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# Faith in United Nations Human Rights Treaties

## Legal and Religious Commentaries For Research and Peer-learning

Edited by
Michael Wiener,
Ibrahim Salama,
Britta Nicolmann

# FAITH IN UNITED NATIONS HUMAN RIGHTS TREATIES

## Legal and Religious Commentaries for Research and Peer-learning

Edited by Michael Wiener, Ibrahim Salama and Britta Nicolmann

San José, Cairo and Oslo

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# FOREWORD

**Francisco Rojas Aravena[1], Mohamed Loutfi[2] and Gentian Zyberi[3]**

Faith, multilateralism and human rights treaties are inherently linked. Already in 1945, the peoples of the United Nations reaffirmed their faith in fundamental human rights, in the dignity

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[1] **Dr. Francisco Rojas Aravena** was elected as the eighth Rector of the University for Peace in 2013, and was re-elected in 2018 and 2022. He has a Ph.D. in Political Science from the University of Utrecht in the Netherlands, and a M.S. in Political Science from the Latin American Faculty of Social Sciences. He also served as Professor at the School of International Relations of the National University of Costa Rica, Professor at Stanford University's campus in Chile, Visiting Professor at the Andres Bello Diplomatic Academy and a Fulbright Professor at the Latin American and Caribbean Centre at Florida International University. In 2012, he was honored by the governments of Costa Rica, Paraguay and the Dominican Republic for his contributions to the integration between Latin America and the Caribbean. He has subsequently been honored with other governmental and academic distinctions.

[2] **Dr. Mohamed Loutfi MBE** is the President and Vice-Chancellor of the British University in Egypt. He holds a BSc in Economics and Political Science and a MSc in Information Technology from Alexandria University. He also studied System Dynamics at the University of Bergen, Norway, before attaining his PhD in Systems Thinking from the University of Sunderland, United Kingdom. He was the first British/Egyptian academician to be a council member at the Observatory of Magna Charta Universitatum of Fundamental University Values and Rights in Bologna, and also the first professional in Europe to take part in a global education think tank, set up by the Ministry of Education in China to promote innovation, entrepreneurship and start-up education.

[3] **Dr. Gentian Zyberi** is Head of Department (2025–2027) and Professor of International Law and Human Rights at the Norwegian Centre for Human Rights, Faculty of Law, University of Oslo. He is a member of the Permanent Court of Arbitration (2016–2028) and of the Scientific Committee of the European Union Fundamental Rights Agency (2023–2028). He was a member of the United Nations Human Rights Committee (2019–2022). He was also editor-in-chief of the *Nordic Journal of Human Rights* (2019–2022) and since 2012 he has been a member of the Board of Advisors to the Editorial Board of the *Yearbook of International Humanitarian Law*.

and worth of the human person, in the equal rights of men and women and of nations large and small, based on conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.

Since agreeing to the United Nations Charter more than eighty years ago, States have adopted ten core human rights treaties and declarations which relate to freedom of religion or belief. During the drafting phase, several faith-based actors and civil society organizations helped to conceptualize key provisions. After the adoption of these human rights treaties, faith-based organizations have followed up to ensure implementation of the legal obligations on the ground. Furthermore, religious leaders bear crucial responsibilities in countering incitement to discrimination, hostility or violence, as well as for promoting compliance with human rights and international humanitarian law.

If we want peace, we must prepare for peace, in line with the motto of the University for Peace *(si vis pacem, para pacem)*. Therefore, we need to promote "among all human beings the spirit of understanding, tolerance and peaceful coexistence, to stimulate cooperation among people and to help lessen the threats to world peace and progress" (General Assembly 1980). This requires inter-disciplinary research, peer-to-peer learning and dissemination of knowledge fundamental to the full development of the human person and societies.

Religions and beliefs can also be inspiration and fundamental sources of human rights protection. For example, Pope Francis and the Grand Imam of Al-Azhar Ahmad Al-Tayyeb asked that their joint Declaration on Human Fraternity for World Peace and Living Together "become the object of research and reflection in all schools, universities and institutes of formation, thus helping to educate new generations to bring goodness and peace to others, and to be defenders everywhere of the rights of the oppressed and of the least of our brothers and sisters" (Holy See/Al-Azhar 2019). The present book aspires to respond to their call.

The current international scene is fraught with uncertainty, conflicts, and wars that violate human rights and international humanitarian law. Interfaith dialogue is essential. We need to listen in order to understand and act in favor of human values and sustainable peace.

This publication brings together research of forty contributors – 24 women and 16 men – from a variety of expert and scholarly backgrounds. In the thematic chapters, current and former United Nations treaty body members or special rapporteurs, religious leaders, faith-based actors and academics share their insights on a specific treaty or declaration, covering civil, cultural, economic, political and social rights, the right to development and international humanitarian law. The legal and religious commentaries provide unique testimonies on their first-hand experiences at national and international levels. We believe that this can enrich research and peer-learning, with particular focus on the confluence of law and religions or beliefs. We would also like to express our deep gratitude to the co-editors of the book for defining and materializing the vision of this groundbreaking project.

We hope that this publication will provide compelling arguments and concrete suggestions to reinvigorate faith in United Nations human rights treaties across the different regions, religions and beliefs. Fully implementing the obligations under human rights and international humanitarian law requires active involvement of all duty-bearers and rights-holders, including faith-based actors.

January 2026,
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# CHAPTER I.

# OVERVIEW OF THE COMMENTARY

**Britta Nicolmann[1], Ibrahim Salama[2] and Michael Wiener[3]**

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[1] **Britta Nicolmann** has been working for the Office of the United Nations High Commissioner for Human Rights (OHCHR) in different functions since 2018, with a focus on the human rights treaty bodies. Previously, she supported peace processes, transitional justice initiatives and reconciliation in countries experiencing armed conflict for the Centre for Humanitarian Dialogue, and researched and published for the OSCE and the Geneva Academy of International Humanitarian Law and Human Rights. She holds an Executive Master in International Law in Armed Conflict (Geneva Academy) as well as a Master of Science in Foreign Service (Georgetown University). The views expressed in this chapter are those of the co-authors and do not necessarily reflect the views of the United Nations.

[2] **Dr. Ibrahim Salama** is Dean of the Faculty of Law at the British University in Egypt and Director of its Human Rights Research and Training Centre since December 2024. Previously, he was the Chief of the Human Rights Treaties Branch at OHCHR (2007–2024), headed the UN Secretariat for the preparatory process of the 2009 UN World Conference Against Racism, and was also an independent expert of the Sub-Commission on the Promotion and Protection of Human Rights, and Chairperson of the Intergovernmental Working Group on the Right to Development (2004–2007). He also contributed to creating the "Faith for Rights" framework, and in 2024 he assumed the role as civil society coordinator of its commUNity of practices.

[3] **Dr. Michael Wiener** has been working since 2006 at the OHCHR. Furthermore, he has been a Visiting Fellow of Kellogg College at the University of Oxford since 2011. During his 2022 UN sabbatical leave, he was also a Senior Fellow in Residence at the Geneva Graduate Institute of International and Development Studies. He holds a Master of Laws from the University of London, and his doctoral thesis at the University of Trier focused on the mandate of the UN Special Rapporteur on freedom of religion or belief. The views expressed in this chapter are those of the co-authors and do not necessarily reflect the views of the United Nations.

**Abstract:** While faith and human rights are often perceived as antagonistic or competing value systems, this book aims at de-compartmentalizing their religious and legal sides through sixteen substantive chapters discussing complementarities and tensions between faith traditions and human rights. It explores if and how faith-based actors or their activities had an impact on treaties and declarations on human rights or international humanitarian law, either during their elaboration, monitoring or implementation on the ground. The related United Nations treaty bodies and special procedures mandate-holders have decades-long jurisprudence in this regard, to which the book seeks to facilitate access for the general public, including faith-based actors, civil society and academics. The terms "religion and belief", or "faith" as an umbrella terminology, are understood in a broad sense to cover theistic, non-theistic, atheistic and any other beliefs. The book title "Faith in United Nations Human Rights Treaties" is meant to convey both faith in the existing obligations and treaty bodies, despite and because of the challenges they face, and also as exploring the role of faith actors and factors in developing and implementing hard law norms and soft law standards. The subtitle clarifies that the book provides legal and religious commentaries for research and peer-learning. At the practical level, it aims to facilitate a Faith for Rights "commUNity of practices" among secular or faith-based human rights advocates, individually and collectively, with faith-related analysis, observations and recommendations by UN treaty bodies and special procedures mandate-holders. Similarly in armed conflicts, compliance with international humanitarian law may be enhanced if States, non-State armed groups, religious leaders, faith-based actors and human rights mechanisms are jointly involved in peer-learning, peer-cooperation or peer-pressure.

**Keywords:** Faith; human rights treaties; United Nations declarations; international humanitarian law; legal and religious commentaries.

## 1. Why this book?

Faith and human rights are often perceived as antagonistic – their respective advocates are seen as opponents or at least portrayed as living in different spheres and believing in divergent value systems. The resulting false dichotomy of hierarchization complicates matters and polarizes communities within and among societies. At the international and national levels, legal and religious cards are routinely played out against each other, to the detriment of both sides as well as of the values they claim to cherish and defend. Both value systems can be and have been instrumentalized. Religions have been weaponized. Rights claims and religious grounds were equally turned to tools for agitating conflicts, antagonizing communities and dividing societies.

The key objective of this book is to break these silos and to de-compartmentalize the intersection of faith and human rights, providing analysis and a peer-learning methodology to manage possible tensions and enhance convergence among both disciplines of human values and action thereon. Considering them as two sides of the same coin, the book explores if and how faith-based actors or their activities had an impact on international human rights treaties, either during their elaboration (*travaux préparatoires*), monitoring (notably through United Nations treaty bodies and special procedures mandate-holders) or implementation on the ground (by States and civil society organizations).

Demonstrating the positive influence of religious or belief values behind international treaties, either with or without explicit reference to faith values in the text of the treaties, may also bolster their binding nature at a time when this is increasingly being challenged, even by States Parties which have voluntarily signed up to treaty obligations. In addition to these hard law norms, some soft law standards such as United Nations declarations and action plans also have a foundation in faith traditions, which consequently

may provide additional legitimacy and impetus for implementation. Similarly in armed conflicts, compliance with international humanitarian law may be enhanced if States, non-State armed groups, religious leaders, faith-based actors and United Nations human rights mechanisms are jointly involved in peer-learning, peer-cooperation or peer-pressure (OHCHR 2024, 78).

The book is not only a theoretical endeavor. Its legal and religious commentaries aim to promote a missing yet valuable interdisciplinary reflection on the role of religion and beliefs in protecting human rights. The analysis provided of interaction between faith factors and treaty law making and implementation can inspire secular experts and faith advocates to work closer for the same objective. The book aims to facilitate a "commUNity of practices" (Faith for Rights 2024) among secular or faith-based human rights advocates, individually and collectively, with updated faith-related jurisprudence, observations and recommendations from the United Nations human rights architecture and beyond. Regional and international human rights mechanisms have decades-long jurisprudence to offer, and the book provides access to faith-related contributions in United Nations documents for the general public and practitioners, including faith-based actors, civil society and academics. Research, peer-learning, training and advocacy are inseparable and mutually enhancing tools and drivers.

Most importantly, this comparative analysis of faith in human rights treaties should also debunk the myth that human rights are predominantly a Western heritage. As the former High Commissioner for Human Rights, Michelle Bachelet, stated in Tunis at the commemoration of the 70th anniversary of the Universal Declaration of Human Rights and the 161st anniversary of the Fundamental Covenant *Ahd El Aman* (Bachelet 2019):

> "Human rights are an inherent part of every society. They constitute a common heritage of all nations, cultures and religions. I stand here, as a woman from

> Latin America, to celebrate one of the sources of human rights – one of their oldest and most far-reaching visions – here, in the Arab world."

Highlighting the essential role of ethical and spiritual foundations of religions and beliefs in addressing polarization and conflicts, High Commissioner Volker Türk also called on "religious leaders from all faiths to work together to promote the shared, universal principles of human dignity and compassion, and to transform them into acts of solidarity" (Türk 2025).

Therefore, it is crucial to support the role of facilitators of peer-learning programs on inter-faith and intra-religious issues. There is not much utility in superficial inter-religious dialogues that are not specific in content, rights-based and action-oriented. Comparative analysis between faith traditions and human rights fills this coherence gap and strengthens advocacy for rights, faith and "faith for rights" action on the ground. We believe that this is the most promising way forward when revisiting and reimagining the promotion and protection of human rights in light of lessons learned in the past 80 years since the launch of the universal human rights journey. Connecting the dots between faith and rights enhances complementarities and reduces tensions between both value systems that are equally powerful and simultaneously applicable.

Ultimately, this should also lead to enlightening or developing public policies and initiatives by States and non-State actors, thereby enhancing a rights-based approach to religions and a religiously sensitive approach to human rights. Both are needed. For example, if religious leaders explain why their respective religious texts should not be used as a pretext for entering or keeping blanket reservations to international human rights treaties, this is a powerful argument for lifting such reservations – or not making them in the first place. Another example of the added value

of comparative analysis is to counter the misuse of unfounded religious interpretations that lead to violations of women's rights.

Vice versa, United Nations treaty bodies may consider including more consistently faith-based actors in their recommendations after State Party reviews and other committee work. While some United Nations treaty bodies in their concluding observations have already invited faith-based actors to work for human rights, most committees have not adopted general recommendations focusing on religion or belief. This remains undoubtedly a debatable point in some committees between experts who see value and relevance in engaging faith actors and others who fear a slippery slope and stick to doctrinal secularism. This book also aims to establish a balance through exploring common grounds between these two trends. It is worth noting that the pro-engagement camp has been expanding over the past decade, which can simply be explained by pragmatic necessity. Many faith-based actors are active in the human rights arena. Indeed, in addition to some treaty bodies' activities, several special procedures mandate-holders have been engaging with religious communities during country visits, for individual communications and in thematic reports, yet cross-fertilization and a transversal view on faith and human rights may be useful. By definition of their mandate, the contributions of the Special Rapporteurs on freedom of religion or belief since 1986 have undoubtedly created reciprocal religious literacy in the human rights sphere and human rights literacy within the religious arena.

This dynamic is at the heart of "Faith for Rights", to which the special rapporteurs and treaty body members, among many others, have played a central role in establishing it and developing it from a soft law framework to a peer-to-peer learning methodology and global movement. Furthermore, the sixth annual meeting of the commUNity of practices, held in Cambodia and Thailand in October 2025, spotlighted Dharmic – Buddhist, Hindu, Jain and Sikh traditions – and Indigenous perspectives on human rights and peacebuilding (Faith for Rights 2025). Recalling the 18 commitments,

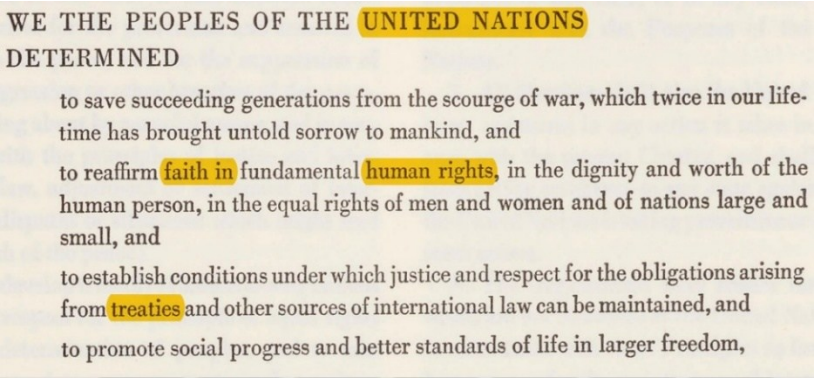
the *Bangkok Declaration on Dharmic Perspectives on Faith for Rights* recognized the diversity of spiritual, ethical and cultural traditions as a source of insight for promoting dignity, justice and compassion (Bangkok Declaration 2025).

The terms "religion and belief" – or "faith" as an umbrella terminology – are understood in a broad sense in this book. Theistic, non-theistic, atheistic and any other beliefs are equally protected under international human rights law. Thus, there is no exclusive focus on the major religions, especially since religious or belief minorities face numerous forms of discrimination from State and non-State actors.

The book seeks to provide interdisciplinary analysis, based on the jurisprudence of the international human rights treaties, stimulating research on tensions and complementarities between faith traditions and human rights in their respective interpretations. The thematic scope covers not only freedom of religion or belief, but also many other human rights that are influenced by religions and beliefs, either positively or negatively. Religious leaders, actors and individuals belonging to belief communities may be at the same time both duty-bearers and rights-holders. Everyone has the fundamental human right not to be discriminated against *on the basis of* religion or belief. Likewise, no one must be discriminated against *in the name of* religion or belief. Most importantly, no one should be compelled to choose between one's faith or one's human rights.

## 2. Why this title?

In 1945, the peoples of the United Nations reaffirmed "faith in fundamental human rights" and stressed the importance of respecting "the obligations arising from treaties and other sources of international law" (UN Charter 1945, preamble). Eighty years later, amid a crisis threatening both the UN and universal human rights, these quotes from the United Nations Charter inspired the title of this book, "Faith in United Nations Human Rights Treaties".



WE THE PEOPLES OF THE UNITED NATIONS
DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

The preamble's reference to faith in human rights was proposed in 1945 by Field Marshal Jan Smuts, then Prime Minister of the Union of South Africa. Just before the end of the Second World War, he stated at the meeting of Dominion prime ministers in London on 6 April 1945 that "[f]undamental human rights had been at stake. Like all great wars, this war had been at bottom a religious one. What the world expect from us was a statement of our human faith of the things which we had fought for and which we should try to stabilise and preserve in the world" (Heyns/Gravett 2017, 590). In San Francisco at the United Nations Conference on International Organization on 1 May 1945, Smuts suggested for the new Charter of humanity to "proclaim to the world and to posterity, that this was not a mere brute struggle of force between the nations but that for us, behind the mortal struggle, was the moral struggle, was the violation of the ideal, the faith in justice and the resolve to vindicate the fundamental rights of man, and on that basis to found a better, freer world for the future" (UN Conference 1945, 425).

On the same day, the Foreign Minister of Haiti, Mr. Lescot stated that the Second World War "derived much of its cruel intensity from psychological disturbances that were created by racial and religious discrimination in the political doctrines against which the United Nations are fighting in their desire to remain faithful to the

democratic ideals of freedom and human dignity" (ibid., 443). Earlier that week, the chairman of the Indian delegation in San Francisco, Sir Ramaswami, had also linked religions and human rights by noting: "There is one great reality, one fundamental factor, one eternal verity which all religions teach, which must be remembered by all of us, the dignity of the common man, the fundamental human rights of all beings all over the world" (ibid., 245)

On 26 June 1945, the representatives of the governments of fifty States signed the United Nations Charter – as highlighted at the end of its Article 111 in the final clause "IN FAITH WHEREOF […]". The United Nations Charter entered into force on 24 October 1945, including the principle that "[a]ll Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill *in good faith* the obligations assumed by them in accordance with the present Charter" (Article 2 (2), emphasis added).

Secretary-General António Guterres highlighted the role of faith and people by recalling the opening of the first ballot box of the Security Council for inspection before voting (Guterres 2025):

> "To everyone's surprise, there was already a slip of paper inside. It was a message from the box's maker – a local New York mechanic named Paul Antonio. He wrote: 'May I, who have had the privilege of fabricating this ballot box, cast the first vote? May God be with every member of the United Nations organization, and through your noble efforts bring lasting peace to us all – all over the world.' That humble note reminds us why the Security Council exists: for people. Sincere, hopeful people who, for the last eight decades, have placed their trust in this institution to save them from the scourge of war. The privilege to sit at this table carries a duty – above all – to honour the faith of those people."

In 1948, the Universal Declaration of Human Rights reiterated in its preamble that "the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights" (A/RES/217(III), A). This reaffirmation is also explicitly mentioned in the preambles of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (A/RES/34/180, annex) and of the 1989 Convention on the Rights of the Child (A/RES/44/25, annex), which respectively have 189 and 196 States Parties as of December 2025. This means almost universal acceptance by States of this formulation in legally binding conventions.

The book title "Faith in United Nations Human Rights Treaties" should be interpreted in two complementary ways: (1) understanding it as having faith in the existing obligations and monitoring bodies of international human rights treaties, and (2) also reading the title as exploring the role of faith factors and faith-based actors in drafting and implementing the respective human rights conventions and declarations. The formulation of the title is deliberately designed to include both meanings for this book. Its subtitle clarifies that the book provides legal and religious commentaries for research and peer-learning. Our aim is to accompany and support a movement and a mixed coalition on faith and rights and "Faith for Rights".

### 3. How are the chapters structured?

To facilitate readability and access to information, each book chapter is structured in a similar manner.

The first section, "Introduction", provides thematic context about the human rights treaty or declaration that the chapter comments on.

The second section, concerning "Religious influences during the *travaux préparatoires*", outlines any faith-based background and participation by religious actors (or lack thereof) when the treaty or declaration was drafted.

The third section, on "Faith-related jurisprudence", provides interdisciplinary analysis, based on the individual cases, general comments and concluding observations of the United Nations human rights treaty bodies as well as reports by thematic special procedures mandate-holders.

Lastly, the fourth section, on "Issues of interpretation", focusses on specific questions, for example gaps or contradictions in the jurisprudence of the various United Nations treaty bodies, special procedures or regional human rights courts. The aim is to explore tensions and complementarities between faith traditions and human rights, with a view to managing the former and enhancing the latter.

**4. Which themes are covered in this book?**

All core human rights treaties and relevant declarations – in chronological order of their adoption – are commented on by international experts, including current and former treaty body members or special rapporteurs, religious leaders, faith-based actors and academics (see the Annex for short biographies of each contributor).

The first substantive chapter covers the 1948 Universal Declaration on Human Rights (commented on by Katharina Kunter and Rabbi Alex Goldberg). The following ten chapters focus on the core human rights treaties: the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (Michał Balcerzak); the 1966 International Covenant on Civil and Political Rights (Gentian Zyberi, Ahmed Shaheed and Zeynep Baysar); the 1966 International Covenant on Economic, Social and Cultural Rights (Bhumika Modh and Prashant Sharma); the 1979 Convention on the Elimination of All Forms of Discrimination against Women (Nahla Haidar El Addal, Esther Eghobamien-Mshelia, Hilary Gbedemah, Bandana Rana, Nicole Ameline and Britta Nicolmann); the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(Nora Sveaass and Helle Dahl Iversen); the 1989 Convention on the Rights of the Child (Allie Kavalauskas, Philip Jaffé, Jennifer Philpot-Nissen, Eleonora Mura and Maria Lucia Uribe Torres); the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Nazila Ghanea and Thiago Alves Pinto); the 2002 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Malcolm Evans and Elīna Šteinerte); the 2006 Convention on the Rights of Persons with Disabilities (Heiner Bielefeldt, Şafak Pavey and Michael Wiener); and the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (Nathan Reyes).

Subsequently, two soft law instruments with direct relevance to faith and human rights are commented on, i.e. the 2012 Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (Sejal Parmar, Mona Elbahtimy and Michael Wiener) as well as the 2017 Beirut Declaration and its 18 Commitments on "Faith for Rights" (Diane Alai, John Graz and Michael Wiener). This is followed by a chapter on the draft International Covenant on the Right to Development (Ibrahim Salama and Mihir Kanade), based on the draft text with commentaries as submitted by the Chair-Rapporteur of the Working Group on the Right to Development (A/HRC/54/50, annex and A/HRC/54/50/Add.1), which is currently under consideration by the United Nations General Assembly.

To complement these chapters on human rights treaties and declarations, two additional chapters on international humanitarian law focus on the "dictates of the public conscience" in the 1899 and 1907 Hague Conventions and in the 1949 Geneva Conventions and their 1977 Additional Protocols (Ritika Sharma and Sahildeep Singh), as well as on the influence of Islamic law principles on the drafting of the 1977 Additional Protocols to the Geneva Conventions (Ahmed Al-Dawoody and Medha Damojipurapu).

In the final chapter, the three co-editors (Ibrahim Salama, Britta Nicolmann and Michael Wiener) offer their concluding observations, providing a synthesis of the book and an outlook to the future. The goal of this concluding chapter is to show that restoring faith in and impact of human rights norms and institutions requires connecting the dots between three value systems – rights, faith and ethics – that are often artificially separated and even played out against each other: (1) universally accepted human rights norms and standards, (2) faith traditions compatible with these norms and which often exceed them in terms of scope and depth of protection, and (3) secular ethical values at large.

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# CHAPTER II.

# UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)

**Katharina Kunter[1] and Rabbi Alex Goldberg[2]**

**Abstract:** This chapter explores the historical, philosophical and religious foundations of the Universal Declaration of Human Rights. The United Nations General Assembly adopted the Declaration in 1948 against the background of Second World War atrocities, particularly the Holocaust, which galvanized Allied leaders to envision a postwar order grounded in justice and human dignity. The drafting process, led by individuals like Eleanor Roosevelt, René Cassin and Charles Malik, was shaped by diverse religious, philosophical and cultural influences. Christian ecumenical networks, especially in the United States of America and the United Kingdom, advocated for religious liberty, while

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Jewish organizations and intellectuals emphasized universal dignity and minority protections. Muslim and non-Western voices, including Sir Muhammad Zafrullah Khan, Begum Shaista Suhrawardy Ikramullah, Peng Chun Chang, Hansa Mehta and Hernán Santa Cruz, ensured the Declaration's intercultural co-authorship. However, it is also important to acknowledge who was not present in the *travaux préparatoires*, notably Dharmic, Indigenous and sub-Saharan perspectives. Ultimately, religious and secular ideas converged in the Declaration's core concepts such as dignity, equality and freedom of thought, conscience, religion or belief. Faith communities have played a central role not only during the drafting process but also for the evolving interpretation of human rights. The Universal Declaration is not a static product of 1948 but a living covenant between faith, reason and humanity, whose universality rests not on uniformity but on the continual rediscovery of the sacred worth of the human person. In a fractured global order, faith-based ethics can re-humanize the discourse of rights, turning law into empathy and sovereignty into service.

**Keywords:** Universality, dignity, conscience, responsibilities, secularism, faith communities, humanity.

## 1. Introduction: Historical background of the Universal Declaration of Human Rights

Even before the Second World War began, the political leadership of the Allies – the Soviet Union, the United States of America and the United Kingdom – were informed about the atrocities, oppression, imprisonment and mass shootings of Jews, as well as of the murder of dissidents and those who did not conform to the ideological concept of National Socialism.

Shortly later, as the Second World War, with its devastation and bombing raids, was in full swing, various Allied circles initiated considerations regarding the principles on which international law

would need to be based in the aftermath of the war, with a view to preventing such dehumanization in the future and to establish a just, lawful and peaceful international society in the long term. The British and Americans in particular favoured stronger legal protection for the individual and a just, peaceful international order. American President Woodrow Wilson had already proposed similar ideas at the end of the First World War with his 14-point programme of 8 January 1918, in which he advocated a politically independent, international alliance of all states to secure peace (Wilson 1918). However, the League of Nations, which the United States of America never joined, ultimately failed.

Now, in the Second World War, American President Franklin D. Roosevelt took up Wilson's ideas again on 6 January 1941 with his "Four Freedoms Speech". In this address to Congress, he articulated a new vision of peace grounded in U.S. ideals, enumerating four fundamental freedoms – freedom of speech, freedom of religion, freedom from want, and freedom from fear – and affirmed the universal right to religious liberty, declaring that every individual everywhere should possess the right "to worship God in his own way" (Roosevelt 1941). These "Four Freedoms" influenced the Atlantic Charter, a document proclaimed by Roosevelt and British Prime Minister Winston Churchill on 14 August 1941 (Atlantic Charter 1941). This agreement established the fundamental principles for a future order based on international law after the Second World War. The Atlantic Charter became a basic component of the subsequent Declaration by United Nations, which was signed on 1 January 1942 by 26 States (Declaration by United Nations 1942). This was the first time the term "United Nations" appeared, as a concept proposed by Roosevelt to denote the collective endeavour of the 26 signatory States in their joint struggle against the Axis powers (Germany, Italy and Japan), which were united by a military coalition.

At the same time, more information and details concerning the mass murders of millions of European Jews planned by the Nazis

became known. In August 1942, Gerhart Riegner of the World Jewish Congress in Geneva telegraphed to the American and British Foreign Offices that he had received reliable reports from Hitler's headquarters about the planned systematic murder of 3.5 to 4 million European Jews. In December 1942, twelve Allied governments published the declaration on the "extermination of the Jewish population of Europe" (Allied Governments 1942). This appalling news gradually began to permeate wider circles of the (Allied) international political public, although the American and British media were generally reticent and not particularly interested, as recent studies by Laurel Leff and James Jordan have shown (Jordan 2021; Leff 2005). Nevertheless, from 1942 onwards, a growing body of information about the extermination camps such as Sobibor, Treblinka, Majdanek and Auschwitz began to reach Allied circles; however, the full extent of the Holocaust only became known after the liberation of the extermination camps in 1944/1945.

The idea of the United Nations and a Universal Declaration of Human Rights began to take shape in 1942. Following the Tehran Conference in December 1943, at which the United States of America, the Soviet Union and the United Kingdom confirmed the establishment of an international organization to secure peace, further goals, principles and organizational structures were subsequently discussed and defined. Between 25 April and 26 June 1945, delegates from fifty nations finally met in San Francisco and adopted the 111-article Charter of the United Nations, based on the various proposals drawn up to that point and the Yalta Agreement. The Charter established the principles and tasks of the United Nations, including the promotion of "positive peace" through intergovernmental co-operation in the field of human rights. In the face of the destructive and barbaric violence that the Nazi regime had unleashed globally, world leaders decided to add another declaration to the UN Charter that would legally protect and guarantee the rights of every human being in the world. The

permanent UN Commission on Human Rights was established as an organ of the Economic and Social Council of the United Nations to draft this new human rights declaration. The first session of the nuclear Commission on Human Rights took place from 29 April to 20 May 1946 and was primarily used for logistical preparations (E/38/Rev.1).

The first session of the full Commission on Human Rights was then opened in New York on 27 January 1947 by Henri Laugier, UN Assistant Secretary-General for Social Affairs (E/CN.4/SR.1). Eleanor Roosevelt, the widow of US President Franklin D. Roosevelt, who had passed away in April 1945, was unanimously elected Chair of the Commission. She had already served as a US delegate to the United Nations. The Chinese delegate and philosopher Peng Chun Chang became Vice-Chairman, and the Lebanese philosopher and diplomat Charles Malik was appointed Rapporteur.

