reality may be somewhat different.

The relative importance of perceived ‘hard issues’ such as stability versus ‘soft issues’ such as human rights, remains outside the scope of this particular paper. Nevertheless, it may well be the case that the *long term* ‘hard issues’ are less related to suppressing manifestations of terrorism and are in fact human rights, transparency, the rule of law, and democratisation. Short-term hard realism may undermine long-term stability.

II. EU and human rights in its external action

A. Human Rights generally

According to the European External Action Service (EEAS), the promotion of universal and indivisible human rights is at the core of the EU’s mission in its foreign relations.

The EU views all human rights as universal, indivisible and interdependent. It actively promotes and defends them both within its borders and when engaging in relations with non-EU countries.

The European Union is founded on a strong engagement to promote and protect human rights, democracy and rule of law worldwide. Sustainable peace and stability, long-term development and prosperity cannot exist without respect for human rights and democratic institutions. This commitment, which finds its legal basis in Art. 21 of the Lisbon Treaty, underpins all internal and external policies of the European Union.³

The EU’s human rights and democracy policy encompasses civil, political, economic, social and cultural rights. The EU is adamant about protecting the universal nature of human rights when this is questioned on grounds of cultural or political differences. The EU furthermore believes that democracy is the only political system which can fully realize all human rights.

Unlike the 1957 Treaty of Rome, which created the EEC, the 1992 Treaty on the European Union (Maastricht), made brief references to the promotion of human rights and democracy as goals of the EU.⁴ By the 21st century, however, following the Treaty of Lisbon, the EU elevated human rights into its governing law. In the 2012 consolidated version of the Treaty on European Union, human rights are

³ EEAS. (2016) Human Rights and Democracy. Available at: http://eeas.europa.eu/human_rights/about/index_en.htm [16 Mar 2016].

⁴Treaty on European Union (1992) http://europa.eu/eu-law/decision-making/treaties/pdf/treaty_on_european_union/treaty_on_european_union_en.pdf [16 Mar 2016].

Preamble: ‘CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law...’

Title I Art. F.2: ‘The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law’.

Title V J.1.2: ‘The objectives of the common foreign and security policy shall be ‘to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms’.

identified as fundamental norms. The Treaty on European Union makes reference to this, notably Article 21, which stresses the EU's determination to promote and protect human rights in its external action⁵. In detail, this article endorses 'the universality and indivisibility of human rights'⁶ as a guiding and working principle that needs to be respected and pursued in all EU policies and fields of actions.⁷ This commitment was similarly emphasised with the adoption of the Charter of Fundamental Rights, which has been legally binding since 2009.⁸ As quoted above, in a different context, the EU stated in 2008 that:

The European Union undertakes to intensify the process of integrating human rights and democratisation objectives ('*mainstreaming*') into *all aspects of its external policies*. Accordingly, the EU will ensure that *the issue of human rights, democracy and the rule of law will be included in all future meetings and discussions* with third countries and *at all levels*, whether ministerial talks, joint committee meetings or formal dialogues led by the Presidency of the Council, the Troika, heads of mission or the Commission.⁹(emphasis added)

This brief passage identifies four key factors with regard to human rights: *mainstreaming* the topic, including human rights in *all aspects* of external policies, including human rights in *all discussions* and at *all levels* of discussions.

In 2012, the same basic precepts were concretised and expanded in the 'EU Strategic Framework and Action Plan on Human Rights and Democracy'. The key tenets of this document are the commitment of the EU to mainstream human rights throughout EU policy, incorporating human rights in all Impact Assessment evaluations, engaging at all levels with CSOs and continuously evaluating the human rights impact of EU action. Trade, regulation, counterterrorism, conflict prevention, and crisis management are key areas where mainstreaming of human rights are particularly encouraged.¹⁰ Bilateral and multilateral channels are both considered in the 2012 EU Strategic Framework, as well as an array of human rights that need specific consideration.¹¹

The 2012 Strategic Framework specifically identified the Arab League and the OIC as partners for integrating human rights, which pledged that the EU 'will work in partnership with regional and other organisations such as [...] the Arab League [and] the Organisation of Islamic Cooperation'.

⁵Consolidated Version of the Treaty on European Union [2008] OJ C115/13, art 21.

⁶ Treaty on European Union, *ibid*, art 21(1).

⁷ Treaty on European Union, *ibid*, art 21(3).

⁸EEAS, *ibid*.

⁹ EU Guidelines on human rights dialogues with third countries – update, 22 Dec 2008 16526/08. <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2016526%202008%20INIT>.

¹⁰Council of the EU. (2012). *EU Strategic Framework and Action Plan on Human Rights and Democracy*, art 10 – 15.11855/12http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf [accessed 20 Mar 2016].

¹¹ 2012 EU Action plan, *ibid.*, art 16 – 30.

The 2012 Strategic Framework officially expired in 2014¹², with its second edition launched in 2015 for a duration of four years¹³, continuing in most senses with the legacy of the first Action Plan. Annual Reports have been published since 2012, covering the EU action and the human rights situation in third countries. Institutionally speaking, 2012 was also marked by the nomination of the first EU Special Representative for Human Rights¹⁴, whose mandate is to coordinate and implement the different Strategic Actions on Human Rights and Democracy¹⁵. Together with the EEAS and the EC, the Council of the EU is part of the human rights foreign action, with a working party focussing on this field, the COHOM¹⁶. The official importance of integrating human rights into the EU's external actions was reinforced again as recently as 5 March 2016, when the EEAS launched a new campaign for the promotion of human rights as an integral part of the EU's external action.¹⁷ While the commitment has powerfully emerged during the 21st century, it remains to be seen to what extent human rights are actually integrated at all levels of EU external action.

B. EU institutions involved in the EU-LAS/OIC dialogues

In the intricate and complicated EU institutional fabric, foreign policy remains a matter decided by overlapping institutions within the EU that often have competing values.¹⁸ Although the treaty of Lisbon marked a new stage in the organising of the foreign policy apparatus, today the interaction between institutions in this domain remains complex.¹⁹ The EU's principal organs and institutions with a stake on the Union's external policy are the European Council, the Foreign Affairs Council, the EEAS, the European Commission, and the European Parliament.²⁰

The European Council directs the EU's general political agenda, and does so through its meeting statements, which are normally reached by consensus.²¹ It is not a legislative body, but, as stated above, has the mandate to initiate the policy-making process in the EU. It meets monthly, with the participation of the High Representative when foreign affairs are discussed. It gathers heads of state or government and passes the baton to the Foreign Affairs Council for the definition of EU foreign policy. On 27 June 2014, the European Council agreed to adopt a five-point list with top priority areas to guide the EU's action during the coming five years.²² The last of the five points lays the basis for the EU's foreign action, in which

¹² EEAS. (2014). *Annual Report 2014. Human Rights and Democracy in the World in 2014*. Available at: http://eeas.europa.eu/human_rights/docs/2014-hr-annual-report_en.pdf [16 Mar 2016].

¹³ Council of the EU. (2015). Action Plan on Human Rights and Democracy 2015 – 2019. 10897/15. Available at: http://eeas.europa.eu/human_rights/docs/action-plan-on-human-rights-and-democracy-2015-2019_en.pdf [16 Mar 2016]

¹⁴ Council Decision 2012/440/CFSP of 27 July 2012 appointing the European Union Special Representative for Human Rights [2012] OJ L 200/21.

¹⁵ Council Decision 2012/440/CFSP, *ibid.*, art 3.

¹⁶ The Council of the EU (n.d.) Working Party on Human Rights. Available at: <http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/working-party-human-rights/> [16 Mar 2016]

¹⁷ 'EU4HumanRights' http://eeas.europa.eu/top_stories/2016/150316_eu4humanrights_en.htm [16 Mar 2016]

¹⁸ Bindi, Federiga and Angelescu, Irina, eds. (2012). *The Foreign Policy of the European Union* (2nd Edition). Washington, US: Brookings Institution Press, p. 41

¹⁹ *Ibid.*, p. 42.

²⁰ EEAS, 'Relation to other EU institutions and bodies', available at: http://eeas.europa.eu/background/relations-insitutions/index_en.htm [accessed 28 Mar 2016]

²¹ Bindi and Angelescu, *The Foreign Policy of the European Union*, 43

²² European Council. (2014). *Conclusions for the 26-27th June meeting*. ST 79 2014 INIT.

consistency in the EU's foreign policy, the promotion of stability, prosperity, and democracy in neighbouring EU states and the engagement with global partners in different areas, including human rights, should all be part and parcel of the EU's policy agenda.²³

The aforementioned guidelines are the basic material upon which the Council of the EU makes decisions. One of its prerogatives is to develop the EU's common foreign and security policy (CFSP), defining and implementing it. In order to guarantee unity and coherence, the High Representative of the Union for Foreign Affairs and Security Policy (HR) chairs the specific thematic configuration, the Foreign Affairs Council (FAC).²⁴ On a monthly meeting at the ministerial level, the Foreign Affairs Council makes sure that the EU external action is consistent, has the mandate to define and implement European Council's conclusions, can launch EU crisis management actions, and adopt any measure to implement the EU's foreign and security policy. Within the meeting, not only the HR/VP's assures the European Commission's (EC) presence, it is also reassured by the participation of the European Commissioners occupied with foreign affairs issues.²⁵

Since 2011, the formal launching of the EEAS has changed the foreign policy-making and institutional constellation of the EU. The primary task of the EEAS is to assist the HR/VP in his or her varied prerogatives. However, the European Commission still retains the authority in matters involving aid, development, energy, and enlargement.²⁶ The EEAS nevertheless remains the single most important EU institution with regards to interregional cooperation, and it does not share this competence with the EC.²⁷ Finally, the European Parliament (EP) functions in this specific field of action pursuing its accountability role. The EU Parliament plays a role in shaping overall EU policy toward the LAS and OIC as well as toward the member states of the two intergovernmental organisations. In addition, the Parliament may play a small role in bilateral discussions through parliament-to-parliament exchanges. The Parliament contains 20 standing committees, including Foreign Affairs (AFET), which in turn includes two subcommittees, Human Rights (DROI) and Security and Defence (SEDE). The purpose of the AFET is the 'promotion, implementation and monitoring' of the EU's foreign policy.²⁸ The AFET surveys all EU foreign policy, including the European Neighbourhood Program or the European Instrument for Democracy and Human Rights. Moreover, AFET is in charge of the monitoring of institutional relations with EU bodies, UN bodies, and other intergovernmental organisations relevant to the EU's external policy.²⁹

With regard to the LAS, an EU-LAS liaison office (ECLASLO) was opened in Malta in 2009, in parallel with the Malta Initiative that was started by the Maltese Foreign Affairs Minister to put the LAS and the EU in

²³ Ibid., p. 20

²⁴ The Council of the EU, 'Foreign Affairs Council configuration (FAC)', available at: <http://www.consilium.europa.eu/en/council-eu/configurations/fac/> [accessed 28 Mar 2016]

²⁵ Ibid.

²⁶ EEAS, 'Relation to other EU institutions and bodies', available at: http://eeas.europa.eu/background/relations-insitutions/index_en.htm [accessed 28 Mar 2016]

²⁷ Ibid.

²⁸ European Parliament. (2015). *Rules of Procedure of the European Parliament*. Annex VI, Title I. <http://www.europarl.europa.eu/sides/getLastRules.do?language=en&reference=ANN-06> [accessed 26 Mar 2016].

²⁹ European Parliament, *ibid.*

closer contact.³⁰ Although the EU-LAS relations gained some momentum after Malta I, the military intervention of Israeli troops in Gaza in 2008 marked an important setback, which would irremediably affect ECLASLO.³¹

In 2012, the Cairo Declaration made reference to ECLASLO in article 3, stating that the organ ‘will be an important instrument to implement such projects’, in relation to the bilateral cooperation programme that would be created following the ministerial meeting in Cairo.³² In 2014, the Athens Declaration also made reference to ECLASLO when saying that ‘the Ministers undertook to further support the European Commission-LAS Liaison Office in Malta (ECLASLO), to play a bigger role in enhancing practical cooperation between the two sides’.³³

To date, the available information on the activities of ECLASLO remains scarce. However, Maltese governmental sources affirm that the Liaison Office participates in the training and information course on Euro-Arab diplomacy.³⁴ Other workshops and events have taken place, tackling migration and gender issues.³⁵ On the 14th March 2016, the LAS held at its headquarters in Cairo a Steering Committee Meeting of ECLASLO, with the presumable intention to give a boost to the organ.³⁶

During the Parliamentary session of control of 17 April 2015, MEP Barbara Lochbihler (Verts/ALE) and other party members raised a question to the HR/VP Federica Mogherini regarding ECLASLO’s raison

³⁰ Foreign Affairs, Government of Malta, ‘The Embassy of Malta in Cairo participates in the Steering Committee Meeting of the European Commission League of Arab States Liaison Office’, available at: https://foreignaffairs.gov.mt/en/Embassies/Me_Cairo/Pages/News/The-Embassy-of-Malta-in-Cairo-participates-in-the-Steering-Committee-Meeting-of-the-European-Commission-League-of-Arab-Stat.aspx [accessed 28 Mar 2016]

³¹ Elisabeth Johansson-Nogués, ‘The New EU-Arab League Dialogue: The Contours of a Cooperation,’ *Mediterranean Politics* 20,2 (2015): 295-302.

