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Introduction

1.1 Background

Liberal states harbour a fundamental contradiction at their core.[1] On the one hand, they cherish the right to freedom of expression. On the other hand, they insist that citizens should be treated equally and protected from discrimination and violence. States wary of social hostility may be inclined to combat forms of 'extreme speech'. Indeed, some states have taken measures to outlaw sources of social unrest that are liable to upset, for example, the religious sensitivities of citizens by criminalizing speech through blasphemy laws, religious defamation laws or through hate speech laws. Critics of such policies respond that the only effective response to extreme speech is *more speech*.[2] That is, they suggest that the 'marketplace of ideas' should be permitted to do its work: in a liberal state publicly made extreme statements will trigger sufficient counter-balancing speech to ensure that fighting words will remain just that – fighting *words*.[3] Moreover, some would argue, if we rely on hate

[1] From the outset it should be noted that in this study we are concerned with a *liberal* dilemma. Regimes that themselves publicly incite discrimination or violence against religious minorities do not raise our dilemma in a meaningful way. Sections 1.1 and 1.2 of this introduction draw on Jeroen Temperman, 'Blasphemy Versus Incitement', in Christopher Beneke *et al.* (eds.), *Profane: Sacrilegious Expression in a Multicultural Age* (University of California Press, 2014), 401–25.

[2] As forcefully put by Justice Brandeis in his concurring opinion in the US Supreme Court decision in *Whitney* v. *California*, 274 U.S. 357 (1927), arguing that '[t]o courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.'

[3] US Supreme Court Justice Oliver Wendell Holmes is credited with developing the notion of the marketplace of ideas. *Abrams* v. *United States*, 250 U.S. 616 (1919). In his dissenting opinion Justice Holmes argued that freedom of expression is best reached by 'free trade in ideas' in 'the competition of the market'.

speech laws, there is a risk that we lose our natural inclination to actively fight bad ideas. It was for the latter reason that John Stuart Mill defended a fierce form of freedom of expression:

> even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but … the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground, and preventing the growth of any real and heartfelt conviction, from reason or personal experience.[4]

The marketplace defence of free speech has it critics, though. One concern may be that counter-speech by the targeted groups or individuals themselves may be encumbered by the fact that they are oftentimes at a socially disadvantageous position, while, at the same time, not all such groups can count on others to speak up for them.[5] Still others would argue that unbridled free speech sounds all well and good in states with a strong constitutional tradition of fundamental rights protection, but that such absolute freedom is perilous in non-liberal or non-democratic states, or states with a history of religious or ethnic tensions. What, some ask, about genocidal societies?[6] William Schabas made this point forcefully when he wrote that '[a] well-read and well-informed *genocidaire* will know that at

[4] John Stuart Mill, *On Liberty* (London: John W. Parker & Sons, 1859), at chapter 2.

[5] See Ishani Maitra and Mary Kate McGowan, 'Introduction and Overview', in Ishani Maitra and Mary Kate McGowan (eds.), *Speech & Harm: Controversies Over Free Speech* (Oxford University Press, 2012), 1–23, at 9. Nielsen makes the point that the marketplace doctrine is premised on faulty empirical assumptions, showing that hate speech targets in particular, for various reasons, typically do not respond to verbal attacks and that the 'more speech' ideal (i.e. counter-speech) is often easier to invoke than actually carry out. Laura Beth Nielsen, 'Power in Public: Reactions, Responses, and Resistance to Offensive Public Speech', in Maitra and McGowan (eds.), *Speech & Harm*, 148–73. For that reason it has been proposed that hate speech policies, rather than penalizing hate speakers, could focus on empowering hate speech targets to speak up by providing them with the necessary institutional, educational and material support. See Katharine Gelber, '"Speaking Back": The Likely Faith of Hate Speech Policy in the United States and Australia', in Maitra and McGowan (eds.), *Speech & Harm*, 50–71. For concerns about the true potential of counter-speech, see also Caroline West, 'Words that Silence? Freedom of Expression and Racist Hate Speech', in Maitra and McGowan (eds.), *Speech & Harm*, 222–48.