This was followed by two years of extensive discussions on a wide range of human rights issues, with contributions of human rights experts and specialists from non-governmental organizations. In 1946, the Sub-Commission on Prevention of Discrimination and Protection of Minorities was founded as a subsidiary body of the Commission on Human Rights.

The Commission ultimately drew up the Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations General Assembly in Paris on 10 December 1948 by 48 votes, with eight abstentions (A/PV.183, 933). Notably, its Article 18 includes the right to manifest one's "religion or belief in teaching, practice, worship and observance" (A/RES/217(III), A), which emerged as a subject of profound discussion and subsequent influence. In 1950, the European Convention on Human Rights (Council of Europe, 1950) repeated this formulation almost word for word, albeit with a different order in its Article 9 ("to manifest his religion or belief, in worship, teaching, practice and

observance"), as did other human rights treaties discussed in this volume.

## 2. Religious influences during the travaux préparatoires of the Declaration

Against the background of the developments described above, various political, social and religious circles have been engaged since the early 1940s in the preparatory work (*travaux préparatoires*) for the drafting of a new declaration implementing international law and securing peace, as well as in the parallel discussions on a universally valid declaration of human rights. If one examines the religious influences on the preparatory work for the drafting of the UDHR, three levels can be distinguished:

a) Networks and groups, mostly originating from the political and cultural elites of the Allies, who began to think about the establishment of peacekeeping structures under international law, already in 1941/42, i.e. in the early stages of the Second World War. Lawyers, politicians and diplomats often came together to discuss this issue, bringing their religious and ethical beliefs into the discussion, even if these were not the focus. In addition to the Allied circles, a few groups of the German resistance, such as the members of the Kreisau Circle, who were already concerned about human rights during the Second World War and in opposition to the Nazi regime, also existed (Roon 1967).

b) In addition to the invisible biographical, religious influences of these groups, controversial ethical or moral attitudes based on religion and faith were reflected in the topics discussed when drafting the UDHR and in the discussions on Article 18. They can be interpreted as an expression of the internationally diverse and multi-religious composition of the Commission meetings.

c) Finally, the UDHR was contributed to by some outstanding individuals who can be explicitly identified as religious persons. For these individuals, religion manifested itself as personal

spirituality, religiously inspired philosophy or ethics. Without knowledge of these, the faith-based part of the UDHR cannot be understood. However, the later, mostly secular historiography of the UDHR (e.g. Ignatieff 2001) either ignored this aspect or was not aware of it. Consequently, this has contributed to a secular narrative of the UDHR that is not accurate in its entirety. In the following, these three levels will be analyzed using selected examples.

### 2.1 Christian Contributions and Networks

The German invasion of Poland on 1 September 1939, which marked the beginning of the Second World War, posed a profound challenge to Christian circles that understood themselves in transnational terms. Among these were representatives of the Protestant-dominated Ecumenical Movement, which had unsuccessfully sought peace during the First World War but now, drawing on Wilsonian ideas, advocated for a new international organization and world order that would also safeguard human dignity (Thomson 2015; Slotte 2015; Peiponen 2012; Erdmann 2005; Nurser 2005). Two figures stood out in this context: the American lawyer and diplomat John Foster Dulles, and the American Lutheran theologian Frederik O. Nolde.

Dulles, like Wilson, was a Presbyterian (Thomson 2015; Immerman 1999; Toulouse 1983). His father was a minister in the Presbyterian Church in Watertown, New York; his grandfather John W. Foster and his uncle Robert Lansing had both served as U.S. Foreign ministers. In 1919 he was a member of the American delegation at the Paris Peace Conference. In the spring of 1939, shortly before the outbreak of the war, Dulles published the book *War, Peace and Change*, in which he passionately argued for the creation of an international society (Dulles 1939). In 1941 he became chair and "mastermind" of the *Commission to Study the Bases of a Just and Durable Peace*, established by the Federal Council of Churches (FCC). This commission had an ecumenical orientation

and brought together leading experts aimed to articulate the churches' active contribution to defining the moral, political and economic foundations of a lasting peace. Prominent Protestant theologians such as Reinhold Niebuhr, Frederik O. Nolde, John Coleman Bennett and Henry Van Dusen participated in its work. The German-born theologian Paul Tillich, then living in exile in the United States, was also invited to comment. However, from his perspective of religious socialism, Tillich voiced fundamental objections to the very concept of a "just and durable peace" (Stone 2020).

In 1943, the Commission published the document *Six Pillars of Peace*, drafted largely by Dulles (FCC 1943). Drawing on Wilson's Fourteen Points, it advocated for an organized political cooperation among the "United Nations". Notably, point 6 of the document advocated the United Nations to embrace the right to religious and intellectual freedom. The *Six Pillars* attracted considerable political and public attention. To further elaborate the details of the proposed principle of religious liberty, the FCC, together with the Foreign Missions Conference of North America (FMC), established a Joint Committee on Religious Liberty (JCRL) in January 1942. Under the chairmanship of Dulles, and with the strong support of Nolde, the churches' visions for postwar reconstruction not only gained wide public visibility but also found resonance within the political elites in Washington, D.C. and New York. This applied to the JCRL's 1944 statement on religious liberty, which reached not only church audiences but also the White House, Congress and U.S. embassies abroad (Lindkvist 2017, 74ff.). The statement argued for integrating religious liberty as a central element of the future postwar order. It defined religious liberty as: "freedom to worship according to conscience and to bring up the children in the faith of their parents; freedom for the individual to change his religion; to preach, educate, publish, and carry on missionary activities; and freedom to organize with others, and to acquire and hold property, for these purposes" (ibid., 75).

At the same time, Christian groups in the United Kingdom also took up the cause of religious liberty. Among them was a Joint Committee on Religious Liberty, supported by the British Council of Churches and the Conference of British Missionary Societies, as well as an ad hoc group chaired by the Archbishop of Canterbury. In 1942 this latter body issued a statement that, among other aspects, affirmed the right to change one's religion or belief as an essential component of religious freedom (ibid., 75).

With the end of the Second World War, the various church deliberations on the future post-war order and the implementation of religious freedom and human rights were finally channelled through the now emerging World Council of Churches (WCC), in particular through its Commission of Churches for International Affairs (CCIA), a kind of foreign policy department founded in 1946. From 1946 onwards, Nolde played a key role in facilitating communication between the CCIA and the United Nations in New York, while Dulles increasingly concentrated on influencing the diplomatic process itself (Peiponen 2012).

In the autumn of 1944, Dulles participated in the "Big Four" conference at Dumbarton Oaks in Washington, D.C., where American, Soviet, British and Chinese politicians and diplomats drafted the first proposals for the constitution of the future United Nations (Thompson 2015, 179 ff.). Subsequently, and in consultation with church representatives, he served as an adviser to the American delegation at the inaugural UN meeting in San Francisco in April 1945. There Dulles exerted significant influence in ensuring that the United Nations and its Charter would not simply constitute a continuation of the wartime alliances, as had seemed likely at Dumbarton Oaks. In San Francisco, the final text of the Charter was drafted and, together with the Statute of the International Court of Justice, was unanimously adopted by the delegates of fifty States on 25 June 1945. The Charter entered into force on 24 October 1945.

The circles around Dulles, Nolde, the American *Commission to Study the Bases of a Just and Durable Peace* and the British *Joint Committee on Religious Liberty*, which were now working together in the CCIA, remained active in matters of religious freedom. Nolde and others regularly attended the Commission on Human Rights meetings as advisors or observers and communicated, commented or developed the drafts and wording around the future Article 18 through discussions, statements, letters and other means. Nolde was particularly privileged because, as an American and as a representative of an international religious organization, he was able to have regular contact with Eleanor Roosevelt, who headed the Commission on Human Rights. He had already contacted her in May 1946 and told her about the four points that were important from the point of view of the CCIA and the ecumenical movement, namely implementation, minority rights, freedom of speech and the International Bill of Rights (Peiponen 2012, 223, referring to Nurser 2005, 131). In addition, he established contact with Charles Malik, the rapporteur of the Commission on Human Rights. Malik was Greek Orthodox and a professor of philosophy at the American University of Beirut.

The CCIA's lobbying work now also included Nolde's intensive efforts in favour of religious liberty. The basis for this was the *Declaration of Religious Liberty* drawn up by the CCIA and adopted by the WCC and the International Missionary Council (IMC) in 1948. It became part of the official final document of the WCC's founding assembly, held in Amsterdam in August 1948 (WCC 1948). After further meetings and discussions in the Commission on Human Rights, revisions and back-and-forth communication between Nolde, Eleanor Roosevelt and others, the UN General Assembly adopted the Universal Declaration of Human Rights in Paris on 10 December 1948. It consisted of a preamble and 30 articles that provide individual freedoms, denounce torture and slavery, and affirm the equal dignity of all human beings.

Nolde and the CCIA had made a decisive contribution to the wording of Article 18 on religious freedom and, together with Eleanor Roosevelt, ultimately ensured that the article also addressed religion, and not just freedom of belief and conscience. In the course of this human rights work, an ecumenical friendship developed between Nolde and Charles Malik, who had collaborated in the commission to secure recognition of the right to change one's religion or belief. In August 1948, Nolde invited Malik to serve as a commissioner in the CCIA, an invitation he accepted (Lindkvist 2017, 63).

The UDHR was significantly influenced by the political Protestantism of the Allies, particularly the United States and the United Kingdom. However, there were also Catholic influences in shaping the UDHR. A first sign of a new direction in the Catholic Church, which had traditionally been one of the fiercest critics of the idea of inalienable individual freedoms, was Pope Pius XII's Christmas address in December 1942, where he spoke for the first time of "human dignity" and "fundamental personal rights" (Pius XII 1942). It was then the French Catholic philosopher Jacques Maritain (who was born into a Protestant family), who took up prominently the subject of human rights und developed a natural law-based catalogue of 26 universal human rights. Exiled in the United States after the German occupation of France in 1940, Maritain engaged with American intellectual circles, taught and advocated for human rights. By 1942, Maritain's ideas were already influencing public debate, notably through a statement by the National Conference of Christians and Jews on "inalienable rights" and his book on the Rights of Man and Natural Law (Maritain 1942). Maritain was not an official UN-delegate, but his human rights approach nevertheless influenced the formulation of the UDHR. As head of the French delegation at the UNESCO General Conference in Mexico City in November 1947, Maritain addressed the philosophical disagreements stalling the UDHR and proposed a practical approach: delegations should focus on

agreeing to the text itself, rather than debating its underlying ideological justifications: "No declaration of human rights will ever be exhaustive and final. It will ever go hand-in-hand with the state of moral consciousness and civilization at a given moment in history" (Maritain 1947). This strategy, rooted in his natural law theory, helped unite the thirty-seven delegations and moved the UDHR closer to adoption. His intellectual influence extended beyond 1947, because he envisioned the UDHR as a "preface to a moral charter of the civilized world" (Maritain 1946, 420). His work further influenced the UDHR's final draft, with 22 of his proposed rights ultimately included in the 1948 declaration.

At the same time, there were also other Catholic contributions that influenced the development of the UDHR. These included a committee of Catholic laity and bishops, appointed by the National Catholic Welfare Conference in the U.S, which later, in January 1947 published an own "Declaration of Human Rights" (Putz 1991, 388–397). This detailed 50-article declaration was also submitted to the UN Human Rights Commission, chaired by Eleanor Roosevelt. The Catholic text shared remarkable similarities with the UDHR, including near-verbatim passages, such as those affirming the inherent dignity of the human person.

### 2.2 Jewish Contributions and Networks

In parallel to the Christian and ecumenical initiatives active during and after the Second World War, several Jewish organizations – composed primarily of lawyers, scholars, diplomats and community representatives – played a decisive role in shaping the emerging international discourse on human rights and peace. Their engagement stemmed directly from the experience of persecution and exile under National Socialism and from the collective conviction that the legal and moral order of the post-war world had to guarantee the dignity and security of all human beings. While these Jewish networks differed in geographical scope and philosophical orientation, they shared the belief that the failure of

the inter-war system to protect minorities and individuals must not be repeated.

Among the most significant of these networks were the American Jewish Committee (AJC), the Consultative Council of Jewish Organizations (CCJO), and the World Jewish Congress (WJC). Each organization, in its own way, sought to transform the Jewish experience of oppression into universal norms of law and justice. Their representatives were often émigrés or survivors of the European catastrophe who brought with them both intellectual authority and moral urgency. The ideas of such figures as Hersch Lauterpacht and René Cassin – both jurists deeply marked by Jewish ethical and legal traditions – resonated through these organizational efforts and helped to translate moral imperatives into diplomatic language within the new United Nations framework.

The American Jewish Committee, founded in New York in 1906, emerged after 1945 as one of the most influential Jewish voices in international deliberations on human rights. Under the presidency of Jacob Blaustein, the AJC adopted an explicitly universalist position. It argued that Jewish safety could be secured only in a world where all people's rights were protected by law. Its team of legal experts, among them Moses Moskowitz and Zachariah Shuster, had already articulated this vision in a 1944 memorandum entitled "A World Charter for Human Rights". This early draft anticipated many of the formulations later adopted in the Universal Declaration. The AJC's members maintained close contact with governmental delegations and with the newly created United Nations Commission on Human Rights, encouraging the inclusion of a separate declaration that would set forth the moral and legal principles of a just world order.

In order to coordinate Jewish advocacy at the international level, the AJC, together with the *Alliance Israélite Universelle* in Paris and the Anglo-Jewish Association in London, founded the

Consultative Council of Jewish Organizations (CCJO) in 1946. The Council received consultative status with the Economic and Social Council (ECOSOC), becoming the first Jewish non-governmental organization accredited to the United Nations. It was presided over by René Cassin, who at the same time served as a leading member of the UN Commission on Human Rights. The CCJO provided an important channel through which Jewish jurists and intellectuals could contribute to the *travaux préparatoires* of the Declaration. The Council's memoranda repeatedly emphasized freedom of religion and conscience, the protection of minorities, and the responsibility of the international community to prevent new forms of persecution. Cassin's dual position as both the Declaration's principal draftsman and head of the CCJO gave this organization a distinctive influence at the intersection of moral reflection and legal codification.

The AJC and CCJO represented a strand of Jewish thought best described as universalist. Their members held that Jewish security and human security were inseparable and that the recent catastrophe required a moral reconstruction of the world based on equality and human dignity. This position was grounded not only in modern liberal philosophy but also in Jewish moral categories such as *Tzelem Elohim* (the divine image in every human being) and *mipnei darchei shalom* (acting for the sake of peace). Cassin himself, whose Sephardic family perished in the Holocaust, saw the Declaration as a "covenant of peace" for all humanity – a secular extension of biblical ethics into international law.

Alongside this universalist current, another influential Jewish organization advanced a more particularist approach: the World Jewish Congress. Established in Geneva in 1936, the WJC represented Jewish communities across Europe, North America and the British Mandate for Palestine, and had been among the first to alert the Allied governments to the Nazi extermination plans. As mentioned in the introduction, its Geneva representative, Gerhart Riegner, sent in August 1942 the now famous "Riegner

Telegram", which reported reliable information about the planned systematic murder of Europe's Jews. This early act of documentation demonstrated the WJC's role as a moral witness and as an advocate for Jewish collective survival. After the war, under the leadership of Nahum Goldmann, Jacob Robinson and Alex Easterman, the organization shifted its focus to ensuring legal recognition of Jewish rights as a people, the restitution of property, and the establishment of safeguards against genocide.

In its submissions to the newly formed United Nations between 1946 and 1948, the WJC argued that the destruction of European Jewry had revealed the inadequacy of individual-rights protection alone. The organization therefore called for the inclusion of group rights and minority protections within the emerging international order. This perspective, articulated most forcefully by Jacob Robinson, a Lithuanian-Jewish lawyer who had advised the Nuremberg prosecution, influenced debates surrounding the Convention on the Prevention and Punishment of the Crime of Genocide (1948) and the later International Covenant on Civil and Political Rights (1966). For the WJC, the Jewish experience was not merely an example of universal suffering but a distinct collective tragedy that demanded explicit legal and moral recognition.

The coexistence of these differing Jewish viewpoints – the universalist emphasis of the AJC and CCJO as well as the particularist focus of the WJC – illustrates the diversity of Jewish intellectual responses to the post-war crisis. Yet both currents were ultimately motivated by a shared conviction that law must protect the sanctity of human life. The universalists translated Jewish ethics into the idiom of universal dignity; the particularists insisted that human rights must also defend the existence of peoples and communities. This interplay of perspectives contributed significantly to the moral atmosphere in which the Universal Declaration of Human Rights was conceived.

It is therefore important to recognize that Jewish involvement in the preparatory work for the Declaration cannot be reduced to the figure of René Cassin alone, although his role as principal draftsman and later Nobel Peace Prize laureate has rightly become emblematic. Rather, it represented a collective endeavour by a transnational Jewish network that connected refugee scholars, legal experts and communal leaders across London, Paris, Geneva and New York. Through their lobbying, drafting and moral advocacy, these groups helped to shape both the language and the spirit of the emerging post-war human-rights system. Consequently, the Jewish contribution to the Universal Declaration was not only legal and institutional but also profoundly ethical and spiritual, drawing from the deep well of Jewish experience and thought to affirm that every human being, and every community, possesses inalienable dignity.

### 2.3 Individual Jewish contributors

In addition to the Jewish organizations and networks that became active during and after the war, a number of individual Jewish jurists and intellectuals exerted a formative influence on the development and spirit of the Universal Declaration of Human Rights. Their biographies reveal how personal experience – often marked by exile, persecution or military service – was transformed into a universal moral and legal vision. The spiritual and ethical impulses underlying their thought were rooted in the Jewish moral tradition, in which the dignity of the individual and the sanctity of life stand at the centre of human existence.

One of the most important among these figures was Hersch Lauterpacht (1897–1960). Born in Galicia, then part of the Austro-Hungarian Empire, he was educated in Lemberg (today Lviv), Vienna, and later in London, where he became Whewell Professor of International Law at the University of Cambridge. Having fled the growing antisemitism and statelessness of interwar Central Europe, Lauterpacht brought to British academia a profound

awareness of the vulnerability of individuals in the face of state power. His "An International Bill of the Rights of Man", published in 1945, was among the earliest and most influential proposals for a codified system of universal rights (Lauterpacht 1945, 31–36). In this work, he argued that the individual – not the state – must become the central subject of international law, endowed with rights that no government could abrogate.

Lauterpacht's concept of the dignity of the human person resonated deeply with the ethical teachings of Judaism, especially the idea that every human being is created *b'tzelem Elohim* – in the image of God. His writings had a direct intellectual impact on the deliberations of the United Nations and the language of the UDHR. The recurrent phrasing "everyone" and "all human beings" in the Declaration echoes Lauterpacht's insistence on universality and equality. His later involvement in the drafting of the European Convention on Human Rights and his advocacy for the recognition of crimes against humanity further demonstrate how his personal history of exile was transposed into a legal philosophy of inclusion and moral accountability.

Another decisive figure was René Cassin (1887–1976), whose life and work embodied the intersection of Jewish ethics, French republicanism and international legal idealism. A native of Bayonne and a descendant of a Sephardic Jewish family, Cassin was gravely wounded in the First World War and subsequently dedicated his life to peace and social justice. During the Second World War, he joined General Charles de Gaulle's Free French Government in London and became one of its principal jurists. His family's deportation and murder during the Holocaust deeply affected him and strengthened his resolve to create an enduring legal order that would prevent future atrocities.

As Vice-President of the United Nations Commission on Human Rights, Cassin took on the task of synthesizing the various drafts of the Declaration into a coherent text. His intellectual contribution

lay not only in formulating the structure of the document but in articulating its moral logic. Cassin envisaged the Declaration as a fourfold edifice: the Preamble as its foundation, general principles as its base, specific rights as its pillars, and implementation mechanisms as its roof. This architectural metaphor reflected his conviction that the protection of human dignity required both moral substance and institutional form. His authorship of the term "universal" in the title of the Declaration (A/C.3/SR.92, 61) was a deliberate philosophical statement: rights were to belong to humanity as a whole, transcending national and religious boundaries. Cassin's handwritten first draft of 16 June 1947 also included the provision that "Individual freedom of conscience, belief and thought is a sacred and absolute right. The exercise of public or private worship and the expression of opposing beliefs may only be subject to restrictions imposed in the interests of public order, morality or the rights and freedoms of others" (Cassin 1947, draft article 20, our translation).

Cassin's Jewish heritage informed his understanding of law as covenant and of humanity as a community of mutual responsibility. His involvement in the Consultative Council of Jewish Organizations, which he served as president, linked his legal work directly to Jewish ethical and humanitarian engagement. For Cassin, the Declaration was not only a legal text but a spiritual testament. When awarded the Nobel Peace Prize in 1968, he described the UDHR as a new covenant for humanity, a phrase that revealed the enduring influence of biblical ethics upon his universalist worldview.

The figure of Moses Moskowitz (1907–1991) provides another important link between Jewish post-war thought and the institutional formation of the human-rights regime. Born in Poland, he emigrated to the United States and became a leading legal advisor to the American Jewish Committee and later the CCJO. Moskowitz played a crucial role in the drafting of memoranda submitted to the United Nations Commission on

Human Rights between 1946 and 1948, particularly in relation to freedom of religion and protection of minorities. His later works, including "Human Rights and World Order" (Moskowitz 1958), developed a theoretical framework that combined moral universalism with pragmatic diplomacy. Moskowitz was among those who believed that the security of Jews could not rest solely on the establishment of Israel or on minority treaties, but required a genuinely universal legal system protecting all individuals. His contribution, though less publicly visible than Cassin's, was instrumental in shaping the legal arguments that underpinned the UDHR.

A further figure deserving of attention is Jacob Blaustein (1892–1970), the American industrialist and communal leader who served as president of the American Jewish Committee in the critical years following the war. Unlike Cassin and Lauterpacht, Blaustein was not a legal scholar but a strategist and diplomat who recognized that the moral authority of the Jewish experience had to be translated into institutional influence. He advocated tirelessly for Jewish participation in the emerging United Nations and cultivated close relationships with American and international political leaders. Under his leadership, the AJC promoted a universalist human-rights agenda grounded in both liberal democracy and Jewish ethics. Blaustein's public statements reflected a cautious but resolute belief in moral reciprocity. His advocacy at the United Nations contributed significantly to the inclusion of human-rights language in the UN Charter and to the creation of consultative status for Jewish non-governmental organizations such as the CCJO.

To these leading figures one might also add Jacob Robinson (1889–1977), a Lithuanian-Jewish jurist who had served as a member of the Lithuanian parliament and later as an advisor to the prosecution at the Nuremberg Trials. Robinson's expertise in minority rights and his involvement with the World Jewish Congress gave him a distinctive perspective on the emerging human-rights architecture. He was among the first to argue that

the Holocaust exposed not only the vulnerability of individuals but also of groups, and that the new international order must recognize the rights of peoples to exist and to preserve their identity. His advocacy for the legal codification of genocide as a crime against humanity influenced both the drafting of the Genocide Convention and subsequent UN debates on minority protection.

Taken together, these Jewish jurists and intellectuals personify the transformation of trauma into normativity. Each, in his own way, sought to universalize the moral lessons of Jewish history. Lauterpacht translated the experience of exile into a jurisprudence of individual dignity; Cassin reimagined covenantal ethics as a universal declaration; Moskowitz institutionalized moral principles through sustained legal advocacy; Blaustein gave Jewish moral thought a political platform at the United Nations; and Robinson ensured that the memory of collective destruction informed the international conscience.

Their efforts demonstrate that the Universal Declaration of Human Rights was not conceived in an intellectual vacuum but grew from the shared conviction that humanity, having descended into unprecedented barbarism, required a renewed moral foundation. Through their combined influence, Jewish ethical thought, legal scholarship and communal activism helped to shape a declaration that, while secular in language, bore the deep imprint of faith-inspired humanism. It is therefore not an exaggeration to say that, without the personal and intellectual contributions of these Jewish individuals, the moral architecture of the UDHR would have been markedly poorer and less universal in its reach.

### 2.4 Individual Christian contributors

The key Protestant figures who had significant influence on the UDHR during the commission's work have already been mentioned – John Foster Dulles (1988–1959) and Frederik O. Nolde (1899–1972). In contrast to the two Protestants, who were primarily committed to religious freedom, the Orthodox Christian

Charles Malik (1906–1987) advocated a Christian existentialism that was based above all on the experience of 20th-century totalitarianism, the dictatorship of the masses and the fear of false religions, and which opposed this with the intellectual and spiritual freedoms of the individual. At the same time, Malik saw human rights more as a document that assigned people their place in a larger order than as a political instrument.

Eleanor Roosevelt (1884–1962), chairperson of the drafting committee of the Universal Declaration of Human Rights, is known throughout the human rights community through the UN photo from 1949, where she is proudly holding a poster of the Universal Declaration of Human Rights (United Nations 1949). She was a devoutly religious person who belonged to the Episcopal Church and was friends with Protestant theologians such as H. Richard Niebuhr, Paul Tillich and Martin Luther King Jr., who shaped her liberal, justice-oriented faith (Smith 2017). For her, religion was not abstract but a call to action – rooted in the belief that all people were "children of God" and deserved dignity. In her 1932 essay *What Religion Means to Me*, she defined religion as "that belief and faith in the heart of a man which makes him try to live his life according to the highest standard he is able to visualize" (Roosevelt, 1932; Smith 2017, 8). Her personal credo was to emulate the life of Christ, whose humble birth as a refugee resonated profoundly with her own advocacy for immigrants and displaced persons. This perspective motivated her to challenge injustice, even when it entailed confronting her own prejudices, including her traditional inherent Christian antisemitism.

When she commenced her work at the United Nations, her spiritual values expanded as she engaged with diverse faiths, recognizing early on the importance of understanding Islam and defending religious freedom. She insisted that the UDHR protect the right to worship – and to change one's faith – reflecting her belief in a pluralistic, inclusive society. Her encounters with Jewish refugees, both before and after the Second World War,

transformed her into a fierce advocate for their rights (Sears 2021). Horrified by the conditions in postwar displacement camps, which she compared to Nazi concentration camps, she became a strong advocate for a Jewish State and a vocal opponent of antisemitism, even clashing with U.S. officials who resisted refugee aid.

### 2.5 Individual Muslim contributions

Furthermore, it is necessary to note the contribution of Sir Muhammad Zafrullah Khan (1893–1985) and Begum Shaista Suhrawardy Ikramullah (1915–2000), whose interventions exemplify both the Islamic and the non-Western participation in the elaboration of the Declaration.

Khan was trained in London and called to the Bar at Lincoln's Inn, and he became Pakistan's first Foreign Minister. He combined an explicitly Muslim moral vocabulary with the diplomatic self-understanding of a newly independent state; at the same time, as a committed member of the Ahmadiyya community, he spoke with the sensibility of a religious minority. In the General Assembly Third Committee debates of autumn 1948, when Article 18 became the focal point of controversy, Khan defended an extensive conception of freedom of religion or belief, grounding it in Qur'ānic and Prophetic sources (e.g., the Farewell Sermon) and insisting that the Declaration articulate a universal principle of conscience rather than a merely confessional privilege. His stance placed him at odds with the proposed Saudi amendment (A/C.3/247/Rev.1), which sought to delete the explicit "right to change one's religion or belief"; that proposal was defeated in committee (22–12, with 8 abstentions), and scholarship credits Khan's Qur'ānic argumentation with helping to secure the final Article 18 formula against deletionist pressure. While voting alignments among some Muslim-majority delegations fluctuated on specific roll-calls concerning the "change of religion" clause, the Declaration as a whole (and Article 18 with it) proceeded to adoption, with contemporary and later analyses noting that, in the

end, all Islamic states except Saudi Arabia accepted the Article 18 text. Read together with Asian and Arab voices such as P. C. Chang and Charles Malik, Khan's interventions therefore undercut the later claim that the UDHR was an exclusively Western or Judeo-Christian construction, and demonstrate instead a plural authorship in which Islamic reasoning – including that articulated by an Ahmadi Muslim and Pakistani nationalist – helped to shape the operative universalism of the final text.

While Zafrullah Khan is given due attention in the research literature, Begum Shaista Suhrawardy Ikramullah, the only Muslim woman involved in drafting the UDHR, has been largely overlooked. Begum Shaista Suhrawardy Ikramullah, a Pakistani politician, diplomat and women's rights activist, was born into the influential aristocratic Suhrawardy family in Kolkata. She became one of the first Muslim women from then Bengal to earn a PhD from the University of London, with a thesis on Muslim women in South Asia that shaped regional gender discourse (Tribune 2018).

A key figure in the All-India Muslim League, she campaigned for the Pakistan Movement alongside Muhammad Ali Jinnah. In 1947, she was elected to Pakistan's Constituent Assembly, where she championed women's rights, education and constitutional reforms, leaving a legacy in Pakistan's foundational years. Her diplomatic career was equally remarkable: Begum served as Pakistan's delegate to the UN General Assembly and represented Pakistan at the UN Commission on Human Rights, serving as a member of the Third Committee on social, humanitarian and cultural matters, which in 1948 spent 81 meetings discussing the draft of the UDHR. Here Begum Shaista Suhrawardy Ikramullah advocated for freedom, equality and choice in the declaration (Nigam 2020; Adami 2019). She further championed the inclusion of Article 16, which stipulates equal rights in marriage. This, she argued, is a crucial measure to combat child marriage and forced marriage (ibid.), claiming that "[i]t was imperative that the peoples of the world

should recognize the existence of a code of civilized behavior which would apply not only in international relations but also in domestic affairs" (quoted after Nigam 2020).

### 2.6 Individual Hindu contributors

Finally, the contribution of the Indian delegate and Hindu woman Hansa Mehta (1897–1995) should be emphasized. She was India's delegate to the UN Commission on Human Rights from 1947 to 1952 and was the one to whom we owe the adoption of the inclusive and gender-neutral formulation of Article 1 of the UDHR, referring to "all human beings" (Adami 2019, 67 ff.). Mehta urged Eleanor Roosevelt to chair the drafting committee and challenged her later to support the inclusion of "All human beings" in the original Article 1, which had been written as "All men are born free and equal [...]", a phrase that, as Mehta pointed out, might be interpreted as excluding women in many parts of the world. During the June 1948 session of the Commission, the formulation "all human beings" was adopted, marking a significant advancement in the promotion of inclusivity.