³² EU-LAS Foreign Affairs Ministerial Meeting. (2012). *Cairo Declaration*, art 3. available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/133465.pdf [accessed 28 Mar 2016]

³³ EU-LAS Foreign Affairs Ministerial Meeting. (2014). *Athens Declaration*, art 12. available at: http://www.eas.europa.eu/statements/docs/2014/140611_03_en.pdf [accessed 28 Mar 2016]

³⁴ Foreign Affairs, Government of Malta, ‘The Embassy of Malta in Cairo participates in the Steering Committee Meeting of the European Commission League of Arab States Liaison Office’, available at: https://foreignaffairs.gov.mt/en/Embassies/Me_Cairo/Pages/News/The-Embassy-of-Malta-in-Cairo-participates-in-the-Steering-Committee-Meeting-of-the-European-Commission-League-of-Arab-Stat.aspx [accessed 28 Mar 2016]

³⁵ Foreign Affairs, Government of Malta, ‘Minister for Foreign Affairs George W. Vella addresses the round table discussion on ‘The European Agenda on Migration,’ available at: <https://foreignaffairs.gov.mt/en/Government/Press%20Releases/Pages/Minister-for-Foreign-Affairs-George-W--Vella-addresses-the-round-table-discussion-on-%E2%80%9CThe-European-Agenda-on-Migration%E2%80%9D.aspx> [accessed 28 Mar 2016]

³⁶ Foreign Affairs, Government of Malta, ‘The Embassy of Malta in Cairo participates in the Steering Committee Meeting of the European Commission League of Arab States Liaison Office’, available at: https://foreignaffairs.gov.mt/en/Embassies/Me_Cairo/Pages/News/The-Embassy-of-Malta-in-Cairo-participates-in-the-Steering-Committee-Meeting-of-the-European-Commission-League-of-Arab-Stat.aspx [accessed 28 Mar 2016]

d'être, its activities and the oblivion of its mentioning in the EU-LAS MoU.³⁷ In her answer of 21 September 2015, Mogherini explained the genesis of the Office and gave examples of its activities.³⁸ However, the more substantive questions in relation with the fact that it had not been mentioned in the MoU passed unanswered.

III. The League of Arab States and human rights

A. Introduction to the Arab League

The League of Arab States (Arab League or LAS), which came into existence on 22 March 1945, is an intergovernmental organisation that now includes 22 member states, including Palestine.³⁹ Its permanent headquarters is in Cairo, Egypt. The founding Pact of the League of Arab States (Arab Pact) emphasizes the importance of independence of the 'Arab' lands that were, at the time of the League's founding, subject to European colonial control either as protectorates, colonies, or other forms of direct or indirect rule. Since 1945, all Arab lands have acquired their independence, with the obvious exception of Palestine. The Arab Pact also emphasizes cooperation among Arab states to promote their common political and economic interests, but says nothing about human rights or good governance. This omission should, however, be placed in context. The Arab League was created before the drafting of the first major modern human rights instrument, the Universal Declaration on Human Rights, and thus it was not at all exceptional that the Arab League did not identify human rights as a founding issue.⁴⁰

The original signatories to the Arab Pact are frequently described as independent Arab states. It would be more accurate to state that in 1945 the 'independent' status of the signatories was aspirational rather than an accomplished fact. Of the seven earliest members of the Arab League, only Saudi Arabia and the Kingdom of Yemen (later the Yemen Arab Republic) were fully independent at the time. The remaining five were effectively under either British or French military occupation or suzerainty in 1945. It is perhaps

³⁷EP written question to the Commission (HR/VP). *League of Arab States Liaison Office in Malta (Verts/ALE)*. E-006221-15, 17 April 2015. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2015-006221+0+DOC+XML+V0//EN&language=pt> [accessed 28 Mar 2016]

³⁸Answer given by VP Mogherini on behalf of the EC. *League of Arab States Liaison Office in Malta (Verts/ALE)*. E-006221/2015, 21 September 2015. Available at: <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2015-006221&language=PT> [accessed 28 Mar 2016]

³⁹Syria was suspended in 2011. The member states in alphabetical order (with their date of accession in parentheses) are as follows: Algeria (1962), Bahrain (1971), Comoros (1993), Djibouti (1977), Egypt (1945), Iraq (1945), Kuwait (1961), Lebanon (1945), Libya (1953), Mauritania (1973), Morocco (1958), Oman (1971), State of Palestine (1976), Qatar (1971), Saudi Arabia (1945), Somalia (1974), Sudan (1956), Syria (1945) (suspended on November 16, 2011), Transjordan (1945), Tunisia (1958), United Arab Emirates (1971), the Mutawakkilite Kingdom of Yemen (1946). The identification of Palestine as a 'state' is for some observers, of course, controversial. The Mutawakkilite Kingdom of Yemen became the Arab Republic of Yemen in 1962 (popularly 'North Yemen'). South Yemen joined the Arab League as an independent state in 1967 before merging with North Yemen in 1990 to form what is now the Republic of Yemen.

⁴⁰The 1945 Pact has been amended twice, in 1958 and 2005. The first amendments pertained to Council meetings and in 2005 it was amended for the purposes of establishing an Arab Parliament and for establishing procedures in the event of an attack against a member state. The 2005 amendments came into force in 2007.

useful to think of the term ‘independent Arab States’ as an understandable political aspiration of the time, rather than as an accomplished political reality. Indeed, it is more accurate to describe the majority of the signers of the Pact as ‘struggling-to-be-independent’, rather than as ‘sovereign states’. With the Arab League’s admission of the ‘State of Palestine’ in 1976, the on-going aspiration for sovereignty continues to play an active role in the institution’s identity.

At the time of the founding of the Arab League in 1945, three of the principal interests and goals of the fledgling organisation were first, promoting independence from foreign rule in all ‘Arab’ lands (however defined); second, promoting cooperative relations among the emerging independent states; and third, opposing any efforts by the British or the world community to create a Jewish entity or state inside Palestine. It should be noted that efforts to promote *Arab* unity were circumscribed by the competing interests of local political elites to rule their respective sovereign states rather than be subsumed into some larger political entity where their influence might be diluted.

Having been founded in 1945 before the international community began to promote the universality of human rights through instruments such as the Universal Declaration of Human Rights (1948) or the Genocide Convention (1948), the Arab Pact’s lack of reference to human rights, democracy, good governance, is understandable. Its focus was not the rights of individuals or minority groups, but the importance of self-determination (for the majority ethnic nationality), sovereignty, and non-interference in the internal affairs of Arab states. The Pact declares that each member state ‘shall respect the form of government obtaining in the other States of the League, and shall recognize the form of government obtaining as one of the rights of those States, and shall pledge itself not to take any action tending to change that form’ (Arab Pact, 1945: Art. 8).

While the Pact refers to the rights of its member *states*, e.g.in Article 8, it says nothing about the rights of *people* who live inside those states. None of the subsequent amendments to the 1945 Pact included any provisions on the rights of human beings. (In 2015, amendments to the Pact were proposed to include references to human rights, but they have not been adopted). Thus the Arab League is to a large extent preserving non-interference as a guiding principle rather than overcoming it. Though the interest of Arabs and independence of lands where Arabs were in a majority was a founding concern, no substantial effort was made to clarify what is meant by the defining term ‘Arab’. The original gap in explaining what is and is not included in the important word ‘Arab’ leads to the understandable concern of whether people of non-Arab nationality living in Arab League states are second-class citizens and are therefore not entitled to the same rights as Arabs. This same problem confronts the member states of the Organisation of Islamic Cooperation: do state governments and institutions show a preference for Muslims over non-Muslim citizens of the same states?

Palestine was of express interest in the Arab Pact. In 1945, ‘Palestine’ would have been understood to refer to the *entire* land of ‘Palestine’ under the British mandate, including what is now Israel (which did not exist until 1948), the West Bank, and Gaza.⁴¹ In 1945, all three were under the same British mandate

⁴¹ To underscore how terminology has changed, Jews born in Palestine before 1947 referred to themselves as ‘Palestinians’ (as did Arabs). The word referred to the land of Palestine and was not a synonym for ‘Arab’ nor did it designate any ethnicity or religion.

and political control and were not seen as separate entities. Thus the Arab League was not concerned about the not-yet existent entity of Israel, but was very concerned that the British might grant some or all of Palestine to the Jews. Speaking with hope more than certainty, the Annex to the 1945 Arab Pact declares that Palestine is *de jure* an 'independent' state and that it should participate in Arab League meetings.⁴²

While human rights are absent from the 1945 Pact, the Arab League subsequently adopted some texts related to human rights, including, most importantly, the Arab Charter on Human (ACHR) in 2004, which came into force in 2008, although not all of the Arab League's 22 members have ratified it as of 2015. According to one knowledgeable scholar writing in 2014, 'there is evidence that attention to human rights and international law is slowly but increasingly featuring in LAS's decisions. There is a noticeable increase in informed and accurate reference to international law in resolutions [...].'⁴³ Yet, even with these modest improvements, there are very few major achievements of LAS bodies in relation to ensuring promotion and protection of human rights and beyond. LAS has systematically adopted the approach that it, as a body, does not interfere in the internal affairs of member states. Therefore, despite many major human rights concerns in Arab countries, LAS generally did not discuss these concerns through its various bodies. The main exception has always been violations of international human rights and humanitarian law in the context of the Arab–Israeli conflict.⁴⁴

There are several significant difficulties in describing and explaining the Arab League. As Mervat Rishmawi has stated, there 'is a scarcity of literature of any kind, academic or otherwise that analyses the LAS, its standards, mechanisms, and debates relating to the promotion and protection of human rights compared to other regional intergovernmental organisations'.⁴⁵ Meetings are frequently held behind closed doors and NGOs and the press are often not welcome to cover proceedings. Many critical documents are not published after being adopted nor updated after being amended. Versions of documents other than in Arabic frequently are not made available. For example, a complete, English-language version of the 1945 Pact, as amended, is not available on the Arab League's website (or other typical sources), nor is the 1983 Charter on the Rights of the Arab Child easily available in any language other than Arabic. The status of ratifications and reservations is not clearly available. Full transparency of its operations and activities should be a priority in any regional intergovernmental organisation that takes its responsibility toward its members, civil society, or the remainder of the world seriously.

⁴² In 1945, Palestine had effectively been under British rule since 1917, and had been declared a British mandate through the League of Nations. In 1947, Britain announced its intention to withdraw from Palestine and to turn responsibility for its future over to the new United Nations. United Nations General Assembly Resolution 181 proposed to divide Palestine into a 'Jewish state', an 'Arab state', and an international zone for Jerusalem. Israel declared its independence in 1948 and seized part of the designated Arab state in the fighting of 1947 and 1948. The state of Transjordan seized the 'west bank' and Jerusalem, while Egypt seized Gaza, leaving the proposed Arab lands under Israeli, Transjordanian, and Egyptian control.

⁴³Rishmawi, 'League of Arab States' (2014), 616. Rishmawi is, however, very much aware, and critical of, the frequent recourse to political expediency by the Arab League rather than following a conscientious and principled approach to human rights and international law.

⁴⁴Rishmawi, 'League of Arab States' (2014), 618.

⁴⁵Rishmawi, 'League of Arab States' (2014), 617.

What may be surprising to observers of the 21st century Middle East, is that the founding documents of the Arab League, the Alexandria Protocol and the 1945 Arab Pact, made no reference to religion, Islam, or God, nor did the Arab League's Cultural Treaty of 1946 or the 'Casablanca Protocol' of 1965. Even though all of the original founding members and all of the current members of the Arab League have Muslim majorities, the salient issue of Islam in Arab lands goes unmentioned in these early documents.⁴⁶ This absence, compared to more recent Arab League documents, is a salient sign of changing priorities, in rhetoric and/or reality. The leaders of independence movements in the 1940 and 1950s were largely 'secular' and religion played a secondary role in their political concerns. The original concern was for *Arabs* rather than *Muslims*, even though the vast majority of Arabs were Muslim. The selected identity marker was ethnicity and not religion.

The state that has had perhaps the greatest influence in the Arab League and the OIC, stemming in no small part from its extraordinary wealth and substantial financial contributions to both organisations, has been Saudi Arabia. The Saudi king is now identified in official documents of both organisations with the title of 'Custodian of the Two Holy Mosques'. The seemingly modest title of 'custodian' nevertheless insinuates a symbolic if not actual pre-eminence over all other heads of state in the Muslim world.⁴⁷

Just as the language, symbols, and references to Islam have grown in the Muslim world since the second half of the 1970s, so have such references increased in the documents and statements of the Arab League. The 2004 ACHR *does* refer to God and Islam in the preamble and 'Islamic Shariah' in Article 3.

Many Arab League member states were caught up in the turbulence and turmoil of the so-called Arab Spring in 2011. As the events were unfolding, the LAS appointed in July 2011 a new Secretary-General Nabil al-Arabi, a former-Egyptian diplomat, who played an important role in 'pushing forward a League-wide reform process' during a tumultuous period.⁴⁸ The LAS uncharacteristically opened the reform process to members of civil society who took advantage of the momentum.⁴⁹ Ultimately, however, the reforms implemented to date have been found to be far from what is needed for the Arab League to become a serious actor in promoting human rights, transparency, and good governance within its member states.

⁴⁶ Lebanon's Muslim majority is, however, split between Shia and Sunni, and neither school of Islam has a majority in that country.

