

# The International Human Right to Freedom of Religion or Belief: Foundations and Challenges

*Notes from a Conversation with David H. Moore, Sterling and Eleanor Colton Endowed Chair in Law and Associate Director, International Center for Law and Religion Studies, BYU Law School*

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## How is Religious Freedom Defined and Protected as a Human Right?

International Law is a central guarantor of Human Rights (and consequently Religious Freedoms). On a base level, International Law can be divided between (1) Treaties and (2) Customary International Law. Both these forms are manifest in the sanctification of Human Rights on an international level. This is made possible through the International Bill of Human Rights, which is composed of the **Universal Declaration of Human Rights** (Customary) as well as the 2 Covenants (**the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights**) which are both treaties. Through these 3 lenses, the international recognition of Religious Freedom can be observed.

### Universal Declaration of Human Rights:

The genocide of the Holocaust compelled the International Declaration of Human Rights, which includes the right to freedom of religion, highlighting the significance of preserving people's beliefs and avoiding religious prejudice. **Articles 18 and 29 (par. 2)** make that abundantly clear:

*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. (Art. 18)*

However, it must be noted that Religious Freedom can be practiced under the auspices of (1) Lawfulness, (2) Having Admissible Purposes and (3) Being Necessary and Proportionate. Hence,

*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. Article 29(2)*

## The International Covenant on Civil and Political Rights

The ICCPR affirms and upholds the right to freedom of religion, enabling people to exercise and alter their religious convictions without hindrance or coercion. Since religious freedom is crucial to promoting an inclusive and fair society, state parties are required by law to defend this right. **Article 18** specifies that:

- *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.*
- *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
- *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others*
- *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

**Article 20** also states that:

*Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. . . In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.*

## Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief

The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief is a General Assembly Resolution that highlights the value of religious freedom by urging the abolition of all forms of intolerance and discrimination and promoting the right to practice, profess, and manifest one's religion or belief in both public and private spheres. This is shown in Article 6:

*In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:*

- 1) *To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;*
- 2) *To establish and maintain appropriate charitable or humanitarian institutions;*
- 3) *To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;*
- 4) *To write, issue and disseminate relevant publications in these areas;*
- 5) *To teach a religion or belief in places suitable for these purposes;*
- 6) *To solicit and receive voluntary financial and other contributions from individuals and institutions;*
- 7) *To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;*
- 8) *To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;*
- 9) *To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.*

## Additional Players in International Religious Freedom

Many players have taken it upon themselves to uphold principles of human rights on an international level. Some of these include: (a) States, (b) Regional Human Rights Systems, (c) Nongovernmental Organizations, (d) Multinational Corporations, (d) Individuals, **but most importantly, (f) the United Nations Human Rights System.**

The UN Human Rights System takes two forms: *Charter Bodies* and *Treaty Bodies*.

### *Charter Bodies*

This includes the 6 Bodies of the United Nations: (1) the General Assembly, (2) Security Council, (3) International Court of Justice, (4) Secretariat, (5) Economic and Social Council and (6) the now suspended Trusteeship Council. These bodies may create additional institutions to advance human rights. The General Assembly, for example, has created the Human Rights Council. The Council consists of representatives of elected states and promotes human rights through such things as the Universal Periodic Review and the establishment of Rapporteurs and Working Groups, including the Special Rapporteur on Freedom of Religion or Belief. Through the Universal Periodic Review, the human rights practices of all UN members states are reviewed on a rotating basis.

### *Treaty Bodies*

These are generally created by the nine core human rights treaties.

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1969)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1981)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1987)
- Convention on the Rights of the Child (CRC) (1990)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (2003)
- Convention on the Rights of Persons with Disabilities (CRPD) (2008)
- International Convention for the Protection of All Persons from Enforced Disappearance (CED) (2010)

### **Human Rights Committee**

The Human Rights Committee oversees states' compliance with the ICCPR, including its guarantee of freedom of religion or belief. (1) *General comments*, (2) *state reports*, and (3) *individual communications* are the three main tools the Committee employs to promote and defend human rights around the world.

- 1) ***General comments*** are interpretations of the ICCPR that offer direction on human rights obligations under the treaty.
- 2) ***State reports*** require member states to submit reports on their efforts to implement human rights standards under the ICCPR. This enables the Human Rights Committee to evaluate each nation's human rights condition and offer recommendations.
- 3) ***Individual communications*** allow people or groups to bring claims of human rights breaches directly to the Human Rights Committee. The Committee then decides whether a violation has occurred and directs the state to remedy any violation.

These systems are essential for keeping track of, advising against, and responding to international human rights abuses.

## What Are the Challenges to International Human Rights?

- 1) ***Human Rights Violations: Unfortunately***, human rights violations remain far too common around the world.
- 2) ***Human Rights Maximalism***: Human rights maximalism is the notion that every good thing is a human right. This approach can devalue the currency of human rights.

- 3) **Human Rights Skepticism (Or Even Cynicism):** Skepticism about human rights refers to a position of view in which the efficacy, legality, or universal applicability of human rights organizations are questioned.
- 4) **Human Rights Special Pleading:** Human rights special pleading is the attempt to elevate one or more human rights above others to favor a preferred right or the rights of a particular group at the expense of others.
- 5) **Politicization or Even Weaponization of Human Rights:** Refers to the exploitation or manipulation of human rights discourse and mechanisms for political gain or strategic goals, such as advancing partisan agendas, discrediting rivals, or defending military interventions.

## What Are Possible Solutions? (E.g. Punta Del Este Declaration)

As per the Punta del Esta Declaration:

*Human dignity is a powerful concept that resonates across cultures and can:*

- 1) Remind that the foundation and fundamental goal of human rights is human dignity
- 2) Provide common ground for (a) support for human rights, (b) understanding human rights, (c) resolution of competing claims
- 3) Guide advocacy efforts
- 4) Provide a basis for state obligations but also obligations of individuals, corporations, civil society members, etc.
- 5) Inspire action and respect.