## 3. Faith-Related Jurisprudence of the Universal Declaration of Human Rights

### 3.1 Foundations: Dignity, Conscience and Belief

While the Universal Declaration of Human Rights of 1948 was not conceived as a theological charter, its moral architecture reveals the presence of religious and philosophical reasoning at every stage of its formation. Behind the legal text stood an intricate conversation between faith traditions and secular humanism – between the spiritual conscience of humanity and its new juridical expression after war and genocide. The Declaration's vocabulary – dignity, conscience, belief, freedom – is both juridical and theological, reflecting the conviction of its framers that the universal protection of human rights could not be divorced from the moral foundations of civilization itself.

The Preamble and Article 1 proclaim that "all human beings are born free and equal in dignity and rights". The term dignity emerged as a point of profound convergence among drafters from diverse religious and philosophical backgrounds. For the Lebanese philosopher and diplomat Charles Malik, a central figure in the Commission and later President of the Economic and Social Council, dignity was inseparable from the human person's transcendence. Educated in philosophy in Cairo and Harvard under Alfred North Whitehead, Malik's thought was deeply informed by Eastern Orthodox theology: he saw the human being as a rational and spiritual creature whose freedom derived from divine creation. For Malik, the UDHR was thus not merely a legal instrument but an expression of humanity's divine vocation – a declaration of faith in man because man is made in the image of God.

The Chilean delegate Hernán Santa Cruz contributed a complementary, though distinct, perspective. A Catholic jurist and diplomat, he argued that the Declaration's first article expressed "a moral and legal recognition of the worth of the human person" that transcended political systems. Drawing on both the social teachings of the Church and the Latin-American *personalista* tradition, he framed human dignity as a collective moral good that bound nations in solidarity. His interventions ensured that social and economic rights – rooted in an ethical vision of justice – stood alongside civil and political rights.

The chairperson, Eleanor Roosevelt, though personally reticent about doctrinal religion, also drew on a deep moral faith. Her letters and memoirs reveal a spiritual vocabulary steeped in Protestant ethics and a belief in the divine equality of all people. She understood human rights as the secular expression of a religious truth – that every individual, regardless of faith or nation, possesses inherent worth. Roosevelt's quiet but persistent invocation of conscience infused the drafting process with moral gravity: she reminded delegates repeatedly that the Declaration's

purpose was not abstract legislation but the protection of "the dignity and worth of the human person".

Alongside these figures, Peng Chun Chang, the Chinese philosopher and vice-chair of the drafting committee, provided a critical foil to the Western theological and philosophical voices. Drawing on Confucian and Daoist ethics, Chang argued that human dignity did not depend on divine command but on cultivated harmony, virtue and benevolence. He introduced the Confucian ideal of *ren* – humaneness – as a moral foundation for rights and often served as a mediator between the more theistic delegates and the secular rationalists. His interventions widened the Declaration's moral horizon beyond a Judeo-Christian framework, giving it genuinely intercultural breadth.

The Canadian legal scholar John Peters Humphrey, Director of the UN Division of Human Rights, prepared the Secretariat's first draft of the Declaration in early 1947. Drawing on a wide range of constitutional documents – from the American Bill of Rights to the French Declaration of the Rights of Man and of the Citizen – Humphrey's draft served as the technical foundation for subsequent deliberations. It was primarily a juristic compilation rather than a philosophical synthesis, yet it provided the indispensable framework on which later moral and legal debates would unfold.

It was René Cassin who subsequently restructured Humphrey's text, transforming it into a document of both juridical balance and moral resonance. Cassin's redraft imposed an internal architecture modelled on the French civil-law style – preamble, principles, individual rights, and social duties – thus turning Humphrey's pragmatic compilation into a coherent charter of human dignity. The final text that emerged bore the imprint of many minds: Cassin's juridical order, Malik's personalism, Chang's Confucian humanism, Roosevelt's pragmatic idealism, and the moral universalism of figures such as Santa Cruz and Zafrullah Khan.

## 3.2 The Right to Life and the Question of Moral Beginnings

If Article 18 expressed the spiritual heart of the Declaration, Article 3 ("Everyone has the right to life, liberty and security of person") formed its moral threshold. The clarity of the statement concealed a deep contest over the meaning of life itself. For some delegates, including Hernán Santa Cruz of Chile, life was not simply biological existence but the moral foundation of human community: a sacred trust that society must sustain through justice, peace and dignity. To Santa Cruz, the right to life demanded conditions that made life truly human – freedom from hunger, poverty and fear, no less than protection from arbitrary killing.

Yet this moral breadth led the drafters into difficult terrain. To affirm the right to life was to open the question of when life begins, and thus when rights attach. Some delegations, drawing on Catholic or Orthodox theology, pressed for recognition of the unborn. Others, seeking to avoid metaphysical or doctrinal entanglements, insisted that the Declaration speak only of those already born. The final wording of Article 1 ("All human beings are born free and equal in dignity and rights") quietly resolved this impasse. By anchoring universality in the born person, the drafters sidestepped the question of abortion without foreclosing later national or religious interpretations.

Santa Cruz's intervention reflected a broader Latin American concern with social justice rather than with reproductive ethics as such. His emphasis fell on the quality and dignity of life, not merely its inception. He found common ground with René Cassin's post-Holocaust understanding of moral repair, Malik's Christian personalism, and Chang's Confucian ethics of harmony: each regarded life as sacred because it carried the capacity for freedom and moral choice.

Opposition came from other quarters. The Soviet bloc, suspicious of religious or moralizing language, urged that Article 3 remain purely legal – a guarantee against state violence. Several Western

delegations, anxious to avoid doctrinal division, supported a minimal formulation. But the Latin American voices, led by Chile and Panama, insisted that moral language was indispensable. The resulting text – spare, universal, yet ethically resonant – preserved a space where diverse faiths could recognize their own reflection.

In this silence, the UDHR's universality was born. By refusing to define the metaphysics of life, the drafters left room for nations and traditions to engage the right to life within their own moral frameworks. Later constitutional developments, such as Chile's protection of "the life of the unborn", reveal both the enduring influence and the interpretive elasticity of the Declaration. Its restraint was not evasion but invitation – a recognition that the defence of life, in all its forms, must remain a conversation among conscience, faith and law.

### 3.3 From the Sanctity of Life to the Freedom of Conscience

The moral thread running from Article 3 to Article 18 is not accidental but deliberate. For the drafters of the Universal Declaration, the protection of life and the freedom of conscience were two sides of the same moral coin. Life without conscience, they sensed, would become mere existence; conscience without the protection of life would perish under fear or tyranny. The theological anthropology that inspired Hernán Santa Cruz to insist on dignity, also underpinned Charles Malik's conviction that freedom of belief was the condition of all other freedoms, and René Cassin's view that conscience must be shielded from ideological coercion.

Thus, the Declaration moves from the sanctity of life to the sanctity of the inner life – from the inviolability of the body to the inviolability of the soul. Article 18, often called the "spiritual heart" of the UDHR, embodies this progression: it translates the right to live into the right to believe, doubt, change and worship. In this transition, the framers were not simply balancing law and theology; they were crafting a universal moral language in which the freedom

to live and the freedom to believe become expressions of the same human dignity.

### 3.4 Article 18: The Core of Faith-Related Jurisprudence

Among all provisions, Article 18 ("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") was the most debated and theologically charged. The wording reflected years of philosophical tension: how to protect conscience without imposing a religious frame, and how to articulate freedom of belief that included the right to change or renounce religion.

The British clause, introduced by the United Kingdom delegation, drew upon the nation's long tradition of liberal Protestant conscience but was also coloured by its missionary inheritance and imperial experience. The clause explicitly affirmed "the freedom to change his religion or belief" – a phrase that provoked intense controversy. For some within the British and Commonwealth delegations, this principle expressed the Lockean conviction that faith has no moral value unless freely chosen. For others, it echoed an older Christian impulse to defend the freedom to proclaim and persuade – the moral right of evangelization within a plural world.

In this way, the British proposal embodied a strange moral alliance between liberal individualism and evangelical activism. On one hand, it asserted that no state or community could coerce belief; on the other, it preserved the right to seek the conversion of others – a right often exercised by missionary movements in the colonial world. This dual legacy exposed the moral ambivalence of the British position: it combined genuine pluralism with a residual confidence in the universality of its own religious tradition. The clause thus reflected both a sincere defence of freedom of conscience and a tacit assertion of Christian civilization's reach.

Ironically, one of the most profound influences on the British understanding of rights, Hersch Lauterpacht, was not part of the delegation. Though a Cambridge professor and a leading architect of post-war human-rights law, Lauterpacht – an Austrian-born Jew – was sidelined by the Foreign Office establishment. His exclusion reflected the class and cultural prejudices of the time, yet his ideas silently shaped the debates. His *International Bill of the Rights of Man* (1945) had already proposed the legal centrality of human dignity, anticipating the spirit that would animate Article 18. In this sense, the British clause bore the imprint not only of Protestant conscience and imperial Christianity but also of a Jewish moral vision that the delegation itself failed fully to acknowledge (Sands 2016, 263–272).

Opposition came swiftly. Saudi Arabia and other Muslim-majority states objected that including the right to change religion would legitimize proselytism and threaten communal stability (Waltz 2004). The Soviet bloc objected from another angle, seeing religion itself as an obstacle to social progress. Yet the clause found defenders among an unexpected alliance: Charles Malik of Lebanon, René Cassin of France, Eleanor Roosevelt of the United States, and Sir Muhammad Zafrullah Khan of Pakistan. Together, they forged a moral consensus across civilizational lines.

Malik viewed the article as the spiritual heart of the Declaration: freedom of conscience, he argued, was the condition of all other freedoms. Cassin understood the same article through the post-Holocaust lens of moral repair: conscience must be shielded from ideological coercion, whether religious or political. Roosevelt, blending pragmatic idealism with faith-based ethics, insisted that universality required defending "the right of every person to their own belief or unbelief".

Sir Muhammad Zafrullah Khan, Pakistan's representative and a member of the Ahmadiyya community, introduced a distinctive Islamic rationale. Citing Qur'ān 2:256 ("There is no compulsion in

religion") he asserted that freedom of conscience was not a Western innovation but a divine command. When Saudi Arabia proposed removing the right to change one's religion, Khan's intervention was decisive: such a deletion, he warned, would contradict Islam's own principle of voluntary faith. His insistence that conscience and belief are God-given rights preserved the inclusive language of Article 18 and ensured that the UDHR could not be portrayed as an exclusively Judeo-Christian text.

At the same time, several Muslim and Asian delegates expressed concern that the freedom to change religion could be exploited by Western powers or missionary organizations, threatening fragile social fabrics in newly independent or post-colonial societies. For many, religion was not simply an individual conviction but the cornerstone of collective identity; to convert was not merely to change belief but to cross communal boundaries with political consequences. Such anxieties were rooted less in opposition to freedom than in a different anthropology – one that viewed the person as inseparable from family, faith and nation.

Cassin and Malik both acknowledged these concerns while insisting that moral autonomy could not be surrendered to the state or community. Malik emphasized that community must rest on persuasion rather than compulsion. Khan's Qur'ānic reasoning helped reconcile these worlds: his position affirmed both Islam's intrinsic commitment to freedom and the Declaration's universal aspiration.

P. C. Chang, the Chinese vice-chair and Confucian scholar, added further depth. He argued that "thought and conscience" must include non-religious moral convictions – Confucian, Daoist and humanist – thereby ensuring that the text embraced both believers and non-believers. Chang's interventions (for example in E/CN.4/SR.64) made the article not only multi-faith but multi-civilizational, extending its moral logic beyond the West's religious and secular binaries.

The resulting article achieved a remarkable synthesis. It drew from Christian *libertas conscientiae*, Jewish moral responsibility, Islamic *karāmah*, Confucian *ren*, and Indigenous philosophies of relational harmony – translating centuries of faith reasoning into the grammar of modern law. It balanced Western liberalism with non-Western spirituality, missionary zeal with plural restraint, and legal positivism with moral transcendence.

The debate around Article 18 revealed a persistent tension that continues to animate discussions on freedom of religion or belief today: the balance between protecting the right of minorities to practise their faith and safeguarding the equally vital right to change – or to reject – belief altogether. The framers wrestled with whether such freedom extended to proselytism or missionary activity, and whether religious persuasion could coexist with communal harmony. That the final wording held these in creative tension is testament to the depth of moral dialogue across traditions.

Article 18 thus became the living hinge between universalism and particularism, faith and freedom, as well as law and conscience. It reflected the theological complexity of a world emerging from genocide and empire – a world that sought to articulate a moral law binding on all humanity without erasing the distinctive languages of its traditions.

### 3.5 From Moral Principle to Jurisprudence

The moral consensus achieved in 1948 soon evolved into a corpus of law and jurisprudence. Although the UDHR was not legally binding, it became the moral constitution of the post-war world. Its principles were incorporated into binding covenants, beginning with the International Covenant on Civil and Political Rights (ICCPR, 1966), whose Article 18 echoed the UDHR almost verbatim. In its General Comment No. 22 (1993), the Human Rights Committee affirmed that freedom of thought, conscience and religion extends to theistic, non-theistic and atheistic beliefs

alike (CCPR/C/21/Rev.1/Add.4, 2) – a direct continuation of the pluralism envisaged by Chang, Malik and Khan.

Regional human rights courts – especially the European Court of Human Rights – translated these moral principles into enforceable norms. The 1993 landmark case *Kokkinakis v. Greece* reaffirmed that freedom of religion "is one of the foundations of a 'democratic society'" (Appl. No. 14307/88, 31), directly invoking the spirit of Article 18. Thus, the language of dignity and conscience that emerged from faith-based debates in 1948 gradually crystallized into the jurisprudence of international law.

### 3.6 Present and Absent Voices

Khan's participation was emblematic of a broader reality: non-Western and Muslim voices were neither marginal nor oppositional in shaping the UDHR. Alongside him stood Malik, Santa Cruz and Chang, whose combined intellectual heritage – Christian, Islamic, Latin American and Confucian – ensured that the Declaration's moral foundation was intercultural and finally inclusive, as we have seen by the contributions of the Muslim diplomat Begum Shaista Suhrawardy Ikramullah from Pakistan and Hindu woman and activist Hansa Mehta from India. Their contributions decisively challenge later critiques that the UDHR represents a purely Western or Judeo-Christian construct. The record of the *travaux préparatoires* demonstrates instead that the Declaration's universality emerged through diversity, debate and cross-civilizational encounter.

Still, it is important to acknowledge who was not present. In 1948, much of Africa and Asia remained under colonial rule, and Dharmic, Indigenous and sub-Saharan perspectives were largely excluded. Post-colonial and decolonial scholars have since argued that this absence limited the Declaration's early universality, for it reflected a world still divided by empire and hierarchy. Yet the very language of dignity and equality later became the moral grammar of decolonization: anti-colonial movements, liberation theologies,

and newly independent states adopted the UDHR as their moral charter.

The exclusion of Indigenous Peoples and their religious traditions was equally significant. Their cosmologies – grounded in the sacred interdependence of human, land and spirit – stood outside the anthropocentric language of rights dominant in 1948. In subsequent decades, however, Indigenous worldviews profoundly expanded human-rights thinking. From the UN Declaration on the Rights of Indigenous Peoples (2007) to the rise of environmental and collective-rights jurisprudence, Indigenous philosophies have reframed human dignity as relational rather than individualistic, linking rights to responsibilities toward the earth and future generations. In this sense, their later recognition has deepened, rather than contradicted, the UDHR's moral intent: universality is no longer defined by uniformity, but by the dialogue of multiple moral worlds.

Its influence spread across regions and traditions. The European Convention on Human Rights (1950), the American Convention on Human Rights (1969), the African Charter on Human and Peoples' Rights (1981), and the Arab Charter on Human Rights (2004) each reinterpreted the UDHR through their own moral lenses. Religious communities likewise engaged with its message: the Cairo Declaration on Human Rights in Islam (1990) framed Islamic ethics within its logic; Christian, Jewish, Hindu and Buddhist leaders issued statements aligning their teachings with its principles. The Declaration's universality thus became dynamic – shaped by translation, critique and reinterpretation.

### 3.7 Universality and the Emergence of a New Moral Order

The UDHR's claim to universality introduced a concept of law that was neither treaty-based nor merely aspirational. It created what later scholars have termed a strong form of "soft law" – a moral and ethical framework that, though not legally binding, exerts normative force upon states, communities and individuals alike.

This universality is grounded not in coercion but in moral persuasion. The Declaration's faith-inspired and humanistic ideals generated a shared sense of obligation, transcending the contractualism of the later Covenants and Conventions. Its authority lies precisely in its non-coercive nature: it appeals to conscience rather than compliance, shaping international norms through moral recognition rather than enforcement.

In this respect, the UDHR represents a new category of global covenant – one in which ethical conviction replaces legal compulsion as the primary source of legitimacy. Its universality is therefore not static but dialogical: it continues to invite interpretation, reaffirmation and moral participation from diverse faiths and cultures.

### 3.8 Community, Responsibility and the Missing Article

Among the Declaration's lesser-discussed provisions, Article 29(1) articulates an idea largely absent from later human rights treaties: "Everyone has duties to the community in which alone the free and full development of his personality is possible".

This article reveals a central insight of the UDHR's faith-related jurisprudence – that rights and responsibilities are inseparable. Drawing on both the communitarian ethics of Christian social thought and the Jewish and Islamic traditions of moral duty (*mitzvot* and *fara'iḍ*), Article 29(1) affirms that freedom flourishes only within a society bound by mutual obligation. Its "voluntary disappearance" from later human rights treaties marks a shift from moral interdependence to individual autonomy. Yet its presence in 1948 reminds us that the UDHR envisioned humanity not as a collection of isolated rights-holders but as a moral community bound by shared duties.

Almost seven decades later, the 2017 Beirut Declaration on "Faith for Rights" (see below chapter XIV) quoted Article 29(1) of the UDHR, and added immediately afterwards as a new dimension the

duty "to practice what we preach, to fully engage, to speak up and act on the ground in the defence of human dignity long before it is actually threatened" (OHCHR 2025, 11). Furthermore, the faith-based and civil society actors stressed in the Beirut Declaration (ibid., 12) that:

> "Religious communities, their leaders and followers have a role and bear responsibilities independently from public authorities both under national and international legal instruments. By virtue of article 2 (1) of the 1981 UN Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion of Belief, 'no one shall be subject to discrimination by any State, institution, group of persons or person on the grounds of religion or belief'. This provision establishes direct responsibilities of religious institutions, leaders and even each individual within religious or belief communities. As much as the notion of effective control provides the foundation for responsibilities of non-State actors in times of conflict, we see a similar legal and ethical justification in case of religious leaders who exercise a heightened degree of influence over the hearts and minds of their followers at all times."

Thus, faith-based actors have resuscitated the "missing article" – after decades of oblivion in hard law norms – through affirming in the 2017 Beirut Declaration the responsibility of religious leaders and individual believers "to stand up for our shared humanity and equal dignity of each human being in all circumstances within our own spheres of preaching, teaching, spiritual guidance and social engagement" (ibid., 11). Yet, this does not let States off the hook in terms of their distinct human rights obligations, since they continue to "bear the primary responsibility for promoting and protecting all rights for all, individually and collectively to enjoy a

dignified life free from fear and free from want and enjoy the freedom of choice in all aspects of life" (ibid.).

### 3.9 The Jurisprudence of Dignity and Faith

The concept of human dignity has since become the interpretive keystone of international human rights law. Whether grounded in *imago Dei*, *karāmah* or *ren*, dignity functions as a moral bridge between sacred and secular anthropology. Faith-based reasoning continues to inform its legal understanding: the sacred inviolability of the person is translated into the juridical protection of human rights. The jurisprudence of dignity, therefore, does not represent residual theology but the enduring source of moral coherence in the Declaration's legal vision.

The UDHR's faith-related jurisprudence unmistakably reveals it as a work of moral pluralism and spiritual depth. Its key framers – Roosevelt, Malik, Cassin, Chang, Santa Cruz, Khan and Humphrey – categorically did not construct a secular fortress against religion; they created a shared moral dwelling in which faith and reason coexist. More recently, revisionist historians such as Samuel Moyn and Marco Duranti have misinterpreted this fact – without understanding or knowledge of spiritual and religious influence – as a Christian-conservative human rights revolution which, in the emerging Cold War, also had an anti-communist orientation (Moyn 2010; Duranti 2020). In contrast, John Witte and many of his co-researchers have correctly argued that the legal form of human rights also grew from a religious multifaith intuition: that the human being, endowed with conscience and moral freedom, cannot be reduced to the purposes of the secular, the state or conservative "Western" policymaking (Witte/Green 2012).

In this sense, the UDHR is both a legal and a theological milestone. Its jurisprudence, continually elaborated in courts and commentaries, carries forward the conviction that the defence of human rights remains inseparable from the moral traditions that first inspired them. As Malik stressed shortly after the adoption of

the UDHR: "What is at stake here is the determination of the nature of man" (Malik 1949).

The Universal Declaration thus emerged as a living covenant rather than a static code – a text in which faith, ethics and law converged to articulate the moral conscience of humanity. Yet the very universality that gave it strength also invited contestation. In the decades that followed, jurists, theologians and philosophers debated what its plural moral vocabulary truly meant: was it a secular charter of Enlightenment reason or a quiet theology of human dignity? How could its universal principles be reconciled with the diversity of cultures, religions and political systems that later embraced it?

These tensions between belief and reason, universality and particularism, form the interpretive history of the UDHR. The next section therefore turns from the making of the Declaration to its meaning – to how communities of faith, states and scholars have read, contested and re-imagined its message across the modern world.

## 4. Issues of Interpretation: Faith, Reason, and the Post-Shoah Covenant

### 4.1 The Problem of Secularism and Sacred Foundations

In the decades following its adoption, the Universal Declaration of Human Rights was often interpreted as a monument to secular Enlightenment rationality. In the polarized climate of the Cold War, commentators in both East and West sought to present it as the triumph of human reason over ideology and dogma. This secular reading, though politically expedient, obscured the deeper moral pluralism that had shaped the Declaration's creation.

As later scholarship has shown, the UDHR's framers did not envisage a purely secular document. The language of dignity, conscience and belief reveals a moral anthropology that drew upon multiple faith traditions. Yet in the immediate post-war years, the

religious roots of these concepts were deliberately muted, as States sought a universal vocabulary detached from explicit theology. In this process, the spiritual origins of the text were partially eclipsed by a rhetoric of neutrality.

By the late twentieth century, theologians, philosophers and jurists began to re-examine this moral architecture. The rediscovery of the religious and philosophical contributions of figures such as René Cassin, Charles Malik, Peng Chun Chang and Zafrullah Khan challenged the narrative of secular exclusivity. As a result, the UDHR came to be reinterpreted not as a rejection of faith, but as a covenantal dialogue between sacred and secular traditions. Its moral authority rests, therefore, not in its detachment from religion, but in its capacity to articulate values that both believers and non-believers could recognize as universal. In the US Civil Rights Movement, it was ultimately the protestant (Baptist) minister Martin Luther King Jr. who gave his "I Have a Dream" speech in 1963, which was not only a breakthrough for social and civil human rights and led to the adoption of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966, but also reshaped the perception of the 1948 UDHR in his own Christian way, which was also attractive to secular listeners.

### 4.2 Cultural Relativism and Universalism

From the 1970s onwards, a new critique emerged, questioning whether the UDHR's universality concealed Western cultural assumptions. Post-colonial scholars argued that the Declaration reflected the moral priorities of a world still dominated by Euro-American power. Some Asian, African and Arab thinkers claimed that the UDHR's individualism overlooked the communitarian and spiritual dimensions of their societies.

This critique was not without historical foundation: many States in Africa and Asia were still under colonial rule in 1948, and

Indigenous and non-Western voices were largely absent from the drafting process. Yet, as recent research has emphasized, the Declaration was neither wholly Western nor exclusively secular. It was the product of genuine intercultural negotiation – of Muslim, Christian, Confucian, Jewish, Indigenous and humanist philosophical traditions seeking a moral language that transcended ideology.

The subsequent development of regional human rights instruments confirmed this dynamic, translating the UDHR's principles into their own cultural and ethical frameworks. These regional instruments demonstrate that universality need not imply uniformity: the Declaration's global influence lies precisely in its interpretive adaptability.

### 4.3 Theological and Faith-Based Reinterpretations

Faith communities have played a central role in the evolving interpretation of human rights. From the outset, the World Council of Churches, through its active participation via the CCIA, was one of the strongest pioneers and advocates of the UDHR. When it was founded in Amsterdam in 1948, it already emphasized human rights and religious freedom (Visser 't Hooft 1949). However, upon its global publication, the UDHR encountered resistance, even within Europe, the historical stronghold of Christianity, where human rights were long regarded as incompatible with divine law (Kunter 2018). In 1864, Pope Pius IX had characterized human rights as an ecclesiastical and theological misstep in his *Syllabus Errorum* (Pius IX 1864). Nevertheless, the UDHR contributed to a gradual shift in the Christian churches towards human rights (while one should have in mind that the Holy See is not a member state of the United Nations but was granted Permanent Observer State status on 6 April 1964). During the Second Vatican Council, Pope John XXIII made in 1963 a favourable reference to the 1948 UDHR in his encyclical *Pacem in terris* (John XXIII 1963); two years later, Pope

Paul VI further elaborated on this with the declaration *Dignitatis humanae* (Paul VI 1965), explicitly recognizing religious freedom and affirming the right of every individual to choose or practice a religion.

The same applies, for example, to the Protestant Church in Germany, where the UDHR was, even in nazi-critical postwar Protestant circles, long regarded as a secular document that was irrelevant to German Protestants because it was not of divine right (Evangelische Kirche in Deutschland 1950). This interpretation only changed at the end of the long 1960s; in the 1970s, gradual acceptance began to emerge in the Protestant Church as well.

In recent years, Pope Francis has renewed and deepened the moral vision of *Dignitatis humanae*. In *Fratelli Tutti* (Francis 2020), he interprets human rights through the lens of universal fraternity, asserting that "every human being has the same inviolable dignity" and that rights are "not only individual entitlements but expressions of our shared belonging". His ecological encyclical *Laudato Si'* (Francis 2015) extends this principle beyond humanity, grounding the dignity of persons within a wider network of creation. Pope Francis thus reanimates the UDHR's universalism through an ethics of relational care and mutual dependence – an interpretation that unites spiritual ecology with social justice. Pope Francis has drawn on the traditions of Catholic liberation theology, where Latin American theologians such as Gustavo Gutiérrez (Gutiérrez 1988) and Leonardo Boff (Boff 1980) likewise read human rights as inseparable from structural justice. They argued that "to affirm human dignity without confronting oppression is to empty the Gospel of its power". In Protestant thought, Jürgen Moltmann (Moltmann 1967), Miroslav Volf (Volf 1996) and in the Anglican-catholic tradition John Milbank (Milbank 1990) have connected human rights to the theology of reconciliation – seeing them not merely as safeguards but as instruments for restoring communion among estranged peoples. Lisa Sowle Cahill (Cahill

2013) adds a feminist theological dimension, reading dignity as relational equality grounded in the *imago Dei*.

In Judaism, the horrors of the Shoah gave theological urgency to the protection of human dignity. David Novak emphasizes that Jewish law (*Halakhah*) grounds human rights in the covenantal relationship between God and humanity. For Novak, rights are not the possession of the individual but the recognition of divine command that endows every human being with sacred worth. This covenantal anthropology – rooted in the *tzelem Elohim*, the belief that every person is created in the image of God – supplies an ontological foundation for universal rights that transcends cultural boundaries. Thus, while Judaism does not speak the language of "rights" in the modern sense, it provides the theological soil from which the notion of inalienable human dignity grows (Novak 1998; Novak 2000).

### 4.4 Post-Shoah Theology: Between Universalism and Particularism

The emergence of the UDHR in 1948 coincided with the Jewish world's struggle to comprehend the Shoah and reassert moral meaning in its aftermath. For Jewish theologians, the Declaration represented not merely a political achievement but a profound theological turning point: a universal moral covenant arising from the ashes of particular suffering.

Post-Shoah Jewish thought wrestled with two intertwined imperatives. The first was universalism – the conviction that the lessons of Jewish suffering must inform a global ethic of human dignity. The second was particularism – the affirmation that the covenantal identity of Israel, rooted in historical memory and divine election, must not dissolve into abstract cosmopolitanism. The challenge lay in holding both together.

Emil Fackenheim famously warned that after Auschwitz, humanity faces a "614th commandment": not to grant Hitler posthumous

victories by abandoning Jewish faith or moral responsibility (Fackenheim 1982). Eliezer Berkovits and Irving Greenberg argued that the Shoah demanded a renewed covenantal theology grounded in human dignity and responsibility. In their view, the UDHR became a partial fulfilment of the prophetic Jewish call to justice – a global echo of Sinai, though articulated in secular idiom.

Later thinkers such as Jonathan Sacks reinterpreted this dialectic through the language of "covenantal pluralism", holding that "to be true to our faith, we must recognize the image of God in those not of our faith" (Sacks 2002). Sacks saw in the UDHR a shared covenant of human responsibility that does not erase distinct identities but binds them in moral solidarity. Similarly, Emmanuel Levinas's phenomenology of "the face of the Other" transforms Jewish ethics into a universal grammar of responsibility – each encounter with the Other a summons to moral duty (Levinas 1969).

Thus, within post-Shoah theology, the UDHR occupies a unique space: it is both a universal text of human dignity and a Jewish theological response to the loss of faith in humanity. Judaism's negotiation of universalism and particularism mirrors the Declaration's own tension between moral unity and cultural diversity. The Jewish witness after the Shoah thus lends the UDHR not only historical legitimacy but spiritual depth.

### 4.5 The Living Covenant

Current public interpreters of the UDHR, as Rowan Williams, David Novak and Jimmy Carter, offer a triad of conscience through which the continuing life of the UDHR can be understood. Williams provides the theological hermeneutic – the conviction that law must rest upon reverence for the sacredness of the human being. Novak articulates the covenantal anthropology – the idea that rights and responsibilities flow from the divine-human relationship. Carter embodies the lived ethic – the

translation of moral principle into compassionate action (Williams 2019; Novak 1998; Novak 2000; Carter 2019).