⁴⁷ The title has been used by different Islamic rulers in history. Currently, only the King of Saudi Arabia flaunts such a courtesy. For further information, see al-Rasheed, Madawi. *A History of Saudi Arabia* (Cambridge: Cambridge University Press, 2010) 73.

⁴⁸Rishmawi, LAS: Standards and Mechanisms (2015), 14.

⁴⁹Rishmawi, LAS: Standards and Mechanisms (2015), 14.

B. Chronological overview of the Arab League and human rights

As mentioned above, human rights, good governance, democracy, and transparency were not among the founding principles of the Arab League and they played little role during its early years. Where the LAS focused on independence for Arab lands, the Israeli/Palestinian dispute, and state sovereignty, the Arab League has never departed from its founding principle of non-interference in the internal affairs of other member states, a position that fundamentally precludes any serious promotion of human rights. As one former Arab League expert on human rights wrote: '[t]he issue of human rights has only rarely influenced LAS policies. In fact, the LAS has never criticised any member for violating human rights. The only criticism and condemnation regards Israeli violations of human rights in the occupied Arab territories'.⁵⁰ Indeed, to the extent that the Arab League promoted human rights during its early years it pertained to Israeli suppression of Palestinian rights. The Arab League did not denounce, for example, Jordanian occupation of the West Bank or Egyptian occupation of the Gaza strip, both of which were seized by the Arab League members in 1948. One of Arab League's first acts to promote human rights was the 'Casablanca' Protocol for the Treatment of Palestinians in Arab States.⁵¹

It was only after the June 1967 war where Israeli seized the West Bank, the Gaza strip, the Sinai Peninsula, and the Golan Heights that the Arab League began to manifest an interest in the Arabs who lived inside those territories that had recently been under member-state control. The first institution created by the Arab League to focus on human rights issues, the Arab Permanent Committee on Human Rights (APCHR), established in 1968 immediately after the June 1967 war, did not focus on the rights of all Arabs, but instead 'monitored and denounced human rights violations by Israel in the occupied territories, making the Palestinian (human rights) question its main concern'.⁵² As MS.M.al-Ajani observed, the Arab League was developing a 'growing awareness of the importance of human rights as a useful political weapon, particularly vis-à-vis Israeli human rights violations in the occupied territories'.⁵³

Unlike the OIC's founding documents issued between 1969 and 1972, Arab League documents issued from the mid-1940s to the late 1960s were virtually silent on Islam (as well as human rights). Prior to the June war of 1967, the principal human rights concern of the Arab League was not the rights of people living within its own borders, but the rights of Palestinians that had been infringed by Israel. Even though the West Bank was occupied by member state Jordan and the Gaza strip occupied by member state Egypt, the human rights criticisms targeted Israel. With regard to issues of human rights and transparency, the Arab League is a 'latecomer' among intergovernmental organisations.⁵⁴

Beginning in the second half of the 1960s, the Arab League began to take a somewhat broader approach to human rights issues. It notably participated in the UN's International Year for Human Rights in 1966, the same year that the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights came into force. In the June 1967 war, Israel seized control of the West Bank,

⁵⁰Allam, 'The Arab Charter on Human Rights,' 50.

⁵¹<http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?page=printdoc&docid=460a2b252> See also Rishmawi, 'The League of Arab States and Human Rights' (2014), 628.

⁵² Van Hüllen, 'Just Leave Us Alone,' 128.

⁵³Al-Ajaji, 'The League of Arab States and the Promotion and Protection of Human Rights,' 112.

⁵⁴ Van Hüllen, 'Just Leave Us Alone,' 125.

East Jerusalem, the Gaza strip, the Sinai, and the Golan Heights, all areas belonging to Arab League member states. Acknowledging the value of employing the newly recognised international human rights law from the two conventions, the Arab League increasingly began to use ‘international human rights’ as a rhetorical weapon against Israel. The rising LAS rhetoric about international human rights standards did not extend to Arab League states’ own treatment of Palestinian refugees or other human rights practices within its member states. The Arab League’s more recent response to other issues involving Palestine reveals a continuing inconsistency with its approach to human rights. The Arab League has been a strong supporter of Palestine’s accession to the Rome Statute so that it would be able to bring actions against Israel in the International Criminal Court. Yet when the International Criminal Court brought actions against LAS Council members President Ali Abdullah Saleh of Yemen and President Omar al-Bashir of Sudan for genocide and other crimes, the Arab League opposed the ICC because it was interfering in the internal affairs of a member state.

In December 1966, the year that the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) came into force, the United Nations designated 1968 – the 20th anniversary of the Universal Declaration of Human Rights – as the ‘International Year for Human Rights’.⁵⁵ In 1967, in preparation for the upcoming International Year for Human Rights, the UN’s Human Rights Council requested UN Secretary-General U Thant to engage in discussions with regional intergovernmental organisations that did not have human rights mechanisms in order to encourage the organisations to establish them. Discussions between the UN General Secretariat and the Arab League began in 1967. Thus during the 1966-1967 period a variety of factors came into play: international recognition of the ICCPR and ICESCR as international law, the UN’s recognition of a symbolic 20th-year anniversary of the beginning of the modern human rights system, UN engagement with the Arab League on establishing a human rights institution, and the possibility of there being a new type of human rights rhetoric that could be used to criticize Israel. With this combination of factors, the Arab League decided in 1968 to create the first LAS institution devoted to human rights, the Arab Permanent Committee on Human Rights (APCHR), which came into existence in 1969. It operated under the general rules for all other functional commissions within the General Secretariat until receiving its own governing statute in 2007.

In the early 1970s, coinciding with the creation of the OIC, the Arab League increasingly referred to Islam and sharia as a means for understanding and effectively circumscribing human rights standards. The new human rights language within the LAS was crafted to create religious and cultural rationales for not applying international human rights norms internally, while at the same time using international human rights standards to denounce Israel and other non-member states. While it was not difficult to identify the inconsistencies in such uses of ‘human rights’ by the Arab League, the positive outcome is that human rights finally were on the agenda.

⁵⁵ UN General Assembly Resolution 2217 <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/005/20/IMG/NR000520.pdf?OpenElement> No LAS member state had at the time ratified either the ICCPR or the ICESCR. For the dates LAS states ratified the major international human rights treaties, see Rishmawi, *LAS: Standards and Mechanisms* (2015), 102-105.

During the period, most major human rights instruments coming from the Arab League spoke of the rights of *Arabs* (such as the 1983 Charter on the Rights of the *Arab Child*) and typically referred to the noble values of Islam, thereby placing many of the inhabitants of member states in the category of people not included (or included as an afterthought) in the documents. After 2004, instruments deemphasized the identity elements of Arab ethnicity and the Islamic religion. Arab League documents and positions on human rights nevertheless carved out ‘regional’ and ‘cultural’ (i.e., religious) exceptions as justifications for not complying with ‘western’ standards.

During the period 2001-2004, culminating in the Tunis Summit and the adoption of the Arab Charter on Human Rights (in force since 2008), the Arab League began to take its first modest steps toward the development of a modern human rights regime.⁵⁶ Prior to 2004, with the adoption of the Arab Charter on Human Rights (in force 2008), the Arab League had done little to actually promote human rights.⁵⁷ Although it has not abandoned the sovereignty principle, nor established effective monitoring mechanisms, nor produced human rights treaties that adhere fully to international human rights norms, there has been an important sea change – at least rhetorically. The more recent human rights texts come much closer to accepting international norms (with some exceptions) and they do explicitly reference the universality of human rights. Since 2004, they also have largely, though not entirely, abandoned the dividing of Arabs from non-Arabs and Muslims from non-Muslims. Yet, to be clear, even these steps are halting and are not consistent – signalling the probability that there are internal disputes and pressures. Different coalitions prevail at different times on different issues. Thus, on the one hand, there is important and recognisable progress, on the other hand however, their instruments fall short of establishing an effective human rights regime.

The change is perhaps most clearly manifest in the adoption of the 2004 Arab Charter on Human Rights, which makes pronounced statements in support of universal human rights standards. It should be noted, however, that the change between 2001 and 2004 was not one of a transformational internal sea change pervading the Arab League as a whole, but are likely the results of a strongly contested internal struggle combined with outside pressures pushing a reluctant Arab League to modernise its institutions and approaches. Thus, on the positive side, Rishmawi sees ‘evidence that attention to human rights and international law is slowly but increasingly featuring in LAS’s decisions.’⁵⁸

Yet, even with this circumscribed optimism, this same close observer of the Arab League finds that:

the fact remains that human rights promotion and protection remains problematic. Political considerations and the inter-state relations remain the dominant factor in decision-making, especially because the lack of a developed Parliament and expert bodies means that most of the decisions are taken at the political level. Also, in light of the absence of an advanced Secretariat with adequate human and financial resources and adequate strategies in relation to human rights,

⁵⁶ For a brief chronological overview, see Van Hüllen, ‘Just Leave Us Alone,’ 125-140.

⁵⁷ For a brief chronological overview, see Van Hüllen, ‘Just Leave Us Alone,’ 125-140.

⁵⁸Rishmawi, ‘The League of Arab States and Human Rights,’ (2014), 616.

the Secretary General and the Secretariat are able in principle to play a role, but in practice this role has been, and is expected to continue to be, limited.⁵⁹

Van Hüllen offers a much harsher assessment of the meaning of the supposed advances at the 2004 Tunis Summit and what is taken as the real rationale behind it.

This 'surge' towards governance transfer by the Arab League in 2004 was certainly not due to a sudden belief in the normative value of democracy, human rights, the rule of law, and good governance as universal standards for governance. Looking at the Arab League's activities more closely suggests that *its recent efforts should be understood as symbolic action rather than attempts at effectively promoting and protecting governance standards in the region*. Even though the final draft of the Arab Charter on Human Rights was brought closer to global standards, its content still falls behind internationally recognised, 'universal' norms, for example with regard to gender equality, the death penalty, and the right to derogations under emergency law.⁶⁰

Van Hüllen argues that the 2004 Tunis 'reforms' came not from an internal wish to promote good governance and human rights in the Arab League, but as a way of ingratiating member states to the international community that was increasingly demanding reforms, a lessening of authoritarianism, and responding to increasing restlessness among populations caused by corruption, lack of reform, and economic stagnation. It might almost be said that the international community was pressing for reforms as a way of proactively anticipating the 'Arab Spring' that would finally come seven years later. The clear and significant improvements exemplified in the 2004 ACHR do not mean that the document is without important flaws. And however good, improved, or flawed the 2004 ACHR is, it continues to lack any powerful enforcement mechanisms and the record since 2004 is mixed, with some positive developments and some troubling regressions.

In sum, the 2004 Arab Charter on Human Rights (ACHR) is the Arab League's single most important instrument explaining its official conception of human rights. It was completed in 2004 and entered into force in 2008. As of February 2016, 14 member states have ratified it.⁶¹ Although most human rights scholars find it to be an important improvement over the 1994 Arab Human Rights Charter (which was never ratified and never went into force), and although there are some provisions that equal international standards, there are many provisions that continue to fall short.

⁵⁹Rishmawi, 'The League of Arab States and Human Rights,' (2014), 631.

⁶⁰ Van Hüllen, 'Just Leave Us Alone', 135 (emphasis added).

⁶¹ There are several discrepancies on the Internet regarding how many states have ratified. The correct list of states that have ratified is: Algeria, Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Palestine, Qatar, Saudi Arabia, Sudan, Syria, United Arab Emirates, and Yemen. States that have signed but not ratified include: Egypt, Morocco, and Tunisia.

IV. The Organisation of Islamic Cooperation and Human Rights.

A. Introduction to the Organisation of Islamic Cooperation (OIC)

The Organisation of Islamic Cooperation (OIC) (the ‘Organisation of the Islamic Conference’ prior to 2011), with its 57 member states, is the second largest intergovernmental organisation in the world after the United Nations. As stated in the currently governing Charter of the Organisation of the Islamic Conference of 2008 (2008 OIC Charter), it is guided by the ‘noble Islamic values’ of peace, tolerance, and moderation, and promotes, among other values, human rights, the rights of women and children, democracy, self-determination, and good governance.⁶² The OIC also pledges to ‘respect, safeguard and defend the national sovereignty, independence and territorial integrity of all Member States’. All states with majority-Muslim populations are members of the OIC, as well as 11 states with Muslim minorities. With its self-proclaimed religious identity, it is unique among the world’s intergovernmental organisations.

Although the OIC perceives itself as explaining Islamic values and speaking for the worldwide Muslim community (*ummah*), almost none of the members of the governing Islamic Summit or Council of Ministers are religious scholars. Virtually all official members of the Islamic Summit are political leaders who obtained their positions through hereditary monarchies (as in the case of Morocco and Jordan), or some combination of heredity and family decision (as in the case of Saudi Arabia), through military coups (as in the case of Egypt under Abdel Fattah el-Sisi or Syria under Hafez al-Assad), or other varieties of political machinations. Democratically elected leaders are rare exceptions. Iran is unique in having a religious-education requirement for its head of state. Thus, it is peculiar that an organisation comprised of politicians whose power largely derives from position rather than popular elections or Islamic scholarship, purports to speak on behalf of the Islamic religion and Islamic values of the entire world. The OIC itself does not address, explain, or justify why it is that politicians – many of whom have had particularly unsavoury reputations – are qualified to act as legitimate spokesmen (all *are* men) for one of the world’s great religions.

