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The Prohibition of Incitement to National, Racial or Religious Hatred: The case of West Asian Arab Countries*

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> "By engaging in a detailed discussion of the alleged 'heretical' character of Abu Zayd's academic writings, the courts have clearly transgressed the ordinary boundaries of legal discourse, which is normally concerned with outwardly manifested actions rather than spiritual affairs, and with legal questions rather than religious or moral considerations".[1]

> "Freedom of speech is not a core value, requiring special protection. It is a value that must be balanced against equally, if not more, compelling values, namely non-discrimination, multiculturalism and social harmony".[2]

Since January 2011 mass anti-government protests have spread across several countries in the Middle-East and North Africa demanding change, reform and respect for human rights. The right to freedom of expression has been at the heart of what has been termed "the Arab Spring". This paper aims at examining the question of the prohibition of incitement to national, racial or religious hatred in the Arab countries in West Asia,[3] and the extent to which the promotion of freedom of expression requires

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The views expressed in this Paper are a strictly of personal nature and are not necessarily shared by the Qatari Ministry of Foreign Affairs.

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[1] - Kilian Balz, "Submitting Faith to Judicial Scrutiny through the Family Trial: Abu Zayd Case", in *De Welt des Islams*, 37 (2), Brill, Leiden, 1997, p. 155.

[2] - Rhoda E. Howard-Hassmann, "Canadians Discuss Freedom of Speech: Individual Rights versus Group Protection", in International Journal on Minority and Group Rights, Vol., 2000, p. 138.

[3] - The term Arab countries in West Asia are used in this paper to include the following countries: Bahrain, Iraq, Jordon, Kuwait, Lebanon, Oman, Palestine, Qatar, Saudi Arabia, Syria, United Arab Emirates and Yemen.

states to punish advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.[4] **Part I** of this paper briefly discusses and examines the prohibition of incitement to national, racial or religious hatred in international human rights law. **Part II** critically analyses the legislation of Arab countries relating to the prohibition of advocacy of national, racial and religious hatred. **Part III** draws some conclusions on how to effectively address incitement while ensuring full respect for freedom of expression in the Arab countries.

I. The prohibition of incitement of national, racial or religious hatred in international human rights law

Although the Universal Declaration on Human Rights (UDHR) does not specifically provide for the prohibition of incitement of national, racial or religious hatred, it does guarantee the right to freedom of expression in its article 19, which states that everyone has "the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". It has been pointed out that the importance of freedom of expression was highlighted as early as 1946, when at its very first session, the UN General Assembly adopted Resolution 59 (I) which states "Freedom of information is a fundamental human right and …the touchstone of all the freedoms to which the United Nations is consecrated".[5] While article 19 of the UDHR does specifically provide for prescribed limitations on freedom of expression, the Declaration provides for a general limitation clause in

[4] - Throughout this paper the term "advocacy of national, racial or religious hatred which constitutes incitement to discrimination, hostility or violence", as it appears in article 20 (2) of the ICCPR will be used instead of the well-known term "Hate Speech", which is generally defined in words similar to those used in article 20 (2) of ICCPR – speech advocating or inciting acts of discrimination or violence towards a group of people or an individually based on hatred for their nationality, race, religion, or any other immutable characteristic. However, the paper notes that the two terms are generally used interchangeably. For literature on "Hate Speech" see for example, Sandra Coliver (ed.) Striking a Balance : Hate Speech, Freedom of Expression and Non-Discrimination (1992), Scott J. Catlin, "A Proposal for Regulating Hate Speech in the United States: Balancing Rights under the International Covenant on Civil and Political Rights" in Notre Dame Law Review Vol. 69:4, 1994, pp. 771-813, Elizabeth F. Defeis, "Freedom of Speech and International Norms: A Response to Hate Speech" in Stanford Journal of International Law, Vol.29 (1992-1993), pp. 57-130, Stephanie Farrior, "Molding the Matrix: the Historical and Theoretical Foundations of International Law Concerning Hate Speech" in Berkeley Journal of International Law, Vol. 14:1, 1996, pp. 1-98, Stanley Fish, "Boutique Multiculturalism, or Why Liberals Are Incapable of Thinking about Hate Speech" in Critical Inquiry, Vol. 23 2 (Winter, 1997), pp. 378-395 and David O. Brink, "Millian Principles, Freedom of Expression and Hate Speech" in Legal Theory, Vol. 7, 2001, pp. 119-157.