Yet this moral symphony extends further. Reinhold Niebuhr's Christian realism, Jacques Maritain's Thomistic pluralism, Hans Küng's Global Ethic, Pope Francis's theology of fraternity, Emmanuel Levinas's Jewish ethics of responsibility, and Jonathan Sacks's covenantal pluralism – all converge upon a single intuition: that human rights are sustained not merely by law, but by reverence (Niebuhr 1944; Maritain 1946; Maritain 1951; Küng 1991; Francis 2015; Francis 2020; Levinas 1969; Sacks 2002).

Together, these thinkers reveal that the UDHR is not a static product of 1948 but a living covenant between faith, reason and humanity. Its universality rests not on uniformity but on the continual rediscovery of the sacred worth of the human person. In every generation, its endurance depends on conscience – on the willingness to see in each other the reflection of the divine image, and to act accordingly.

### 4.6. Faith, Reason, and the Future of the Universal Declaration of Human Rights

The Universal Declaration of Human Rights was born from catastrophe but destined for hope. Seventy-seven years after its adoption, its endurance lies not only in its legal legacy but in its moral imagination. The Declaration remains a text of conscience – one that must be continually reinterpreted as humanity's moral, technological and ecological horizons expand.

#### 4.6.1 The Covenant Renewed: Faith and Moral Imagination

In our time, the dialogue between faith and rights must move beyond apology toward renewal. The religious and philosophical pluralism that animated the drafting of the UDHR can now serve as a model for what Jonathan Sacks called "the dignity of difference" embodied through "covenantal relationships": an ethic in which difference is not a threat but a condition of shared

responsibility (Sacks 2002). Rowan Williams has argued that "the future of rights discourse depends upon recovering its moral soul" (Williams 2019). The task of human rights, he suggests, is not only to regulate power but to cultivate reverence – an awareness of vulnerability and belonging that resists the reduction of life to utility.

Faith, when freed from triumphalism, provides the imaginative and spiritual resources to sustain this reverence. It reminds us that the human person is not self-created but relational; not an abstraction, but a life situated within community and creation. In this sense, the renewal of the UDHR's moral vision requires not less theology, but better theology – one that is dialogical, compassionate and covenantal.

### 4.6.2 The Rise of a Digital Humanity

If 1948 marked the birth of a moral covenant between nations, our century demands a covenant for the digital age. Artificial intelligence, social media and algorithmic governance have redrawn the boundaries of human interaction, creating unprecedented possibilities – and new forms of domination.

Religious thought offers counter-narratives to digital determinism. The Jewish idea of *tzelem Elohim*, the Christian notion of *imago Dei*, and the Islamic understanding of *karāmah* all affirm that human worth precedes technological utility. The challenge for the future is to translate these metaphysical intuitions into digital ethics: to ensure that algorithms serve human dignity rather than define it. A renewed human-rights ethic must thus include the right to truth, to moral integrity and to meaningful presence in a digital public sphere.

### 4.6.3 Planetary Ethics and the Moral Horizon of Creation

The moral horizon of the UDHR now extends beyond humanity to the planet itself. In *Laudato Si'*, Pope Francis reframes ecological responsibility as an extension of human rights: "a true ecological

approach becomes a social approach; it must integrate justice in discussions about the environment" (Francis 2015). The crisis of climate change exposes the moral insufficiency of a purely anthropocentric ethic.

Faith traditions long before 1948 spoke of covenant not only between God and humanity, but between humanity and the earth. In Jewish thought, the Sabbath of the Land (*shmita*) sanctifies rest for creation itself. Indigenous cosmologies express similar insights, seeing stewardship as participation in the sacred cycle of life. The future of human rights will depend upon whether this expanded covenantal consciousness – what theologian Hans Küng called a "global ethic of responsibility" – can be embedded in law and daily practice (Küng 1991).

This is not the invention of new rights but the rediscovery of old obligations: the duty to safeguard the living conditions of future generations, the moral imperative to protect the vulnerable of creation, and the recognition that the moral community extends to all who share the breath of life.

### 4.6.4 From Sovereignty to Solidarity

The original UDHR assumed a world of nation-states; the crises of our time expose the limits of that framework. Refugee displacement, pandemics and climate migration reveal that rights detached from global solidarity are fragile. The moral architecture of the Declaration must therefore evolve from the sovereignty of states toward the sovereignty of conscience.

Here, faith communities can serve as mediators of solidarity. Across religions, the principle of hospitality – the duty to welcome the stranger – embodies the moral core of rights. The Hebrew Bible commands, "You shall not oppress the stranger, for you were strangers in the land of Egypt". The Qur'an teaches that "the noblest among you are those most mindful of God". The Gospel of Matthew makes compassion the measure of judgment itself.

These imperatives converge in a single moral intuition: that the protection of the other is the measure of one's own humanity. In a fractured global order, such faith-based ethics can re-humanize the discourse of rights, turning law into empathy and sovereignty into service.

### 4.6.5 A Universal Declaration for the Twenty-First Century

As the world enters new moral terrain, the UDHR's legacy must be renewed through what Karen Armstrong has called "compassionate pluralism" (Armstrong 2004): the art of living together across ultimate differences. The next generation of rights may not take the form of another declaration but of an evolving moral consensus – a living covenant that extends from the self to the social, from the social to the planetary, and from the planetary to the divine.

Faith and reason must again act in concert. Faith offers the language of reverence; reason offers the language of critique. Together, they sustain what Rowan Williams has described as "a grammar of hope" – the capacity to speak meaningfully about human dignity even amid suffering and change. The challenge is not only to preserve the universality of rights but to deepen it – to make it truly global, truly inclusive, and morally alive. The UDHR was conceived as a "minimum of shared values". Its future lies in becoming a maximum of shared conscience (Williams 2014; Williams 2019).

### 4.6.6 The Enduring Moral Covenant

The Universal Declaration began as a response to the abyss of human cruelty. Its words were meant to bind wounds and restrain power. But its deeper purpose endures: to remind humanity that law without love is tyranny, and freedom without responsibility is emptiness.

In the words of René Cassin, spoken in Oslo in 1968, the birth of the Universal Declaration of Human Rights "constituted a

historical event of the first magnitude. It is the first document of an ethical sort that organized humanity has ever adopted, and precisely at a time when man's power over nature became vastly increased because of scientific discoveries and when it was essential to decide to what constructive ends these powers should be put. Its moral and political repercussions have been considerable" (Cassin 1968).

That birth continues. Every act of courage, compassion and conscience renews the covenant. In a world once again haunted by division and dehumanization, the Universal Declaration of Human Rights endures as faith's gift to reason and reason's tribute to faith – a reminder that the moral destiny of humankind is to recognize, protect and rejoice in the dignity of all.

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# CHAPTER III.

# INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (1965)

**Michał Balcerzak**[1]

**Abstract:** This chapter examines the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in the context of faith-related influences and jurisprudence. It refers to the historical context of its drafting and the regrettable "separation" between the work of the United Nations on an instrument concerning racial discrimination and its parallel efforts to counter religious intolerance. The chapter further discusses the practice of the Committee on the Elimination of Racial Discrimination (CERD). It focuses on cases examined under Article 14 of ICERD (individual communications), general recommendations, and concluding observations where issues of religion and belief have intersected with racial discrimination. Furthermore, the chapter comments on the attempts to identify gaps in the protection against discrimination of religious groups.

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Finally, it discusses interpretative challenges concerning the intersection of racial discrimination and religion, in particular the notion of "ethno-religious minorities".

**Keywords:** ICERD, CERD, racial discrimination, religion, faith, *travaux préparatoires*, intersectionality, hate speech, human rights treaties.

## 1. Introduction

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted by the United Nations General Assembly on 21 December 1965 and entered into force on 4 January 1969. ICERD was the first of the modern core international human rights treaties. It was negotiated in the shadow of decolonization, the struggle against apartheid in South Africa, and the persistence of racial segregation and anti-Semitism in many parts of the world. As such, ICERD was designed as a legal instrument to prohibit racial discrimination but also as a moral response to systemic injustices rooted in historical hierarchies of ethnicity, faith and culture.

Religion has played an important, if sometimes implicit, role in both the historical dynamics surrounding racial discrimination and the debates over its eradication. Faith traditions have frequently been invoked in different ways: on the one hand, they have provided ethical justifications of human equality, and theological arguments affirming the inherent dignity of every person; on the other hand, they have at times been selectively interpreted or co-opted in political and cultural contexts to defend exclusionary practices. What is most significant, however, is that faith-based teachings across diverse traditions contain strong moral arguments against oppression and inequality. These arguments have been voiced by religious leaders, grassroots movements and faith-based organizations to support the elimination of racial hierarchies, to inspire solidarity across communities, and to anchor universal

human rights in shared moral values. In this sense, religious perspectives have often enriched the global conversation on racial equality by offering a criticism of discrimination and a constructive vision of social order rooted in spiritual understandings of justice. However, it would be unrealistic to assume that religious communities and their leaders have spoken with one voice on matters of human rights; some faith-based approaches to human rights remain, to say the least, reserved if not politicized (Alves 2008, 979).

Article 1 of ICERD defines "racial discrimination" as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin". Although religion is not expressly included in this list, the Convention's object and purpose – eradicating discrimination that undermines human dignity – resonates strongly with faith-based perspectives. Moreover, the jurisprudence of the Committee on the Elimination of Racial Discrimination (CERD) has extended into areas where religious identity overlaps with racial or ethnic grounds, making ICERD relevant for the protection of faith communities.

Within the text of Convention, explicit reference to "religion" appears twice. First, in the opening paragraph of the Preamble, the State parties recall one of the purposes of the United Nations, namely "to promote and encourage universal respect for and observance for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion" (Article 1(3) of the UN Charter). This language situates ICERD firmly within the broader normative framework of the United Nations Charter and the Universal Declaration of Human Rights, which is referred to in the subsequent paragraph of the Preamble. The second reference is in Article 5 (a)(vii) of ICERD, which obliges State parties "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law", specifically including the enjoyment of the

right to freedom of thought, conscience and religion. Thus, ICERD provides for an explicit international obligation to ensure equality before the law and prohibits racial discrimination in the exercise of freedom of religion.

## 2. Religious influences during the travaux préparatoires

There was no single incident that triggered the drafting of ICERD. Nonetheless, some disturbing events and developments of the late 1950s and early 1960s, such as the Sharpeville massacre on 21 March 1960, and rampant racism in many parts of the world, including a surge of anti-Semitism in Germany, the United States and elsewhere, must have contributed to the atmosphere within the United Nations at that time (Schwelb 1966, 997; Friesel 2014, 361). The Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (the Sub-Commission) first took up the issue of racial discrimination in January 1960, and a draft resolution was prepared – and later adopted – under the title "Recent manifestations of anti-Semitism and other religious and so-called racial prejudices" (E/CN.4/800, 166; Schabas 2023, 245).

The resolution was preceded by an in-depth report prepared by Arcot Krishnaswami, Special Rapporteur of the Sub-Commission (E/CN.4/Sub.2/200/Rev.1). The origins of this study date back to 1953, when it was first suggested to the Sub-Commission and included in its list of projected studies. However, it was not until 1956 that the Sub-Commission decided to proceed with it and appointed Mr. Krishnaswami as the Special Rapporteur. Written long before the United Nations imposed word limits on these kind of documents, Krishnaswami's study examined in remarkable detail the various aspects of the right to freedom of thought, conscience and religion; the relations of state and religion, as well as "trends" (part IV) and "a program for action" (part V). The study relied heavily on illustrations of anti-Semitism but also addressed other manifestations of discrimination based on religion. Notably, it contained a proposal of "basic rules" for the full

realization of religious freedom and "Draft Principles on freedom and non-discrimination in the matter of religious rights and practices".

Krishnaswami's report was undoubtedly a milestone on the path towards recognizing the problems of discrimination in the area of religion in the 1960s. This issue subsequently remained on the UN agenda. However, it took two more decades for the United Nations General Assembly to adopt the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (Schabas 2023, 248). In the early 1960s, however, the focus was still fluid. The idea of an international convention prohibiting the manifestation of "racial or national hatred" was first advanced at the Sub-Commission as early as 1961 and was followed by the encouragement from the Third Committee of the General Assembly to work on the manifestations of "racial prejudice and national and religious intolerance" (ibid.).

At this juncture, the developments accelerated and the Third Committee started the process which led to the adoption of the 1963 Declaration on the Elimination of All Forms of Racial Discrimination. Until 1962, it appeared possible that the Third Committee would pursue a resolution addressing both racial discrimination and religious intolerance jointly. However, eventually the issues were separated and, on 7 December 1962, the General Assembly adopted two distinct resolutions: one on the preparation of a draft declaration and a draft convention on the elimination of all forms of racial discrimination (A/RES/1780(XVII)), and the other on the preparation of a draft declaration and a draft convention on the elimination of all forms of religious intolerance (A/RES/1781(XVII)). This "separation" was a turning point which resulted in slowing down the UN's focus on religious intolerance, while speeding up the work aimed at the declaration and a treaty addressing racial discrimination. The reasons for such a split were political rather than legal and

reflected, according to some commentators, tensions arising from the conflict in the Middle East and the preferences of specific delegations, especially those from Eastern Europe, to diminish the importance of religion when compared to racial discrimination (Schwelb 1966, 999; Schabas 2023, 250).

The drafting process of the Declaration on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations General Assembly on 20 November 1963, was shaped by the urgency of addressing the persistence of colonialism, apartheid and segregation, but also the cautious pragmatism of States wary of binding obligations. Negotiations revealed tensions between those advocating for immediate condemnation of racial discrimination in all its manifestations and those preferring more general, aspirational language that would avoid interfering with domestic policies. The resulting Declaration, while limited in legal effect, laid crucial normative foundations by affirming the duty of States to prevent, prohibit and eradicate racial discrimination. The Declaration refers to religion in Article 3 (A/RES/1904(XVIII)), where it says that:

> "Particular efforts shall be made to prevent discrimination based on race, colour or ethnic origin, especially in the field of civil rights, access to citizenship, education, religion, employment, occupation and housing."

The Declaration paved the way for the subsequent elaboration of ICERD, whose *travaux préparatoires* reveal a complex interaction of political and cultural influences. A relatively concise draft of ICERD, consisting of ten articles, was prepared by the Sub-Commission in early 1964 and transmitted to the Commission on Human Rights, which discussed it in over forty sessions. During those discussions, the United States and Israeli delegations proposed the inclusion of a specific article referring to anti-Semitism (Friesel 2013, 287). While some African and Latin

American delegations supported this proposition, it was opposed by the Soviet Union, which favoured instead a broader reference to "Nazism, including all its new manifestations (neo-Nazism, genocide, anti-Semitism)" (Schabas 2023, 266). The controversy over whether to single out particular manifestations of racism was ultimately referred to the Third Committee of the General Assembly.

In the Third Committee, proposals to refer explicitly to anti-Semitism – and, more generally, to specific forms of racial discrimination – were actively advanced by certain delegations, most notably the United States, Israel and Brazil. Yet, these proposals did not attract majority support. The final text of ICERD, therefore, refrained from enumerating "examples" of racial discrimination linked to particular religious or ethnic groups. It should be noted, however, that the debates of 1965 did not occur in isolation. They anticipated, and in some ways informed, the subsequent adoption of the International Covenant on Civil and Political Rights (see below chapter IV), which contains both an explicit guarantee of freedom of religion or belief in its Article 18 and a general non-discrimination clause in its Article 26.

The exclusion of religion as a distinct ground of protection against discrimination under ICERD was not the result of its irrelevance. Instead, it reflected the deliberate political decision of the General Assembly, taken already in 1962, to address the question of religious intolerance within a separate normative framework. What is particularly noteworthy is the divergence in institutional treatment: whereas the *travaux préparatoires* of ICERD proceeded with unusual speed and efficiency, culminating in the adoption of the treaty in 1965, the question of "protection against promotion or incitement to religious intolerance, or discrimination on grounds of religion or belief" did not progress comparably. Relevant drafts of both a declaration (E.CN.4/873) and a treaty (E/CN.4/882) were prepared by the Sub-Commission with similar dispatch in 1964 and 1965. However, the General Assembly chose

to prioritize the declaration route, which in the end produced only the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

Although the idea of a binding treaty on freedom of religion or belief has never been formally abandoned, the initiative has long lost its momentum. As subsequent debates on "complementary standards" illustrate (see below, section 4.1), the prospect of such an instrument's adoption remains remote.

## 3. Faith-related jurisprudence

### 3.1 CERD's Individual Communications

Article 14 of ICERD provides for an individual complaints mechanism, unique among the early United Nations human rights treaties. Unlike the inter-state complaint procedure under ICERD, the individual communication procedure is not automatic: States must file a declaration recognizing the competence of the Committee on the Elimination of Racial Discrimination before individuals may invoke it. Where such a declaration has been made, individuals or groups of individuals within the jurisdiction of that State party may submit written petitions alleging breaches of the Convention. Applicants must exhaust all domestic remedies, the petition must not be anonymous, and the same matter must not be under consideration by another international mechanism.

Once a communication is declared admissible, the Committee transmits it to the State party for observations, then considers the merits in light of submissions from both sides. The Committee's "opinions" are not binding judgments but carry authoritative interpretative force and are regularly relied upon by domestic and international bodies. In this way, Article 14 provides individual complainants with a forum for redress. It contributes to the progressive clarification of ICERD's substantive obligations, thereby fine-tuning the Convention's supervisory machinery. However, the use of the individual communication procedure

under ICERD remains modest: between 1988 and 2025, the CERD Committee has ruled on fewer than eighty cases, with around twenty still pending (as of September 2025). The reasons for this are manifold and include: the limited acceptance of the procedure by States parties to ICERD (58 out of 182); the availability of alternative international fora, such as the United Nations Human Rights Committee or the European Court of Human Rights; and – last but not least – the limited visibility of the procedure, even in States parties that have accepted it under Article 14 of ICERD.

Although ICERD does not explicitly include religion within its definition of racial discrimination, the CERD Committee, through its jurisprudence under Article 14, has considered several communications in which religion or religious identity played a role. While limited in number, these decisions shed light on how the Committee interprets and applies the Convention in contexts where religion intersects with ethnicity, national origin or descent. In essence, the intersectionality of religion and ethnicity/nationality is not always sufficient to bring the claim within the ambit of the Convention.

The earliest and perhaps most widely cited opinion is *The Jewish community of Oslo et al. v. Norway* (CERD/C/67/D/30/2003). The Committee was asked to assess whether the acquittal of a neo-Nazi leader, following a speech glorifying Rudolf Hess and Adolf Hitler and vilifying Jews and immigrants, was compatible with Norway's obligations under ICERD. The Committee first addressed admissibility, rejecting Norway's objections that the petitioners were not "victims" and had not exhausted domestic remedies. Drawing on comparative jurisprudence from the Human Rights Committee and the European Court of Human Rights, CERD held that members of vulnerable communities could qualify as victims when a legal regime fails to provide protection against hate speech. The Committee further reasoned that the Supreme Court's

final judgment left the petitioners without effective domestic remedies, meeting the exhaustion requirement.

On the merits, CERD carefully examined the speech in question, diverging from the majority of the Norwegian Supreme Court. While the Court had downplayed the remarks as "absurd" or "mere rhetoric", the Committee stressed that calls to follow in Hitler's and Hess's footsteps, combined with explicit anti-Semitic accusations, objectively amounted to the dissemination of ideas based on racial hatred and incitement to racial discrimination, if not violence.

The Committee emphasized that expressions praising Nazism and denigrating Jews as a group were of "exceptionally/manifestly offensive character". It crossed the threshold into prohibited incitement to racial discrimination (CERD/C/67/D/30/2003, 10.6). The Committee further stressed that the "due regard" clause in Article 4 could not be read so broadly as to shield racist propaganda under freedom of expression, pointing to its General Recommendation XV (A/48/18, 115). Consequently, the Committee found violations of Articles 4 and 6 of ICERD and recommended legislative and judicial measures to ensure that similar statements would not be immunized in the future.

The Committee's opinion in *Jewish community of Oslo et al. v. Norway* demonstrates how CERD's jurisprudence on racial discrimination can protect a vulnerable group from vilification. By recognizing anti-Semitic propaganda as a manifestation of racial discrimination and stressing the State's positive duty to sanction such conduct, the Committee acknowledged that the obligations of States parties under the Convention may extend to situations where religious identity and freedom of religion are at stake.

However, the Committee's stance on the *Jewish community of Oslo* should not be considered to extend to all cases where religion or religious identity has been invoked. In the case *A.W.R.A.P. v. Denmark* (CERD/C/71/D/37/2006), the complainant alleged

that the refusal of the Danish authorities to initiate an investigation into a politician's anti-Muslim remarks had violated Article 6 of ICERD. The claimant contended that the politician's statements were directly aimed at persons of Muslim or Arab background. The CERD Committee found, however, that no particular ethnic/national/racial minority group was targeted, which would allow the claims to be brought within the ambit of the Convention. The Committee observed that (ibid., 6.2):

> "[…] the impugned statements specifically refer to the Koran, to Islam and to Muslims in general, without any reference whatsoever to any race, colour, descent, or national or ethnic origin. While the elements of the case file do not allow the Committee to analyse and ascertain the intention of the impugned statements, it remains that no specific national or ethnic groups were directly targeted as such by these oral statements as reported and printed. In fact, the Committee notes that the Muslims currently living in the State party are of heterogeneous origin. They originate from at least 15 different countries, are of diverse national and ethnic origins, and consist of non-citizens, and Danish citizens, including Danish converts."

Furthermore, the Committee made an important statement on the "double discrimination" or situations where discrimination based on religion intersects with ethnicity or nationality (ibid., 6.3):

> "The Committee recognises the importance of the interface between race and religion and considers that it would be competent to consider a claim of 'double' discrimination on the basis of religion and another ground specifically provided for in article 1 of the Convention, including national or ethnic origin. However, this is not the case in the current

> petition, which exclusively relates to discrimination on religious grounds. The Committee recalls that the Convention does not cover discrimination based on religion alone, and that Islam is not a religion practised solely by a particular group, which could otherwise be identified by its 'race, colour, descent, or national or ethnic origin.' The Travaux Préparatoires of the Convention reveal that the Third Committee of the General Assembly rejected the proposal to include racial discrimination and religious intolerance in a single instrument, and decided in the ICERD to focus exclusively on racial discrimination. It is unquestionable therefore that discrimination based exclusively on religious grounds was not intended to fall within the purview of the Convention."

For the above reasons, and given that the general references to Muslims do not single out a particular group of persons, the Committee concluded that the application falls outside the scope of the Convention and is inadmissible *ratione materiae* under Article 14 (1) of ICERD.

There were also cases examined by CERD against Denmark in which ethnic, national and religious identities intersected in a more nuanced manner, with the ethnic or national component being predominant, allowing the Committee to proceed to an examination as to the merits. This was the situation in *Mohammed Hassan Gelle v. Denmark* (CERD/C/68/D/34/2004) and *Saada Mohamad Adan v. Denmark* (CERD/C/77/D/43/2008), both concerning allegations of racist hate speech against persons of Somali descent. An intersection of the applicant's ethnic/national and religious identities could also be observed in the *Mahali Dawas and Yousef Shava v. Denmark* (CERD/C/80/D/46/2009), which involved the State's failure to investigate the racist character of an attack against Iraqi refugees.

Juxtaposing the CERD's opinions in the *Jewish community of Oslo et al.* and the *A.W.R.A.P.* cases may create an impression that the protection of the intersection of ethnic/national and religious identity does not always operate effectively. However, it would be misleading to suggest that CERD differentiates between religions or adopts double standards. The issue lies rather in ICERD's inherent "deficit" caused by excluding religion as a ground of prohibited discrimination, the origins of which were explained earlier in this chapter. As the guardian of the Convention, the Committee remains bound by its text. Consequently, claims based solely on allegations of discrimination due to religion, as a rule, fall outside the scope of ICERD. The situation differs, however, where the intersection of national or ethnic and religious identity permits the consideration that a person or group of particular ethnicity or nationality was targeted.

### 3.2 CERD's General Recommendations

The Committee's interpretive practice extends beyond the examination of individual communications. Through its General Recommendations, adopted under Article 9 (2) of the Convention, CERD has provided authoritative guidance on the meaning of "racial discrimination" and the scope of States' obligations. General Recommendations may address a specific provision of the Convention, a situation that affects groups and persons subjected to racial discrimination, or the rights of a category of persons who are specifically vulnerable to racial discrimination (CERD/C/504, 2). While the earliest General Recommendations were relatively brief interpretative statements, later ones have evolved into more detailed analyses of specific problems from the perspective of the Convention.

Several General Recommendations contain references to religious identity, ethno-religious communities or faith-related issues. These documents demonstrate how the Committee understands the overlap between religion and ethnicity, and provide guidance on

how States should respond to manifestations of anti-Semitism, Islamophobia and other forms of religiously inflected hostility.

A link between the Convention and religion can be traced in General Recommendation XXIX on descent-based discrimination (A/57/18, 111). The Committee addressed forms of discrimination grounded in caste or analogous systems of inherited status. Such systems often have a religious dimension, since descent-based hierarchies are frequently justified or perpetuated by religious belief or custom. The General Recommendation clarifies that the Convention's prohibition of discrimination based on "descent" extends to caste-based practices, even when cloaked in religious doctrine. This interpretive stance is noteworthy since it implies that States parties cannot invoke religious traditions to justify entrenched hierarchies amounting to racial discrimination.

Important guidance can be found in General Recommendation No. 35 on combating racist hate speech (2013). It elaborates on the scope of "racist hate speech", expressly acknowledging that anti-Semitism and Islamophobia are paradigmatic forms of racialized hatred. The CERD recalled that (CERD/C/GC/35, 6):

> "In the light of the principle of intersectionality, and bearing in mind that 'criticism of religious leaders or commentary on religious doctrine or tenets of faith' should not be prohibited or punished, the Committee's attention has also been engaged by hate speech targeting persons belonging to certain ethnic groups who profess or practice a religion different from the majority, including expressions of Islamophobia, anti-Semitism and other similar manifestations of hatred against ethno-religious groups, as well as extreme manifestations of hatred such as incitement to genocide and to terrorism. Stereotyping and stigmatization of members of protected groups has also been the subject of

> expressions of concern and recommendations adopted by the Committee."

Further, General Recommendation No. 36 on preventing and combating racial profiling by law enforcement officials (2020) highlights the discriminatory targeting of individuals on the basis of stereotypical assumptions, including those relating to religion. The Committee defines "racial profiling" as (CERD/C/GC/36, 13):

> "(a) committed by law enforcement authorities; (b) is not motivated by objective criteria or reasonable justification; (c) is based on grounds of race, colour, descent, national or ethnic origin or their intersection with other relevant grounds, such as religion, sex or gender, sexual orientation and gender identity, disability and age, migration status, or work or other status; (d) is used in specific contexts, such as controlling immigration and combating criminal activity, terrorism or other activities that allegedly violate or may result in the violation of the law."

In view of the foregoing, although the Committee's analysis of racial profiling has primarily focused on law enforcement practices in a narrow sense, it may be argued that profiling based on visible religious markers – such as the wearing of the hijab, turban or kippah – likewise falls within the ambit of the Convention. Such practices perpetuate stereotypes linked to ethno-religious identity and also risk conflating religious affiliation with ethnic origin, thereby amounting to racial profiling. In this respect, visible religious markers become proxies for ascribed racial or ethnic categories, and the discriminatory treatment of individuals on this basis raises an issue under the Convention.

### 3.3 CERD's use of the Early Warning Urgent Action procedure in situations implicating ethno-religious communities

The CERD's Early Warning and Urgent Action Procedure (EWUA) constitutes a preventive mechanism designed to address situations that may escalate into patterns of racial discrimination or conflict falling within the scope of the Convention. While not explicitly provided by the Convention, EWUA may be closely linked with the Committee's mandate under Article 9 of ICERD. The procedure enables the Committee to respond promptly to circumstances requiring immediate attention, complementing its regular reporting and communications functions. "Early warning" measures are intended to identify and address structural problems at an incipient stage, before they evolve into widespread discrimination or violence. By contrast, "urgent action" measures are undertaken in response to ongoing crises or serious violations that demand swift intervention.

The Committee may activate the EWUA procedure on its own initiative or upon receiving reliable information from states, civil society or other stakeholders. Typical triggers include patterns of systematic discrimination, rising ethnic tensions, exclusionary state policies, and situations of violence or forced displacement affecting minority groups. In practice, the Committee adopts decisions, letters or statements directed to the State concerned, urging specific remedial measures. These may range from immediate protective actions for affected communities to the revision of legislation or policies that give rise to discriminatory practices. Although the Committee's decisions under the procedure are not legally binding, they carry significant political and moral weight and often serve to mobilize international attention.

Over time, the EWUA procedure has become an important tool in CERD's preventive diplomacy, complementing the work of other human rights bodies. It reflects the Committee's recognition

that combating racial discrimination requires not only *ex post facto* assessment of individual cases but also proactive monitoring and early engagement with States parties. The mechanism underscores the preventive function of ICERD and situates the Committee within the broader landscape of international peace and security, particularly where racial or ethnic discrimination has led or may lead to conflict.

The CERD's Working Group on Early Warning and Urgent Action Procedure first considers the application of the EWUA procedure and may recommend specific action to the plenary Committee. While CERD's decisions, statements and letters adopted under EWUA procedure are part of the public record, neither the responses of states nor the initial submissions by relevant stakeholders are published. Accordingly, analysis must rely on the publicly available outcomes of CERD's work. On that basis, several examples can be identified in which the EWUA procedure was applied in relation to an urgent situation affecting ethno-religious groups. In none of these cases, however, did CERD act only in response to discrimination or persecution based solely on the ground of religion. Instead, the Committee's engagement was prompted by reports of state measures targeting groups defined by their ethnic or national origin, often in conjunction with their religious identity. It should also be noted that numerous interventions of CERD under EWUA concern indigenous populations, which often possess distinct ethno-religious identities.

Recent concrete examples where ethno-religious identity was at stake in the context of the CERD's actions under the EWUA procedure include the following.