The criteria for membership in the OIC have not been entirely clear. All states with a Muslim-majority population belong to the OIC, while 11 member states have Muslim minority populations. The 1972 OIC Charter provides that ‘Every Muslim state is eligible to join’ the OIC.⁶³ It does not explain what is meant by ‘Muslim state,’ though it seems to have been intended to mean states with a Muslim-majority population. The standard that was articulated in Article 3.2 of the 2008 OIC Charter provides that ‘Any State, member of the United Nations, having Muslim majority and abiding by the Charter, which submits an application for membership may join the Organisation if approved by consensus only by the Council of Foreign Ministers on the basis of the agreed criteria adopted by the Council of Foreign Ministers’. This would appear to preclude states where Muslims constitute less than 50% of the population from being ineligible to join.⁶⁴

⁶²Charter of the Organisation of the Islamic Conference, 14 March 2008 <http://www.oic-oci.org/is11/english/charter-en.pdf>. The name change came in 2011, after the 2008 Charter was adopted.

⁶³1972 OIC Charter, Art. VIII <http://www.oic-oci.org/is11/english/charter-en.pdf>

⁶⁴Kayaoglu, *Organization of Islamic Cooperation*, 97

Despite the apparent Muslim-majority requirement, 11 of the OIC's 57 member states have less than a 50% Muslim population (Benin, Cameroon, Gabon, Guinea-Bissau, Guyana, Ivory Coast, Mozambique, Nigeria, Suriname, Togo, and Uganda). The 'OIC accepted the membership of Uganda in 1974, although the majority of its population is not Muslims. Apparently, that was because Uganda at that time had a Muslim president.'⁶⁵ Curiously, the state with the third largest Muslim population in the world, India, is not a member, even though India had frequently expressed a wish to join. (Representatives from India attended the Rabat Summit in 1969, but ultimately were discouraged from participating, accounting for the sometimes conflicting counts of 24 or 25 states being represented). The issue of membership standards became apparent when the head of state of member-state Lebanon, who himself was a Christian, was prevented from attending the Summit meeting in Mecca in 1981 because he was not a Muslim.⁶⁶ It is a curious matter that the 57-member Islamic Summit, which claims to speak for Islam, includes non-Muslims who may not have the right to attend meetings, depending on where they are held.⁶⁷

It is frequently, but inaccurately, stated that the Organisation of the Islamic Conference (renamed the Organisation of Islamic Cooperation in 2011) was founded in 1969 at the 'First Islamic Summit' held in Rabat, Morocco. The Rabat Islamic Summit included representatives from 24 Muslim-majority countries, as well as delegates from India and the Palestinian Liberation Organisation (PLO) (represented by Yasser Arafat) as an observer. The official Declaration of the Rabat Summit in fact made no reference to an OIC, but did adopt a resolution calling for a follow-up meeting that would '[d]iscuss the subject of establishing a permanent Secretariat' for the heads of the Islamic Summit.⁶⁸ In reality, the OIC was established formally as an institution only in 1972 with the adoption of the Charter of the Islamic Conference (in force 1974).⁶⁹ Thus the Rabat summit was simply the first of a series of recurring meetings of what evolved into the ultimate decision-making body of the OIC: the so-called 'Islamic Summit'.

The immediate trigger for the calling of the First Islamic Summit in Rabat in September 1969 was as a response to an arsonist's attack on the al-Aqsa Mosque in Jerusalem, a building that is generally regarded as the third holiest site in the Muslim world. On 21 August 1969, a deranged Christian zealot entered Al-Aqsa Mosque and started a fire that caused significant but limited damage to some of the interior and roof of the building. The attack came two years after the June 1967 (Six-Day) War. During the 1967 war, Israel captured the old city of Jerusalem and East Jerusalem, including the prominent religious and symbolic Al-Aqsa Mosque and the Dome of the Rock. The ease with which Israel seized these two sacred buildings as well as the Haram al-Sharif (Temple Mount) on which they are erected, underscored the

⁶⁵Bacik, 'Genesis, History, and Functioning,' 604.

⁶⁶Bacik, 'Genesis, History, and Functioning,' 598.

⁶⁷There are no clear rules for expelling members. Egypt was nevertheless expelled in 1979, not for doing something judged to be un-Islamic, but for signing a peace treaty with Israel.

⁶⁸Declaration of the Rabat Summit Conference, September 1969, <http://www.oic-oci.org/english/conf/is/1/DecReport-1st%20IS.htm#resolution>.

⁶⁹914 U.N.T.S. No. 13039 (pp. 103-128; text in Arabic, English, and French). For the declarations issued during the 1972 Summit, see <<http://www.oic-oci.org/english/conf/fm/All%20Download/Frm.03.htm>> [03/12/2015].

weakness of the surrounding Arab/Muslim states that had thrice been soundly defeated by the Israeli Defence Forces during a 20-year period (1948, 1956, and 1967).

During the weeks immediately following the arson attack, King Feisal of Saudi Arabia with the assistance of King Hassan II of Morocco, convinced the political leaders of Muslim states to attend a conference in Morocco designed to respond to the recent events. From 22-25 September 1969, representatives of two dozen countries with majority-Muslim populations (as well as the Palestinian Liberation Organisation as an observer) met in the ballroom of the Hilton Hotel in Rabat to discuss specifically the appropriate Muslim response to the Al-Aqsa fire, the Israeli-Palestinian conflict more generally, as well as the potential value of establishing a permanent 'secretariat' of Muslim countries to act as a liaison to promote the interests and values of the assembled states.⁷⁰

It should perhaps be noted, as but one example of what would become a recurring pattern within the OIC, the Rabat meeting issued a vociferous denunciation of Israel even though no lives had been lost and the damage from the fire ultimately repaired. And yet when Muslim extremists seized the Holy Mosque in Mecca ten years later in 1979, killing several hundred Muslim pilgrims and worshippers and destroying many portions of the mosque, the OIC issued no public statement denouncing the attack or holding Saudi Arabia responsible. Secretary-General Ihsanoglu, in his book on the OIC, similarly denounced the arson attack on the al-Aqsa mosque, the third holiest site in Islam, incorrectly stating that it was perpetrated by a 'fanatical Australian Jew' (rather than a mentally disturbed Christian).⁷¹ Ihsanoglu's book is, however, completely silent on the bloody massacre of hundreds of Muslims in 1979 inside the Grand Mosque in Mecca, the holiest site in Islam, that was perpetrated by fanatical Saudi Muslims.⁷²

B. Chronological overview of the OIC and human rights

The following are among the principal *articulated* positions and principles of the Islamic Summit and the OIC between 1969 and the present:

- Placing a high priority on state sovereignty and the non-interference with the internal affairs – including human rights violations – of OIC states;
- Condemning the state of Israel, particularly with regard to Palestinians;
- Formally recognising human rights while doing little to actually promote them;
- Criticising non-member states for human rights violations against Muslims (and Palestinians); and

⁷⁰Shameem Akhtar, 'The Jeddah Conference' *Pakistan Horizon* 23, no. 2 (1970): 179-84. Among the controversial issues discussed in Rabat were the merits of a boycott of the state of Israel and whether India, a Hindu-majority country with the world's third largest Muslim population, should be allowed to participate. The divisions within the group fell along Cold War lines between more conservative states that were more closely allied with the United States and the more leftist states that were aligned with the Soviet Union. Syria and Iraq boycotted the meeting.

⁷¹Ihsanoglu, *Islamic World in the New Century*, 22. Nor does Ihsanoglu mention that the arson attack against al-Aqsa was widely covered and denounced in the Israeli press and by Israeli religious and political leaders.

⁷²Trofimov, *The Siege of Mecca: The Forgotten Uprising in Islam's Holiest Shrine and the Birth of Al Qaeda*.

- Promoting better relations among OIC member states and establishing a range of institutions to encourage cooperation on issues including economics, trade, culture, technology, and education.

Among the widely stated criticisms of the OIC have been:

- Failing to provide institutions and initiatives with sufficient funding and support;
- Acting more as a debating and discussion society rather than an effective organisation;
- Formally acknowledging human rights while doing little to actually promote them and engaging in actions to undermine them;
- Using 'Islamic values' as a shield to prevent scrutiny of itself and member states; and
- Not preventing conflicts among member states.

In order to understand the OIC's internal conceptualisation of human rights, it is useful to divide the subject into three chronological periods: first, the founding years (1969-2004), second, the years that Ekmeleddin Ihsanoglu served as Secretary-General (2005-2014), and third the regime that emerged after Ihsanoglu's departure. In brief, during the early years there was virtually no serious recognition of international standards beyond *pro forma* acknowledgements of 'human rights'. During the Ihsanoglu years, however, modest but measurable progress was made in the path of bringing the OIC closer in line with international standards. Some observers believed that the OIC had finally begun a slow but serious path in the right direction, though even this was debatable. Since 2014, however, there has been no serious progress and all visible signs are that the OIC is returning to its pre-2005 attitudes.

1. The OIC's Conceptualisation of Human Rights (1969-2004)

As mentioned above, the 1969 Rabat Islamic Summit, which predated the formal establishment of the OIC in 1972, focused generally on the Israeli-Palestinian dispute and specifically on the arson attack on the al-Aqsa mosque. The two-page final Declaration officially acknowledged that the participating states affirmed 'their adherence to the Charter of the United Nations and fundamental Human Rights . . .'.⁷³ The Declaration more particularly noted the 'principles of justice, tolerance and non-discrimination . . .'. The Declaration did not, however, go beyond these reasonable if unremarkable *pro forma* acknowledgements. The 1969 Declaration makes reference to the 'common creed' (Islam) of the participating states and praises the 'immortal teachings of Islam'.

The Charter of the Islamic Conference, which came into force in 1973,⁷⁴ and which formally created the Organisation of the Islamic Conference, provides a more fully formed explanation of the purpose of the Islamic Summit than did the 1969 Rabat Declaration. Like the Rabat Declaration, the 1972 Charter made

⁷³Declaration of the Rabat Islamic Summit, 25 September 1969, <http://www.oic-oci.org/english/conf/is/1/DecReport-1st%20IS.htm#resolution>.

⁷⁴Charter of the Islamic Conference, 4 March 1972, 914 U.N.T.S. No. 13039 (pp. 103-128; text in Arabic, English, and French). For other the declarations issued during the 1972 Summit, see <http://www.oic-oci.org/english/conf/fm/All%20Download/Frm.03.htm>.

a *pro forma* commitment to ‘the U.N. Charter and fundamental Human Rights’. There was no significant elaboration on this basic statement, though slightly more specific references were added with reference to the OIC’s opposing racial segregation and colonialism.

The formal, rhetorical support for human rights in the Charter is somewhat undermined by its more vigorous emphasis on the principles of state sovereignty and non-interference in the internal affairs of other member states. By including such language, the OIC has effectively removed itself as an institution that could monitor human rights compliance by its member states or pressure them to comply with human rights standards. While this support for non-interference does not preclude states from taking the initiative to promote human rights within their own borders, and while it does promote the OIC’s pressuring non-member states to comply with human rights standards, it effectively acknowledges that as an organisation it will not take serious steps to pressure member states to comply with the standards it officially supports. Because the most typical forms of violation of human rights are committed by states and within states against their own citizens, the approach taken by the OIC unfortunately *shields* states from scrutiny rather than encourage it.

From the perspective of other intergovernmental agreements, the salient feature of the 1972 Charter is its language about Islam. The Charter resolves to ‘preserve Islamic spiritual, ethical, social and economic values, which will remain one of the important factors of achieving progress for mankind’. (Preface) Its objectives include promoting ‘Islamic solidarity among member states’ and preserving ‘Islamic spiritual, ethical, social and economic values, which will remain one of the important factors of achieving progress for mankind’ (Preface).

It is not obviously clear, and it certainly is not explained in the 1972 Charter, why it should be assumed that the political leaders of the OIC states that signed the Charter –including such people as the Shah of Iran, Muammar Qaddafi, Hafez al-Assad, and several heads of state who came to power through military coups – should be taken seriously as authorities qualified to interpret for the world ‘noble Islamic values,’ religious truth, or divine law. None of them was a religious scholar and they were frequently known more for their ruthlessness than for their understanding of Islam. The OIC was not founded by recognized religious figures known for their scholarship and piety, but often by brutal political and military leaders who frequently used the language of Islam to justify their rule domestically and internationally.

As such, the obvious question, never squarely addressed by the OIC itself, is whether the organisation might better be understood to be an *Islamic* organisation – as its name declares – or actually a political organisation that uses the rhetoric of ‘Islam’ to justify political ambitions and interests of individual heads of state and the countries they lead.

Although there are non-Muslim minorities living in all of the OIC states, the 1972 Charter says nothing about them. Rather, it focuses its interest on only one religious tradition by pledging ‘to strengthen the struggle of all Moslem peoples with a view to safeguarding their dignity, independence and national rights’ (Art. II.A.6). Implicitly, the political leaders of the OIC show a concern for Muslims living outside their region (where their influence is very limited) than they do for any religious minority living within their borders where they have enormous influence. While ‘fundamental Human Rights’ are rhetorically

supported in the 1972 Charter, it does not call for safeguarding people of all religions, but only those who are Muslim. It should further be noted that while the Charter itself refers only to Islam and Muslims, Muslim *minorities* within the member states – whether Shia in Saudi Arabia or Sunnis in Iran – often suffer the same types of persecution from ‘Islamic’ states that Muslim minorities experience in non-OIC states, but the Charter ignores them.