[5] - ARTICLE 19, "Towards an interpretation of article 20 of the ICCPR: Thresholds for the prohibition of incitement to hatred", A Study prepared for the regional expert meeting on article 20, Organized by the Office of the High Commissioner for Human Rights, Vienna, February 8-9, 2010, p. 2.

article 29, which applies to all the rights and freedoms set forth in the Declaration, including the right to freedom of expression.[6]

For the limitation to be legitimate under article 29 of the UDHR, it must satisfy two essential criteria: (i) it must be determined by law, and (ii) it must be enforced solely for one or several of the purposes mentioned in the article. The first purpose that makes the limitation permissible, is to secure "due recognition and respect for the rights and freedoms of others". The other grounds used by article 29 of the UDHR are morality, public order and the general welfare of a democratic society.

In describing the nature of the right to freedom of opinion and expression, article 19 of the International Covenant on Civil and Political Rights (ICCPR) makes a distinction between freedom of opinion, on the one hand, and freedom to expression, on the other. The former is conceived as admitting no restriction, while the latter is assumed to be subject to limitation by the state for certain defined purposes.[7] The rationale behind this distinction might originate from the distinction between the *forum internum* and the *forum externum*. For the restriction to be legitimate under article 19 of ICCPR, it must satisfy three criteria: (a) be provided by law; (b) for the protection of one of the aims mentioned in the article; and (c) necessary to protect that aim.[8] The aims mentioned in the article include the respect of the rights and reputations of others and the protection of national security or of public order, or of public health or morals.

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[6]- Article 29 of the UDHR reads:
"1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations."
For an extensive study of the limitations under article 29, see Erica-Irene A. Daes," Freedom of the Individual under Law: Study on the Individual's Duties to the Community and the Limitations on Human Rights and Freedoms under Article 29 of the Universal Declaration of Human Rights", United Nations Study Series No. 3, New York, 1990, and Törkel Opsahl, "Articles 29 and 30", in Asbjørn Eide, Gudmundur Afredsson, and Göran Melander (eds.), The Universal Declaration of Human Rights: A Commentary, Oslo: Scandinavian University Press (1992) , pp. 449-470.

[7] - See General Comment No. 10 on Article 19 of the ICCPR: Freedom of Expression, adopted by the Human Rights Committee on 29/6/1983, para. 1. It should be noted that this General Comment is to be replaced in 2011. The first draft of the new General Comment is available as follows: Draft general Comment No. 34 (upon completion of the first reading by the Human Rights Committee) on Article 19 of the ICCPR, UN Doc CCPR/C/GC/34/CRP.5, adopted 25/11/10. NB there is also a 3.5.11 version now online, available at http://www2.ohchr.org/english/bodies/hrc/comments.htm

[8] - ARTICLE 19, "Towards an interpretation of article 20 of the ICCPR: Thresholds for the prohibition, *supra note* 5, p. 2.

Unlike the UDHR, the ICCPR) does specifically prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Article 20 of the ICCPR contains two specific prohibitions on two types of expression. This article provides that:

> "1. Any propaganda for war shall be prohibited by law.
> 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".

The drafting history of article 20 reveals that the disagreement between the proponents and the opponents of article 20 lies in two main issues: the potential abuse by the governments of the restriction placed by article 20 on the right to freedom of expression and the difficulty of defining the terms 'incitement', 'hostility' and 'hatred'.[9] It has been rightly pointed out that this provision employs a double-barreled formulation, whereby what is prohibited is advocacy of hatred that "constitutes" incitement rather than simply incitement.[10] However Nowak has noted that despite its lengthy, eventual historical background, the legal formulation of this provision is not entirely clear.[11] The Human Rights Committee did not attempt to offer any definition or interpretation of the phrase "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" in its General Comment No. 11 on article 20.[12] However, the Human Rights Committee indicates that the prohibitions imposed by article 20 are fully compatible with the right to freedom of expression as contained in article 19, the exercise of which carries with it special duties and responsibilities.[13] Moreover, the Committee holds that the measures

[9] - For a detailed discussion of the drafting history of article 20, see M.J.Bossuyt, Guide to the Travaux Preparatories of the International Covenant on Civil and Political Rights (Dordrecht: Martinus Nijhoff Publishers, 1987), Kevin Boyle, "The United States versus the Rest of the World", in 53 (2) Maine Law Review (2001), pp.; Manfred Nowak, U. N. Covenant on Civil and Political Rights, CCPR Commentary (N. P. Engel Publisher, Second Edition 2005), pp. 468 -480, and Farrior, *supra note 4*, pp. 21-49.

[10] - ARTICLE 19, "Towards an interpretation of article 20 of the ICCPR: Thresholds for the prohibition, *supra note 6*, p. 2, Nazila Ghanea, "Incitement and Free Expression: A textually-embedded ICCPR Analysis", Peter Molnar (ed.) Reframing Access to Information and Freedom of Speech Debates in a Post 1989 World, Cambridge: Cambridge University Press (forthcoming), Mohamed S. M. Eltayeb, "The limitations on Critical Thinking on Religious Issues under Article 20 of ICCPR and its Relation to Freedom of Expression", Religion and Human Rights 5 (2010), pp. 119- 135.