**a) Israel/the occupied Palestinian territory** (Statements of 27 October 2023 and 9 May 2025; Decisions of 21 December 2023 and 12 December 2024): CERD's statements and decisions represent the Committee's most prominent recent use of EWUA

in a context where ethno-national and religious identities overlap. The Committee intervened in the immediate aftermath of mass violence, expressing its deep concern at indiscriminate attacks and their humanitarian consequences for civilian populations. In its statements and decisions, CERD issued urgent recommendations to the State(s) concerned, including to institute an immediate ceasefire, conduct investigations, ensure access to humanitarian assistance, respect international humanitarian law, and refrain from collective punishment measures. Unusually for this type of intervention, the Committee also called upon all State parties to CERD to "fully respect their international obligations, in particular those arising from the Convention, the Convention on the Prevention and Punishment of the Crime of Genocide and common Article 1 of the four Geneva Conventions, to cooperate to bring an end the violations that are taking place and to prevent war crimes, crimes against humanity and genocide, including by ceasing any military assistance if there is a clear risk that such assistance could be used in violation of international law" (Decision of 12 December 2024, last paragraph).

CERD's statements and decisions concerning the Israeli-Palestinian conflict, adopted under the EWUA procedure, must be distinguished from the Committee's engagement with the communication brought by the State of Palestine against Israel under Article 11 of ICERD. The specific results of this procedure, particularly with respect to the State of Palestine's allegations concerning the right to freedom of thought, conscience and religion, will be discussed in the following sub-section.

**b) Rohingya who fled Myanmar to India** (Statement of 29 June 2024): In mid-2024, CERD applied the EWUA procedure to the situation of the Rohingya, a predominantly Muslim ethno-religious minority from Myanmar's Rakhine State, who fled from Myanmar to India. The Committee called on the State to end arbitrary mass detention and to cease forced removals – measures CERD framed as necessary to prevent racial discrimination and to protect an

ethno-religious minority at risk of onward persecution. CERD's intervention invoked the State's obligations to prevent discriminatory measures and guarantee protection consistent with the Convention, emphasizing the principle of non-refoulement and the duty to investigate allegations of pushbacks and other human rights violations.

**c) Uyghurs in the Xinjiang Uyghur Autonomous Region of China** (Decision of 23 November 2022): In this Decision, adopted under its EWUA procedure, CERD expressed grave concern over the human rights situation of the Uyghurs (a mostly Muslim minority of Turkic origin) in the Xinjiang Uyghur Autonomous Region of China (XUAR). The allegations brought to the attention of the Committee included mass arbitrary detention in "vocational education and training centres" and other facilities, torture and ill-treatment, enforced disappearances, forced labour, family separations, restrictions on religious practice, and deaths in custody (OHCHR 2022). The Committee urged China to immediately release all individuals arbitrarily detained, investigate all allegations of serious violations, review national security and counter-terrorism laws for compliance with ICERD, and provide effective remedies and reparations to victims. It further called on China to cease reprisals against Uyghurs and other ethnic Muslim communities, implement the recommendations of CERD, the Committee against Torture and the OHCHR Assessment (ibid., 151), and reminded all States of their duty to cooperate to end serious breaches of international law.

CERD's EWUA procedure can potentially ensure reaction, but also has inherent limits. The Committee cannot compel compliance; the effectiveness of its measures depends largely on State cooperation and political will to act on its recommendations. Statements or decisions adopted under EWUA are sometimes politically contested, and the States concerned often dispute CERD's factual characterizations or the suggested remedies.

Nevertheless, the EWUA procedure remains an instrument for addressing serious threats to ethno-religious communities.

### 3.4 The conclusions of the Ad Hoc Conciliation Commission established under Article 12(1)(b) of ICERD in the *State of Palestine v. Israel* case, concerning freedom of thought, conscience and religion (Article 5 (d) (vii) of ICERD)

The inter-State communication submitted in 2018 by the State of Palestine against Israel, invoking Article 11 of ICERD, resulted in the first-ever inter-state proceedings pursued and completed by an ad hoc Conciliation Commission (AHCC) established under the provisions of a United Nations human rights treaty (Eiken/Keane 2022). The Commission fulfilled its mandate by adopting a report (CERD/C/113/3) as well as a summary of the facts (CERD/C/113/3/Add.1) and their assessment (CERD/C/113/3/Add.2). The report, adopted by the AHCC on 19 February 2024, was then submitted to the Chair of CERD, who in turn communicated it to the State parties to the dispute, to all State parties to ICERD (Article 13 (2) and (3) of ICERD), and to the general public.

The case raised numerous procedural and substantive issues that fall beyond the scope of the present chapter. However, one particular aspect of the AHCC's report will be discussed here, as it directly refers to the freedom of thought, conscience and religion, as protected under Article 5 (d) (vii) of ICERD. It should also be noted that although the AHCC was established by the Committee pursuant to Article 12 (1) (b) of ICERD, and comprised five Committee members, it functioned as an independent body with a mandate conferred explicitly by Article 13 of ICERD, and not as a subordinate body of CERD itself.

The State of Palestine's allegations, included in its communication of 2018 and based on the right to freedom of thought, conscience and religion, were summarized by the AHCC as follows (CERD/C/113/3/Add.1, 30):

> "The State of Palestine claims that Israel continues to discriminate against Palestinians' rights to freedom of religion in breach of article 5 (d)(vii) of the Convention. Through a complex and restrictive system established by Israel, hundreds of thousands of Palestinians – Muslims and Christians – have regularly been impeded from worshipping at sites that are among the most significant to their faiths, particularly in Jerusalem. Palestinians are routinely prevented from attending religious services at the Al-Aqsa Mosque and the Church of the Holy Sepulchre in occupied East Jerusalem. Palestinians are also widely prevented by Israeli restrictions from accessing the Ibrahimi Mosque and Tomb of the Patriarchs in Hebron and the Church of the Nativity in Bethlehem. Palestinian applicants do not receive travel permits from Israeli authorities for the celebration of religious festivals, marriages or funeral ceremonies with family members who live in different parts of the Occupied Palestinian Territory. The closure regime causes particular difficulties during the holy month of Ramadan. After the designation of Gaza as a 'hostile entity' in 2007, Israel banned all travel from Gaza to East Jerusalem and other parts of the West Bank, except for very limited categories of people who are eligible to apply for a travel permit. On the contrary, on Jewish holidays, such as Yom Kippur, for example, access to East Jerusalem is typically entirely blocked off to Palestinians from other parts of the West Bank and all checkpoints are closed to them to facilitate settlers coming from the West Bank to East Jerusalem."

Given that Israel participated only in the jurisdiction/admissibility phase of the proceedings and refused to cooperate with the AHCC

during the merits phase, its responses to the allegations could be drawn only from submissions made in the earlier phases. Thus, the AHCC's report recapitulates Israel's observations concerning the claims under Article 5 (d) (vii) of ICERD as follows (CERD/C/113/3/Add.1, 31):

> "Regarding Palestine's claims on the rights to freedom of thought, conscience and religion, Israel referred to the case of *Anonymous v. The Minister of Defence* (19 March 2018), before the High Court of Justice in which the State party expressed its commitment to reducing the time taken to process entry requests submitted by Christian Palestinians to enter the West Bank for Christmas and Easter. Israel contends that its law 'grants freedom of worship and ensures the safekeeping of and access to holy places to members of all faiths. Sites are guarded by the Police to protect public order in sensitive places.' Israel reiterates that it only reported on the human rights conditions within the territory of the State of Israel in its State report to the Committee; thus, this statement would appear to only apply to Palestinian Muslims and Christians while on the territory of the State of Israel."

The AHCC, in its assessment of the facts (CERD/C/113/3/Add.2, 35), recalled that the Human Rights Council on 24 March 2017 expressed its concern at "the restrictions imposed by Israel that impede access of Christian and Muslim worshippers to holy sites in the Occupied Palestinian Territory, including East Jerusalem" (A/HRC/RES/34/30, 26). The General Assembly had also expressed concerns over "provocations and incitements regarding the holy places of Jerusalem, including the Haram-al-Sharif" as the consequence of the tensions and violence in the Occupied Palestinian Territory, including East Jerusalem, provoked by Israeli policies (for which

the AHCC footnoted the preamble of A/RES/79/87, A/RES/71/95 and A/HRC/4/17, 30). Furthermore, the AHCC observed (CERD/C/113/3/Add.2, 36):

> "In its report issued in 2013, the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, revealed that access to places of worship was denied to Palestinians. The mission also reported that during holy days, Palestinians were prevented from attending scheduled rituals due to checkpoints and area closures. This situation happened, for instance, in September and October 2015, when Israeli authorities imposed restrictions on Palestinians to access the Al-Aqsa compound, as reported by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. In his report issued in 2021, the same mandate noted the same situation when, in the last days of Ramadan, Israeli security forces restricted the access of Palestinian worshipers to the Aqsa Mosque. The Committee on Economic, Social and Cultural Rights expressed its concern that 'the Palestinians living in the Gaza Strip are impeded from visiting religious sites in the West Bank, including East Jerusalem due to the closure policy of the State party and that Palestinians living in the West Bank too are restricted from visiting religious sites in East Jerusalem.'"

The AHCC noted "that movement restrictions impacted the freedom of thought, conscience and religion as the Israeli authorities prevent Muslim and Christian Palestinians from access

to their holy sites in the Occupied Palestinian Territory". It added that (CERD/C/113/3/Add.2, 37):

> "Allowing Palestinians to move freely from Gaza to holy sites in the West Bank and vice versa is fundamental to the enjoyment of freedom of religion of Palestinians living in the OPT, including East Jerusalem as required by article 5(d)(vii) of the Convention."

The AHCC has not had any judicial powers and its mandate consisted in "fully considering the matter" and preparing and submitting to the Chair of the Committee "a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute" (Article 13 (1) of ICERD). The AHCC considered that its task does not include pronouncing on violations of ICERD in a judicial manner; rather, it expressed its conclusion as to how restrictions of movement impact the freedom of thought, conscience and religion of the affected religious minorities. The AHCC's report included a recommendation that the Government of Israel "ensure that restrictions of movement imposed on Palestinians for security reasons are applied only when strictly necessary and proportionate" (CERD/C/113/3, 51(i)).

It may be argued that the scale of violence and the dramatic situation in Gaza following Israel's armed response to the Hamas attack of 7 October 2023 have overshadowed the AHCC's recommendations, including the one cited above. Nevertheless, the Commission's report – containing recommendations directly addressing the violence and atrocities of and subsequent to 7 October 2023 – has not been rendered obsolete. At its 114th session in December 2024, CERD established a follow-up Rapporteur on the AHCC's report.

### 3.5 CERD's Concluding Observations

Last but not least, reference should be made to CERD's concluding observations, which were adopted after examining a State party's periodic report during an "interactive dialogue". This dialogue is conducted at public meetings between the plenary Committee and State party delegations, during which CERD members inquire into the domestic situation in the State party concerned, from the viewpoint of the Convention. The delegation has an opportunity to supplement the information contained in the report. It is established practice that, wherever ethno-religious minorities can be identified, CERD pays particular attention to their situation, especially where it has information about shortcomings in the implementation of the Convention. By way of example, the following recent concluding observations made explicit references to the situation of ethno-religious minorities.

With regard to Saudi Arabia, the CERD noted with concern reports that "ethno-religious minority groups, in particular non-Sunni ethno-religious minority groups, face obstacles in obtaining permission to construct religious places of worship" (CERD/C/SAU/CO/10-22, 29) and that "non-citizens, such as migrant workers and domestic workers from Africa and South-East Asia who are non-Muslims, face discrimination in the enjoyment of their right to freedom of thought, conscience and religion, which includes restrictions on constructing religious places of worship, on organizing cultural activities with a religious character, such as public worship, and on public displaying of religious symbols" (ibid.).

Regarding the Islamic Republic of Iran, the Committee expressed concerns about "the spread of hate crimes, racist hate speech and the dissemination of negative stereotypes against ethnic and ethno-religious minority groups and non-citizens, particularly those from Afghanistan" (CERD/C/IRN/CO/20-27, 14(b)), the socioeconomic situation of "ethnic and ethno-religious minority

groups" (ibid., 22–23), as well as the status of women belonging to these groups (ibid., 18–19)

Regarding Pakistan, CERD voiced its deep concerns "about the increasing number of reports of violent attacks and reprisals, including physical attacks, mob lynchings and killings, against persons accused of blasphemy, who often belong to ethnic and ethno-religious minority groups" (CERD/C/PAK/CO/24-26, 15), as well as "reports of the enforced disappearance of ethnic and ethno-religious leaders, politicians, public officials and human rights defenders" (ibid., 17). A specific concern related to "exclusion of members of ethno-religious minority groups that are not recognized as Muslim, such as Ahmadis, from the seats reserved for non-Muslim candidates in the National Assembly, the Senate and provincial assemblies" (ibid., 19). A separate section of the concluding observations was focused on freedom of religion or belief (ibid., 23–24), raising concerns on the rights of persons belonging to ethno-religious minority groups, in particular non-Sunni.

Regarding Bosnia and Herzegovina, CERD expressed concern about "the identity-based politics contributing to the persistence of ethnic and ethno-religious divisions and tensions in the State party and that undermine efforts to eliminate racial discrimination and effectively implement the Convention" (CERD/C/BIH/CO/14-15, 41–42).

With regard to Turkmenistan, CERD noted that "[c]onsidering the intersectionality of religion and ethnicity, the Committee is concerned about the challenges faced by persons belonging to religious minorities in freely exercising their right to freedom of religion or belief, including excessive administrative barriers to the registration of religious organizations, and the prohibition on practising religion in cases where an organization is unregistered" (CERD/C/TKM/CO/12-13, 25).

Concerning Brazil, CERD referred to discrimination against Afro-descendants and communities identified through both ethnic and religious practices, urging policies against multiple discrimination. The Committee was deeply concerned by "(a) High and growing numbers of cases of religious intolerance and discrimination, fuelled by discriminatory depictions of Afro-Brazilian religions, including *terreiro* religions, in the media; (b) Inadequate protection against various forms of attacks by private individuals on the grounds of religion, including discrimination, violence and desecration of religious sites; (c) Institutionalized forms of religious intolerance and discrimination, including violent attacks by law enforcement officials, the criminalization of their faith under offences such as charlatanism and the practising of traditional medicine, and a lack of sensitivity to Afro-Brazilian religions within the justice system; (d) The fact that women who practise Afro-Brazilian religions experience their religion being negatively taken into account in decisions over custody of their children; (e) The lack of accountability for attacks and discrimination against persons who practise Afro-Brazilian religions" (CERD/C/BRA/CO/18-20, 43).

Concerning Belgium, CERD expressed concern over the lack of disaggregated data on racist hate crimes and speech to identify ethno-religious hatred, "such as antisemitism, Islamophobia, anti-Gypsyism, Afrophobia or anti-Asian hatred" (CERD/C/BEL/CO/20-22, 17). CERD also noted increasing reports of racist hate speech, including anti-Semitic and Islamophobic speech (ibid., 18).

Concerning Sweden, CERD expressed concerns about "reports of attacks against mosques, as well as about the lack of sufficient funding to safeguard mosques against attacks and of affordable insurance against such attacks", "racist hate crimes and hate speech against Muslim ethno-religious minority groups, especially Muslim women", "the difficulties faced by persons belonging to Muslim ethno-religious minority groups in accessing employment and

housing outside of minority-populated areas, amounting to de facto segregation", "stereotypical representation of Muslims in the media and by politician", "situations of intersectionality in relation to ethnicity, religion and gender, with Afro-Swedish Muslim women, for example, appearing to be a particularly vulnerable group subject to multiple discrimination" (CERD/C/SWE/CO/22-23, 18).

Concerning the State of Palestine, CERD regretted "the lack of information on the situation of ethno-religious and national minorities in the State party and on their ability to fully enjoy all the rights covered by the Convention without discrimination" (CERD/C/PSE/CO/1-2, 21). The Committee was particularly concerned "about the lack of information on the situation of Bedouins, who face several challenges in terms of obtaining access to essential services, as well as forcible evictions and the demolition of their houses" (ibid.).

Specific recommendations always follow CERD's concerns expressed in its concluding observations. A more in-depth study of particular State practice would be required to assess the extent to which the Committee's recommendations on the situation of the ethno-religious minorities have been implemented (or not), including in subsequent review cycles. While the reporting cycle may vary, State parties are generally required to submit periodic reports every four years, after which they await examination by the Committee. The situation of ethno-religious minorities may also be singled out by CERD as a matter of particular importance, either highlighted in the section entitled "paragraphs of particular importance" or selected for the accelerated follow-up procedure. In the latter case, the State party concerned is expected to provide information on the implementation of specific recommendations within one year of the adoption of the concluding observations.

## 4. Issues of interpretation

### 4.1 The discussion of complementary standards

The overview of religion-related aspects of ICERD's needs to include a question of possible "protection gaps". As already mentioned, the drafters of the treaty deliberately excluded religion as the ground of prohibited discrimination, but it remains an open question whether this decision created "a gap", given the subsequent developments in international human rights law. The fact remains, however, that there is no separate treaty which would cover the issue of discrimination based on religion. Whether or not such a treaty is advisable or redundant is also a matter of debate (Gliszczyńska-Grabias 2025, 75)

In 2007, the Human Rights Council through its resolution 6/21 established the Ad Hoc Committee on the Elaboration of Complementary Standards ("Ad Hoc Committee"), to give effect to the recommendation of the 2001 Durban Declaration and Programme of Action (A/CONF.189/12). This Declaration had underscored the persistence of gaps in the international normative framework for combating racism, racial discrimination, xenophobia and related intolerance. While the ICERD provided the cornerstone of this regime, it was increasingly recognized that contemporary forms of discrimination, including those targeting groups defined simultaneously by race, ethnicity and religion, were not fully captured by its provisions. The mandate of the Ad Hoc Committee was thus to elaborate complementary standards, potentially in the form of additional protocols to ICERD, addressing these lacunae in a manner responsive to new manifestations of intolerance.

An expert report prepared for the Ad Hoc Committee in 2007 (A/HRC/4/WG.3/6) set out a comprehensive mapping of substantive gaps. It highlighted in particular the vulnerability of religious groups when targeted in conjunction with racial or ethnic identity, noting the close relation between "race" and "religion" in

many national contexts (ibid., 42–50). The report observed that "[i]n light of the increasing incidents of Islamophobia, anti-Semitism and Christianophobia in the aftermath of the events of 11 September 2001, it is necessary that human rights bodies update accordingly their general comments or recommendations, reporting guidelines, and rules of procedures" (ibid., 48). Further sections of the report examined the manifestations of religious intolerance and defamation of religious symbols (ibid., 123–140) as well as incitement to racial hatred and dissemination of hate speech and xenophobic and caricatural pictures (ibid., 141–152). With regard to the latter, the experts offered the following assessment and recommendations (ibid., 152):

> "In addressing the underlying question as to whether there is a gap in international human rights law pertaining to combating incitement to racial and religious hatred and the dissemination of hate speech, the experts discern a gap in application and consider that while there are provisions from various treaties addressing the issue, further guidance from treaty bodies as to the interpretative scope of these provisions and their threshold of application would be most useful."

Post-2007 debates within the Ad Hoc Committee confirmed the serious character of racist and religious hate speech, but also revealed deep divisions among States. Certain delegations, particularly from the Organization of Islamic Cooperation, argued for the elaboration of a protocol to ICERD specifically addressing contemporary forms of Islamophobia, which they perceived as a structural and global phenomenon analogous to anti-Semitism and apartheid. Other States, primarily from Western Europe and North America, expressed reservations, cautioning that the incorporation of "defamation of religions" into international law could undermine freedom of expression and shift the focus from protection of individuals to protection of belief systems. These

debates mirrored the broader controversies that had surrounded the parallel resolutions on "defamation of religions" adopted by the Commission on Human Rights, General Assembly and Human Rights Council from 1999 to 2010.

Between 2008 and 2025, the Ad Hoc Committee held fifteen sessions, which revealed a lack of consensus among States regarding the adoption of a binding international instrument addressing discrimination based on religion. Instead, States have reached, at least in principle, a consensus over the need to elaborate an additional protocol to ICERD aimed at criminalizing acts of a racist and xenophobic nature (A/HRC/57/69, 129). This does not mean that the issue of discrimination based on religion or belief has disappeared from the Ad Hoc Committee's agenda. It should be recalled that the Human Rights Council had mandated the Ad Hoc Committee to elaborate complementary standards filling the existing gaps in ICERD and "also providing new normative standards aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred" (A/HRC/DEC/3/103). Possible modalities for addressing this issue in the draft protocol were discussed and reflected in the updated Chairperson's Draft document for the fourteenth session of the Ad Hoc Committee (OHCHR 2024). Although the conceptual works on the scope, terms, elements and structure of the additional protocol to ICERD are relatively advanced, no draft has yet been finalized for negotiation among States.

### 4.2 Interpretive challenges

The interpretation of ICERD in relation to freedom of religion or belief raises several challenges, some of which have already been mentioned. First, there is the question of the treaty's "deficit" in the lack of recognition of religion as the ground of "racial discrimination". Even when applying "dynamic interpretation", it is impossible to assume that discrimination based on religion is implicitly included in the definition enshrined in Article 1 of

ICERD, especially given the evidence to the contrary, based on the *travaux préparatoires.*

Second, ICERD explicitly provides in Article 5 (d) (vii) for an obligation of State parties to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of – *inter alia* – the right to freedom of thought, conscience and religion. Patrick Thornberry has observed that despite the above provision, "addressing the situation of groups whose identity is partly constructed in terms of religion has proved awkward for the Committee" (Thornberry 2016, 127). However, as shown by the overview of the CERD's practice above, the use of the term "ethno-religious minority" (also "group" or "community") has become more and more frequent. At the same time, the Committee has not abandoned its references to "intersectionality", which proves a useful doctrinal concept. The use of the term "ethno-religious" in numerous CERD's concluding observations or other mandated activities does not mean that the concept is crystal clear. It is indeed a delicate matter of identity components, where ethnic and religious influences may have similar or varied shares in constituting a holistic concept of identity. It would be advisable for CERD to undertake a thematic study on the concept of "ethno-religious minorities".

Third, ICERD's interpretation must take into account the norms of general international law, as well as particular cultural or religious contexts. Faith traditions may serve both as resources and obstacles to interpret and implement ICERD effectively. By adopting an approach that recognizes the intersectionality of race/ethnicity and religion, CERD has sought to ensure that ICERD remains a living instrument capable of addressing contemporary forms of discrimination.

A potential new chapter in the history of ICERD could emerge if an additional protocol on criminalizing acts of a racist and

xenophobic nature is finalized and opened for signature. Such a protocol could enhance the protection of ethno-religious minorities in situations where race/ethnicity and religion intersect. It remains to be seen, however, if the State parties to ICERD will demonstrate enough determination to adopt the protocol and bring it into force.

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# CHAPTER IV.

# INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966)

**Gentian Zyberi[1], Ahmed Shaheed[2] and Zeynep Baysar[3]**

**Abstract:** This chapter provides an analysis of the jurisprudence of the United Nations Human Rights Committee concerning the right to freedom of religion or belief, as included and protected in

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the International Covenant on Civil and Political Rights. After the introduction (section 1), the chapter addresses the religious influences during the *travaux préparatoires* of the UN treaty (section 2). The third section provides an analysis of the faith-related jurisprudence of the UN treaty body, including inclusive religious education, conscientious objection to military service, religious clothing, registration of religious associations, and asylum and non-refoulement. Some selected issues of interpretation are addressed in section 4, where the jurisprudence of the Committee is compared with that of other key human rights mechanisms.

**Keywords:** International Covenant on Civil and Political Rights; UN Human Rights Committee; freedom of religion or belief; conscientious objection to military service; religious clothing; religious education; registration of religious organizations; asylum and non-refoulement.

## 1. Introduction

As of November 2025, there are 175 States Parties to the International Covenant on Civil and Political Rights (ICCPR or Covenant) and 116 States that are also a party to the Optional Protocol which allows the Committee to deal with individual complaints (United Nations 2025). This ensures broad global coverage. Article 18 of the Covenant guarantees freedom of thought, conscience, religion or belief (FORB or freedom of religion or belief). This article provides as follows:

> "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to 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.

> 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
>
> 3. 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.
>
> 4. 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."

The right includes both the internal (*forum internum*) and the external (*forum externum*) sphere of operation. Article 18 is quite extensive in the aspects of the right it covers, including that to adopt or to manifest FORB without coercion and the freedom of parents or legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. Under Article 18 (3), this freedom may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others. Importantly, Article 4 of the Covenant bestows upon the right to freedom of thought, religion or belief the status of a non-derogable right. Even in times of most serious public emergencies, States that interfere with the freedom to manifest one's religion or belief must justify their actions by referring to the requirements specified in Article 18 (3), as commented by the UN Human Rights Committee (CCPR/C/21/Rev.1/Add.11, 7). Besides Article 18, the ICCPR includes other provisions related to religion, notably Article 2 (1) prohibiting discrimination more generally, including on the basis of religion; Article 26 ensuring equality and equal protection and

prohibiting discrimination on any ground, including religion; and Article 27 covering the protection of religious minorities (see generally Schabas 2019, 475–539; Taylor 2020, 499–537).

The UN Human Rights Committee (HRCttee or Committee) has a rich jurisprudence on interpreting Article 18, through its three main methods of work, namely concluding observations as part of States reporting; general comments which provide detailed guidance on State obligations under the Covenant; and individual communications concerning various FORB violations. During the State reporting process, the Committee has raised concerns with State parties to the Covenant in relation to Article 18 and has issued relevant concluding observations to them. General Comment No. 22 (CCPR/C/21/Rev.1/Add.4) is important in having clarified the scope of Article 18 and systematized the jurisprudence of the Committee until 1993. Individual communications have raised various issues, such as inclusive religious education, conscientious objection to military service, religious clothing, registration of religious associations, asylum and non-refoulement, and so on.

This chapter will first track the religious influences during the *travaux préparatoires* of the UN treaty, then analyze some selected aspects of faith-related jurisprudence of the Human Rights Committee, and finally reflect more broadly on some issues of interpretation that have been more controversial and might have put the Committee on a collision course with other human rights mechanisms. Scholarly work has addressed various aspects of this right, from a more general perspective (De Jong 2000; Lindholm/Durham/Tahzib-Lie 2004; Evans/Petkoff/Rivers 2015; Bielefeldt/Ghanea/Wiener 2016; Lindkvist 2017; Bielefeldt/Wiener 2019), to covering various regions of the world, including Europe (Paladini/Iglesias Vázquez 2023; Roberts 2024), Latin America (Alves 2020), the Association of Southeast Asian Nations (Mufford 2017), and so on. Some scholarly works have analyzed specific religions, like the Islamic religion (Ben Achour

2021), or atheism (McAdam 2018) as well specific aspects of this right such as the freedom of conscience (Hammer 2001) or the freedom of thought (O'Callaghan/Shiner 2025). Yet, other works have analyzed the relations between the right to freedom of religion or belief and democracy, securitization, religious pluralism, and so on.

## 2. Religious influences during the travaux préparatoires

Some of the controversies concerning freedom of religion or belief were reflected in the discussions held during the *travaux préparatoires* of the ICCPR (Bossuyt 1987, 355–371; Schabas 2019, 501; Taylor 2020, 504–505). These preparatory works that took place during the drafting period from 1947 to 1966, reveal significant religious influences that shaped the formulation of Article 18. This provision is essential in recognizing and protecting religious freedoms globally and was subject to extensive debate, reflecting various religious and philosophical perspectives. These religious influences reflected themselves along several lines, including recognizing religious freedom as a fundamental human right, reflecting specific religious perspectives, grounding secularism and State neutrality perspectives, endorsing the need for inter-faith dialogue, and balancing individual rights and public order.

The idea of freedom of religion was heavily influenced by the aftermath of World War II and the widespread recognition of the atrocities committed during the Holocaust. There was a strong desire to enshrine religious freedom as a fundamental human right, partly influenced by Judeo-Christian and Islamic values which emphasize individual dignity and moral agency. Several countries involved in the drafting process had predominantly Christian populations, and their representatives advocated for protections of individual religious freedoms grounded in Christian moral teachings. This included the United States of America and various Western European States, where Christian doctrines on the sanctity of individual conscience played a significant role. Muslim-

majority countries contributed their perspectives, emphasizing that freedom of religion should respect traditional religious values and norms relevant to their cultural contexts. Concern was expressed that specific mention of the right to "change one's religion or belief" might be interpreted as unduly favoring missionary activities or concerted efforts to propagate anti-religious beliefs or as encouraging doubts in the minds of believers (Bossuyt 1987, 357).

Besides the influences coming from the Abrahamic religions, there was also a strong secular influence, particularly from countries with secular governments or traditions such as France and the Soviet Union. These States argued for a more neutral stance that provided protections not only for religious views but also for atheistic and non-religious convictions. The Soviet Union, in particular, emphasized the importance of protecting atheism alongside religious beliefs. In his 1960 study for the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (see above chapter III), Special Rapporteur Arcot Krishnaswami noted that "the term 'religion or belief' is used in this study to include, in addition to various theistic creeds, such other beliefs as agnosticism, free thought, atheism and rationalism" (Krishnaswami 1960, 1). He also stressed that "[t]he precept that one should love one's neighbour as oneself was part of the faith of Christianity" and "[t]he same idea permeates Judaism and Islam, as well as the various branches of Buddhism, Confucianism and Hinduism, and it may also be found in the teachings of many non-religious beliefs" (ibid.).

The drafters of the ICCPR engaged in discussions that involved various faiths and emphasized the importance of interfaith dialogue. They recognized the need for mutual respect and coexistence among different religious traditions, and these discussions often centered on balancing minority religious rights with majority practices. Debates concerning Article 18 also considered how individual rights to religious freedom interact with

public order and moral considerations. This aspect was influenced by religious philosophies seeking to preserve social harmony and moral integrity, while also being mindful of the diverse religious landscape. The final text of Article 18 reflects these influences, aiming to balance various religious and philosophical viewpoints by providing broad protection for individuals to hold, practice and change their religious beliefs while considering societal norms and public order. The diverse religious perspectives and the lengthy adoption process contributed to a more inclusive and universal articulation of religious freedoms in the ICCPR.