The OIC’s first and most comprehensive human rights document was the Cairo Declaration of Human Rights in Islam (CDHRI), a non-legally binding document that was issued by the CFM in 1990.⁷⁵ From an international law and intergovernmental-organisation perspective, the most striking feature of the CDHRI is its repeated references to ‘Sharia’ (15 references), ‘Allah’ (9), and ‘Islam’ (10 not including additional references to the ‘Islamic Summit’). The document goes beyond simple references. Islam praised for having an ‘unspoiled nature’ and for having made Muslims the ‘best community’ of people. (Preamble) Such self-flattery may be typical for religious leaders talking about their own religion, but it is unusual for states to make such statements about the religions of their inhabitants.

Sharia is declared to be the ‘only source of reference’ for clarifying the document (Art. 25) and that indeed all rights identified in the CDHRI are ‘subject to Sharia’. (Art. 24) There are both legal and practical difficulties with such a formulation. Unlike international human rights standards that have no comparable limitations, *all* rights under the CDHRI must be identified within Sharia and may be limited by it. This creates obstacles that are not recognised under any major international human rights convention. Importantly, there is no practical explanation of exactly what *is* Sharia or how it can be known exactly what Sharia allows and what it prohibits. Within Islam, of course, what is included within Sharia is typically a question for religious scholars to decide. Under modern standards, however, laws should be written, published, and be accessible – which may not be the case with Sharia. Thus not only is Sharia a factor not identified in international human rights instruments, it is something that, by its very nature, is elusive and cannot be stated or necessarily even known.

The CDHRI does identify several particular rights, albeit all are limited under the Sharia constraint. Specifically identified are rights of:

- Equality and non-discrimination, whether on the basis of race, colour, language, sex, religious belief, political affiliation, or social status (Art. 1), as well as the right against discrimination based on race or nationality with regard to getting married (Art. 5);
- Equality before the law and a presumption of innocence (Art. 19);
- Life, which includes bodily safety and prohibition of genocide or being killed (Art. 2) and the right not to be tortured (Art. 20);
- Non-combatants and property in time of war and conflict (Art. 3);

⁷⁵ Nineteenth Council of Foreign Ministers, Cairo 1990, Res. No. 49/19-P. Available at http://www.oic-iphrc.org/en/data/docs/legal_instruments/OIC%20Instruments/Cairo%20Declaration/Cairo%20Declaration%20on%20Human%20Rights%20in%20Islam%20-%20EV.pdf [12/12/2015].

- One's good name (Art. 4);
- Children to have nursing, education, and health care (Art. 7)

One of the more progressive aspects of the CDHRI is the imposition of *duties on states* to:

- Guarantee the right to life and prevent bodily harm (Art. 2);
- Protect places of burial (Art. 4);
- Provide clean environment, health care and education (Arts. 7, 9, 17);
- Provide education (Art. 9); and
- Guarantee employment for those who are able-bodied and willing to do so (Art. 13)

One of the most salient issues with regard to rights in the Muslim world pertains to religion. While the Declaration importantly acknowledges that there should be no discrimination against people based upon their religious beliefs (Art. 1), and also acknowledges that there should be 'no compulsion on man [...] to convert him to another religion or to atheism,' (Art. 10), the characterisation of rights implicitly prefers Islam to other religions. Thus it does not declare that there should be no compulsion in matters of religion generally, but only that compulsion should not be used to weaken people's attachment to Islam.

Women are specifically held to be 'equal to man in dignity'. (Art. 6) Whereas such a declaration, as far as it goes, is entirely consistent with international human rights law, it implicitly ignores numerous rights of equality of women that should be protected, including the equal right to education, employment, travel, marriage, inheritance, and other areas. To say that a 'slave is equal to his master in dignity' would be a very meagre declaration and far from what would be required under international standards. Whereas the woman is entitled to this unclear 'dignity,' the husband has a 'duty' of supporting his wife. Even though many married couples might be perfectly pleased by such an arrangement, it nevertheless unduly reinforces a difference in capacities and responsibilities, thereby *undermining* women rather than guaranteeing their full rights as human beings.

Finally, and importantly, the Declaration, as a non-binding document, does not establish any human rights mechanisms to promote state compliance. Although this absence does not distinguish the CDHRI from many other human rights declarations, many declarations are understood to be steps toward to the establishment of legally binding treaties with enforcement mechanisms. There have, however, been no concrete developments within the OIC with regard to preparing a general human rights treaty in the more than quarter century since the CDHRI was adopted.

2. Conceptualization of human rights in the Ihsanoglu Era (2005-2014)

During Ihsanoglu's first year in office, the OIC adopted a Ten-Year Programme of Action (TYPOA) in response to ongoing calls for reform within the organisation.⁷⁶ Although TYPOA's objectives are broader than simple reform, and in fact encompass all aspects in which the OIC has a stake, human rights, rule of law and democracy occupy a special place. TYPOA's content should be understood as having provided a roadmap for OIC intentions and strategies in the field of human rights up to the year 2015. An Intergovernmental Experts Group is preparing a new TYPOA (presumably for 2016-2025) is working on the evaluation of the 2005-2015 TYPOA and the drafting of a new programme where it is promised that human rights will play an important role.⁷⁷

The TYPOA begins with praise for Islam and the 'Ummah's pioneering role as a fine example of tolerance and enlightened moderation, and a force for international peace and harmony' and it notes the 'noble principles and values of Islam'. The document nevertheless recognises that the OIC region is facing serious problems that must be addressed. The places where challenges confront the OIC are in:

the intellectual and political fields, there are major issues, such as establishing the values of moderation and tolerance, combating extremism, violence and terrorism, countering Islamophobia, achieving solidarity and cooperation among Member States, conflict prevention, the question of Palestine, the rights of Muslim minorities and communities, and rejecting unilateral sanctions.

Article VIII of TYPOA, 'Human Rights and Good Governance,' treats the issues of human rights, rule of law, and democracy. It begins by seeking a firm commitment to 'enlarge the scope of political participation,' to guaranteeing equality, civil liberties and social justice, as well as to promote accountability, transparency and corruption-free strategies. Yet Article VIII once again focuses not on all *people*, or even *all Muslims living in OIC member states*, but only 'the rights of Muslim Minorities and Communities *in non-OIC Member States*'. (emphasis added) The OIC, once again, does not seek to hold its own members accountable for treating all citizens or even all Muslims within its member-states justly, but emphasizes only the responsibility of non-member states' treatment of Muslims. Israel's treatment of Palestinians was a particular focus. Thus, once again, in its member states where the OIC could have done something, it abjured; it limited its focus only to places where it could offer only rhetoric and condemnation.

The TYPOA calls for the establishment of an 'independent permanent body to promote human rights' (which ultimately would become the Independent Permanent Commission on Human Rights; see below) and for the establishment of an OIC Human Rights Charter. It sought to 'introduce changes to national laws and regulations in order to guarantee the respect of human rights in Member States', which presents

⁷⁶Third Extraordinary Session of the Islamic Summit Conference (2005). 'Ten-Year Programme of Action to Meet the Challenges facing the Muslim Ummah in the 21st Century'. Available at <http://www.oic-iphrc.org/en/data/docs/legal_instruments/OIC%20Instruments/TYPOA-%20AEFV/TYPOA-EV.pdf> [01/02/2016]

⁷⁷ Resolution 1/41-TYPOA on The Status of Implementation of the OIC Ten Year Programme of Action, OIC/CFM-41/2014/POL/RES/FINAL, <http://www.oic-oci.org/oicv2/subweb/cfm/41/cfm/en/docs/final/RES-PoA.pdf> [16/12/2015] Report of the 42nd Session of the Council of Foreign Ministers, OIC/CFM-42/2015/REPORT/FINAL, http://www.oic-oci.org/oicv2/subweb/cfm/42/en/42cfm_final_report_en.pdf [16/12/2015]

a change in the dialectic of the OIC with regards to national sovereignty. Nevertheless, as with other OIC initiatives, there is no proposal to create any enforcement mechanisms, meaning that it relies solely on the good will of OIC members to implement TYPOA's commitments.

In 2008, the OIC revised and amended its original 1972 Charter. The OIC institutions under the 2008 Charter have been identified above. The 2008 Charter officially declares that it is subject to the United Nations Charter and to international law (Preamble). Member States shall uphold and promote, at the national and international levels, good governance, democracy, human rights and fundamental freedoms, and the rule of law. (Art. 2.7) Articles 3, 9, 17 and 20, together with different sections in articles 1, 2, 3, and 4 revolve around the observance of and compliance with the Charter of the United Nations, International Law, and the promotion of human rights, fundamental freedoms, good governance - at the member state and international levels - democracy and accountability. It similarly announces that it seeks 'to promote human rights and fundamental freedoms, good governance, rule of law, democracy and accountability in Member States, 'but then adds the significant caveat: 'in accordance with their constitutional and legal systems' (Preamble).

Such a caveat may, of course, be interpreted in at least two very different ways. The first would be to say that member states will adhere to international law *unless it conflicts with domestic law*, or, it could read that *each state will implement international law* according to its own domestic laws. Thus, as we have seen before, there is a fundamental ambiguity in the document with respect to whether international norms of universality do or do not apply.

As with other OIC documents, it appears to limit otherwise applicable international law in accordance with sharia, Islamic law, the principle of non-intervention in the internal affairs of OIC states, and the priority of state law provisions, as provided in Articles 1(3) and 2(2), (4), (6). Thus the same concern that has been addressed above continues to trouble the 2008 Charter.

3. OIC Criticisms of Non-OIC States

Although the OIC has consistently adhered to the policy of non-intervention in the internal affairs of other OIC member states and its human rights instruments typically allowed for state laws to take priority over human rights norms, the OIC has repeatedly criticised the human rights practices of *non-member states*. The country that it has, of course, criticised more than any other state is Israel, particularly with regard to its treatment of Palestinian Arabs, but also its actions in Lebanon, Syria, the Sinai (following the June 1967 war), and Jordan. The OIC has spoken for the right of return of Palestinians both to Palestine and Israel. The OIC has worked actively in the United Nations and other international organisations to promote its concerns. A recent official statement by the Islamic Summit on the matter took place in 2013, and revises the situation from a political point of view.⁷⁸ It condemns the state of affairs in Palestine, asks member states for funds, supports the UN and member states actions that shun Israel or alleviate the Palestinian situation, and makes a special mention to the observance and appeal of the UN resolutions on the rights of Palestinians to return to their land and properties. More recently, the Council of Foreign Ministers

⁷⁸12th Islamic Summit 2013, 'Cairo Final Communiqué,' OIC/SUM-12/F.C./ FINAL. Available at <http://www.oic-oci.org/external_web/is/12/en/docs/final/is12_fc_rev2_en.pdf> [07/02/2016].

passed a resolution on Palestine⁷⁹ with a similar phrasing and content to the IS 2013 communiqué, but in broader detail. What this document reveals is that the OIC continuously ‘monitors and enforces pro-Palestinian norms in the Muslim world and (to) responds to Israel’s actions’⁸⁰ and that it does so in close observance and even partnership with UN work in this very field. A closer look reveals that both externally and internally, the OIC has been able to create a Muslim position regarding the Palestinian cause.

The OIC has shown considerable interest – and appropriately so – in speaking out for the rights of Muslim minorities in non-OIC states. Among the places that have repeatedly been subject to criticism involve Xinjiang, Jammu and Kashmir, Burma, and the Philippines. The OIC also criticised the Soviet Union for its invasion of Afghanistan in 1979 and the United States with regard to its invasion of Iraq and 2003 – as well as the human rights abuses that occurred thereafter.

V. EU dialogues on human rights with the Arab League and the OIC

Although there is a great deal of academic literature on the European Union and its external policies regarding human rights, as well as on the Arab League and the OIC, there is almost no academic treatment of the relations between the EU and the Arab League or the OIC. There also is a relative lack of publicly available information on the relations between the EU and the LAS and OIC. For example, there have been EU-LAS ‘Joint Work Strategies’ for 2012-2014 and 2014-2016, but they have not been made available⁸¹, nor have documents from the ‘Strategic Framework’ between the EU and LAS been made available. Accordingly, observations need to be made with some caution.

Prior to the so-called Arab Spring in 2011, the EU had relatively few ongoing contacts with the OIC and the Arab League. Perhaps the most notable events were the EU-LAS Malta Summit of Foreign Ministers in 2008 and some meetings between HR/VP Catherine Ashton and the other organisations. Although contacts continue to be rather general in nature, there is evidence that the EU wishes to take the organisations more seriously, particularly with regard to partnerships on issues related to counter-terrorism, crisis management, and migration.

A. EU-LAS Foreign Affairs Ministerial Meetings (2008-present)

The highest level of ongoing contacts between the EU and the LAS are at Foreign Affairs Ministerial Meetings. Thus far, three such meetings have been held between 2008 and the present, and Javier Solana also attended and spoke at the 19th Arab League Summit in 2007 in Riyadh.⁸² There have been no

⁷⁹42nd Session of the CFM 2015, ‘The Cause of Palestine, The City of Al-Quds Al-Sharif, and the Arab-Israeli Conflict’, OIC/CFM-42/2015/PAL/RES/FINAL. Available at http://www.oic-oci.org/oicv2/subweb/cfm/42/en/42cfm_res_pal_en.pdf [29/12/2015].