[11] - Manfred Nowak, *supra note 9*, p. 474.

[12] - See General Comment No. 11: Prohibition of propaganda for war and inciting national, racial or religious hatred (Art. 20) adopted by the Human Rights Committee on 29/07/1983.

[13] - Ibid.

contemplated by article 20 (2) constitute important safeguards against infringement of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27 of the ICCPR, and against acts of violence and persecution directed towards those groups.[14] Furthermore, the Committee expressly indicates the distinctive nature of article 20 as being explicitly not self-executing and, therefore, States parties to the ICCPR are obliged to adopt the necessary legislative measures prohibiting the action referred to in article 20.[15] The Committee states that for article 20 to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein is contrary to public policy and providing for an appropriate sanction in case of violation.[16]

Although the crucial question of distinguishing those forms of expressions that satisfy the criteria mandated by article 20 (2), and therefore constitute advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, is a contextual and takes into account the local conditions, history, culture and political tensions, it is, nevertheless, of utmost important to define the threshold of article 20 (2), particularly the phrase "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence", in order to draw the boundaries of the right to freedom of expression and hence the admissible limitations falling within the scope of article 20 (2). Thus, any incitement-related restriction to freedom of expression should conform to the three part test provided for under article 19 (3) 0f the ICCPR, namely, legality, proportionality and necessity.[17] In this regard, it is worth-noting the integrated approach adopted by the Human Rights Committee in its Draft General Comment on article 19 (paragraphs 53 and 54), when it states:

> "53. Articles 19 and 20 are compatible with and complement each other. The acts that are addressed in article 20 are of such an extreme nature that they would all be subject to restriction pursuant to article 19, paragraph 3. As such, a limitation that is justified on the basis of article 20 must also comply with article 19, paragraph 3, which lays down requirements for determining whether restrictions on expression are permissible.

[14] - Ibid.
[15] - Ibid.
[16] - Ibid.
[17] - ARTICLE 19, "Towards an interpretation of article 20 of the ICCPR: Thresholds for the prohibition, *supra note 5*, pp. 8-9.

54. What distinguishes the acts addressed in article 20 from other acts that may be subject to restriction under article 19, paragraph 3, is that for the acts addressed in article 20, the Covenant indicates the specific response required from the State: their prohibition by law. It is only to this extent that article 20 may be considered as *lex specialis* with regard to article 19".[18]

The seven part threshold test for article 20 of the ICCPR, which is suggested by the NGO ARTICLE 19[19], is deemed of utmost importance as the below-mentioned elements are considered constitutive to incitement:

- Severity
- Intent
- Content
- Extent, in particular the public nature of the speech
- Imminence
- Likelihood or probability of action, and
- Context.

The relationship between article 20 (2) of the ICCPR and article 4 of the ICERD will not be discussed here, since it has been addressed elsewhere.[20]

II. The legal framework on the prohibition of incitement of national, racial or religious hatred in the Arab Countries of West Asia

Despite the fact that Arab countries in West Asia share a similar history of colonialism, culture, language and religion, the position of each country as far as human rights are concerned should be understood and analyzed in terms of its own context, and hence the analysis of the framework on incitement in these countries relies largely on the legal, political, cultural and social frameworks on which international human rights norms are observed, respected and implemented. Like other countries in the world, Arab countries in West Asia are faced with the issue of

[18] - See Draft General Comment, *supra note 7*, paras 53 and 54.
[19] - ARTICLE 19, "Towards an interpretation of article 20 of the ICCPR: Thresholds for the prohibition, *supra note 5*, pp. 10-18.
[20] - Mohamed S. M. Eltayeb, "The limitations on Critical Thinking on Religious Issues under Article 20 of ICCPR and its Relation to Freedom of Expression", *supra note 10*, pp. 131-133.

how to effectively address incitement while ensuring full respect for freedom of expression.

While the Arab countries in West Asia accept the UDHR and have cooperated with the Universal Periodic Review (UPR),[21] their ratifications of international human rights treaties[22] and their cooperation with UN Special Procedures varies.[23] None of the Arab countries in West Asia which are parties to ICCPR and ICERD have entered any reservations to articles 18, 19 and 20 of the ICCPR or to article 4 of the ICERD.[24] Despite the lack of ratifications of several Arab countries in West Asia to the ICCPR, the framework on the prohibition of incitement which is laid down by articles 19 and 20 remains indispensable for providing a key guidance to all countries on the delicate

[21] - Bahrain presented its national report before the UPR Working Group on Universal (1st Session 2008), Iraq (7th Session 2010), Jordan (4th Session 2009), Kuwait (8th Session 2010), Lebanon (9th Session 2010), Oman (10th Session 2010), Qatar (7th Session 2010), Saudi Arabia (4th Session 2009), United Arab Emirates (3rd Session 2008), and Yemen (5th Session 2009).The national report of Syria will be considered at 12th Session of the UPR Working Group (3-14 October 2011) [for these national reports, interactive dialogue and their adoption by the UPR Working Group see http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx].