## 3. Faith-related jurisprudence

This section analyses the Committee's jurisprudence concerning various aspects of the freedom of religion or belief. While not providing an exhaustive analysis of all instances where the Committee has addressed these issues, especially through its concluding observations and Views adopted in individual communications, this section addresses several selected issues often raised by the Committee. Concluding observations are adopted based on the Committee's constructive dialogue with States under Article 40 of the Covenant. Views are adopted based on the Optional Protocol of the Covenant, which allows the Committee to deal with individual complaints. Since the first case decided in 1981, the Committee has decided around 130 cases related to Article 18 (see https://juris.ohchr.org/; or https://ccprcentre.org/database-decisions), addressing various aspects of this freedom, including religious discrimination, registration of religious organizations, religion in detention, religion in schools, religious clothing, asylum and non-refoulement, specific issues concerning the Islamic faith (see e.g. Ben Achour 2021), etc. Overall, in these cases the Committee has tried to adopt an interpretation of the Covenant which furthers freedom of religion or belief.

Some of the FORB aspects addressed by the Committee in its almost five decades of activity involve non-discrimination issues, registration of religious organizations, promoting respect and tolerance for religious diversity, eradicating stereotypical prejudices based on religion, particularly in school settings, conscientious objection to military service, religious clothing, religion in schools and in detention, and asylum and non-refoulement. The Committee has called for the crime of apostasy to be abolished (Schabas 2019, 505; see also Masud/Vogt/Larsen/Moe 2021). Along the same lines, the Committee has expressed concern about the criminalization of proselytizing (ibid.). General Comment No. 22 is outlined first, before addressing some selected issues.

### 3.1 Construing broadly freedom of religion or belief through General Comment No. 22

While a relatively short document, with only 11 paragraphs, this general comment adopted in 1993 (CCPR/C/21/Rev.1/Add.4) provides important guidance to States parties to the ICCPR. In paragraph 2, the Committee explains that "Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed." In the same paragraph, the Committee expresses concern about any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community. In paragraph 5, the Committee points out that:

> "Article 18(2) bars coercions that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or

> effect, such as for example those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant are similarly inconsistent with article 18(2)."

Paragraph 10 explains that if a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of the ruling parties or in actual practice, this shall not result in any impairment of the freedoms under Article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it. Paragraph 11 addresses the issue of conscientious objection to military service, by providing that while the Covenant does not explicitly refer to a right of conscientious objection, the Committee believes that such a right can be derived from Article 18.

### 3.2 Inclusive religious education

The protection of the right to freedom of religion or belief regarding education has engaged the Committee's attention in several ways. Key issues include the infringement of parental rights to ensure the religious and moral education of their children in conformity with their own convictions (Article 18 (4)), denial of access to education, and discrimination in State support for religious education.

A very challenging issue is that of the provision of compulsory religious education in State schools. The distinction between "religious instruction" and "information about religions or beliefs" is central to upholding these rights. These two educational types have different pedagogies and intentions. Religious instruction educates students about a particular religious tradition, the doctrines and practices of that specific faith, whereas information about religions aims to broaden students' knowledge of diverse religions or beliefs present in society (A/HRC/16/53, 31; Bielefeldt/Ghanea/Wiener 2016, 211–212). In practice, the line

between the two is often blurred, especially in a compulsory school setting when education on religious knowledge is combined with practising a particular religious belief (CCPR/C/21/Rev.1/Add.4, 6; Bielefeldt/Ghanea/Wiener 2016, 212).

In *Hartikainen et al v. Finland*, the Committee has ruled that compulsory classes on the history of religion and ethics in itself were compatible with Article 18 (4) of the ICCPR, provided that religious instruction is replaced with a pedagogical approach that presents information about religions and beliefs "in a neutral and objective way and respects the convictions of parents and guardians who do not believe in any religion" (CCPR/C/12/D/40/1978, 10.4; CCPR/C/21/Rev.1/Add.4, 6). Where the aim of such education is instruction in a particular religion or belief for the purpose of or to enable the manifestation of that religion or belief, such as learning by heart prayers or singing religious hymns, there must be an effective and practicable exemption provided for children whose parents do not wish their children to be instructed in that religion or belief (CCPR/C/82/D/1155/2003, 14.6; CCPR/C/21/Rev.1/Add.4, 6; Bielefeldt/Ghanea/Wiener 2016, 209–210). Parental wishes under Article 18 (4) are subject to the limitation provided in Article 14 of the Convention on the Rights of the Child, which passes that right to the children, in accordance with their evolving capacities. Special Rapporteur Heiner Bielefeldt advanced the Committee's view on exemption, stating that opting out should also extend to persons adhering to the same religion that is instructed, whenever they consider that their personal convictions, including dissenting interpretations, are not respected (A/HRC/16/53, 50).

In addition to providing exemption opportunities, the Committee also underlined the prominence of a critical, neutral and objective teaching curriculum. In its concluding observations on Pakistan, it expressed concerns about the religiously biased content of textbooks and curricula in public schools and madrasas, advising the State party to review these with a view to removing all

religiously biased content, integrate human rights education and continue to regulate madrasas (CCPR/C/PAK/CO/1, 33–34).

Access to education and restrictions on religious groups to manifest their faith through teaching also fall under the Committee's scrutiny. In its concluding observations on Ireland, the Committee repeatedly emphasized the importance of prohibiting discrimination in access to schools on the grounds of religion, belief or other status through establishing non-denominational schools and safeguarding the availability of diverse school types and curriculum to meet the needs of minority faith or non-faith children (CCPR/C/IRL/CO/5, 41; CCPR/C/IRL/CO/4, 21; CCPR/C/IRL/CO/3, 22). Similarly, the Committee raised concerns about the bans on higher education for the Baha'i religious community in the Islamic Republic of Iran and advised the State party to, *inter alia*, "[e]nsure that members of non-recognized religious minorities, including the Baha'i community, are protected against harassment, discrimination and any other human rights violation, and against any arbitrary decision on account of their religion" (CCPR/C/IRN/CO/4, 47–48; CCPR/C/IRN/CO/3, 23–24). In *Sheriffdeen v. Sri Lanka*, the Committee reiterated that rejection from a public school based on religious affiliation and ethnicity violates Article 26 of the Covenant (CCPR/C/133/D/2978/2017, 6.2 and 7). As a Committee member, Zyberi has argued in his partially dissenting opinion that under the circumstances such a denial constituted also a violation of Article 24 (1) protecting the rights of children to access to education without discrimination (CCPR/C/133/D/2978/2017, annex, 4–6).

Another issue concerns the State funding of educational institutions in relation to discrimination that can be raised by private educational institutions having religious or non-religious characters. The Committee, in the case of *Waldman v. Canada*, stressed that the Covenant "does not oblige States parties to fund schools which are established on a religious basis. However, if a

State party chooses to provide public funding to religious schools, it should make this funding available without discrimination" (CCPR/C/67/D/694/1996, 10.6). It further clarified that selective funding for religious groups for the provision of education must be based on "reasonable and objective criteria" (ibid.).

### 3.3 Conscientious objection to military service

The Committee has dealt with the issue of conscientious objection to military service in a significant part of its jurisprudence, covering both concluding observations as well as individual communications (Zyberi/Sánchez Madrigal 2022, 123–126). Although the Committee noted in General Comment No. 22 that such a right can be derived from Article 18 (CCPR/C/21/Rev.1/Add.4, 11), it took some time for the Committee to recognize this right in its case law. The ICCPR does not explicitly refer to a right of conscientious objection, but Article 8 (3) (c) (ii) on slavery and forced labor recognizes that for purposes of that paragraph "the term 'forced or compulsory labour'" shall not include "[a]ny service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors". It was in its General Comment No. 22 (1993) that the Committee first acknowledged that such a right could be "derived from its Article 18, inasmuch as the obligation to use lethal force might seriously conflict with the freedom of conscience and the right to manifest one's religion or belief" (CCPR/C/21/Rev.1/Add.4, 11). While the position of the Committee prior to 1993 was that the ICCPR does not provide for a right to conscientious objection, in its subsequent jurisprudence it has held that repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibited the use of arms, is incompatible with the absolutely protected right to hold a religion or belief.

While the Committee has found a violation of the right to conscientious objection to military service in several individual communications, most of which have concerned Turkmenistan and the Republic of Korea (CCPR/C/117/D/2226/2012; CCPR/C/117/D/2220/2012; CCPR/C/117/D/2224/2012; CCPR/C/117/D/2227/2012; CCPR/C/112/D/2179/2012; CCPR/C/124/D/2268/2013; CCPR/C/125/D/2316/2013; CCPR/C/126/D/2302/2013; CCPR/C/128/D/2846/2016; CCPR/C/132/D/3065/2017), the first case where it did so was decided in November 2006 (CCPR/C/88/D/1321-1322/2004, 9 and Dissenting opinion by Committee member Ms. Ruth Wedgwood, pp. 14–15; Bielefeldt/Ghanea/Wiener 2016, 265–269). Since 2011, shifting the dimension of protection from *forum externum* to *forum internum*, the Committee has consistently noted that the right of conscientious objection to military service inheres in the right to freedom of thought, conscience and religion, entitling any individual to exemption from compulsory military service if it cannot be reconciled with the individual's religion or beliefs (CCPR/C/101/D/1642-1741/2007, 7.3; CCPR/C/128/D/2846/2016, 7.3; CCPR/C/124/D/2268/2013, 7.3). In emphasizing the obligation of the State to provide an alternative public service, the Committee (CCPR/C/88/D/1321-1322/2004, pp. 12–13; CCPR/C/101/D/1642-1741/2007, 7.3; CCPR/C/106/D/1786/2008, 7.4) has clarified that:

> "The right must not be impaired by coercion. A State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature; it must be a real service to the community and compatible with respect for human rights."

This paragraph is derived from the 2006 dissenting opinion of Committee member Hipólito Solari-Yrigoyen in *Yoon and Choi v.*

*Republic of Korea*, as adopted in 2011 by the majority in *Jeong et al v. Republic of Korea* and completed in 2012 by the Committee in *Jongnam Kim et al v. Republic of Korea* (Schabas 2019, 509–516). This is an important element that has directed States towards ensuring adequate civilian alternatives. The Committee has pushed conscientious objection as far as holding that the fundamental character of the freedoms enshrined in Article 18 (1) of the Covenant is reflected in the fact that the provision could not be derogated from, even in a time of public emergency, as stated in Article 4 (2) of the Covenant (CCPR/C/21/Rev.1/Add.11, 11; CCPR/C/126/D/2302/2013, 7.3; CCPR/C/125/D/2316/2013, 6.3; CCPR/C/128/D/2846/2016, 7.3; CCPR/C/124/D/2268/2013, 7.3; CCPR/C/132/D/3065/2017, 9.3). This finding seems to combine *forum internum* and *forum externum* protection. In addressing various restrictions imposed on conscientious objectors, the Committee found, for the first time in 2021, a violation of freedom of movement pursuant to Article 12 (2) in the case of a conscientious objector who was prohibited from leaving his country, not only because of the excessive duration of the restriction on the author's freedom to leave, but also since the restriction had been imposed for having legitimately exercised his right to freedom of conscience (CCPR/C/132/D/3065/2017, 9.9).

Concluding observations are an important tool for the Committee to address structural problems in States parties to the ICCPR. Notably, the Committee has observed that State parties should ensure the legal recognition of conscientious objection to military service (CCPR/C/ERI/CO/1, 38). Additionally, it has also clarified that related legislation should be accessible without discrimination as to the nature of the beliefs, including religious or non-religious beliefs grounded in conscience, justifying the objection (CCPR/C/TJK/CO/3, 46; CCPR/C/BLR/CO/5, 48; CCPR/C/UKR/CO/8, 30). Additionally, in its recommendations the Committee has emphasized that any alternative service for

conscientious objectors should be of a civilian nature (CCPR/C/ERI/CO/1, 38; CCPR/C/LTU/CO/4, 26), and must be neither punitive nor discriminatory in nature or duration by comparison with military service (CCPR/C/TJK/CO/3, 46; CCPR/C/BLR/CO/5, 48; CCPR/C/UKR/CO/8, 30). These recommendations are important in drawing States' attention to this problem and providing them with guidance as to what legislative and other measures would be necessary to bring their practice in compliance with the Covenant.

Not all States have ratified the Covenant and even some of those that have done so do not recognize the universal applicability of the right to conscientious objection to military service (OHCHR 2022, 11). Despite the progress achieved over decades due to the engagement by various stakeholders, including the Committee, the UN Human Rights Council through the Universal Periodic Review and other procedures (Toomey 2019, 787), and other human rights actors, still persons who exercise this right are often discriminated against, persecuted or even imprisoned in many countries.

### 3.4 Religious clothing

An issue that has become quite controversial more recently has been religious clothing, including headscarves, turbans, kippas or religious jewellery, in educational institutions, public spaces and the workplace. In particular, legal and political debates may arise where gender equality claims intersect, or are perceived to intersect, with freedom of religion or belief (Bielefeldt/Ghanea/Wiener 2016, 365).

For the Committee, this has concerned mainly the wearing of headscarves and face veils. In the landmark cases of *Yaker* and *Hebbadj*, the Committee dealt with the issue of a criminal ban on the wearing of a full-face veil (*niqab*) in France. It found that the State party had failed to demonstrate that the limitation of the author's freedom to manifest her religion or beliefs, through the wearing of the *niqab*, was necessary and proportionate under

Article 18 (3) of the Covenant (CCPR/C/123/D/2747/2016, 8.12; CCPR/C/123/D/2807/2016, 7.12). In addition, it found that the criminal ban of the full-face veil had disproportionately affected the author as a Muslim woman who chooses to wear the full-face veil, and had introduced a distinction between her and other persons who may legally cover their faces in public that is not necessary and proportionate to a legitimate interest, and is therefore unreasonable. It concluded that this provision constituted a form of intersectional discrimination based on gender and religion, in violation of Article 26 of the Covenant (CCPR/C/123/D/2747/2016, 8.17; CCPR/C/123/D/2807/2016, 7.17).

Earlier, in *Hudoyberganova v. Uzbekistan*, the Committee had considered a Muslim student's expulsion from university for refusing to remove her headscarf that she wore in accordance with her beliefs. The Committee, noting the lack of clear justification from Uzbekistan, held that "to prevent a person from wearing religious clothing in public or private may constitute a violation of Article 18, paragraph 2" (CCPR/C/82/D/931/2000, 6.2). However, it also added that its findings did not preclude universities from adopting internal regulations or States from limiting expressions of religion and belief in the context of Article 18 of the Covenant. Several members of the Committee criticized this reasoning, arguing that the facts were too vague to substantiate a violation (ibid., pp. 9–11), and the Committee's contradictory statements on the distinction between the protected *forum internum* and the potentially limitable *forum externum* (Bielefeldt/Ghanea/Wiener 2016, 151–152).

A more assertive approach appeared in *Türkan v. Türkiye*, where the Committee examined the refusal to register a student who was wearing a wig to cover her hair due to rules prohibiting headscarves or veils on religious grounds in higher education institutions. It found that the State party had failed to justify the restriction on reasonable and objective criteria and that the rule amounted to a

form of intersectional discrimination against the author as a Muslim woman who chose to cover her hair, thus violating Articles 18 and 26, and of Article 3 read in conjunction with Article 18 of the Covenant (CCPR/C/123/D/2274/2013/Rev.1, 7.8–8).

The Committee on the Elimination of Discrimination against Women (CEDAW, see below chapter VI), though not adjudicating such complaints directly, has reinforced this intersectional approach through its General Recommendations and State party reviews. It urges States to combat gender-based stereotyping while ensuring women's freedom to manifest religion or belief (CEDAW/C/GC/28, 18–19; CEDAW/C/GC/36, 55; CEDAW/C/PAK/CO/5, 30).

The Committee has also examined restrictions in the context of identity photographs. In *Ranjit Singh v. France*, although it accepted the "need to ensure and verify [identification], for the purposes of public safety and order" (CCPR/C/102/D/1876/2009, 8.4), the Committee found that France had failed to justify why a Sikh turban partially covering the head and forehead hindered identification, stressing the necessity test under Article 18 (3) of the Covenant (ibid.; Bielefeldt/Ghanea/Wiener 2016, 157). In *Shingara Mann Singh v. France*, the Committee further held that the requirement to remove a turban for the identity photograph even once "would potentially interfere with the author's freedom of religion on a continuing basis because he would always appear without his religious head covering in the identity photograph and could thus be compelled to remove his turban during identity checks" (CCPR/C/108/D/1928/2010, 9.5).

Restrictions also appear in public employment where public duties and a shared image are pronounced. The Committee held inadmissible a complaint by retired Canadian police officers who objected to Sikh colleagues wearing religious symbols, finding no evidence that their rights were affected (CCPR/C/74/D/1048/2002, 4.2). Citing this reasoning, Special

Rapporteur Bielefeldt observed that "reasonable accommodation usually just requires a degree of flexibility from both employers and employees, as well as tolerance from third parties and the society at large" (A/69/261, 57). Conversely, in *Karnel Singh Bhinder v. Canada*, the Committee found that a requirement to wear a hard hat for protection against injury and electric shock would be justified under Article 18 (3). However, Special Rapporteur Jahangir later encouraged a more accommodating approach for States by emphasizing examples where Sikhs were exempted from such requirements (A/HRC/10/8, 43; Bielefeldt/Ghanea/Wiener 2016, 149).

Furthermore, freedom of religion or belief entails a negative component, i.e., the freedom not to be exposed to any pressure of performing religious or belief activities against one's own will (A/HRC/16/53, 39). This aspect is especially relevant where women and girls are coerced by the State or non-State actors to wear religious symbols not essential to or against their convictions. Special Rapporteurs have documented numerous cases, including but not limited to Sudan (E/CN.4/1993/62, 57; E/CN.4/1995/91, 93; A/51/542/Add.2, 51), Algeria (E/CN.4/1993/62, 57; E/CN.4/1995/91, 36; E/CN.4/2003/66/Add.1, 59), Islamic Republic of Iran (A/HRC/7/10/Add.1, 125–126), Afghanistan (E/CN.4/1998/6, 60; E/CN.4/1999/58, 26; E/CN.4/2000/65, 7; A/56/253, 30; A/HRC/4/21/Add.1, 7–8), Gaza (A/HRC/10/8/Add.2, 64; Bielefeldt/Ghanea/Wiener 2016, 159) and the Maldives (A/HRC/4/21/Add.3, 53), where women were compelled to wear Islamic clothing by State actors or did so due to fear or social expectation. In response to such concerns, some governments have introduced restrictions on the wearing of headscarves, assuming that women do not usually wear them freely. However, as noted by several mandate-holders, this assumption lacks an empirical basis; even where coercion occurs, it does not justify the widespread prohibition of religious clothing in public life

(E/CN.4/2006/5/Add.4, 99; Bielefeldt/Ghanea/Wiener 2016, 377). Special Rapporteur Jahangir devoted a thematic report to the issue of religious symbols, outlining general criteria to help governments balance competing human rights when regulating religious clothing. She set out a series of "do's and don'ts" for parliamentarians and officials to ensure compliance with international human rights standards (E/CN.4/2006/5, 55). Both Special Rapporteurs Jahangir and Bielefeldt, however, emphasized that such assessments must be made on a case-by-case basis, considering the specific context and human rights involved (E/CN.4/2005/61, 70; E/CN.4/2006/5, 51; A/HRC/10/8, 43; A/HRC/16/53, 42).

### 3.5 Registration of religious organizations

Although the concept of "registration" may appear technical or politically neutral, it often gives rise to serious human rights challenges concerning freedom of religion or belief. In many States, the full exercise of this freedom is restricted to members of registered religious communities, resulting in the exclusion of unregistered communities from basic religious rights and activities. Registration procedures are often excessively bureaucratic and complex, undermining rather than facilitating the exercise of this fundamental right, which exists independently of administrative approval (Bielefeldt/Ghanea/Wiener 2016, 223; Schabas 2019, 523–524).

Under Article 18 (1) of the Covenant, manifestation of religion or belief can take a broad range of forms, including the acts integral to the conduct of basic affairs by religious groups, such as "registering religious, charitable, or humanitarian institutions as well as receiving voluntary financial and other contributions from individuals or institutions" (Brown 2022, 9). The Committee has raised concerns in cases where registration is mandatory (CCPR/C/VNM/CO/3, 43–44), excessively burdensome or relies on vague laws and regulations that are arbitrarily applied

(CCPR/C/MNG/CO/5, 24), or where one religious group holds decision-making authority over the registration of another (CCPR/C/IDN/CO/1, 24).

The impact of such requirements has been addressed in several cases against Azerbaijan (CCPR/C/131/D/2805/2016; CCPR/C/130/D/2928/2017). In *Aliyev*, the Committee held that the State party had failed to demonstrate that the application of the regulations under domestic law was proportionate to the protection of public safety, order, health, morals or the rights of others and that the prior approval of religious literature and registration requirements were the least restrictive measure necessary (CCPR/C/131/D/2805/2016, 7.4). In *Mammadov*, the Committee similarly found that the State party had failed to "justify the blanket ban on religious worship outside of a registered religious organization" (CCPR/C/130/D/2928/2017, 7.6). In both cases, it concluded that the State party failed to demonstrate that the limitations imposed were permissible under Article 18 (3) of the Covenant (Brown 2022, 13).

In *Malakhovsky and Pikul v. Belarus*, the Committee held that refusal to register a Krishna community, which prevented them from carrying out fundamental religious activities, amounted to a disproportionate limitation of the authors' right to manifest their religion, violating Article 18 (3) (CCPR/C/84/D/1207/2003, 7.6). A similar approach was adopted in the case concerning *Sister Immaculate Joseph and eighty Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen in Sri Lanka*, where rejection of their incorporation unduly restricted their freedom to manifest religion. The Committee concluded that the reasons provided by the State party were insufficient to justify that the restrictions were necessary, amounting to a breach of Article 18 (1) (CCPR/C/85/D/1249/2004, 7.2–7.3).

In *Bekmanov v. Kyrgyzstan*, the Committee considered the requirement of submission of a list of 200 founding members

approved by a local district council for registration, imposing an arbitrary and unnecessary bureaucratic burden on small religious groups and effectively preventing them from obtaining registration. It found that the State party had failed to demonstrate why this requirement was necessary under Article 18 (3). Given the refusal to register caused the inability to carry out religious activities as they constitute a criminal offence, the Committee held that this restriction was not necessary to achieve a legitimate aim under Article 18 (3) and therefore violated Article 18 (1) of the Covenant (CCPR/C/125/D/2312/2013, 7.4–7.6).

Beyond specific registration laws of religious communities, general association laws can raise human rights concerns. For instance, in its concluding observations on Indonesia, the Committee criticized the country's law on mass organizations for imposing burdensome and vague registration requirements and for demanding conformity with the State's official philosophy of *Pancasila*, promoting belief in "the One and Only God" (CCPR/C/IDN/CO/1, 24). Before the law's adoption, Special Rapporteur Bielefeldt and three other mandate-holders (Special Rapporteur on the Freedom of Opinion and Expression, Special Rapporteur on the Freedom of Peaceful Assembly and Association, and Special Rapporteur on the Situation of Human Rights Defenders) jointly condemned the Bill for requiring organizations in Indonesia to maintain religious values, which could violate the freedom of religion or belief, including that of non-theistic and atheistic believers (OHCHR 2013; Bielefeldt/Ghanea/Wiener 2016, 230). Their statement underscored the indivisible, interdependent and interrelated nature of these rights, stressing that any restriction must be necessary in a democratic society, proportionate to its purpose, and consistent with pluralism, tolerance and broadmindedness (ibid.).

The Committee and successive Special Rapporteurs, in their reports and concluding observations on Kazakhstan and Turkmenistan, consistently raised concerns about laws requiring

compulsory registration and penalizing the conduct of any religious activities without registration (CCPR/C/KAZ/CO/1, 24; CCPR/C/TKM/CO/1, 17; A/HRC/10/8/Add.4, 22–32 and 64; A/HRC/28/66/Add.1, 24–31 and 69(d); Bielefeldt/Ghanea/Wiener 2016, 226). Special Rapporteur Jahangir, in her mission report on Turkmenistan, observed that authorities often view gatherings for religious or other purposes with suspicion, fearing they could foster subversive movements and could be a threat to State control. She reiterated that the State bears the burden of justifying any limitation on freedom of religion or belief and freedom of association (A/HRC/10/8/Add.4, 56–58).

### 3.6 Asylum and non-refoulement

The Committee has dealt with a significant number of cases relating to claims of a violation of Article 18 brought by individuals requesting asylum, mainly in some Western countries, especially Sweden, Denmark and Canada. What these cases have in common are the claim that their religious belief or conversion makes the complainant a target and causes them to fear for their lives, should they be returned to their country of origin. The Committee has developed a practice whereby there needs to be substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated under Articles 6 and 7 of the Covenant (Schabas 2019, 529–531). The risk must be personal and there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists (ibid., 529). The Committee has regularly emphasized that it will intervene only if the assessment by the national authorities was arbitrary or amounted to a manifest error or denial of justice (ibid.). Communications to the Committee invoking Article 18 as grounds for non-refoulement have all been rejected (ibid., 530).

## 4. Issues of interpretation

While both the ICCPR and the European Convention on Human Rights (ECHR) recognize freedom of religion or belief as a core human right, the United Nations Human Rights Committee and the European Court of Human Rights (ECtHR) have adopted different interpretative approaches to some issues in relation to its manifestation and limitation. These differences may have stemmed from deference granted to national authorities by the ECtHR based on the doctrine of "margin of appreciation", whereas the Human Rights Committee usually does not resort to this doctrine (Bielefeldt/Ghanea/Wiener 2016, 565).

Probably one of the most controversial issues of the interpretation concerns religious clothing. In *S.A.S. v. France* (App No 43835/11, 162), the ECtHR ruled that a French law which prohibited the wearing of full-face veils in public was not in violation of Articles 8, 9, 10, and 14 of the ECHR. The ECtHR found that "in particular to the breadth of the margin of appreciation afforded to the respondent State in the present case, […] the ban imposed by the Law […] can be regarded as proportionate to the aim pursued, namely the preservation of the conditions of 'living together' as an element of the 'protection of the rights and freedoms of others'" (ibid., 157). In their dissenting opinion, the judges Nussberger and Jäderblom disagreed with the judgement for sacrificing individual rights to abstract principles, finding a violation of Articles 8 and 9 of the Convention. They asserted that the "case-law is not clear as to what may constitute 'the rights and freedoms of others' outside the scope of rights protected by the Convention" (ibid., Joint Partly Dissenting Opinion of Judges Nussberger and Jäderblom, 5). Furthermore, the concept of "living together" is not explicitly protected under any Convention right, and even if arguably it can be regarded as related to certain provisions, it remains far-fetched and vague (ibid.). On the other hand, the Committee, in cases such as Y*aker* and *Hebbadj*, found similar bans to be disproportionate and discriminatory, stressing that States parties must demonstrate

that the limitation was necessary and proportionate to a legitimate interest rather than rely on generalized social aims (see above 3.4).

When considering the education contexts and gendered dimension in the ECtHR rulings, in the cases of *Leyla Şahin v. Turkey* and *Dahlab v. Switzerland*, the Court invoked secularism and gender equality to justify restrictions in education. In *Şahin*, where a university student with headscarf was denied access to lectures and examinations, the ECtHR upheld Türkiye's headscarf ban at the university, stating that "the regulations on the Islamic headscarf were not directed against the applicant's religious affiliation, but pursued, among other things, the legitimate aim of protecting order and the rights and freedoms of others and were manifestly intended to preserve the secular nature of educational institutions" (App No 44774/98, 165). Similarly, in *Dahlab*, which was about the prohibition on a primary-school teacher from wearing a headscarf in the performance of her professional duties, the Court declared the case inadmissible on the basis that "a powerful external symbol such as the wearing of a headscarf […] might have some kind of proselytising effect, [and] is hard to square with the principle of gender equality" (App No 42393/98, 13).

By contrast, the Committee, in its Views on the cases of *Hudoyberganova* and *Türkan*, found a violation of Article 18 on the grounds that the State parties had failed to justify the restriction on reasonable and objective criteria for the fulfilment of a legitimate aim (see 3.4 above). Therefore, although both systems aim to balance freedom of religion or belief and legitimate aims of States, they adopt diverging interpretations; the ECtHR privileges social cohesion and margin of appreciation of the States, while the Human Rights Committee, considering the universal application of the ICCPR, prioritizes equality and individual autonomy.

Like in universities, controversies on religious clothing manifested themselves also in public schools, which often seek to create a neutral learning environment free from ideological influence,

though pupils' younger age and compulsory education make them particularly vulnerable (A/HRC/16/53, 44). In *Bikramjit Singh v. France*, the Committee found that the expulsion of a Sikh pupil for wearing a small turban (*keski*) was disproportionate and unsubstantiated by evidence that it threatened order at the school or others' rights, thereby violating Article 18 of the ICCPR (CCPR/C/106/D/1852/2008, 8.7). This reasoning is particularly important as it diverges from the ECtHR's decisions in *Jasvir Singh v. France* and *Ranjit Singh v. France*, which upheld the French ban as compatible with *laïcité* (App no 25463/08; App no 27561/08). The Committee, however, held that secularism does not require the prohibition of common religious symbols, leaving a smaller margin of discretion for States than the ECtHR (CCPR/C/FRA/CO/4, 23; CCPR/C/106/D/1852/2008, 3.15, 8.6; Bielefeldt/Ghanea/Wiener 2016, 153–154). Special Rapporteur Jahangir further cautioned that the doctrine of the margin of appreciation must not undermine the universal, indivisible and interdependent and interrelated nature of human rights affirmed in the Vienna Declaration (E/CN.4/2006/5, 59; Bielefeldt/Ghanea/Wiener 2016, 154).

The fragmentation between the ECtHR and the Committee challenges the coherence of the human rights framework and the development of a holistic "ecosystem" of human rights protection (Bielefeldt/Wiener 2019, 165). This can also lead to so-called forum shopping, where claimants choose to bring their case either to Geneva or Strasbourg based on which body is more likely to support their position. Similarly, it is problematic when States select the interpretation of an international or regional mechanism that suits them, effectively allowing them to evade their human rights obligations (ibid., 151). A more coherent interpretative dialogue between these mechanisms could contribute to bridging gaps and strengthening protection against discriminatory or disproportionate restrictions on freedom of religion or belief. The comparative analysis of their case law underscores not only the

importance of consistency but also the need for a rights-based approach that resists the instrumentalization of secularism or equality to justify restrictions on this right.