[6] In the words of Schabas, '[t]he road to genocide in Rwanda was paved with hate speech.' William A. Schabas, 'Hate Speech in Rwanda: the Road to Genocide', (2000) 46 *McGill LJ* 141–71, at 144. See also Lynne Tirrell, 'Genocidal Language Games', in *Speech & Harm*, 174–221.

the early stages of planning of the "crime of crimes", his or her money is best spent not in purchasing machetes, or Kalashnikovs, or Zyklon B gas, but rather investing in radio transmitters and photocopy machines.'[7]

This is thus our liberal dilemma: a choice between absolute freedom of expression, albeit perpetually accompanied by the risk that the rights of minorities might be undermined by hateful, extremist factions;[8] *or* pro-active prevention of the undermining of minority rights through anti-incitement legislation, albeit at the sacrifice of absolute free speech.[9] As this book takes an international law perspective, and seeing as international law has made a tentative choice in favour of – albeit *high*-threshold – restrictions,[10] the dilemma for – many[11] – states is more

[7] Schabas, 'Hate Speech in Rwanda', at 171.

[8] See e.g. Ronald Dworkin, 'A New Map of Censorship' (2006) 1 *Index on Censorship* 130–3 and Ronald Dworkin, 'Foreword', in Ivan Hare and James Weinstein (eds.), *Extreme Speech and Democracy* (Oxford University Press, 2009), v–ix; Ivan Hare and James Weinstein, 'Free Speech, Democracy, and the Suppression of Extreme Speech Past and Present', in Hare and Weinstein (eds.), *Extreme Speech and Democracy*, 1–7; James Weinstein, *Hate Speech, Pornography, and the Radical Attack on Free Speech Doctrine* (Boulder: Westview Press, 1999); Eric Heinze, 'Viewpoint Absolutism and Hate Speech' (2006) 69:4 *Modern Law Review* 543–82; C. Edwin Baker, 'Autonomy and Hate Speech', in Hare and Weinstein (eds.), *Extreme Speech and Democracy*, 139–57; Kent Greenawalt, *Fighting Words* (Princeton University Press, 1996), particularly at 63 (he does, however, predict that US courts will shift more in the direction of the Canadian approach to hate speech, at 151) and more generally Kent Greenawalt, *Speech, Crime, and the Uses of Language* (Oxford University Press, 1989), for instance at 301; Miklos Haraszti, 'Hate Speech and the Coming Death of the International Standard Before It Was Born (Complaints of a Watchdog)', foreword in Michael Herz and Peter Molnar (eds.), *The Content and Context of Hate Speech: Rethinking Regulation and Responses* (Cambridge University Press, 2012), xiii–xviii; for an argument against religious hatred laws specifically, see Eric Barendt, 'Religious Hatred Laws: Protecting Groups or Belief?' (2011) 17 *Res Publica* 41–54.

[9] See e.g., Jeremy Waldron, *The Harm in Hate Speech* (Cambridge, MA: Harvard University Press, 2012) and Jeremy Waldron, 'Dignity and Defamation: The Visibility of Hate' (2010) 123 *Harvard Law Review* 1596–657. Further, see Eric Barendt, *Freedom of Speech* (2nd rev. edn, Oxford University Press, 2007), accepting the rationale of certain anti-racist hate speech laws (at 170–86) yet being critical of most religion-oriented incitement laws (at 189–92). See also Toby Mendel, 'Does International Law Provide for Consistent Rules on Hate Speech?', in Herz and Molnar (eds.), *The Content and Context of Hate Speech*, 417–29; Steven J. Heyman, 'Hate Speech, Public Discourse, and the First Amendment', in Hare and Weinstein (eds.), *Extreme Speech and Democracy*, 158–82; Bhikhu Parekh, 'Is there a Case for Banning Hate Speech', in Herz and Molnar (eds.), *The Content and Context of Hate Speech*, 37–56; Michael Rosenfeld, 'Hate Speech in Constitutional Jurisprudence: A Comparative Analysis' (2003) 24 *Cardozo Law Review* 1523–67; David Kretzmer, 'Freedom of Speech and Racism' (1986–1987) 8 *Cardozo Law Review* 445–513.

[10] See Art. 20(2) ICCPR, and Art. 4 ICERD.