[22] - The ratifications of the Arab countries in West Asia to international human rights vary. While all Arab countries in West Asia are parties to ICERD, CEDAW and CRC, only Bahrain, Iraq, Jordan, Kuwait, Lebanon, Syria, and Yemen are parties to ICESCR and ICCPR. With the exception of Iraq, Oman and United Arab Emirates all Arab countries in West Asia are parties to CAT. With the exception of Bahrain, Iraq, Kuwait, Lebanon, all Arab countries in West Asia are parties to CRPD. Only Syria is a party to ICRMW. Only Iraq is a party to CEPD [for the status of ratifications of core human rights treaties see http://www2.ohchr.org/english/bodies/treaty/index.htm].

[23] - Only the following Arab countries in West Asia have extended a standing invitation to Special Procedures: Iraq, Jordan, Kuwait, Lebanon and Qatar [see for the list of all countries which have extended a standing invitation to Special Procedures see http://www2.ohchr.org/english/bodies/chr/special/invitations.htm].

[24] - It has to be noted that Saudi Arabia has entered a general reservation to ICERD declares that it will implement the provisions of the Convention, providing these do not conflict with the precepts of the Islamic Shariah. Kuwait has entered interpretative declaration regarding article 2, paragraph 1 (non-discrimination clause) and article 3 (equal rights of men and women) which declares that "Although the Government of Kuwait endorses the worthy principles embodied in these two articles as consistent with the provisions of the Kuwait Constitution in general and of its article 29 in particular, the rights to which the articles refer must be exercised within the limits set by Kuwaiti law"[for the countries' reservations and declarations on core human rights treaties see http://www2.ohchr.org/english/bodies/treaty/index.htm]. In contrast, all Arab countries in West Asia which have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) entered reservations subjecting their obligations under the Convention to the rules and principles of Islamic Shariah, see Rebecca J. Cook, "Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women", Virginia Journal of International Law, 30 (1990): 643; Dona E. Arzt, " The Application of International Law of Human Rights in Islamic States", Human Rights Quarterly, 12 (1990), pp. 218-221; Donna J. Sullivan, "Gender Equality and Religious Freedom: Toward a Framework for Conflict Resolution", New York University Journal of International Law and Politics, 24 (1992): 806; and Ann Elizabeth Mayer, "Islamic Reservations to Human Rights Conventions: A Critical Assessment" in Human Rights and Islam, published by RIMO, 1998: Proceedings of A Conference organized by the Dutch Association for the Study of the Law and Islam in the Middle East (RIMO), Leiden, June 6, 1997, pp. 25-45.

equilibrium to be established between freedom of expression and the prohibition of incitement to hatred.[25]

A survey of the constitutional provisions of the Arab countries in West Asia reveals the following characteristics:

- Proclamation of Islam as the established religion (official state region) and/or Shariah to be the principal source of legislation [article 2 of the Constitution of Bahrain, article 13 of the Constitution of Iraq, article 2 of the Constitution of Jordan , article 2 of the Constitution of Kuwait, article 2 of the Constitution of Oman, article 1 of the Constitution of Qatar, article 1 of the Basic System of Saudi Arabia, article 3 of the Constitution of Syria, article 7 of the Constitution of United Arab Emirates and articles 2 and 3 of the Constitution of Yemen].[26] However, constitutional provisions proclaiming Islam as the established religion and/or Shariah to be the principal source of legislation will have only the content the State chooses to assign them.
- Lebanon is the only Arab Country in West Asia who has opted for a secular model, where no state religion is established nor is Shariah adopted as the principal source of legislation.
- Upholding the right to freedom of religion or belief [article 22 of the Constitution of Bahrain, article 13 (F) of the Constitution of Iraq, articles 14 and 19 of the Constitution of Jordan, article 35 of the Constitution of Kuwait, articles 9 and 10 of the Constitution of Lebanon, article 28 of the Constitution of Oman, article 18 of Constitution of Palestine, article 50 of the Constitution of Qatar, article 35 of the Constitution of Syria, article 32 of the Constitution of United Arab Emirates, article 41 of the Constitution of Yemen]. However, some of the above-mentioned constitutional provisions allowing limitations on

[25] - See Vitit Muntarbhorn, "Study on the Prohibition of Incitement to National, Racial or Religious Hatred: Lessons from the Asia Pacific Religion" at [http://www2.ohchr.org/english/issues/opinion/articles1920_iccpr/experts_papers.htm], p. 5.