Notwithstanding the clearly divergent outcomes between Strasbourg and Geneva on the issue of religious clothing, there is remarkable convergence between these bodies. This is perhaps best illustrated in how both the Committee and the ECtHR shifted their rulings in regard to protecting the right of conscientious objection to military service. Both began from the position of not recognizing such a right in their respective legal frameworks (ibid., 162). However, as noted above in section 3.3, the Committee in General Comment No. 22 indicated a shift in its position, initially as a right protected under the *forum externum*, as evident in the cases decided until 2011, after which it adopted the *forum internum* approach of protecting absolutely the right of conscientious objection to military service. As Bielefeldt and Wiener (ibid.) point out, given the prohibition on derogation from Article 18 even in time of public emergency that threatens the life of the nation, "the *forum internum* approach would make it impossible to derogate from or limit any conscientious objection to military service". The ECtHR has also shifted its interpretation and application of the provisions in Article 9 of the European Convention on the freedom of thought, conscience and religion. In 2011, the Grand Chamber, in the case of *Bayatyan v. Armenia* (App No 23459/03) citing normative developments in regard to recognition of a right to conscientious objection to military service, including the jurisprudence of the Committee on this matter, for the first time recognized that Article 9 of the Convention offers protection to such a right as a legitimate manifestation of one's religion or belief. Although coming shortly after the Committee shifted to the *forum internum* approach, the ECtHR adopted the *forum externum* approach, therefore holding the right subject to the limitations regime under Article 9 (2) of the Convention. Some commentators have suggested that the *forum externum* approach offers more

"dogmatic clarity" in that it likely enables a more consistent approach to addressing different forms of conscience-based claims (Bielefeldt/Wiener 2019, 163). Others, however, have noted that despite the difference in the approach, the ECtHR has not found that any of the permissible limitations on manifestation of religion or belief had been applicable in the cases it had considered (Zyberi/Sánchez Madrigal 2022, 128). In both cases, they were responding to standard-setting efforts undertaken in the international and regional contexts as well as developments at the national level in recognizing the protection of conscientious objection to military service (Shaheed/Rodwell 2022).

Article 18 is an important part of the Covenant, as reflected in the Committee's regular engagement with this right over the past almost five decades. General Comment No. 22 (1993), albeit over 30 years old and in dire need of an update, fulfils an important function with the general guidance it provides to States parties to the ICCPR. By engaging periodically in a constructive dialogue during the State reporting process through raising various issues concerning freedom of religion or belief and trying to address systematic problems, the Committee plays an important role in ensuring respect for freedom of religion or belief. Moreover, the so far 116 States parties which have through the Optional Protocol recognized the competence of the Human Rights Committee to receive and consider communications from individuals, allows it to address individual complaints about State compliance with freedom of religion or belief. The Committee has indicated the need for ensuring equal treatment of various religious communities to funding and to permissions for building places of worship, respect and tolerance for religious diversity and eradicating stereotypical prejudices based on religion, particularly in school settings. It has pointed out the need to remove the requirement of taking a religious oath to assume senior public office positions. And finally, the Committee has requested State parties to continue to take measures to fight against discrimination and incitement to

hatred and violence aimed at any religious community. Overall, and alongside other mechanisms, especially the Special Rapporteur on freedom of religion or belief, the Committee remains an important mechanism for safeguarding this fundamental freedom worldwide.

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# CHAPTER V.

# INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966)

**Bhumika Modh[1] and Prashant Sharma[2]**

**Abstract:** The International Covenant on Economic, Social and Cultural Rights serves as a foundational pillar of contemporary international human rights law, embodying the ideals of dignity, equality and justice across the spheres of employment, education, health and social welfare. However, the intellectual and moral foundations of the Covenant remain deeply shaped by Western

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liberal and Judeo-Christian traditions of rights and justice, with limited engagement with other philosophical lineages. This chapter examines the International Covenant on Economic, Social and Cultural Rights through an interreligious and intercultural lens, focusing particularly on the Dharmic traditions of the Indian subcontinent. It argues that the Covenant's framers and interpreters missed a significant opportunity to draw upon the inclusive, duty-oriented and sustainability-driven ethics inherent in Dharmic thought. By comparing the historical context of the drafting process, analyzing subsequent jurisprudence and exploring interpretive gaps, this chapter suggests that the integration of Dharmic perspectives, such as *artha* (righteous wealth), *dharma* (ethical duty), and the oneness of existence, could have enriched the Covenant's universality and contemporary relevance, especially in addressing ecological balance, equality and sustainable livelihoods.

**Keywords:** ICESCR; Dharmic philosophy; human rights; sustainable development; equality; dignity; economic justice; religion and law; cultural pluralism; universality of rights.

## 1. Introduction

When the International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted in 1966, it completed a significant chapter in the evolution of international human rights. Together with the International Covenant on Civil and Political Rights (see above chapter IV), it gave binding legal expression to the Universal Declaration of Human Rights of 1948 (see above chapter II). The ICESCR embodies the global commitment to ensure that every person enjoys rights relating to work, health, education and an adequate standard of living. Yet, while the Covenant speaks the language of universality, its conceptual vocabulary is rooted largely in Western Enlightenment ideas and Judeo-Christian moral thought (Donnelly 2003; Ishay 2008).

This chapter explores how the ICESCR, despite its global ambition, remains narrowly informed by one civilizational paradigm. It highlights the absence of Dharmic thought, represented in Buddhist, Hindu, Jain and Sikh traditions, from the Covenant's intellectual foundations and subsequent interpretive development. These traditions, which have historically shaped the moral, economic and social imagination of one-sixth of humanity, offer distinctive perspectives on dignity, duty and justice. Their omission from the ICESCR process represents not only a philosophical gap but also a missed opportunity for intercultural dialogue in the making of global norms.

The Dharmic worldviews emphasize an integral relationship between the self and the cosmos, the material and the moral. Concepts such as *dharma* (righteous conduct), *artha* (ethical pursuit of wealth), *karma* (action and consequence) and *ahimsa* (non-harm) provide an alternative moral vocabulary to rights-centric frameworks. In these traditions, the emphasis is not merely on entitlement but on ethical responsibility – to self, society and environment (Sen 2009). This sense of interdependence, or oneness of existence, situates rights within a broader web of relationships rather than isolating the individual as an autonomous bearer of claims.

By engaging this philosophical terrain, the chapter asks three interrelated questions. First, what religious and ideological influences shaped the drafting of the ICESCR? Second, how have the Covenant's monitoring bodies engaged with religious or faith-based reasoning in their jurisprudence? And third, how might Dharmic perspectives enrich or challenge dominant interpretations of economic, social and cultural rights?

The analysis proceeds in four parts. The next section traces the historical and ideological context of the Covenant's negotiation, showing how Western religious and secular currents informed its content while Dharmic or non-Abrahamic frameworks remained

peripheral. The third section reviews relevant jurisprudence of the Committee on Economic, Social and Cultural Rights and other United Nations mechanisms to identify how faith-related arguments have been handled. The fourth section explores issues of interpretation, particularly in relation to rights that Dharmic thought foregrounds but that the ICESCR neglects, such as the right to harmony with nature, the right to sustainable livelihoods and the moral obligation to aid in disaster recovery.

Through this interdisciplinary approach, the chapter aims to demonstrate that engaging Dharmic philosophies does not relativize universal rights but deepens them. Their emphasis on balance, sustainability and collective wellbeing offers valuable insights for revitalizing the ICESCR's implementation in an era marked by inequality and ecological crisis.

## 2. Religious influences during the travaux préparatoires

The *travaux préparatoires* of the ICESCR, the preparatory works of its drafting between 1947 and 1966, reveal a complex interplay of political ideologies, colonial legacies and competing moral vocabularies. The drafting committees were composed largely of delegates from Europe, North America and Latin America, many of whom drew consciously or unconsciously upon the Christian theological notions of human dignity, charity and moral duty toward the poor (Lauren 2011). The Universal Declaration of Human Rights (see above chapter II) had already been influenced by Catholic personalism and Protestant social ethics, as reflected in the language of the "inherent dignity of the human person".

While representatives from India and other newly independent Asian States participated in the debates, their contributions were shaped by geopolitical concerns more than by theological or philosophical articulations. Indian representatives such as Hansa Mehta and Lakshmi Menon had played a notable role in ensuring gender equality in the Universal Declaration of Human Rights, but by the time the ICESCR was being negotiated, the dominant

intellectual discourse had shifted toward Cold War ideological divisions between capitalist and socialist blocs (Morsink 1999). Consequently, questions of religious or cultural plurality received limited attention.

The drafting process revolved around reconciling the Western liberal emphasis on individual freedoms with the socialist concern for collective welfare. Religion appeared mainly as a moral justification for social justice, not as a diverse set of epistemologies. The Judeo-Christian framing of "man's duty to his fellow man" persisted, while non-Abrahamic moral systems were treated as culturally specific or "regional". The very structure of the Covenant, its reliance on State obligations to progressively realize individual entitlements, mirrored Western conceptions of law and governance, rather than the relational and duty-based ethos characteristic of Dharmic philosophies (Baxi 2002).

Dharmic traditions, particularly Buddhist and Hindu thought, could have contributed a nuanced conception of rights as embedded in reciprocal duties. The idea of *dharma* implies not only moral law but the inherent order that sustains social and cosmic balance. Economic activity (*artha*) is legitimate only when pursued through *dharmic* means, respecting justice, sustainability and non-harm. The Arthashastra, for instance, distinguishes between the acquisition of wealth that sustains collective prosperity and that which causes exploitation or ecological degradation (Kautilya, trans. Rangarajan 1992). This holistic view aligns with the ICESCR's objectives but extends them by integrating moral restraint and ecological balance into the economic domain.

Similarly, Buddhist ethics foreground right livelihood (*samyag ājīva*), one of the Eightfold Path components, as an ethical imperative for both individuals and society. This notion, had it informed the ICESCR, might have expanded the Covenant's understanding of work and labour rights beyond material welfare to include ethical, psychological and environmental dimensions (Harvey 2000). The

Jain commitment to *ahimsa* (non-violence) also offers a profound ecological ethic, emphasizing coexistence with all life forms, a dimension only recently emerging in contemporary human rights discourse through the language of environmental rights.

The limited consideration of such perspectives during the *travaux préparatoires* was not merely an oversight but a reflection of the global power asymmetries of the time. Colonial hierarchies persisted in defining which moral vocabularies counted as "universal". Non-Western traditions were often expected to conform to, rather than contribute to, the dominant paradigm. The idea of universality became synonymous with Western rationality, whereas alternative forms of moral reasoning were seen as parochial or metaphysical (Mutua 2002).

Moreover, the UN's post-war institutional culture, grounded in secular liberalism, tended to regard religion as a private domain. This approach, though intended to promote neutrality, effectively excluded the possibility of plural religious contributions to the human rights framework. In contrast, Dharmic traditions do not posit a strict separation between the secular and the spiritual; rather, they integrate ethical principles into social and economic life. A more inclusive dialogue could have allowed the ICESCR to incorporate these holistic perspectives, fostering a genuinely intercultural foundation for economic and social rights.

It is worth noting that some Asian delegates did gesture toward these broader moral frameworks. For example, during early debates on the right to education and cultural participation, Indian representatives invoked the idea of harmony between material progress and moral development. Yet, these interventions were often reframed within the prevailing language of "development" and "modernization", limiting their transformative potential.

A related debate on religious and moral education was triggered by Arcot Krishnaswami, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection

of Minorities. In his 1960 *Study of discrimination in the matter of religious rights and practices*, Krishnaswami suggested 16 Basic Rules (E/CN.4/Sub.2/200/Rev.1, 63), and he commented the following about the formulation on the right to education in the draft covenant on economic, social and cultural rights, which had not yet been adopted at that time (ibid., 68):

> "It would appear that article 14 (3) applies only to the choice of schools by parents or legal guardians who desire to ensure the religious and moral education of their children in conformity with their own convictions; it does not deal with the more general issue of the upbringing of a child. Moreover, the article refers to 'parents and, when applicable, legal guardians', but does not envisage a situation in which children have been torn from their family environment and brought up by individuals who are neither parents nor legal guardians. Rule 1 (2) emphasizes that 'when a child is torn from its family environment, the decision as to the religion or belief in which that child is to be brought up should be made primarily in accordance with the objectively ascertained interests of the child, due attention being paid to the expressed or presumed wish of the parents'. It might be considered advisable to include a fresh provision along these lines in the draft covenant on civil and political rights, first because this is a matter of primary importance in order to ensure the right to freedom of thought, conscience and religion; and secondly because the provision which appears in article 14 (3) of the draft covenant on economic, social and cultural rights would not bind States which become parties only to the covenant on civil and political rights."

Draft article 14 (3) was subsequently adopted on 16 December 1966 by the General Assembly as Article 13 (3) of ICESCR, albeit without any of the changes that Arcot Krishnaswami had suggested in 1960. Separately, the General Assembly included a formulation similar to Article 13 (3) of ICESCR also in Article 18 (4) of the International Covenant on Civil and Political Rights (see above chapter IV).

Thus, the ICESCR emerged as a document shaped primarily by Western moral philosophy, secular humanism and socialist welfare ideals, with minimal engagement with Dharmic or indigenous worldviews. The absence of these voices constrained the Covenant's capacity to articulate an integrated vision of human wellbeing, one that sees economic, social and ecological balance as interdependent rather than competing goals.

### 3. Faith-related jurisprudence

Since its entry into force in 1976, the ICESCR has evolved through interpretive practice, notably via the General Comments of the Committee on Economic, Social and Cultural Rights (CESCR) and related mechanisms such as Special Rapporteurs. These texts collectively shape the living law of the Covenant. Yet, a close reading of this jurisprudence reveals that faith-related reasoning, particularly from non-Abrahamic traditions, remains peripheral. The Committee has acknowledged religion primarily in terms of non-discrimination and cultural rights but has rarely engaged with faith-based moral systems as normative sources for interpreting the Covenant.

The CESCR's General Comment No. 3 (1990) on the nature of States parties' obligations emphasized progressive realization and the use of maximum available resources (E/1991/23, annex III). While the document drew conceptually on a secular framework of social justice, it echoed Christian-inflected ideas of moral responsibility and stewardship without acknowledging parallel notions in other traditions. For instance, the idea that resources are

held in trust for the common good resonates strongly with the Dharmic concept of *parigraha*, the principle of non-possession and responsible use of wealth, but this connection remains unexplored (Sen 2009).

In General Comment No. 12 (1999) on the right to adequate food, the Committee invoked the notion of "freedom from hunger" as a moral imperative, highlighting the duty of States to prevent starvation (E/C/12/1999/5). Yet, it did not engage with alternative philosophical justifications for this duty, such as the Dharmic obligation of *anna-dāna* (the ethical act of sharing food), which has historically underpinned community-based food security systems across the Indian subcontinent (Narayanan 2015). The absence of such references illustrates the secular-liberal bias that privileges universalist language while sidelining non-Western moral reasoning.

The limited faith engagement in CESCR's jurisprudence contrasts with the occasional openness shown by other United Nations bodies. The Human Rights Committee, for instance, in its interpretation of Article 18 of the International Covenant on Civil and Political Rights (ICCPR) on freedom of religion or belief, recognized already in 1993 the diversity of moral and spiritual traditions by stressing that "theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief" are equally protected (CCPR/C/21/Rev.1/Add.4, 2). The Human Rights Committee's emphasis on the fundamental character of Article 18 of the ICCPR, as "reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4 (2) of that Covenant", was also explicitly cross-referenced by CESCR in its General Comment No. 13 on the right to education (E/C.12/1999/10, footnote 14). Furthermore, Special Rapporteurs on freedom of religion or belief have occasionally highlighted the contributions of Asian spiritual traditions to the moral basis of human rights (Bielefeldt 2013).

However, these insights have not substantially influenced the CESCR's interpretive corpus.

Dharmic traditions, if engaged, could enrich several rights under the ICESCR. For example, Article 6 on the right to work could be deepened by the Buddhist idea of right livelihood, which views work as a means to personal growth and social harmony rather than mere economic survival (Harvey 2000). Article 7's provisions on just and favourable conditions of work could draw upon the Hindu and Jain emphasis on ethical occupation, linking dignity of labour with non-exploitative economic relations. Similarly, Article 11 on the right to an adequate standard of living aligns closely with the *dharma-artha-kāma* triad, where the pursuit of material wellbeing is legitimate only when harmonized with moral duty and moderation (Sharma 1999).

Another area of potential synergy lies in the right to health in Article 12 of the ICESCR. The Committee's General Comment No. 14 (2000) defines health as a "state of complete physical, mental and social well-being" (E/C.12/2000/4, 4), echoing holistic principles that Dharmic systems have articulated for centuries. Ayurveda and Buddhist medicine, for instance, perceive health as a balance of bodily, mental and environmental elements, concepts now echoed in the World Health Organization's holistic health paradigm (Zimmermann 2011). Recognition of such indigenous epistemologies could have enhanced cultural legitimacy and local ownership of the Covenant's implementation in South and Southeast Asia.

At the same time, Dharmic frameworks challenge certain underlying assumptions in human rights law. Their duty-centred orientation contrasts with the rights-based logic that positions individuals primarily as claimants vis-à-vis the State. In Buddhist and Hindu ethics, duties precede rights; the fulfilment of one's *dharma* ensures the wellbeing of all. While this approach risks reinforcing hierarchy if uncritically applied, it also offers a

corrective to the excessive individualism that sometimes characterizes liberal human rights discourse (Baxi 2002). Integrating this dialectic could foster a more relational understanding of economic and social rights, one that emphasizes mutual obligations and collective responsibility.

A notable development aligning with Dharmic sensibilities is the growing recognition of environmental dimensions within CESCR's jurisprudence. The Committee's General Comment No. 24 (2017) on State obligations in the context of business activities underscored corporate responsibility for environmental harm (E/C.12/GC/24). Likewise, the UN General Assembly's 2022 resolution recognizing the right to a clean, healthy and sustainable environment (A/RES/76/300) resonates with the Dharmic ethos of *ahimsa* and ecological interdependence. Yet, such convergence remains incidental rather than deliberate, reflecting the absence of structured engagement with Dharmic philosophies in human rights reasoning.

## 4. Issues of interpretation

The intersection of faith traditions and ICESCR rights raises several interpretative challenges and opportunities:

- **Complementarity vs. Conflict:** Religious values can support rights-based development, but tensions arise when interpretations of sacred texts are invoked to justify discrimination (for example in health, education or gender roles). A religiously sensitive yet rights-based approach requires ongoing negotiation between universal norms and diverse theologies.
- **Progressive Realization vs. Religious Absolutism:** The ICESCR enshrines the principle of "progressive realization", recognizing resource constraints. Some religious narratives, however, frame justice as absolute or divinely ordained, potentially demanding immediate action. This gap can be

bridged by reinterpreting sacred imperatives as guiding ideals for policy prioritization and moral accountability.

- **Cultural Particularities:** The risk of cultural relativism arises when States use "religious tradition" to justify failures in implementation. The CESCR has consistently emphasized that cultural or religious arguments must not undermine core obligations under the Covenant. However, the treaty also invites contextualization, which can be enriched by inclusive theological reasoning from within traditions themselves.
- **Faith as a Means of Participation:** Article 1 on the right to self-determination can be interpreted to include collective religious identity, particularly among indigenous and minoritized communities. Faith-based participation in development programs, policymaking and monitoring mechanisms offers a pathway to genuine ownership and sustainability.

The interpretive evolution of the ICESCR presents several challenges where Dharmic insights could offer constructive perspectives. Three areas merit particular attention: (1) the conceptualization of equality; (2) the environmental dimension of rights; and (3) the moral duty to assist those affected by natural or social calamities.

### 4.1 Equality Beyond Formal Non-Discrimination

While the Covenant prohibits discrimination based on race, colour, sex, language, religion or social origin (Article 2), it does not articulate a stand-alone "right to equality". This omission limits the scope of intersectional analysis and the recognition of structural hierarchies. From a Dharmic viewpoint, equality (*samatva*) arises from the ontological oneness of existence (*advaita*), where every being shares intrinsic worth. This metaphysical grounding transcends mere formal equality and demands ethical conduct that respects the interdependence of all life (Radhakrishnan 1952).

Had this perspective informed the Covenant, equality might have been conceptualized not just as a prohibition against discrimination but as a positive moral obligation to promote balance and harmony in social relations. For example, policies on education, employment and health could have been framed as collective duties to ensure inclusivity, reflecting the spirit of *sarva-bhūta-hita* – the welfare of all beings. In practice, this might encourage affirmative measures rooted in solidarity rather than charity.

### 4.2 Right to a Clean and Sustainable Environment

Another interpretive gap concerns environmental rights. While the ICESCR recognizes the right to health and adequate living conditions, it does not explicitly guarantee the right to a clean environment. The omission reflects the mid-twentieth-century context, when ecological consciousness had not yet entered mainstream international law. Dharmic traditions, however, have long emphasized harmony with nature as an ethical imperative. The concept of *ṛta* in Vedic philosophy denotes the cosmic order that sustains ecological balance, while the Buddhist and Jain traditions teach interdependence and non-violence toward all forms of life (Chapple 2017).

Incorporating such perspectives could strengthen the moral foundation of environmental rights under the Covenant. The recognition of *prakriti* (nature) as sacred implies that environmental degradation is not merely a policy failure but a moral transgression. This viewpoint resonates with the contemporary understanding of ecological justice and the "rights of nature" movement, which has found expression in constitutions such as that of Ecuador (2008) and judicial innovations in India recognizing rivers as legal persons. Thus, Dharmic philosophy offers both ethical depth and practical pathways for interpreting economic and social rights in the Anthropocene era.

### 4.3 Right to Sustainable Livelihoods and Post-Disaster Support

Dharmic ethics also illuminate two rights insufficiently elaborated in the ICESCR: the right to sustainable livelihoods and the right to assistance after natural disasters. The Covenant guarantees the right to work and an adequate standard of living, but it does not explicitly address the sustainability of livelihoods or the duty of solidarity in times of collective distress. Dharmic texts consistently emphasize stewardship, mutual aid and the moral obligation of rulers and communities to rebuild after calamities. The *Arthashastra*, for instance, prescribes State intervention to support citizens affected by famine or floods (Kautilya, trans. Rangarajan 1992). Similarly, the Buddhist ideal of *karuṇā* (compassion) mandates social responsibility toward the suffering, extending beyond mere charity to systemic care.

In the modern context of climate-induced disasters, such principles gain renewed relevance. The duty-oriented dimension of Dharmic thought could inform a human rights-based approach to disaster relief that integrates ethical obligation with State accountability. Recognizing a "right to help and rebuilding of lives after natural disasters", as suggested in emerging scholarship, would align with both Dharmic compassion and the Covenant's spirit of solidarity (Alston 2005).

### 4.4 Interpreting Universality through Plurality

A broader interpretive issue lies in reconciling universality with cultural plurality. Critics have long argued that the ICESCR reflects a Eurocentric conception of universality that marginalizes alternative moral epistemologies (Mutua 2002). Engaging Dharmic traditions could offer a relational model of universality, one based not on homogeneity but on shared ethical resonance. The Dharmic idea of *vasudhaiva kutumbakam* ("the world is one family") articulates a cosmopolitanism grounded in empathy rather than

dominance. This vision complements rather than contradicts the Covenant's objective of human dignity and equality.

Integrating such plural perspectives would also enrich human rights education and implementation strategies. For instance, community-driven sustainability initiatives in India, inspired by Buddhist and Gandhian principles, demonstrate how rights realization can emerge from ethical practice rather than legal enforcement alone. Recognizing these traditions as legitimate sources of moral reasoning would enhance the ICESCR's cultural legitimacy across diverse societies.

The Covenant represents a monumental achievement in codifying economic, social and cultural rights as integral to human dignity. Yet, its philosophical genealogy reveals a missed opportunity for deeper intercultural engagement. The absence of Dharmic thought from its drafting and interpretive processes has limited the Covenant's capacity to articulate a truly universal vision of wellbeing, one that integrates economic justice, ecological balance and moral responsibility.

Dharmic philosophies, with their emphasis on *dharma*, *artha* and the oneness of existence, offer perspectives that move beyond entitlement toward ethical stewardship. They remind us that rights divorced from duties risk degenerating into self-interest, while duties without rights can entrench hierarchy. A balanced synthesis, grounded in both moral responsibility and social justice, could revitalize the ICESCR's universality in a fragmented world. A more dialogical approach could facilitate culturally grounded pathways to realizing Covenant rights without compromising universality.

As the international community revisits the Covenant in light of contemporary challenges such as climate change, inequality and cultural alienation, engaging with Dharmic traditions is not merely an academic exercise but a normative necessity. It invites us to imagine a human rights framework that speaks to all civilizations, a covenant of coexistence as much as of justice.

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# CHAPTER VI.

# CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1979)

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**Abstract:** While the Convention on the Elimination of All Forms of Discrimination against Women does not refer directly to "religion" or "belief", the Committee on the Elimination of Discrimination against Women (CEDAW) has played a pioneering

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the development of Nigeria's second and third National Action Plans on UN Security Council resolution 1325. She chaired the Federal Ministry of Women Affairs Ministerial Technical Committee on Private Sector initiatives and is currently leading the development of Nigeria's Affirmative Procurement Policy. She is a fellow of the Hubert Humphrey, Eisenhower and Aspen Institute on Open Societies and serves as the founding Executive Director of Women Arise Development and Humanitarian Initiative.

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role in identifying and analyzing the mutually reinforcing relationship between religions, beliefs and human rights. It has been the first treaty body to increasingly make reference to the Beirut Declaration and its 18 commitments (2017) as well as to the United Nations "Faith for Rights" framework, with the aim to exemplify in its jurisprudence that religion should not slow down the realization of women's rights, but help promote them. Further, the CEDAW Committee has produced an elaborate analysis of the role of faith-based actors in promoting the full implementation of the Convention within existing religious value systems. It has also creatively reached out to faith communities to seek exchange and peer-to-peer learning. This chapter provides a thorough analysis of the CEDAW Committee's rich jurisprudence on religion and women's rights. It elaborates on the Committee's pioneering role in advising on how faith and gender equality can be reconciled, in cases where contradictions seemingly appear. Finally, the chapter outlines the Committee's increasingly differentiated views on how to use the "Faith for Rights" framework in this context.

**Keywords:** Convention on the Elimination of All Forms of Discrimination against Women; Committee on the Elimination of Discrimination against Women; gender equality; women's rights; religion; human rights treaties; treaty body jurisprudence; *travaux préparatoires*; Beijing Declaration and Platform for Action.

## 1. Introduction

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention) was adopted by the United Nations General Assembly on 18 December 1979 and entered into force on 3 September 1981. In its preamble, the Convention observed that despite various resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women, "extensive discrimination against

women continues to exist". The Convention, including through the Committee on the Elimination of Discrimination against Women (CEDAW Committee) which was established to consider progress in the implementation of the Convention (CEDAW Convention, Article 17), sets out to eliminate all forms of discrimination against women. Such discrimination is defined by Article 1 of the Convention as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". Despite this broad definition, the Convention does not include any explicit references to "religion" and "belief". However, the first preambular paragraph refers in a broader sense to the term "faith" by "noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women" (see also above, chapter I).

The relationship between religions, beliefs and women's rights has been a complex one for the CEDAW Committee to unpack. In 2017, States parties to the CEDAW Convention had entered 440 reservations, making it the United Nations human rights treaty with the highest number of reservations, with 60 per cent of these reservations based on religion or belief (Çalı/Montoya 2017, 18). This high number of faith-based reservations demonstrates the religious, cultural and traditional sensitivities in many States parties that continue to shape the promotion and protection, or lack thereof, of women's rights. Despite these sensitivities, the CEDAW Committee has increasingly addressed issues on the interplay between gender equality and faith in an explicit manner over the last years. For instance, in its recent General Recommendation No. 40 (2024) on the equal and inclusive representation of women in decision-making systems, the

CEDAW Committee emphasized that "some misinterpretations of religion and culture can shape gender stereotypes" which in turn "constitute a key barrier to women's equal access to decision-making" (CEDAW/C/GC/40, 30).

Over the past decade, the CEDAW Committee has played a leading role in analyzing the complex interaction between women's rights and religion or belief. It has notably developed constructive recommendations to States parties in numerous areas of such interplay. These include women's right to freedom of religion or belief, intersecting forms of discrimination against women, gender stereotypes, harmful practices, gender-based violence against women, the right to education, equality before the law, marriage and family matters and plural justice systems, to name just a few. The Committee has also developed detailed jurisprudence on the recommended engagement of States parties with – and the responsibilities of – religious actors in the context of bridging gender equality and faith. Furthermore, the Committee has taken on a pioneering role in following up on existing soft law instruments, including the 2012 Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (see below chapter XIII; OHCHR, 2012) and the 2017 Beirut Declaration on "Faith for Rights" (see below chapter XIV). Last but not least, the Committee had encouraged States parties to invite religious leaders and faith-based actors to dialogues on protecting and promoting women's rights in religious contexts, specifically under the United Nations "Faith for Rights" framework, and the Committee itself has promoted such engagement under its own CEDAW Knowledge Hub.

## 2. Religious influences during the travaux préparatoires

The Convention on the Elimination of All Forms of Discrimination against Women does not refer directly to the right to freedom of religion or belief. However, apart from the slightly

different preambular reference to "faith in fundamental human rights", the Convention covers religions or beliefs in at least two of its articles. The closest allusion can be found in Article 13(c), which requires States parties "to take all appropriate measures to eliminate discrimination against women in […] areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: […] (c) [t]he right to participate in recreational activities, sports and all aspects of cultural life". Also Article 1 of the Convention adopts a definition of discrimination against women that puts it into the context of "impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". As an academic commentary of 2012 on the Convention argues, "States parties are obliged to eliminate discrimination against women not only in the fields explicitly covered by the Convention, but also in relation to a much broader range of human rights and fundamental freedoms" (Freeman/Chinkin/Rudolf 2012, 63). They further note that "these rights include, for example, […] the right to freedom of opinion, belief, and religious expression" (ibid.).