⁸⁰Kayaoglu, *Organization of Islamic Cooperation*, 66.

⁸¹ For an official reference to these strategies, see the Athens Declaration (10-11 June 2014) http://www.eeas.europa.eu/statements/docs/2014/140611_03_en.pdf [accessed 29 Mar 2016].

⁸²19th Arab Summit. (2007). *Summary of Remarks by Javier Solana*. Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/discours/93397.pdf. [accessed 29 March 2016] In his speech to the Arab League Summit in 2007, Solana, the EU High Representative for CFSP, spoke diplomatically and complemented in flattering terms his hosts, particularly the King of Saudi Arabia. Solana noted that ‘the Arab-Israeli conflict is at the core of the problems of the region’, which is the same position as that taken

comparable exchanges between the EU and OIC, although, of course, all 22 member states of the LAS also are members of the OIC.

The first Foreign Affairs Ministerial Meeting took place in Malta (11 February 2008), the second in Cairo (13 November 2012), and the third in Athens (10-11 June 2014). A fourth ministerial is tentatively scheduled to convene during the first half of 2016 in Cairo. Each of the three issued a document at its conclusion. Given the brevity of the meetings, typically one day, there is very little of substance that can be achieved, though the majority of work is presumably conducted by sherpas, prior to the convening of the meetings. Because this is the principal policy-making forum between the EU and the LAS, it is appropriate to consider the concluding documents of the meetings.

The 11 February 2008 Malta Communiqué, a short one and a half pages in length, briefly expresses concerns on a variety of issues, including the Israeli-Palestinian dispute (with expressed sympathies for the rights of Palestinians, the situation in Lebanon and Iraq, the dangers of terrorism, the dispute between the UAE and Iran, and climate change.⁸³ There is only a brief reference to human rights, notably in the fourth paragraph:

Ministers reaffirmed that their commitment to peace and the respect of democratic principles, human rights and fundamental freedoms, remain central in the dialogue between the EU and the League of Arab States. This dialogue is guided by the principle of mutual respect.

The language appears to be a simple pro forma recognition of the issue and neither advances standards of human rights nor pledges any concrete measures to improve their recognition. The last sentence may even be read as trumping the recognition of human rights by suggesting that discussions of human rights need to be guided not by the importance of human rights, but by respect for the states and their interlocutors.

The second EU-LAS Foreign Affairs Ministerial produced the Cairo Declaration on 13 November 2012.⁸⁴ The Cairo Declaration, like the Malta Communiqué, identified a range of subjects on which it is anticipated that the EU and the LAS would work cooperatively, including the Israeli-Palestinian dispute, resolving the conflict between the UAE and Iran, and terrorism in Lebanon. The Declaration pledged support for ‘democracy, rule of law and respect of human rights’ and notes the ambitions of the peoples of the two regions ‘to establish the principles of freedom, justice and human rights, as well as to promote mutual respect and tolerance between people belonging to different cultural, religious and ethnic groups’. With regard to human rights, the Declaration offers nothing more concrete than such general support of the

officially by the Arab League. He also chided Iran for not complying with its international obligations, which, too, is consistent with LAS policy. He commented on problems in Sudan and Lebanon that also were largely consistent with LAS policy. While gently noting that there are ‘challenges’ for the Middle East that might lead it into ‘missing the train of human and economic development’, he did not otherwise raise human rights as an important concern.

⁸³ EU-LAS Foreign Ministerial Meeting. (2008). *Malta Communiqué*. Available at: http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/wgme20080220_eu_arabstates_/wgme20080220_EU_arabstates_en.pdf [accessed 29 Mar 2016].

⁸⁴EU-LAS Foreign Ministerial Meeting. (2012). *Cairo Declaration*. Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/133465.pdf [29 Mar 2016]

concept. It notes an agreement to establish a European Commission-LAS Liaison Office in Malta. It also acknowledges the opening of a 'Crisis Room' in the LAS headquarters in Cairo, which was financed by the EU.

As with the Malta Communiqué, the Cairo Declaration – despite its rhetorical support for human rights – suggests nothing concrete with regard to how human rights might actually be promoted or implemented. Nor does it acknowledge that there is a serious deficit in human rights in several of the member states of the Arab League – although it does discuss Israeli abuses of human rights. Indeed, the document reveals a decided emphasis on *promoting tolerance* rather than *guaranteeing rights of human beings* (see especially ¶¶ 6 and 7). While there is obviously nothing inherently wrong with the promotion of tolerance *per se*, such positive-sounding language has the potential of distracting attention from the enforcement of rights through law by rhetorical appeals to conferences and seminars that discuss tolerance as a human value. It is of course much easier to hold conferences on tolerance, respect, and dialogue than it is to take effective measures to ensure that international standards of human rights are being implemented. Tolerance and rights are two separate things. Ideally they are mutually reinforcing; negatively, the promotion of tolerance can be used to distract attention from the lack of respect for rights. The Cairo Declaration may be faulted for falling into this trap.

The 11 June 2014 Athens Declaration of the third EU-LAS Foreign Affairs Ministerial largely raises the same cluster of issues as emerged in Malta and Cairo⁸⁵. The same continuing concerns are expressed for terrorism, security challenges, Israeli policies toward the Palestinians, climate change, the UAE-Iranian dispute, regional energy cooperation, chemical weapons, and migration – particularly the emerging Syrian crisis.

The Athens Declaration similarly adopted an approach to human rights that paralleled that of the Cairo Declaration.

Ministers emphasized the importance to continue to promote and protect human rights and uphold all human rights for all, including the right to economic and social development, freedom of expression and freedom of religion or belief, and promote the values of tolerance and coexistence between different religions and reject the exclusion, extremism, incitement and dissemination of hatred and violence. (¶ 13)

After making this *pro forma* statement in favour of human rights, the ministers did not offer any pertinent comments on actual human rights abuses within member states or propose any means of remedying them. Rather, as with Cairo, they proposed that there be more respect, dialogue, and intercultural and interrelations discussions.

In this regard, the Ministers welcomed the activities of the International King Abdullah Bin Abdulaziz Centre for Interreligious and Intercultural Dialogue in Vienna. They underlined the necessity to respect religious diversity, promote dialogue between cultures and combat hate speech. The Ministers welcomed

⁸⁵ EU-LAS Foreign Ministerial Meeting. (2014). *Athens Declaration*. Available at: http://www.eeas.europa.eu/statements/docs/2014/140611_03_en.pdf [29 Mar 2016]

the decision on the establishment of an Arab Court of Human Rights. The Ministers emphasized the importance of inclusive, transparent and fair elections, in accordance with relevant constitutional and legal provisions. (¶ 13)

The problems of torture, arbitrary arrest, discrimination against women, religious persecution, and lack of freedom of expression will not be dealt with by centres for interreligious dialogue and understanding. Rather than fully acknowledging the depth of the problem and proposing concrete measures to address the issues, the Ministers offered cosmetics. This illusion of taking the problem seriously may be worse than a simple statement that they were unable to agree on the seriousness of the problem or the necessity of effective measures to respond to human rights abuses – with a call to all EU and LAS member states to take their human rights obligations seriously.

B. 2015 EU-LAS and EU-OIC Memoranda of Understanding

In 2015, the EEAS signed a memorandum of understanding (MoU) with the Arab League on 19 January in Brussels and another MoU with the OIC on 27 September in New York City. SR/VP Federica Mogherini of the EEAS and Nabil Elaraby, Secretary General of the LAS, signed the LAS MoU⁸⁶. The 19 January MoU, which was not released publicly at the time of its signing, was immediately identified as the ‘Counter-terrorism’ or ‘CT’ MoU. The European Parliament raised questions about the (secret) MoU and whether it dealt adequately with human rights issues.

The apparent secrecy surrounding the EU-LAS MoU raised questions, particularly in the European Parliament, which debated the topic and ultimately adopted a resolution on the subject on 12 March 2015 calling for the LAS MoU to be released⁸⁷. The authors of this report obtained copies of the two MoUs in early 2016. As far as we are aware, the two MoUs have not been published on any EU portal and largely remain inaccessible, even though they are not secret documents *per se*. As far as we are aware, these memoranda were not released publicly nor have they been published on EU websites, though we have been able to obtain copies.⁸⁸

Although the substance of the LAS MoU ultimately proved to be less problematic than the EP legitimately feared, both memoranda nevertheless contain problematic elements that were appropriately and accurately signalled in the EP resolution of 12 March – even though the Parliament did not have access to the LAS MoU.

The 19 January 2015 MoU with the LAS and the 27 September 2015 MoU with the OIC are in many ways similar documents that frequently use identical language. Both memoranda speak of the need to ‘strengthen’ bilateral relationships and both ‘express their wish to exchange views, develop a dialogue and cooperation in areas of common interest, based on the principles of mutual trust and benefit’. Both

⁸⁶ Copy now available from the authors.

⁸⁷ European Union: European Parliament, *European Parliament Resolution on relations between the EU and the League of Arab States and cooperation in countering terrorism*, 12 March 2015, P8_TA (2015) 0077, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0077&language=EN> [accessed 28 March 2016].

⁸⁸ Copies are available from the authors. Jeremy.Gunn@uir.ac.ma There also are unconfirmed reports that the EU and LAS adopted a separate 2009 MoU on counterterrorism, though we have been unable to obtain a copy.

wish to increase ‘understanding on political and security matters’. Both call for establishing ‘points of contact’ and continuing dialogue at ‘high’ levels as well as in ongoing working relationships. The MoU with the OIC, an organisation professing to speak for Islam, is relatively less specific with regard to economic, political, and social matters than is the MoU with the Arab League.

It is important to recognise that neither the MoU with the LAS, nor the MoU with the OIC makes any direct reference to human rights, democracy, transparency, good governance, or the rule of law, as is mandated by EU policy. Nor does either document acknowledge that repressive and undemocratic regimes may contribute to instability by cutting off opportunities for legitimate dissent or calls for reform. Although official EU policy calls for full integration of human rights into all discussions, the two memoranda make no pretence of doing so. Indeed, by their silence on these matters, they might be read as discounting the importance of human rights, freedom of speech, and freedom of association in favour of their stressing of mutual trust, confidence, and respect.

The 12 March 2015 resolution adopted by the EP takes a rather different approach, and was one much more consistent with officially stated EU policy⁸⁹. The EP appears to have imagined that the LAS MoU had a particular emphasis on counterterrorism, something not borne out in the text of the document. Although security, political cooperation and anti-terrorism are indeed concerns, the MoU does not focus on such topics to the exclusion of others. Nevertheless, the EP, unlike the EEAS, places a great deal of emphasis on the fact that security is not simply an issue of suppression of violence and terrorism, but that it is integrally related to human rights and democratisation. According to the EP, ‘it is crucial to address not only the consequences but also the underlying factors of radicalisation’, a point never mentioned in either the LAS or OIC MoU (¶ K.6).

In arguably its most poignant and perceptive observations on the matter, the EP resolution recognises that ‘whereas civil society organisations that the EU considers to be exercising their universal human rights and fundamental freedoms are labelled as terrorist organisations by governments of members of the LAS; whereas, increasingly, counter-terrorism and national security are cited to legitimise crackdowns on opposition figures, civil society and journalists’, the EP identifies a fundamental problem: the very people who are courageously promoting human rights – values expressed repeatedly in EU documents – may often be treated as if they were dangerous terrorists to be constrained. To the extent that this observation is true, the EEAS should not be using language purporting to establish ‘mutual respect’ and ‘mutual trust’, but should be showing the same courage as human rights activists and NGOs display when confronting LAS member states. By its language, the EEAS may be encouraging the very policies and institutions that are most responsible for suppression and for provoking terrorism.

C. Counterterrorism and crisis management

For understandable reasons, it is difficult to obtain clear policy documentation on exactly what the EU is doing with regard to counterterrorism. Late in 2015, an internal EU Report by the EU Counter-Terrorism

⁸⁹European Union: European Parliament, *European Parliament Resolution on relations between the EU and the League of Arab States and cooperation in countering terrorism*, 12 March 2015, P8_TA (2015) 0077, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0077&language=EN> [accessed 28 March 2016].

Coordinator entitled *State of play on implementation of the statement of the Members of the European Council of 12 February 2015 on counter-terrorism* (23 November 2015) (14438/15) ('CT Report) was, apparently inadvertently, leaked⁹⁰. The CT Report contains no surprising details of EU practices, but provides a lengthy list of actions regarding counter-terrorism that had been taken during the course of 2015 by different components of the EU. Part III of the CT Report, entitled 'Cooperating with our International Partners' makes a brief reference to the LAS and OIC and to the MoUs signed between the EEAS and the two organisations in 2015.

In September the High Representative signed a memorandum of understanding with the Organisation for Islamic Cooperation which includes a commitment to closer cooperation on counter-terrorism and violent extremism. At the end of November, the EU will address the same issues in a meeting with the League of Arab States. A CT working group is being set up and actions for closer cooperation on CT are being identified.

Curiously, the cited MoU with the OIC in fact makes no reference to counter-terrorism or violent extremism (although the MoU with the LAS does). It is not clear whether this is an inadvertent error or whether there are actually two different MoUs between the EU and the OIC. The paragraph does acknowledge that a working group on CT is being established with the LAS.