[26] - For an analysis of the constitutions of the Arab countries in West Asia see generally, Tad Stahnke & Robert C. Blitt, "The Religion-State relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Predominantly Muslim Countries" 36 Georgetown Journal of International Law, Vol. 36 (2004-2005), pp. 947-1078; Mohamed Eltayeb, "Legal Protection of the Right to Freedom of Thought, Conscience, and Religion or Belief in Muslim Countries" in Jonneke Naber (ed.) Freedom of Religion: a Precious Human Right (2000: Van Gorcum & Comp. B. V., Assen, The Netherlands), pp. 100-118; Ann Elizabeth Mayer, "Universal Versus Islamic Human Rights: A Clash of Cultures or A Clash with a Construct", 15 Michigan Journal of International Law, winter 1994, pp. 307-403; Dona E. Arzt, *supra note no. 25*; and Ann Elizabeth Mayer, Islam and Human Rights: Politics and Tradition, Boulder, Colorado: Westview Press, 1991.

freedom of religion by any ordinary law rather than only those limitations permitted under international human rights law (Bahrain, Kuwait, and Yemen).[27]

- Guaranteeing the right to freedom of expression [article 23 of the Constitution of Bahrain, article 36 (A) of the Constitution of Iraq, article 15 of the Constitution of Jordan, article 36 of the Constitution of Kuwait, article 13 of the Constitution of Lebanon, article 29 of the Constitution of Oman, article 19 of the constitution of Palestine, article 47 of the Constitution of Qatar, article 39 of the Basic Law of Saudi Arabia, article 38 of the Constitution of Syria, article 30 of the Constitution of United Arab Emirates, article 41 of the Constitution of Yemen].
- Upholding the principle of equality and non-discrimination[28] [articles 4, 5 and 18 of the Constitution of Bahrain, article 12 of the Constitution of Iraq, article 6 of the Constitution of Jordan, articles 8, 29 and 175 of the Constitution of Kuwait, article 7 of the Constitution of Lebanon, article 17 of the Constitution of Oman, articles 18, 19 and 35 of the Constitution of Qatar, article 8 of the Basic Law of Saudi Arabia, article articles 25 and 45 of the Constitution of Syria, articles 14 and 25 of the Constitution of United Arab Emirates, articles 24, 25, 31 and 40 of the Constitution of Yemen].[29] It has to be noted that not all the Arab countries in West Asia, which declare Islam as state religion, have opted to make equality subject to Islamic law, but rather maintain equality provisions that reflect international standards [see for example article 12 of the Constitution of Iraq, article 17 of the Constitution of Oman and articles 25 and 45 of the Constitution of Syria].[30] However, several constitutions explicitly make equality subject to Islamic law [see for example article 5 (b) of the Constitution of Bahrain, article 8 of the Basic Law of Saudi Arabia and article 31 of the Constitution of Yemen].[31]

[27] - See Tad Stahnke & Robert C. Blitt , *supra note 2*6, p. 964.
[28] - The principle of equality and non-discrimination entails equality before the law; equality of rights and freedoms (including equal rights for men and women); and non-discrimination in rights or other official activities on the basis of, *inter alia*, religion, sex, or color.
[29] - Tad Stahnke & Robert C. Blitt, *supra note 26*, pp. 972-974.
[30] - Ibid. pp. 973-974.
[31] - Ibid. p. 974.

Although the wording of article 20 of the ICCPR is hardly to be found codified in domestic legislation of Arab Countries of West Asia, nevertheless a survey of relevant laws in those countries reveals that their domestic legislation, directly or indirectly, include provisions pertaining to the prohibition of incitement of national, racial or religious hatred. Below are some examples of those provisions:

- Section 130 of Jordan's Penal Code imposes the punishment of imprisonment with hard labor for waging propaganda in time of war which aimed at weakening national sentiment or inciting sectarian division.[32] Whereas section 150 states that "Any act or written or spoken communication that gives rise, or is intended to give rise, to religious or racial bigotry or seeks to instigate strife among the various communities and races that constitute the nation shall be punished by a term of imprisonment of six months to three years and a fine not exceeding 50 dinars".[33] Furthermore, sections 273 and 278 punishing defamation of religions. Whereas section 273 states that "Anyone proven to have publicly offended any prophet shall be sentenced to imprisonment for a period of one and three years", section 278 provides that "Anyone proven guilty of any of the following shall be sentenced to imprisonment of a period not exceeding three months or a fine not exceeding 20 dinars:

  1. Publishing any material that is offensive to other people's religious feeling or beliefs.

  2. Publicly, with another person listening thereto, making speech or sound that is offensive to said person's religious feelings or beliefs.