[11] Yet not, for instance, the USA, which has made reservations to those internationally mandated restrictions on extreme speech.

nuanced than that. Our liberal dilemma proper, then, is *how to prevent abuses* emanating from the fact that, through international law, states are offered tools for restriction *whilst taking seriously* the goods those tools are supposed to protect: minority rights, freedom from violence and persecution, and freedom from discrimination.

This book explores what equilibrium between free speech on the one hand, and avoiding hatred-based marginalization of *religious* groups specifically on the other, international law envisages. The key contention is that international human rights law is increasingly distinguishing between (unacceptable) laws that combat blasphemy, religious defamation and unqualified forms of 'hate speech' on the one hand, and (acceptable) incitement laws that specifically target forms of hate propaganda likely to stir up violence and discrimination. The former set of laws look to the protection of targeted groups against 'direct harm' stemming from hate speech and other insulting forms of speech. Incitement laws look to 'indirect harm', that is, the extent to which extreme speech acts influence an audience to engage in actions – discrimination or violence – against a target group.

The underlying rationale of that particular development is that such unqualified insult and hate speech laws are liable to foster governmental abuse. Governments – potentially working in tandem with the country's dominant religion – could use, and some are indeed known to use,[12] such laws to stifle unpopular speech so as to retain the status quo. Incitement legislation, by contrast, could – in the abstract – offer an important contribution to two of international human rights law's foundational goals: equality and freedom from fear.

This book's objective is to scrutinize if and to what extent Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR) helps to 'solve' our liberal dilemma.[13] The importance and relevance of further conceptualizing Article 20(2) ICCPR can hardly be overstated. Article 20(2) ICCPR is a rather cryptic provision. Whereas Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) has from the outset worked as a catalyst for the elimination of racial discrimination,[14] for the first forty years of its

[12] Paul Marshall and Nina Shea, *Silenced: How Apostasy & Blasphemy Codes are Choking Freedom Worldwide* (Oxford University Press, 2011).

[13] International Covenant on Civil and Political Rights, adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.

[14] International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly Resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969.

existence Article 20(2) ICCPR certainly has not had a similar role in relation to eradicating religious discrimination or religious strife. Even *within* Article 20(2) one can see how international monitoring bodies as well as national policy makers and judges have hitherto focused on the grounds of *racial* and *national* hatred, not on *religious* hatred.[15]

Speech critical of race is, naturally, categorically abject and repugnant; speech critical of religion is not necessarily so. Discourse critical of religion may be perceived as hateful by religious adherents; however, such critical discourse in actual fact may very well amount to a *free exercise* of religion and ought to be protected, not combated, by states. Thus regulations in the area of religious speech or speech concerning religions may well have an unduly 'chilling effect' on free speech and may moreover constitute unjustifiable restrictions on freedom of religion.

That said, State parties to the ICCPR have pledged to take action with respect to any advocacy of religious hatred whenever that hate propaganda constitutes *incitement* to discrimination, hostility or violence. That is the red flag they have accepted. Yet without further benchmarking, that particular internationally mandated limit may and in fact does trigger a host of widely differing state practices on extreme speech. Louis-Léon Christians has observed that the current situation in Europe alone is for this reason highly complex: 'Although almost every European State legislates for the criminal offence of incitement to national, racial or religious hatred, the geometry of such offences is very variable both because of the wording used in each case and because there are alternative offences to be taken into account in every national system.'[16]

Indeed, as long as further benchmarks concerning the international incitement prohibition are lacking, data collection and fact-finding will be highly problematic.[17] Lacking sound definitions, conceptualizations, criteria in relation to such questions as the content, intent, or context of incitement, we cannot comparatively monitor incidents of incitement in the State parties to the ICCPR or other international agreements containing incitement prohibitions. We cannot compare and contrast successful prosecutions; nor can we flag situations where under the international standards state authorities should have acted more proactively (i.e. to

[15] Louis-Léon Christians, *Study for the European Expert Workshop on the Prohibition of Incitement to National, Racial or Religious Hatred* (OHCHR expert seminar on Article 20(2) ICCPR, 9–10 February 2011, Vienna) (hereafter *Study on Incitement*), at 2.
[16] Christians, *Study on Incitement*, at 5.
[17] Alexander Verkhovsky, *Data-Collection and Fact-Finding* (OHCHR expert seminar on Article 20(2) ICCPR, 9–10 February 2011, Vienna).

discharge their 'positive obligations': consider the role of victims to incitement, access to justice, but also proactively promote tolerance through, for instance, education, and liaise with the media). Also, importantly, lacking sound concepts makes it hard to condemn *abuses*. Incidents that have led to prosecutions and convictions that never should have, from an international law perspective, led to interferences with free speech must be consistently berated.