The important point to be noted in this paragraph is that the EU Counter-Terrorism Coordinator does not raise any concerns with regard to human rights in relationship with the formulation of counter-terrorism actions with either the LAS or OIC. Although the CT Report includes a short discussion of the importance of promoting tolerance (Part II.2), it does so not in relation to EU external partners, but internally within the EU. Moreover, however valuable and important tolerance is, it should not subsume the treatment of human rights. Tolerance may be promoted by public education, conferences, and dialogue. Human rights should be a matter of enforceable state policy regardless of whether the society is tolerant or not. Thus, the CT Report, like the EEAS MoUs with the LAS and OIC, fail to apply official EU policy of integrating human rights and mainstreaming human rights in all aspects of foreign policy. This failure is particularly serious when dealing with authoritarian countries that use 'terrorism' as a justification for suppressing legitimate dissent. Thus, in the area that may be the single most important intersection between human rights and EU policies with the LAS and OIC – terrorism – the official EU policy is neither implemented nor even mentioned.

EEAS officials who work in the area of human rights acknowledged in interviews in early 2016 that they are for the most part not involved in EEAS actions related to counter-terrorism. At the time of the interviews, these human rights officers had neither seen nor read the MoUs and were not consulted in their preparation. (We were surprised by their seeming lack of interest in the critical interaction between CT and human rights.) Although the EEAS may officially declare the importance of human rights in its negotiations with partners, it unfortunately appears that this may resemble the same type of window-

⁹⁰ The document is available at: <http://www.statewatch.org/news/2015/nov/eu-council-c-t-implementation-strategy-14438-15.pdf> [accessed 29 Mar 2016].

dressings that LAS and OIC member states display when they officially acknowledge the importance of human rights but do little to actually implement them.

In 2011, the EU and LAS, in combination with the United Nations Development Programme, entered into 'Phase I' of a project on early warning and crisis management, which included the establishment of an EU-financed 2.5 million Euro 'Crisis Centre' at the Arab League headquarters in Cairo⁹¹. This step was noted in the second and third Foreign Affairs Ministerial Meetings⁹². Phase II of the project was launched in November 2015, and is designed to provide additional crisis-monitoring capabilities to the LAS and to further strengthen the bonds between the two organisations⁹³. In this November 2015 meeting an official 'Strategic Dialogue' between the LAS and the EU in 24-25 November meeting of the EU's Political and Security Committee (PSC) and the League of Arab States permanent representatives⁹⁴.

While counterterrorism *per se* falls outside an analysis of human rights, it may be one of the most important intersections between state policies and human rights. There is, of course, no question that terrorism is one of the most serious problems facing modern society not only because of the actual damage that it causes to human life and property, but because of its *in terrorem* effect on society. It drains an enormous amount of economic and human resources away from productive activities into security, screenings, surveillance, and other counter-terrorist expenses. And, of course, it sows fear and anxiety. Although states necessarily must provide protection for its populations, there also can be a tendency – particularly though not exclusively from authoritarian governments – to characterise legitimate political opposition and freedom of expression as being extremist, revolutionary, or terrorist. The threat of terrorism may serve as an excuse to suppress legitimate dissent. Thus one place where there is an important interaction among states, human rights, and terrorism is the effect of security measures on suppressing legitimate dissent.

D. Seminars and Meetings

The EU has worked cooperatively with the LAS and to a lesser extent the OIC to promote discussions on human rights issues. These encounters, albeit positive as far as they go, appear to have had little substantive impact beyond whatever positive impressions they may have left on participants. Among the events that have been identified are:

⁹¹ UNDP. (2015). *Arab Countries to activate regional coordination for effective crisis response*. Available at: <http://www.arabstates.undp.org/content/rbas/en/home/presscenter/pressreleases/2015/11/29/arab-countries-to-boost-regional-coordination-for-effective-crisis-mitigation.html>. [accessed 29 March 2016]

⁹²EU-LAS Foreign Ministerial Meeting (2012), *Ibid*.

⁹³ LAS Press Release. (2015) *The EU and the LAS launch Phase II of their project to strengthen crisis response in LAS and its Member states*. Available at: <http://www.lasportal.org/ar/news/Documents/بيان%20لغة%20الإند%20ج%20ب%20لغة%20الإند.pdf> [accessed 29 March 2016]

⁹⁴ EEAS Press Release. (2015). European Union and League of Arab States representatives met in on 24-25 November 2015 in Brussels. Available at: http://eeas.europa.eu/statements-eeas/2015/151125_03_en.htm [accessed 29 March 2016]. As far as the authors are aware, texts associated with this 2015 'Strategic Dialogue' have not been made public.

- EU- OIC Joint Forum on harmony and tolerance (12-13 February 2002 in Istanbul)⁹⁵
- EU sponsored Thessaloniki European Council on ‘Strengthening the EU’s Partnership [or Relations] with the Arab World’ (19-20 June 2003)⁹⁶
- EU-LAS high-level cooperation meeting in Cairo on a technocratic level (21-22 January 2013)
- EU-LAS-EPLO Civil Society Dialogue Network Meeting in Valetta (1-2 June 2013)⁹⁷
- EU-LAS workshop on ‘coexistence and acceptance of others’⁹⁸
- 4/20-22 EU-LAS Workshop on Freedom of Opinion/Expression LAS/EU (20-22 April 2014)⁹⁹
- Spring Forward Women Programme (EU and LAS parliamentary women) (21 September 2015)¹⁰⁰

While it can well be imagined that such seminars have a positive affect on the participants and help build bridges on a people-to-people basis, the concern would be whether such meetings are effectively being used as substitutes for serious dialogue among political powers on how to improve human rights.

E. The OIC and issues of defamation and blasphemy

The human rights issue in which the EU has engaged most energetically with the OIC during the past fifteen years has been the OIC’s resolutions on ‘Defamation of Religion’ introduced at various fora in the United Nations. The principal loci of the interactions have been in UN meetings in New York and Geneva.

⁹⁵ OIC-EU Joint Forum. (2002). Brief Summary of the Proceedings of the OIC-EU Joint Forum. Available at: <http://www.mfa.gov.tr/brief-summary-of-the-proceedings-of-the-oic-eu-joint-forum.en.mfa> [accessed 29 March 2016]

⁹⁶ EU Delegation at UN. *Strengthening the EU’s partnership with the Arab World*. Available at: http://eu-un.europa.eu/articles/en/article_3078_en.htm (both titles are used) [accessed 29 March 2016].

⁹⁷Discussions were held in Valletta (Malta) in which the participants (EU Commission and EEAS officials, LAS officials and European/Arab CSOs representatives) exchanged views on the future of the EU-LAS cooperation, notably in the field of human rights, political transitions and foreign policy in these spheres. http://eplo.org/wp-content/uploads/2015/01/EPLO_CSDN_meeting_EU-LAS_Report.pdf

⁹⁸Under the framework of the Decade for Civil Society of the LAS 2016-2026. See Rossi Interview, p. 4.

⁹⁹2015 EU-LAS Cooperation to enhance Freedom of Opinion and expression and Freedom of Association and peaceful assembly: From the 20th to the 22nd of April 2015 the EEAS and the LAS jointly organised a seminar that tackled many human rights related issues. The series of workshops were attended by 50 representatives of CSOs, Human Rights Institutions and other engaged individuals and institutions from the MENA region and Europe. Rossi (p.5) makes reference to it signalling out the very positive experience of a Northern Ireland police officer that talked of the experience during the Time of Troubles, what was a valuable sharing with security officers and CS representatives alike. <http://www.solidar.org/EU-LAS-cooperation-to-enhance.html> See also Rossi interview.

¹⁰⁰2015 Spring Forward for Women Programme <http://spring-forward.unwomen.org/en/news/launching-the-arab-women-economic-empowerment-network>

Beginning in 1988, a wave of attention came to the issue of blasphemy following the publication of Salman Rushdie's novel *Satanic Verses*. A group of British Muslims requested British officials to charge Rushdie with blasphemy under British law for having insulted the Prophet Muhammad, but were refused because the law was deemed to protect only Christianity, and perhaps only the Church of England. In 1989, the Ayatollah Khomeini, before his own death later that year, issued a fatwa calling upon Muslims to kill Rushdie because of his blasphemy. In the mid-1990s, two decisions of the European Court of Human Rights upheld the right of states to restrict or prohibit the showing of films that were deemed to offend the religious sensibilities of their (Christian) audiences. *Case of Otto-Preminger-Institut v. Austria* (App. [13470/87](#)), 20 September 1994, Series A vol. 295-A and *Case of Wingrove v. The United Kingdom* (App. 17419/90), 25 November 1996.

In the *Wingrove* case, the European Court of Human Rights found that the British Board of Film Classification had acted within its 'margin of error' in refusing to license the film for distribution a 19-minute film on the grounds of blasphemy. The film, *Visions of Ecstasy* was a fantasy film about St. Theresa of Avila that combined self-mutilation, female nudity, homoerotic caresses, and the sexual stroking and kissing of the body of the dead Christ. The inconsistency of the United Kingdom's prohibiting release of the film about St. Theresa on the grounds of blasphemy while refusing even to consider the case of *Satanic Verses* was not lost on Britain's Muslims nor on human rights scholars.¹⁰¹

A decade after the Ayatollah's *fatwa* and three years after the *Wingrove* decision, Pakistan, on behalf of the OIC, introduced a resolution on the 'Defamation of Islam' in the UN Commission on Human Rights in 1999. Although 'Islam' was used in the original title and although the only religion mentioned by name in the draft was Islam, the resolution itself focused on defamation against religion generally and not solely Islam as is sometimes assumed. The UN Commission on Human Rights, without a vote, largely accepted Pakistan's draft, albeit with some short but important amendments.¹⁰² The title was broadened to be 'Defamation of Religions' rather than single-out Islam, and the references to affronting Islam in the text were either eliminated or broadened to include Islam among other religions. Both versions began with recognition of the need 'to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion' (first clause) and to recognise the importance of human dignity. With both versions affirming the universality of human rights and the UN Charter, they turn to the operative provision of the resolution, where the Pakistan original and the final version were identical except for the substitution of only one word. The final version provided that the UN Commission on Human Rights:

Urges all States, within their national legal framework, in conformity with international human rights instruments, to take all appropriate ['necessary' in the Pakistani original] measures to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by religious intolerance, including attacks on religious places, and to encourage understanding, tolerance and respect in matters relating to freedom of religion or belief (¶ 3).

¹⁰¹ Great Britain finally did repeal the law against blasphemy in 2008.

¹⁰²E/CN.4/1999/L.40 (1999).

Importantly, the adopted resolution *did* recognise the universality of human rights and it also provided that any state restrictions of expression on the grounds of defamation should be made 'in conformity with international human rights instruments'. Because international instruments have been interpreted as establishing a high threshold for the restriction of speech, the 1999 resolution initially provoked only modest controversy and it was adopted without a vote.

Between 1999 and 2010, numerous similar resolutions were submitted to UN bodies and were typically adopted without vote or were overwhelmingly supported despite an increasing split between the 'western' WEOG countries that generally were opposed, and the OIC, developing countries, African countries, and some Orthodox-Christian countries which generally supported the resolutions. Most international human rights scholars and UN experts were opposed to the defamation resolutions, and immediately recognized that they were being used to justify state laws that criminalized blasphemy.

Critics of the defamation resolutions feared that, despite their *pro forma* acceptance of prevailing international standards, they were in fact being promoted as a backdoor channel to justify domestic laws against blasphemy by suggesting that they were consistent with what was hoped to be a new *international human rights standard* that would prohibit criticism of religion. The erstwhile reformer within the OIC, Ekmeleddin Ihsanoglu made it quite clear that the OIC's goal was to bring about a change in human rights law. In a speech that he gave on behalf of the OIC to the UN Human Rights Council in 2007, he criticised blasphemy and Islamophobia, he praised the resolutions on defamation of religion, and said that insults against religion 'could only be addressed through taking effective and legally binding measures for combating defamation of all religions'.¹⁰³ Ihsanoglu thus sought not to underscore international standards but to change them. If such were to become an international standard, it presumably would become possible to incarcerate and punish people for making statements that religious believers, subjectively, found to be 'insulting'. Thus international law could support the prohibition of statements such as 'I do not believe that Jesus was the Christ' or 'Martin Luther was a sinner'. Religious beliefs, and non-beliefs, could be criminalized in states where the majority favoured one belief over another. Currently, with the notorious exceptions of the *Otto-Preminger* and *Wingrove* cases, people do not have a right to prohibit expression that they find to be offensive.

International human rights law does, however, allow the prohibition of hate speech *that incites violence* against others based upon grounds such as religion, race, gender, or nationality. But the key to the international law on freedom of expression not protecting the feelings of people, but protecting people from physical assault. All too often blasphemy laws do not protect people from physical assault; they actually *encourage* religious people to assault others whose expressions are deemed blasphemous.

The OIC was largely successful in having its defamation of religion resolutions adopted between 1999 and 2010. The UN General Assembly (UNGA) saw similar efforts and resolutions from 2005 to 2010.¹⁰⁴ The resolutions, however, generated increasing opposition from some countries and were opposed inside the

¹⁰³4th Session of the Human Rights Council 2007, 'Statement by E. Ihsanoglu,' available at <<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session4/HLS/OIC.pdf>> [07/02/2015].

¹⁰⁴Henne, 'The Domestic Politics of International Religious Defamation,' 512.

UN by important officials. In 2011, a new approach was decided. For the continuation of the issue of defamation of religions and the ‘Danish Cartoon’ controversy of 2005, see below.