  Should the Public Prosecutor prosecute a journalist under article 38 of the Press and Publication Law rather than the Penal Code, a fine of 10,000-20,000 dinars would be imposed."[34]

- Oman's Penal Code includes sections which make defamation of religions and faiths punishable by law, especially Section 130 stating that any provocation of religious strife is considered a criminal offence. This section reads "Any person who promotes or incites

[32] - See section 130 of Jordan's Penal Code.
[33] - See section 150 of Jordan's Penal Code.
[34] - See sections 273 and 278 of Jordan's Penal Code. It is also quoted in Vitit Muntarbhorn, "Study on the Prohibition of Incitement to National, Racial or Religious Hatred: Lessons from the Asia Pacific Religion", *supra note no.25*, p. 21.

religious or sectarian conflicts or theorems of hatred or strife among the populations shall be punished by imprisonment for a maximum of 10 years".[35] Furthermore, Article 209 states clearly that it is a criminal offence to commit an affront to religious and faiths with a view to contempt them.[36] The government of Oman has indicated that no cases of incitement or spreading or publishing or circulating views based on allegations of racial or religious supremacy, or activities either by individuals or institutions or government/non-government organizations have been recorded.[37]

❖ Article 1 of the Palestinian Presidential Decree No. 3 of 1998 entitled "strengthening National Solidarity and Prohibition of Incitement" provides "The following acts will be deemed inappropriate and illegal throughout the Palestinian governorates: Incitement of race discrimination, encouragement of violent acts that are in violation of law, degrading various religions, committing violence or incitement to commit violence that harms the relationship with sisterly and foreign states, and the formation of illegal associations which exercise or encourage the commitment of crimes, disrupt normal life, incite masses to effect change by unlawful force, encourage social unrest, and instigate actions to violate treaties that the Palestine Liberation Organization has concluded with sisterly or foreign states".[38]

❖ Chapter 1 entitled "Crimes Related to Religions and Violability of the Dead" in Part Seven on "Social Crimes" of Qatar's Penal Code comprises several sections (sections 256 -265) which make defamation of religions punishable by law.[39] Thus, section 256

[35] - See section 130 of Oman's Penal Code as amended by Royal Decree No. 72/2001. It is also quoted in Vitit Muntarbhorn, , *supra note no.25*, p. 19.
[36] - See section 209 of Oman's Penal Code.
[37] - Vitit Muntarbhorn, *supra note no.25*, p. 19.
[38] - For the text of Presidential Decree No. 3 of 1998, see *AI-Waqi' Al-Filistenyya* (the Official Gazette) No. 26, dated November 26, 1998, p. 11 (translated and reproduced in the Palestine Yearbook of International Law, Vol. X, 1998/99, pp. 93-99).
[39] - For an English translation of Qatar's Penal Code see: portal.www.gov.qa/wps/wcm/connect/

imposes a term of imprisonment of up to seven years for any of the following deeds:

1- Insulting the Supreme Being in letter and spirit, in writing, drawing, gesturing or in any other way.

2- Offending, misinterpreting or violating the Holy Koran.

3- Offending the Islamic religion or one of its rites.

4- Cursing any of the divine religions according to the regulations of the Islamic law.

5- Insulting any of the prophets in letter and spirit, in writing, drawing, gesturing or in any other way.

6- Sabotaging, breaking, damaging or violating places or their contents if they are made to perform religious rites for one of the divine religions according to the regulations of the Islamic law".[40]

Section 257 imposes a term of imprisonment of up to ten years "in case of establishing, organizing or running an assembly, association, organization or a branch aiming at opposing or challenging the basics and tenets of Islam, or calling upon, favoring or promoting another religion, cult or concept".[41] Whereas section 263 for a conviction of no more than a year and to a fine of no more than a thousand riyals or to one of these two penalties "in case of producing, selling, exposing for sale or circulation, or possessing products, merchandise, prints or tapes including drawings, slogans, words, symbols, signals or anything else that might offend the Islamic religion or other divine religions according to the regulations of the Islamic law. The same penalty is imposed on everyone who uses disks, computer programs or magnetized tapes to offend Islam or other divine religions according to the regulations of the Islamic law".[42] Surprisingly, article 47 (F) of Qatar's Law No. 8 of 1979 on Press and Publication, which has been heavily criticized as curtailing and restricting freedoms of speech and press,[43] explicitly forbids any publication

[40] - See section 256 of Qatar's Penal Code.
[41] - See section 257 of Qatar's Penal Code.
[42] - See section 263 of Qatar's Penal Code.
[43] - The criticism of the 1979 Press and Publication Law was largely directed against article 42 and 43. Whereas article 42 forbids citizens from publishing an item that criticizes the State of Qatar or the Head of State (the Emir), article 43 (13) restricts writers from challenging the work of a public official unless the writer was of "good intention" or "aiming to protect the public interest." Amnesty International indicates that debate continued about a possible new press and publications law to replace Law No.8 of 1979, which prescribes imprisonment for criticizing religion, the army and the Emir and a draft was approved by the Cabinet but had not yet been enacted [see Amnesty International 2011

includes ridicule or contempt for a religion or a heavenly doctrines, or helping to stir up sectarian, racial or religious division.