1.2 Our liberal dilemma embedded in wider international developments

With respect to the issue of extreme speech about or motivated by religion, we have recently witnessed two contradictory developments within the United Nations.[18] For over a decade, political bodies such as the General Assembly and the Human Rights Council (and the former Commission on Human Rights) have pushed for more rigorous international and national measures combating 'defamation of religion'.[19] These UN Resolutions, proposed by the Organization of Islamic Cooperation, have been vehemently criticized by legal scholars, who argue that combating defamation of religion would be tantamount to destroying not only the core right of freedom of expression, but also the right to freedom of religion.[20] The latter, after all,

[18] For a more comprehensive analysis, see Jeroen Temperman, 'Blasphemy, Defamation of Religions and Human Rights Law,' (2008) 26:4 *Netherlands Quarterly of Human Rights* 517–45; Jeroen Temperman, 'Freedom of Expression and Religious Sensitivities in Pluralist Societies: Facing the Challenge of Extreme Speech', (2011) 3 *Brigham Young University Law Review* 729–57; and Jeroen Temperman, 'The Emerging Counter-Defamation of Religion Discourse: A Critical Analysis', (2010) 4 *Annuaire Droit et Religion* 553–9.

[19] E.g. Commission on Human Rights, Resolution 1999/82 on 'Defamation of Religions' of 30 April 1999; Resolution 2001/4 on 'Combating Defamation of Religions as a Means to Promote Human Rights, Social Harmony and Religious and Cultural Diversity' of 18 April 2001; Resolution 2002/9 on 'Combating Defamation of Religions' of 15 April 2002; Resolution 2003/4 on 'Combating Defamation of Religions' of 14 April 2003; Resolution 2004/6 on 'Combating Defamation of Religions' of 13 April 2004; and Resolution 2005/3 on 'Combating Defamation of Religions' of 12 April 2005. This trend was subsequently continued by the Human Rights Council: see, e.g., Resolution 4/9 on 'Combating Defamation of Religions' of 30 March 2007; and Resolution 7/19 on 'Combating Defamation of Religions' of 27 March 2008. See also General Assembly Resolutions 60/150 of 16 December 2005, 61/164 of 19 December 2006 and 62/154 of 18 December 2007 (all on 'Combating Defamation of Religions').

[20] A selection: Temperman, 'Blasphemy, Defamation of Religions and Human Rights Law'; L. Bennett Graham, 'Defamation of Religions: The End of Pluralism?' (2009) 23

includes the right to manifest beliefs that may be heretical, defamatory or blasphemous to another person.

More recently, as of 2011, the tone of these Resolutions has been moderated to accommodate Western criticism: the Resolutions are now entitled 'Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief'.[21] On their face the revamped Resolutions – commencing with Human Rights Council Resolution 16/18 – accord better with standards of international human rights law, since they condemn more expressly incitement rather than plain defamation.[22] Scholars and human rights NGOs have indicated how this new focus on combating intolerance and incitement in practice could and should serve to promote *existing* international human rights standards (rather than introduce new, potentially harmful concepts).[23] Within legal scholarship there remains, at the same time, real anxiety that future political Resolutions, or misinterpretation of the existing ones, will serve as justifications for national practices that unduly stifle speech critical of majority religions.[24]

Emory International Law Review 69–84; Sejal Parmar, 'The Challenge of "Defamation of Religions" to Freedom of Expression and the International Human Rights System' (2009) 3 *European Human Rights Law Review* 353–75; Allison G. Belnap, 'Defamation of Religions: A Vague and Overbroad Theory that Threatens Basic Human Rights' (2010) *Brigham Young University Law Review* 635–85; Rebecca J. Dobras, 'Is the United Nations Endorsing Human Rights Violations?: An Analysis of the United Nations' Combating Defamation of Religious Resolutions and Pakistan's Blasphemy Laws' *Georgia Journal of International & Comparative Law* 37 (2009) 339–80; and most recently and comprehensively, Lorenz Langer, *Religious Offence and Human Rights* (Cambridge University Press, 2014).