In September 2005, the same year that Ihsanoglu became Secretary-General of the OIC, the newspaper *Jyllands-Posten*, the largest in Denmark, published 12 editorial cartoons mocking Islam, Islamists, and the Prophet Muhammad. The decision to publish the cartoons was made in the context of the murder of the Dutch filmmaker Theo van Gogh by an Islamist a year earlier, following the release of the short film *Submission* (written with Ayaan Hirsi Ali), which criticized Muslim practices regarding women. The editorial board believed that threats of violence by Islamists were causing self-censorship by writers and artists who were frightened to criticise Islam. The decision to publish the cartoons was thus both an intentional provocation as well as an effort to promote freedom of expression. Muslim leaders within Denmark protested the publication and ambassadors from several OIC and Arab League countries unsuccessfully sought a meeting with the Prime Minister and the Arab League and OIC wrote a joint letter of protest. Later in the year a delegation of Danish imams travelled to Cairo where they met with the General-Secretary of the Arab League. The Arab League later issued a statement criticizing the Danish government’s handling of the matter. The OIC’s Islamic Summit in Mecca similarly criticized Denmark late in 2005. During the next few months, pressure continued to mount. OIC and Arab League states took actions against Denmark, including the closing of embassies. Radical groups began to issue warnings and death threats. Other publishers, in solidarity with *Jyllands-Posten* republished the cartoons, further heightening tensions. Riots broke out in several cities leading to the deaths of more than 100 people. The Danish cartoon controversy, as with the *Charlie Hebdo* publications and murders in 2015, constituted high-profile examples of the much broader disputes over gratuitous insult, blasphemy, freedom of expression, intentional provocation, inconsistent governmental responses, and murderous responses to expression and violent Islamophobic counter-responses.¹⁰⁵

The Danish Cartoon controversy prompted the OIC to create in 2008 the Islamophobia Observatory, which has to date submitted 8 reports that monitor verbal and physical aggressions, media and institutional hate speech or attacks on mosques.¹⁰⁶ Integrated in the efforts of the OIC (and indirectly LAS), Islamophobia is a permanent and non-negotiable aspect of the political work of the OIC. Apart from the already observed content within the CDHRI that backs the ‘defamation of religions’ concept, both the TYPOA and the OIC 2008 Charter endorse similar phrasing in regards with the importance of preserving Islam from external attacks, combating misconceptions regarding Islam and Muslims and preserving the rights of Muslims in non-member states.¹⁰⁷

The EU and its member states, as well as other countries including the United States and Australia, along with UN institutions like the Special Rapporteur on Freedom of Religion or Belief and the Special

¹⁰⁵ Modood, Tariq, et al. ‘The Danish cartoon affair: free speech, racism, Islamism, and integration.’ *International Migration* 44.5 (2006): 3-62; Keane, David. ‘Cartoon violence and freedom of expression.’ *Human Rights Quarterly* 30.4 (2008): 845-875.

¹⁰⁶Islamophobia Observatory, ‘Eight OIC Observatory Report on Islamophobia,’ OIC-CS-8thOBS-REP-Final-May-2015, <http://www.oic-oci.org/oicv2/upload/islamophobia/2015/en/reports/8th_Ob_Rep_Islamophobia_Final.pdf> [12/01/2016]

¹⁰⁷ TYPOA 2005, Section VII.

Rapporteur on Freedom of Expression, called for approaches that did not restrict freedom of expression. The UN Human Rights Committee's General Comment 34 (2011) was understood to express its opposition both to the criminalisation of blasphemy and the defamation resolutions.

Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26 (¶ 48).

With the strong pushback by the EU and others, there seemed little change that the binding legal norms favoured by the OIC and Ihsanoglu would be forthcoming. Accordingly, in 2011 the defamation approach was dropped in favour of a new Human Rights Council consensus Resolution 16/18 'Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief'. Resolution 16/18 established what has since been called the 'Istanbul Process' to promote dialogue among states and religious groups and to denounce intolerance, stereotyping, and religious hatred. This new approach 'expresses deep concern at the continued serious instances of derogatory stereotyping, negative profiling and stigmatization of persons based on their religion or belief, as well as programmes and agendas pursued by extremist organisations and groups aimed at creating and perpetuating negative stereotypes about religious groups, in particular when condoned by Governments. (Res. 16/18, ¶ 1).

This Istanbul Process focuses on seeking ways to implement resolution 16/18.¹⁰⁸ Other UN organs testify for the OIC change. Indeed, a recent brief note from the Advisory Committee (AC)¹⁰⁹ further explains how the OIC has reduced rhetoric about the 'defamation of religions' and embraced the more international 'hate-speech' approach to the question. The last Session of the Independent Permanent Human Rights Commission (IPHRC) 8th Session was, in turn, dedicated to the theme of hate speech and freedom of expression, what reinforces the AC pronouncements.¹¹⁰

There have, however, been some signs since 2011 that the OIC and some of its member states have not thoroughly renounced the 'defamation of religion' approach. The Arab League and its member states, for example, appear not to have abandoned the 'defamation of religion' approach.

F. European Parliament

Under the frame of its assigned tasks, AFET has approached the LAS and the OIC in a rather indirect fashion. To the extent that this has been done, it is under umbrella of bilateral cooperation reviewing, EU foreign policy reviewing and surveillance of EU institutions with a mandate in its field of action. In pursuing its own-initiative capability, AFET presented a draft report on security challenges in the Middle East and

¹⁰⁸Kayaoglu, 'Dialogue 2.0: A Call for Interfaith Service and Action', *Journal of Dialogue Studies* 2, no. 2 (2014): 127-136.

¹⁰⁹ AC, article 19, Briefing Note - August 2015 'Advisory Committee should oppose study to examine the creation of a 'global grievance forum for perceived defamation of religion'. Available at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/211/04/PDF/G1521104.pdf?OpenElement>> [31/12/2015].

¹¹⁰ 8th Commission Session, 'Press release at its conclusion', available at <http://www.oic-iphrc.org/en/data/docs/Media/Press%20Statements/EV/IPHRC_8th_Session_Concluding_EV.pdf> [31/12/2015]

North Africa and the prospects of political stability (2014/2229(INI))¹¹¹ that was adopted on the 3rd March 2015. In this motion for a EP resolution, the EU-LAS Athens Declaration and the MoU signed between the EEAS and the LAS was taken into account to declare that the LAS should aid in introducing an efficient system of sanctions directed to tackle the ISIS financing by LAS member states.¹¹²

On a more organisational level, AFET recommended the LAS to be a ‘fully-fledged executive body genuinely capable of taking binding decisions’.¹¹³ The final report, adopted on 18 June 2015 (A8-0193/2015)¹¹⁴ nuances and enlarges the draft report. The biggest change is the incorporation in the report of the OIC, which was absent in its draft version.¹¹⁵ On a thematic level, the final report tackles aid coordination, in which the LAS needs to be included¹¹⁶, as well as references to specific LAS member states situation and the importance for the EU to engage with the LAS in its resolution. The report includes the comments of the Committee on Women’s Rights and Gender Equality (FEMM), which highlight the necessity to integrate women’s rights and gender equality in its dialogue with the LAS.¹¹⁷ These mentions to the LAS may be informed by the visit that El-araby paid to AFET on the 20th January 2015, during the same week that the MoU between the LAS and the EEAS was signed. During Elaraby’s intervention in AFET, the situation in Libya and Syria was discussed.¹¹⁸

However, these procedures of legislative concern and practical joint work are not the only contacts between AFET and the LAS. During the AFET Committee mission to Egypt (6-7 February 2016), Barbara Lochbihler¹¹⁹ visited the LAS Human Rights Department, directed by ElhamAlshejni. In the brief meeting, Alshejni was invited to Brussels to present a hearing on the LAS human rights actions, system of protection and promotion, and related issues.¹²⁰ Lochbihler declared that a similar experience had taken place in a DROI Committee mission to Saudi Arabia (24-25 November 2013), this time as Committee Chair.¹²¹ During her short stay, she visited the parliamentary human rights commission and the National Human Rights

¹¹¹Committee on Foreign Affairs (AFET). (2015). *Draft report on security challenges in the Middle East and North Africa and the prospects of political stability*, 2014/2229(INI). Available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-549.275%2b01%2bDOC%2bPDF%2bV0%2f%2fEN> [accessed 27 Mar 2016]

¹¹² AFET, 6

¹¹³AFET, *ibid.*

¹¹⁴Committee on Foreign Affairs (AFET). (2015). *Report on the security challenges in the Middle East and North Africa region and the prospects for political stability*, A8-0193/2015. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bREPORT%2bA8-2015-0193%2b0%2bDOC%2bPDF%2bV0%2f%2fEN> [accessed 27 Mar 2016]

¹¹⁵ AFET, *Report*, 9.

¹¹⁶ AFET, *ibid.*, 18.

¹¹⁷ AFET, *ibid.*, 21-2.

¹¹⁸European Parliament News. (2015). *Nabil El-Araby: ‘The EU is looked by many as the conscience of mankind today’*. Available at <http://www.europarl.europa.eu/news/en/news-room/20150120STO11201/Nabil-El-Araby-The-EU-is-looked-upon-by-many-as-the-conscience-of-mankind> [accessed 27 Mar 2016].

¹¹⁹ MEPs in the Greens since 2009 - Vice-Chair of the Subcommittee on Human Rights and member of the Committee on Foreign Affairs - Coordinator of Foreign Affairs at the group of the Greens.

¹²⁰Lochbihler, Barbara. Interview by Alvaro Lagresa. Research interview. Brussels, March 3, 2016.

¹²¹ DROI. (2013). ‘DROI Chair visits Saudi Arabia’, *DROI Newsletter*, No. 17. Available at: <http://www.europarl.europa.eu/document/activities/cont/201405/20140508ATT83538/20140508ATT83538EN.pdf> [accessed 27 Mar 2016].

Institution (NHRI). Although outside the official circuit, Lochbihler visited the IPHRC and invited them to visit Brussels to further discuss the many issues that were left untouched during the short encounter.¹²²

VI. Conclusion: hard versus soft interests

Harvard Professor Joseph Nye introduced the terms ‘soft power’ and ‘hard power’ to differentiate the types of influence that a country – specifically the United States – wields. Here we will be using the terms ‘hard interests’ and ‘soft interests’ in a way that echoes Professor Nye’s categories, but in a somewhat different way.

We would like to suggest that EU, states, and intergovernmental organisations implicitly differentiate between what may be called ‘hard interests’ from ‘soft interests’. The obvious ‘hard interests’ for the EU’s external action include such subjects as favourable trade policies, economic growth, military and security policy, energy, migration, and environmental issues that are perceived as having a real and direct bearing on the lives of EU citizens. In the area of the environment, for example, water pollution, rising oceans (due to climate change), air quality, and some endangered species (such as Atlantic Bluefin Tuna) are probably ‘hard interests’ whereas the status of the endangered Common Fire Salamander is more likely to be a ‘soft interest’. It can reasonably be assumed that whenever a hard interest is at stake, negotiators will take seriously the potential effects of a policy or an agreement with regard to whether it enhances or subverts the EU’s interests. While diplomats may be willing to sacrifice some hard interests during the course of negotiations, it can be supposed that they will do so only reluctantly and seek compensation for hard-interest losses by seeking compensatory net gains from other hard interests. While negotiators themselves may genuinely be concerned about soft interests, whether by reason of moral sensibilities or political consistency, the soft interests nevertheless are more susceptible to being sidelined or ignored than are hard interests.

The difference between hard and soft interests is also present for the EU’s external interlocutors, whether states (such as Morocco or Turkey) or organisations (such as the Arab League or the OIC). Many of the hard interests of the negotiators on opposite sides of the table likely will be comparable, particularly with regard to trade and security. However, because of the differences between EU member states (which generally may be considered to be parliamentary democracies) on the one hand, and the Arab League and OIC member states (which are relatively authoritarian and non-democratic) on the other, a powerful ‘hard interest’ of many with whom the EU engages in negotiations may be the preservation of the political power of particular ruling authorities (often individuals and their families)¹²³. Thus EU negotiators’ hard interests may be linked to financial sectors (such as agriculture or banks) and trade balances, whereas non-EU negotiators may be more interested on the effect of a policy on the ruling class. While the effect of EU policies on specific European political figures is important, the effect of policies is more likely to be considered in light of the total effect on France or Germany rather than personalised to Francois Hollande

¹²²Lochbihler, Barbara. Ibid.

¹²³ Obviously the EU is susceptible to a similar characterization, with the ‘ruling classes’ of authoritarian/military regimes outside the EU being analogized to the EU ruling classes of bankers, pharmaceutical giants, agribusiness, and industry. While the analogy may be compelling in some uncomfortable ways, the striking differences between some Middle Eastern authoritarian regimes should not be overlooked.

or Angela Merkel, unlike Egypt where the more particular interests of Hosni Mubarak (or Abdel Fattah al-Sisi) or Syria where Bashir al-Assad may predominate.

The most significant problem for hard-interest negotiations is that neither side is likely to see human rights, good governance, transparency, and the rule of law as a hard interest (and it may well be correct that human rights is not a 'hard interest' for states in the short run). To the extent that human rights is a hard interest in the long run, as may well be the case, it is possible that both the EU on the one hand, and the LAS and OIC on the other, are making a significant mistake. The long-term interest of the people of the Arab world and the Muslim world may not be the same as the short-term interests of decision-makers.

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