- Section 307 of Syria's Penal Code states that "any act, piece of writing or speech aimed at, or resulting in the provocation of sectarian or racial division or creation of conflict between confessional groups and the different constituent elements of the nation shall be punished".[44] Furthermore, section 463 provides that "anyone who expresses contempt for religious rites performed in public or who encourages mockery of such a rite is liable to a penalty".[45]
- Article 312 of United Arab Emirate's Federal Criminal Code No. 3 of 1987, as amended by Federal Act No. 34 of 2005, prescribes a term of imprisonment or a fine for any person who desecrates a sacred Islamic object, denigrates an Islamic rite or insults any of the revealed religions.[46] It is also indicated that the Criminal Code prescribes penalties for anyone who commits offences against religious beliefs or rites and defamation.[47] Moreover, section 15 of United Arab Emirate's Law on the Prevention of Information Technology Crimes provides that "the penalty of imprisonment and a fine or either applies to whoever commits any of the following offences through the Internet or an information technology device:

  1. Abuse of an Islamic holy shrine or ritual
  2. Abuse of a holy shrine or ritual of any other religion where such shrine or ritual is protected under Islamic Sharia
  3. Defamation of any of the divine religions
  4. Glorification, incitement or promotion of wrongdoing

  The penalty shall be imprisonment for up to 7 years for an offence involving opposition to Islam or injury to the tenets and principles of Islam, opposition or injury to the established practices of Islam, prejudice to Islam the breaching of a religion other than Islam or the propagation, advocacy or promotion of any discipline or idea of such nature."[48]

Report, Qatar].

[44] - See section 307 of Syria's Penal Code.

[45] - See section 463 of Syria's Penal Code.

[46] - See Seventeenth Periodic Report of United Arab Emirates submitted to Committee on the Elimination of Racial Discrimination (UN. Doc. CERD/C/ARE/12-17, dated 27 March 2009), para. 7 at p. 21.

[47] - Ibid. Para. 79 at pp. 21-22.

[48] - Quoted in Vitit Muntarbhorn*, supra note no.25*, pp. 18-19.

- Yemen's Penal Code provides for punishment of up to three years and a fine for any acts which ridicules or contempt a religion. Thus, section 194 reads "Every person who publicly broadcasts opinions that deride or disparage religion or religious beliefs, practices or teachings, publicly incites contempt for a confessional group, or promotes the idea of the superiority of a confessional group, in such a way as to undermine public order, shall be liable to a term of imprisonment of not more than three years or a fine".[49] Section 195 stipulates that "Where the religion or creed that is the subject of the disparagement, derision or contempt is the Islamic religion, the penalty shall be a term of imprisonment of not more than five years or a fine.[50]

III. Concluding remarks

The preceding survey of the legal provisions in several Arab countries in West Asia reveals the following characteristics:

First, the emphasis has been on anti-blasphemy laws, which are incorporated into the penal and criminal codes of those countries. Anti-blasphemy laws are essentially purported to protect religions or related beliefs rather than addressing the issue of the prohibition of incitement of national, racial or religious hatred. Although anti-blasphemy laws have a bearing on the prohibition of the incitement to hatred, the provisions mentioned protected only 'divine religions', namely, the three Ibrahamic religions of Islam, Christianity and Judaism, and hence, fall behind international standards which requiring equal protection of all religions and beliefs from defamation and contempt.[51] In this regard it has to be recalled that for acts of 'defamation of religions' to be prohibited and hence legitimately restricting the right to freedom of expression, they should satisfy the criteria set forth by article 20 (2) of ICCPR, i.e. they advocate religious hatred that constitutes incitement to discrimination, hostility or violence.[52] This may indicate that

[49] - See Seventeenth and Eighteenth Periodic Reports of Yemen submitted to Committee on the Elimination of Racial Discrimination (UN. Doc. CERD/C/YEM/17-18, dated 14 June 2010), para. 75 at p. 22.

[50] - Ibid.

[51] - The Report Special Rapporteur on Freedom of Religion or Belief, Mrs. Asma Jahangir and Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Mr. Doudou Diene have emphasized that " "Member States should bear in mind that defamation of religion must receive the same degree of concern and equal treatment regardless of which religion is targeted, thus avoiding hierarchization of forms of discrimination, even if their intensity varies according to history, geography and culture" [see UN Doc .A/HRC/2/3].