[21] E.g. Human Rights Council Resolution 16/18, 'Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief' (UN Doc. A/HRC/RES/16/18, adopted on 24 March 2011). See also the parallel revamped General Assembly Resolutions: General Assembly Resolution 66/167, 'Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief' (UN Doc. A/RES/66/167, adopted on 19 December 2011); and General Assembly Resolution 67/178, 'Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief' (UN Doc. A/RES/67/178, adopted on 20 December 2012).

[22] E.g. A/HRC/RES/16/18, para. 3.

[23] Notably, see Universal Rights Group, *Combatting Global Religious Intolerance: The Implementation of Human Rights Council Resolution 16/18* (Policy Report, 2014).

[24] E.g. Robert C. Blitt, 'Defamation of Religion: Rumors of Its Death are Greatly Exaggerated' (2011) 62 *Case Western Reserve Law Review* 347–97. The Universal Rights Group report, mentioned in the previous note, shares these concerns and even speaks in terms of helping states to bring the implementation of this Resolution 'back on track' (at 4 and 7).

While the General Assembly and the Human Rights Council have pushed for restrictions on religious defamation, UN independent experts have been pushing states to affirm existing international norms – which standards imply that many states ought to narrow rather than widen definitions of punishable speech. The timing of these expert interventions suggests that they are in direct reaction to ongoing developments within the said political bodies of the UN. For instance, the UN Special Rapporteur on freedom of religion or belief, an independent expert, has held that defamation of religion does not in itself adversely impact the freedom of religion, and thus does not necessarily engage international law.[25] Indeed, the Special Rapporteur called national criminal bans on defamation of religion 'counter-productive'.[26] Further, the Human Rights Committee, which monitors compliance with the ICCPR, officially treats blasphemy and religious defamation bans as violations of international law and calls for their removal. Newly adopted General Comment No. 34 observes that: 'Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, *are incompatible with the Covenant*.'[27] Thus, according to the Committee, unqualified forms of defamation of religion (blasphemy, disrespect of religion, gratuitously offensive speech, satire, religious criticism, etc.) shall not be combated by states.

The UN Special Rapporteur on freedom of expression has also warned against lowering free speech standards in the – alleged – interest of freedom of religion. Rapporteur Ligabo argued that:

> with increased frequency, particularly due to events that dominated international politics recently, an alleged dichotomy between the right to freedom of opinion and expression and the right to freedom of religion or belief has been purported. In particular, it has been argued that the dogmatic use of freedom of expression as a fundamental human right has undermined people's ability to fully enjoy other human rights, in particular freedom of religion. The Special Rapporteur strongly rejects such a view.[28]

[25] *Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, and the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène, Further to Human Rights Council Decision 1/107 on Incitement to Racial and Religious Hatred and the Promotion of Tolerance* (UN Doc. A/HRC/2/3, 20 September 2006), paras. 36–39.

[26] A/HRC/2/3, para. 42.

[27] Human Rights Committee, *General Comment 34: Article 19: Freedoms of Opinion and Expression* (CCPR/C/GC/34, adopted at its 102nd session, Geneva, 11–29 July 2011), para. 48 (emphasis added).

[28] A/HRC/7/14, para. 63.

Indeed, freedom of expression and freedom of religion are not perpetually in conflict; nor are these fundamental freedoms automatically at odds any time someone says something critical or shocking about a religious belief.