[52] - See Mohamed S. M. Eltayeb, "The limitations on Critical Thinking on Religious Issues under Article 20 of ICCPR and its Relation to Freedom of Expression", *supra note 10*, p. 128.

'defamation of religions' may offend people and hurt their religious feelings, but it does not thereby necessarily nor directly result in a violation of their rights, and the right to freedom of religion or belief in particular.[53] Identifying the permissible limitations on critical thinking on religious issues that might fall under the scope of article 20 (2) of ICCPR requires a distinction between those acts of 'defamation of religions' that are tantamount to advocacy of religious hatred and those which are not.[54] This distinction should be made with particular emphasis on the fact that embracing the full scope of both the right to freedom of religion or belief and the right to freedom of expression is a pre-requisite to addressing the limitations on both rights.[55] Moreover, such a distinction should be wary of possible abuse by the governments in invoking the restrictions set forth in article 20 (2). Such abuse may result in undermining or nullifying the measures contemplated by article 20 (2) as important safeguards against both infringement of the rights of religious minorities and of other religious groups under articles 18 and 27 of the ICCPR, and against acts of violence and persecution directed towards those groups.[56]

Second, neither the Arab countries who are parties to ICCPR nor the ones which are parties to ICERD have enacted appropriate legislation for implementing articles 20 (2) and 4 of the said conventions. Both articles are explicitly not self-executing and, therefore, states parties are obliged to adopt the necessary legislative measures prohibiting the actions referred to in them. Since those countries are characterized by an increasing national, racial and religious diversity as well as increasingly multicultural societies, it is of an utmost importance for them to adhere to the international framework for combating advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, as articulated in Part I of this paper.

Third, Despite the fact that 'defamation of religions' and religious hatred in most cases are interconnected with and interrelated with incitement to racial

[53]- See the Report Special Rapporteur on Freedom of Religion or Belief, Mrs. Asma Jahangir and Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Mr. Doudou Diene, *supra note 51*, p. 10.
[54] - See Mohamed S. M. Eltayeb, "The limitations on Critical Thinking on Religious Issues under Article 20 of ICCPR and its Relation to Freedom of Expression", *supra note 10*, p. 130.
[55] - Ibid.
[56] - See General Comment No. 11, *supra note 12*.

discrimination, xenophobia and related intolerance, it is nonetheless of utmost importance not to confuse a racist statement with an act of defamation of religion.[57] The elements constituting a racist statement are not the same as those constituting a statement of defamation of religion.[58] The legal measures, and in particular the criminal measures, which have been adopted to fight racism may not necessarily be applicable to defamation of religion.[59]

Fourth, there is a conducive environment in the Arab countries of West Asia for the promotion and protection of human rights in general, as well as the prohibition of incitement of national, racial or religious hatred, which is evident by the increasing number of ratifications of and accessions to human rights treaties, constructive dialogue with international human rights mechanisms, the establishment of national human rights institutions (NHRIs) and the incorporation of human rights into school curricula. Some countries such as Qatar have established institutions for the promotion of a culture of dialogue, mutual understanding, encouraging tolerance and consistence and creating an environment adverse to incitement of terrorism and hatred.[60]

Fifth, legal measures should be seen as a part of a wider set of strategies for combating advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. In this regards education, both intra- and inter-religious dialogue, enrooting a culture of tolerance and coexistence are indispensable strategies in supporting legal measures.[61]

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[57] - See Mohamed S. M. Eltayeb, "The limitations on Critical Thinking on Religious Issues under Article 20 of ICCPR and its Relation to Freedom of Expression", *supra note 10*, p. 133.
[58] - See the Report Special Rapporteur on Freedom of Religion or Belief, Mrs. Asma Jahangir and Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Mr. Doudou Diene*, supra note 51*, p. 12.
[59] - Ibid.
[60] - Qatar has established the following institutions: Doha Centre for Interfaith Dialogue, Arab Foundation for Democracy, Doha Centre for Media Freedom and Qatar Committee for Alliance of Civilizations. Qatar also hosts the United Nations Training and Documentation Centre for South-West Asia and the Arab Region, which is established by UN General Assembly Resolution 60/153 [see Qatar's National Report to the UPR Working Group, UN. Doc. A/HRC/WG.6/7/QAT/1, dated 19 November 2009].
[61] - See Mohamed S. M. Eltayeb, "The limitations on Critical Thinking on Religious Issues under Article 20 of ICCPR and its Relation to Freedom of Expression", *supra note 10*, p. 135.

Sixth, since the position of all States as far as human rights are concerned is open to change and transformation either positively or negatively, the crucial question should be how to influence the change in favour of greater protection of human rights in Arab countries in West Asia. It has to be seen how the "Arab Spring" will pave the way for greater promotion and protection of human rights.