In fact, international law already has norms in place for the most extreme forms of speech about religion or motivated by religion. The latter Special Rapporteur, too, emphasizes:

> that existing international instruments establish a clear limit on freedom of expression. In particular, the International Covenant on Civil and Political Rights provides that … 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law'. The main problem thus lies in identifying at which point exactly these thresholds are reached.[29]

The latter problem is precisely what forms the problem statement of the present book: when is the threshold of incitement within the meaning of international human rights law reached, and what, then, marks the difference with low-threshold defamation of religion (protected by freedom of expression)? Moreover, how can a 'combating incitement' approach avoid the pitfalls of abuse that the 'combating defamation' approach so clearly fails to avoid? In the words of the Special Rapporteur on freedom of expression, our research into the question of punishable incitement:

> should meet a number of requirements. In particular, it should not justify any type of prior censorship, it should be clearly and narrowly defined, it should be the least intrusive means in what concerns limitations to freedom of expression and it should be applied by an independent judiciary … [T]hese limitations are designed to protect individuals rather than belief systems, guaranteeing that every person will have all of his or her human rights protected.[30]

This book proposes to address this challenge in the following ways.

[29] A/HRC/7/14, para. 65.

[30] A/HRC/7/14, 65. In the next paragraph the Rapporteur notes that 'a broader interpretation of these limitations, which has been recently suggested in international forums, is not in line with existing international instruments and would ultimately jeopardize the full enjoyment of human rights.' This is a reference to the combating defamation of religion approach.

1.3 Outline

This book enquires into the legislative and judicial obligations that flow from the international prohibition on hateful incitement as enshrined in the International Bill of Rights. Some 160 states have,[31] by ratifying the ICCPR, pledged to 'prohibit by law' *any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence* (Article 20, paragraph 2, ICCPR). The leading question is: which speech acts engage this prohibition and in respect of this ban what are the precise legislative and judicial obligations of State parties?

It should be noted from the outset that there is a consensus among stakeholders that Article 20(2) ICCPR presupposes civil and administrative law sanctions and measures in addition to criminal law responses to incitement; moreover, it is widely understood that any anti-incitement toolbox ought to include non-legal approaches as well as legal ones.[32] For

[31] I.e. all ICCPR State parties minus the seven states that have made reservations to Art. 20 ICCPR. Australia, Belgium, Luxembourg, Malta, New Zealand, United Kingdom and the United States have deposited reservations or interpretative declarations that limit their obligations under Art. 20(2), typically to the effect that no further national legislation shall be deemed to be required under the terms of this provision. A number of states have entered reservations to Art. 20(1) on war propaganda.

[32] *Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence* (Conclusions and recommendations emanating from the four regional expert workshops organized by OHCHR in 2011 and adopted by experts in Rabat, Morocco on 5 October 2012), paras. 23–29; Committee on the Elimination of Racial Discrimination, *General Recommendation 35: Combating Racist Hate Speech* (UN Doc. CERD/C/GC/35, 83rd session, 12–30 August 2013), paras. 30–44, listing a comprehensive set of positive measures; Special Rapporteur on Freedom of Religion or Belief, *Tackling Manifestations of Collective Religious Hatred* (A/HRC/25/58, 26 December 2013), particularly paras. 31–53; Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Report of the Special Rapporteur to the General Assembly on Hate Speech and Incitement to Hatred* (A/67/357, 7 September 2012), particularly paras. 56–74; ARTICLE 19, *Prohibiting Incitement to Discrimination, Hostility or Violence: Policy Brief* (2012), at 41–45 ('Sanctions and other measures'). For scholarly accounts on non-legal approaches to incitement, see e.g. Peter Molnar, 'Responding to "Hate Speech" with Art, Education, and the Imminent Danger Test', in Herz and Molnar (eds.), *The Content and Context of Hate Speech*, 183–97; Maleiha Malik, 'Extreme Speech and Liberalism', in Ivan Hare and James Weinstein (eds.), *Extreme Speech and Democracy* (Oxford University Press, 2009), 96–120; David Richards, *Free Speech and the Politics of Identity* (Oxford University Press, 1999), particularly chapters 4 to 6, presenting ways to promote counter-speech as a remedy; Katrine Gelber, 'Reconceptualizing Counterspeech in Hate Speech Policy', in Herz and Molnar (eds.), *The Content and Context of Hate Speech*, 198–216; Arthur Jacobson and Bernhard Schlink, 'Hate Speech and Self-Restraint', in Herz and Molnar (eds.), *The Content and Context of Hate Speech*, 217–41.