The lack of an explicit reference to religion or belief begs the question of faith-based influences during the *travaux préparatoires* of the Convention, or rather the absence thereof. In his comprehensive review of the drafting process of the Convention, Lars Rehof describes such faith-based influences as the "religious-ideological confrontation between Islamic and, in a broad sense, western conceptions of the role of religion in society" (Rehof 1993, 2). Indeed, some delegates from Muslim-majority States raised concerns regarding specific articles during the *travaux préparatoires*, which are also visible in reservations upon ratification of or accession to the Convention, either of a general nature or concerning specific articles, primarily Articles 2, 9, 15 and 16

(Freeman/Chinkin/Rudolf 2012, 31). Specifically, regarding Article 2 of the Convention, Iran noted during the *travaux préparatoires* that some provisions of the text, which was finally adopted by the Commission on the Status of Women, "were not consistent with certain Iranian laws dealing with religion" (Rehof 1993, 54). Notably, Iran has not yet ratified the Convention. On Article 9 of the Convention, one point of discussion during the drafting process was whether Islamic teachings would allow including women's rights at all in the context of nationality (Freeman/Chinkin/Rudolf 2012, 237). There were different interpretations among Muslim-majority States on the transmission by women of their nationality to their children (ibid.).

With regard to Article 16 of the Convention, the proposal to refer to women's "equal right to adopt children" was debated, with some States arguing that adoption itself was not in line with religious law (ibid., 414). Bahrain proposed a new subparagraph (f) which would have recognized "equal rights and duties of both men and women in respect of wardship of children in such a way that does not run counter to the interests of the children and conform with the rules and regulations of society derived from the provision of the applicable religious and positive laws prevailing in the society" (United Nations 1979, 217). After a long discussion on whether the ideas of subparagraph (f) should be retained or deleted, the Working Group of the Whole on the Drafting of the Convention on the Elimination of Discrimination against Women decided to retain them and to try to find a generally acceptable formulation, which led to several proposed new formulations without any specific reference to "religious laws" (ibid., 223–232). The final formulation, which was also agreed to by Bahrain, refers to the same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption, and added in this context "or similar institutions where these concepts exist in national legislation" (CEDAW Convention, Article 16(f)).

Finally, the report of the Working Group does not indicate any

debate among delegates during the drafting process on whether or not Article 13(c) should include more specific rights in the area of religion and belief; however, upon suggestion from Cuba, the final wording clarifies that the right to participate applies to "all aspects of cultural life" (United Nations 1979, 125–126). Overall, religion seems to have been interpreted as a factor limiting women's rights. Representatives of non-governmental organizations in consultative status with the Economic and Social Council attended the meetings of the Working Group only as observers (ibid., 3). There is little evidence of a positive influence of faith-based actors on the *travaux préparatoires* that could have contributed to enshrining more explicitly the right to freedom of religion or belief in the Convention, or that might have allowed to clarify related women's rights concerning, for instance, women's participation in decision-making in the religious sphere or the compatibility of their rights with some – seemingly contradictory – religious, cultural or traditional interpretations.

This analysis of the *travaux préparatoires* demonstrates particularly the concerns of some Muslim-majority States. However, it is important to note that States parties with the same majority religion have addressed the question of reservations differently. Notably, there are a significant number of members of the Organisation of Islamic Cooperation that are States parties to the CEDAW Convention and that have not made any formal reservations to the Convention upon ratification or accession (United Nations, 2025). Further, some Muslim-majority States parties withdrew their religion-based reservations, following national debates on their faith traditions, religious interpretations and gender equality, and often following amendments to national legislation. The lifting of reservations by Morocco and Tunisia are some among other examples, which are outlined in part 4 of this chapter. Acknowledging the importance of the religious background of States parties, the CEDAW Committee has increasingly called on Muslim-majority States to review legislative

provisions and processes in countries with similar sociocultural and religious backgrounds and legal systems, in order to inform their own legislative harmonization process (CEDAW/C/GMB/CO/6, 10; see also CEDAW/C/SEN/CO/8, 42; CEDAW/C/KWT/CO/6, 10; CEDAW/C/SGP/CO/6, 12; CEDAW/C/MYS/CO/6, 9; CEDAW/C/MRT/CO/4, 9; CEDAW/C/BHR/CO/4, 9). Further, the Committee has referred to "good practices of other Muslim countries with regard to *the application of sharia in line with the Convention*" (CEDAW/C/PHL/CO/7-8, 50, emphasis added). In concluding observations to one State party, it has explicitly referred to "*practices of other State parties in the region and in the Organization of Islamic Cooperation (OIC)* who found that article 16 is compatible with sharia law and, thus, opted not to introduce or to withdraw their reservation to the concerned article" (CEDAW/C/JOR/CO/5, 10, emphasis added).

Further, it should be emphasized that the CEDAW Committee has equally engaged on the question of religion, belief and women's rights with numerous States parties with different majority religions other than Islam. First, such States parties have also made reservations to the Convention on the basis of faith. Religion-based general reservations to the CEDAW Convention are all from members of the Organisation of Islamic Cooperation and refer directly (except one) to Islamic law (Çalı/Montoya 2017, 20). However, reservations specific to certain provisions were equally made by non-OIC members, such as India, Israel, Malta, Micronesia and Singapore (ibid., 23-24). For illustrative purposes, India's declaration on Article 16 (2) of the Convention reads "the Government of the Republic of India declares that though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, *religions* and level of literacy" (United Nations 2025, emphasis added). As another example, Israel refers to the laws of its religious communities to explain its reservations to

Article 7(b) and to Article 16 of the Convention (ibid.). Furthermore, Singapore cites its "multiracial and multireligious society and the need to respect the freedom of minorities to practice their religious and personal laws" to explain that it "reserves the right not to apply the provisions of articles 2, paragraphs (a) to (f), and article 16, paragraphs 1(a), 1(c), 1(h), and article 16, paragraph 2, where compliance with these provisions would be *contrary to their religious or personal laws*" (ibid., emphasis added).

Another area of thematic engagement by the CEDAW Committee on faith and women's rights concerns the restriction of bodily autonomy of women in Christian-majority States. For example, in a report on an inquiry conducted under Article 8 of the Optional Protocol to the Convention, the CEDAW Committee acknowledges "the interconnectedness of the level of access to legal abortion and the sociopolitical and religious context of [the State party], in particular *the religious characterization of abortion as a sin*" (CEDAW/C/OP.8/GBR/1, 48, emphasis added). It also recognizes that "that context informs the positions taken by political parties on amending legislation criminalizing abortion" (ibid., 48). Further, it finds that "the inadequacy of State-provided family planning support, as *driven by socioreligious considerations*, coupled with a political culture that circumscribes the role of women, subjects women and girls in [the State party] to double jeopardy, effectively depriving them of any control over their fertility" (ibid., 51, emphasis added). Overall, the CEDAW Committee concludes that in the State party, there is "[a] prevalence of discriminatory gender stereotypes portraying a woman's primary role as that of mother, as *rooted in culture and religion*" and "[a] societal ostracization and *religious condemnation of women who undergo an abortion*, breeding fear and hindering access to sexual and reproductive health services and information" (ibid., 73, emphasis added). In another inquiry report, the Committee notes that the State party's Supreme Court cited the right to freedom of

thought, conscience and religion in the State party's constitution to confirm that doctors who refuse abortion care based on conscience do not have a legal obligation to refer the patient to another doctor (CEDAW/C/POL/IR/1, 10). Further in concluding observations, the Committee calls for "unimpeded and adequate access to legal abortion and post-abortion services for all women in the State party, including by ensuring that institutions are precluded by law from raising conscientious objections, defining the grounds on which it is permissible for health professionals to raise such objections and guaranteeing mandatory referrals in cases of conscientious objections" (CEDAW/C/HUN/CO/9, 36; see also CEDAW/C/POL/CO/7-8, 36). To add to the previous examples, the CEDAW Committee has expressed concern about the illegality of abortion in another Christian-majority State party, whose declaration to Article 16 (1) (e) reads: "The Government of Malta does not consider itself bound by sub-paragraph (e) of paragraph (1) of article 16 in so far as the same may be interpreted as imposing an obligation on Malta to legalize abortion" (CEDAW/C/MLT/CO/4, 34–35; United Nations 2025).

While the *travaux préparatoires* point to little engagement between faith-based influences and the drafting of the treaty, the relationship between religion and gender equality has been clearly established since then. On the one hand, the CEDAW Committee regularly pronounces itself on women's rights in the context of religion, tradition and culture and on the role of faith-based actors. It also increasingly makes references to the United Nations "Faith for Rights" framework. On the other hand, faith-based actors and civil society debated the role and responsibilities of religious leaders to protect and promote human rights at more than a dozen workshops organized by OHCHR from 2008 to 2017 (see below chapter XIV). The result of these debates was the Beirut Declaration on "Faith for Rights", whose Commitment V addresses "persons belonging to religions and beliefs in all regions

of the world" on non-discrimination and gender equality (OHCHR 2018b). In it, the faith-based and civil society actors working in the field of human rights and gathered in Beirut specifically "commit to revisit, each within [their] respective areas of competence, those religious understandings and interpretations that appear to perpetuate gender inequality and harmful stereotypes or even condone gender-based violence". Furthermore, Commitment V states that "we pledge to ensure justice and equal worth of everyone as well as to affirm the right of all women, girls and boys not to be subjected to any form of discrimination and violence, including harmful practices such as female genital mutilation, child and/or forced marriages and crimes committed in the name of so-called honour". The Beirut Declaration supports Commitment V through citations from different religious texts and with one quote also from the CEDAW Committee. The quotation derives from the joint General Recommendation by the CEDAW Committee and General Comment by the Committee on the Rights of the Child, in which both Committees stress that in order to eliminate harmful practices, "a comprehensive, holistic and effective approach to capacity-building should aim to engage influential leaders, such as traditional and religious leaders" (CEDAW/C/GC/31/Rev.1, 70).

## 3. Faith-related jurisprudence

The jurisprudence of the CEDAW Committee has over the years addressed a broad spectrum of areas where gender equality and faith intersect.

First of all, it calls on States parties to promote and protect women's right to freedom of religion and belief, such as participation in religious activities (CEDAW/C/TJK/CO/4-5, 15–16; CEDAW/C/LBN/CO/4-5, 18). Furthermore, on the wearing of religious symbols, the Committee holds that comprehensive evaluations should be undertaken to assess the impact of banning the wearing of religious symbols in schools on

the right to education of girls and their inclusion in all facets of society as full members of the community (CEDAW/C/FRA/CO/7-8, 32–33), as well as the impact of institutional regulations in the area of employment that limit women, in particular migrant women of ethnic and minority communities, on the basis of their way of dressing, such as wearing a headscarf (CEDAW/C/NOR/CO/8, 29–30). Previously, it had also expressed concern about harassment of women wearing the *hijab* (CEDAW/C/TUN/CO/6, 30–31). More generally, the Committee systematically raises concerns on the multiple and intersecting forms of discrimination faced by women and girls on the ground of religion, namely that they experience discrimination because of their religion or belief and because they are women and girls (CEDAW/C/GC/30, 36 and 57; CEDAW/C/GC/32, 6; CEDAW/C/GC/33, 8; CEDAW/C/GC/34, 14; CEDAW/C/GC/35, 12; CEDAW/C/GC/36, 31 and 66; CEDAW/C/GC/37, 2; CEDAW/C/NOR/CO/9, 22–23; CEDAW/C/MDV/CO/6, 51–52; CEDAW/C/NPL/CO/7, 10 and 26; CEDAW/C/BTN/CO/10, 36; CEDAW/C/HUN/CO/9, 25). For instance, the Committee has expressed concern about the lack of temporary special measures that are being applied by a State party "for promoting the participation of women from religious minorities […] in various areas under the Convention" (CEDAW/C/IND/CO/4-5, 18; see also CEDAW/C/NPL/CO/7, 20; CEDAW/C/LKA/CO/8, 21).

Second, the Committee identifies several human rights concerns, where it sees a need to reconcile religion and human rights. Regularly, the Committee addresses contexts in the life of women and girls where they still encounter multiple challenges to the enjoyment of equal rights to those of men, such as traditional, cultural and religious contexts. Such challenges are harmful gender stereotypes, gender-based discrimination and violence, harmful practices, violations of rights in the areas of education, health, nationality, marriage and family law, and plural justice systems.

For instance, the Committee frequently expresses concern about the perpetuation of harmful gender stereotypes of women and girls, including gender stereotypes maintained by religious figures or "justified" with reference to religious practice or belief (CEDAW/C/MDV/CO/6, 25–26). It also refers to gender stereotypes within religious communities. In the review of a State party, the Committee notes, for instance, "the unequal status of nuns compared to monks" (CEDAW/C/BTN/CO/10, 27). Regarding another State party, it mentions that "no women have been ordained as priests", "[n]otwithstanding the fact that women attend and graduate from theological colleges" (CEDAW/C/WSM/CO/6, 29). The Committee links this lack of women priests to the concern that only one female lecturer worked in such theological colleges (ibid.).

Further, as stated in its General Comment No. 35 on gender-based violence against women, "erosion of the legal and policy frameworks that aim to eliminate gender-based discrimination or violence [is] often justified in the name of tradition, culture, religion or fundamentalist ideology"; this is one of the factors that "contribute[s] to the pervasiveness of gender-based violence against women and lead[s] to a culture of impunity" (CEDAW/C/GC/35, 7). Additionally, the Committee notes violent extremism as one of the factors affecting and exacerbating gender-based violence, which "is affected and often exacerbated by cultural, economic, ideological, technological, political, *religious*, social and environmental factors, as evidenced, among other things, in the contexts of […] violent extremism and terrorism" (ibid., 14, emphasis added; see also CEDAW/C/IRQ/CO/4-6, 9). In a report on an inquiry conducted under Article 8 of the Optional Protocol to the Convention, it recognizes that religious divisions are among the root causes of violent extremism, that have to be addressed through the women, peace and security agenda (CEDAW/C/NGA/IR/1, 118). Such violent extremism leads in the specific case of the State party to abductions of women and

girls, subjecting them to gender-based violence and other violations of their rights (ibid., 27–39).

Furthermore, the Committee raises concerns with States parties about justifications of harmful practices on the basis of sociocultural and religious customs and values, as well as constitutional and other provisions that protect the right to culture and religion (CEDAW/C/GC/31/Rev.1, 7 and 27). Examples include child marriages and polygamous, levirate and sororate marriages (CEDAW/C/SEN/CO/8, 21 and 41; CEDAW/C/HUN/CO/9, 42) as well as "crimes committed in the name of so-called honour [that] are often sanctioned by the community as a means of preserving and/or restoring the integrity of its cultural, traditional, customary or religious norms following alleged transgressions" (CEDAW/C/GC/31/Rev.1, 30). Apart from that, the Committee sees a connection between religious and cultural practices that contribute to the prevalence of harmful practices, and negative effects on the right to education. It calls on State parties to "protect women and girls from being deprived of their right to education on the basis of patriarchal, religious or cultural norms and practices" (CEDAW/C/GC/36, 55). In its General Recommendation No. 36 on the right of girls and women to education, the Committee equally specifies (ibid., 52):

> "When girls are not in school, they are more likely to be forced to marry. The discriminatory and harmful practices of child and/or forced marriage, associated with religious or cultural practices in some societies, negatively impacts the right to education. When girls are unable to finish their education because of child and/or forced marriage and pregnancy, they face practical barriers, including forced exclusion from school, social norms confining girls to the home and stigma. […] By failing to curb child marriage, Governments fail in their obligation to ensure access to education for girls on an equal basis with boys."

In addition, the Committee has also expressed concern in cases in which a nationality law established different conditions for women and men with regard to the transmission of nationality depending, notably, on religion (CEDAW/C/MDV/CO/6, 35). Additionally, in the area of sexual and reproductive health and rights of women and girls, the Committee has noted that the exercise of conscientious objection can impede effective access to sexual and reproductive health services, including safe abortion and post-abortion services (CEDAW/C/YEM/CO/7-8, 38). Equally, the Committee regularly makes reference where States parties restrict the rights of women and girls on the ground of religion in the area of marriage and family law, including, among others, regarding marriage (e.g. regulations on the re-marrying of widows, child marriage, and polygamous marriage) and property and inheritance laws (CEDAW/C/PHL/CO/7-8, 49; CEDAW/C/MMR/CO/4-5, 46; CEDAW/C/IND/CO/4-5, 40). For example, it noted in concluding observations for one State party that its "Buddhist Women Special Law imposes restrictions on Buddhist women who wish to marry outside their faith" (CEDAW/C/MMR/CO/4-5, 46). Further, in a less common statement, the Committee noted that "pressure from conservative and religious groups" had prevented amendments to discriminatory provisions in the family law of a State party (CEDAW/C/MLI/CO/6-7, 43).

Lastly, in many instances, the Committee expresses a general concern about exceptions in national legislation to gender equality on the ground of religion (CEDAW/C/THA/CO/6-7, 8). Further, a regular concern is the limited access to justice experienced by women and girls in the context of plural justice systems (CEDAW/C/GC/29, 12; CEDAW/C/GC/33, 5). In such systems, religious (as well as customary, community and traditional) justice systems might not effectively enforce women's rights under statutory law and under the Convention, such as the prohibition of harmful practices (CEDAW/C/GC/31/Rev.1, 43).

Religious – or other – laws might also not always comply with the Convention (CEDAW/C/BFA/CO/7, 12).

The above analysis of key concerns has led the Committee over the past decade to develop a rich set of key recommendations in the area of religion and women's rights. While most of the jurisprudence of the Committee is by nature country-specific and depends on the context, some overarching recommendations of a general nature can be drawn out. Importantly, the Committee has held that "discrimination against women cannot be justified on the grounds of religion, customs and/or practices" (CEDAW/C/GMB/CO/6, 10). Notably, "according to international law, a party may not invoke provisions of its domestic law, including those based on religious doctrine, as a justification for its failure to perform a treaty and to perpetuate discrimination, the elimination of which is a core obligation" (UN Experts 2022b; see also UN Experts 2022a and CEDAW 2022). In its joint statement with the Committee on the Rights of the Child on the situation of women and girls in Afghanistan of 30 August 2021, the two Committees further reiterated that (UN Experts 2021, emphasis added):

> "under international human rights law, including both Conventions, which are binding on those exercising effective control in Afghanistan, religious norms and traditions cannot be invoked to justify violations of women's and girls' human rights. The *right to freedom of religion protects individuals, and not religions as such*. The Taliban and any State organs *must respect, and ensure to all persons under their jurisdiction or effective control, including women and girls, the human rights set forth in the Conventions* and in all other human rights treaties to which Afghanistan is a party."

Additionally, the Committee holds that delays in the implementation of the Convention "cannot be justified on any

grounds, including economic, cultural or religious grounds" (CEDAW/C/GC/35, 21). For instance, it recommends States parties to "protect girls and women from being deprived of their right to education on the basis of patriarchal, religious or cultural norms and practices" (CEDAW/C/GC/36, 55). Concretely, the Committee recommends States parties to "plan and adopt appropriate legislation, policies and measures and ensure that their implementation responds effectively to specific obstacles, barriers and resistance to the elimination of discrimination […]", without "any delay on any grounds, including cultural and religious grounds" (CEDAW/C/GC/31/Rev.1, 31). Furthermore, any discriminatory legal provisions, including religious (and traditional or customary) laws, have to be repealed (ibid., 55; CEDAW/C/MMR/CO/4-5, 15). This includes legislation containing "legal defences or mitigating factors based on culture, religion or male privilege, such as the defence of so-called 'honour', traditional apologies, pardons from the families of victims/survivors or the subsequent marriage of the victim/survivor of sexual assault to the perpetrator, procedures that result in the harshest penalties, including stoning, lashing and death" (CEDAW/C/GC/35, 29). Additionally, the Committee systematically calls for the withdrawal of reservations linked to religious justifications (CEDAW/C/IND/CO/3, 11; CEDAW/C/TUN/CO/7, 11–12; CEDAW/C/JOR/CO/5, 10, CEDAW/C/KWT/CO/6, 10; CEDAW/C/SGP/CO/6, 12; CEDAW/C/MYS/CO/6, 9; CEDAW/C/MRT/CO/4, 9; CEDAW/C/BHR/CO/4, 9).

Frequently, the Committee also makes recommendations related to the access to justice of women and girls in plural justice systems (CEDAW/C/GC/33, 5; CEDAW/C/GC/29, 12). The Committee notes that "prejudices and weak capacity […] among judges in customary and religious courts or traditional adjudication mechanisms and the belief that matters falling within the purview of such customary systems should not be subjected to any review

or scrutiny by the State or other judicial bodies deny or limit the access to justice of victims […]" (CEDAW/C/GC/31/Rev.1, 44). The Committee acknowledges that informal justice mechanisms might be more accessible to rural women and girls (CEDAW/C/GC/34, 8), however, it notes that women might not be able to choose between the civil law system and religious (and other) law systems, due to a lack of awareness of women on the different systems or of their liberty to choose between them (CEDAW/C/GC/33, 62). In fact, the Committee has stated that the "preservation of multiple legal systems is in itself discriminatory against women" (CEDAW/C/KEN/CO/8, 8). Specifically, with regard to "informal community arbitration systems, including faith-based tribunals", the Committee states in the context of a specific State party review that these "are often not in conformity with the Convention" (CEDAW/C/GBR/CO/7, 22).

Consequently, the Committee concludes that States parties must ensure that existing norms of religious (and other) justice systems are harmonized with the Convention (CEDAW/C/GC/33, 64; CEDAW/C/GC/35, 26; CEDAW/C/PHL/CO/7-8, 50; CEDAW/C/IND/CO/4-5, 41) and that religious or other justice systems are recognized and codified (CEDAW/C/GC/33, 63). Furthermore, the Committee comments that States parties with plural justice systems have to clearly define the relationship between justice systems, with statutory laws taking precedence over religious (and other) laws, if the latter allow, condone or prescribe violations of human rights, such as harmful practices (CEDAW/C/GC/31/Rev.1, 55). In a specific case concerning child marriage, it has recommended a State party to "enforce sanctions against any individual performing a marriage ceremony under civil, customary or religious law involving children below 18 years of age" (CEDAW/C/MLI/CO/6-7, 44).

Additionally, CEDAW recommends States parties to appoint Muslim women to positions in religious courts and alternative

dispute resolution, if the latter are compatible with the Convention (CEDAW/C/KEN/CO/8, 9). In the specific case where multiple family law systems exist, such as civil, indigenous, religious and customary law systems, but no unified family code, the Committee recommends States parties to "provide for individual choice as to the applicable family law at any stage of the relationship" (CEDAW/C/GC/33, 46). Particularly in cases where religious and other justice systems and courts cover family matters, the Committee recommends to broaden the jurisprudence of ordinary courts (CEDAW/C/BFA/CO/7, 13). In the context of disaster risk reduction, the Committee has recommended States parties to conduct gender impact analysis of religious and other norms (CEDAW/C/GC/37, 38). Equally, women and girls should be protected from interpretations of religious texts and traditional norms that create barriers to their access to justice and result in discrimination against them (CEDAW/C/GC/33, 25).

Lastly, the Committee recognizes that the interplay between religion and women's rights can be a complex one. It has, thus, developed recommendations that aim to increase the understanding of the State party and other concerned actors of this interplay. First, it recommends the systematic collection, dissemination and analysis of data related to women's rights, disaggregated by religion, in addition to sex, age, ethnicity, geographical location, disability and socioeconomic context, in all spheres (CEDAW/C/SEN/CO/8, 44). Second, it suggests to relevant States parties to "undertake a review of legislative provisions in countries with similar sociocultural and religious backgrounds and legal systems, in order to inform its own legislative harmonization process and to develop strategies to ensure the implementation of legislation promoting and protecting women's rights" in its own religious context (CEDAW/C/GMB/CO/6, 10). Thirdly, the Committee recommends exchanges between the Government and faith-based actors. For instance, it "encourages open and inclusive debates […]

to combat justification of discrimination against women in the name of religion" (CEDAW/C/MLI/CO/6-7, 44). It also makes direct reference to initiatives under the United Nations "Faith for Rights" framework (OHCHR 2025b).

It is interesting to see that these recommendations by the Committee are in line with the Beijing Declaration and Platform for Action. While the concluding observations of CEDAW are by nature more differentiated as well as country- and context-specific, the Beijing Declaration and Platform for Action recognizes the intersectionality of discrimination against women also on the basis of religion (United Nations 1995, Annex I 32, and Annex II 46, 225 and 232). The Beijing Platform for Action states that "any harmful aspect of certain traditional, customary or modern practices that violates the rights of women should be prohibited and eliminated" (ibid., 224). It specifies that "any form of extremism may have a negative impact on women and can lead to violence and discrimination" (ibid., 24, see also 118 and 224). More generally, the Beijing Platform for Action recommends governments to "take steps so that tradition and religion and their expressions are not a basis for discrimination against girls" (ibid., 276) and to "condemn violence against women and refrain from invoking any custom, tradition or religious consideration to avoid their obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence against Women" (ibid., 124). In another reference not specific to faith-based organizations, equally in the chapter on "human rights of women", the Beijing Platform for Action recommends governments and non-governmental organizations, the United Nations and other international organizations to "encourage, coordinate and cooperate with local and regional women's groups, relevant non-governmental organizations, educators and the media, to implement programmes in human rights education to make women aware of their human rights" (ibid., 233). Finally, the Beijing Platform for Action underlines that the

"underrepresentation of women in decision-making positions in the areas of art, culture, sports, the media, education, *religion* and the law have prevented women from having a significant impact on many key institutions" (ibid., 183, emphasis added).

## 4. Issues of interpretation

One very important development in the jurisprudence of the CEDAW Committee is that it has gone further than merely identifying the human rights concerns that appear in connection with religion or are claimed to be justified by religion. The Committee has not only made recommendations that focus on action by the State party, such as legislative and policy changes. Additionally, the Committee has also analyzed how States could seek support for such – at times sensitive – changes. In this regard, the Committee increasingly recommends engagement with religious leaders and communities, for instance to address discriminatory social and cultural stereotypes of the role of women in the family and society and related violations of their rights, particularly harmful practices, as well as violations of the right to education, the right of women to participate in political and public life, and/or the rights of specific groups of women and girls, such as rural women (CEDAW/C/GC/34, 25).

The Committee recommends two types of engagement with faith-based actors. First of all, many recommendations suggest States parties to conduct awareness-raising initiatives for religious leaders, either with the aim to increase their understanding of gender equality generally (CEDAW/C/HUN/CO/9, 10) or of a particular right, such as women's right to participate in political life (CEDAW/C/PSE/CO/1, 31; CEDAW/C/NPL/CO/7, 31) and their right to land, water and other natural resources (CEDAW/C/GC/34, 58), or to raise awareness on specific attitudes or practices as being discriminatory (CEDAW/C/THA/CO/6-7, 19) or harmful (CEDAW/C/GC/31/Rev.1, 70; CEDAW/C/KEN/CO/8, 21; CEDAW/C/BTN/CO/10, 64).

For instance, in its General Recommendation No. 35 on gender-based violence against women, the Committee recommended to "develop and implement effective measures, with the active participation of all relevant stakeholders, such as representatives of women's organizations and of marginalized groups of women and girls, to address and eradicate the stereotypes, prejudices, customs and practices set out in article 5 of the Convention, which condone or promote gender-based violence against women and underpin the structural inequality of women with men" (CEDAW/C/GC/35, 30). According to the Committee (ibid., emphasis added):

> "such measures should include […] *awareness-raising programmes that promote an understanding of gender-based violence against women as unacceptable and harmful*, provide information about available legal recourses against it and encourage the reporting of such violence and the intervention of bystanders; address the stigma experienced by victims/survivors of such violence; and dismantle the commonly held victim-blaming beliefs under which women are responsible for their own safety and for the violence that they suffer. *The programmes should target women and men at all levels of society*; education, health, social services and law enforcement personnel and other professionals and agencies, including at the local level, involved in prevention and protection responses; *traditional and religious leaders*; and perpetrators of any form of gender–based violence, so as to prevent repeat offending."

In concluding observations for a State party, the Committee recommends to "adopt *a comprehensive strategy with proactive and sustained measures targeted at women, men, girls and boys at all levels of society, including community and religious leaders*, aimed at eliminating patriarchal attitudes, discriminatory stereotypes and social norms concerning the roles and responsibilities of women and men in the

family and in society […]" (CEDAW/C/LKA/CO/9, 26; see also CEDAW/C/NPL/CO/7, 23 and 25). While the above-mentioned examples refer to "engaging" or "targeting" religious leaders, the Committee recommended in 2023 "sensitizing" religious and community leaders as well as the general public on the need for legislative reform of discriminatory legislation, including discriminatory provisions in the penal code, family law and nationality law (CEDAW/C/BHR/CO/4, 13; see also CEDAW/C/BTN/CO/10, 44). Other concluding observations go a step further by suggesting to a States party to "provid[e] *mandatory* capacity-building for religious and faith-based leaders" in the context of preventing and eliminating child marriage (CEDAW/C/GMB/CO/6, 44, emphasis added). Lastly, the Committee has also recommended to a State party to disseminate "among Muslim *communities*, including women, men and traditional and *religious leaders* […] information on good practices of other Muslim countries with regard to the application of sharia in line with the Convention" in the context of plural justice systems (CEDAW/C/PHL/CO/7-8, 50, emphasis added).

In this first set of recommendations, the Committee recommends States parties to engage with faith-based actors, with the aim of convincing them to refrain from certain actions. The majority of recommendations are addressed to religious leaders, as those with sufficient influence to promote such change in course. For instance, in its General Recommendation No. 36 on the right of girls and women to education, the Committee invites States parties to "encourage *religious and community leaders* to oppose the practice of female genital mutilation and *to inform and educate their communities on the dangers of the practice* (CEDAW/C/GC/36, 55, emphasis added). These recommendations by the Committee also resonate with the Beirut Declaration on "Faith for Rights", which highlights that "empowering religious actors requires actions in areas such as legislation, institutional reforms, supportive public policies and *training adapted to the needs of local religious actors who often are one of the*

*main sources of education and social change in their respective areas of action*" (OHCHR 2018a, 15, emphasis added).

In other instances, the Committee has recommended States parties to seek direct cooperation with religious leaders for joint initiatives or actions (CEDAW/C/GC/31/Rev.1, 34). This type of engagement focuses more, but not exclusively, on the positive obligations of faith-based actors to contribute to promoting and protecting women's rights. Specifically, the Committee recommends to "*consult* with traditional and religious leaders to ensure that the provisions of the Convention are fully integrated into the national legal framework" (CEDAW/C/GMB/CO/6, 10, emphasis added). The Committee has also recommended States parties to engage religious leaders to play a role in identifying and eliminating social and cultural stereotypes (CEDAW/C/GC/37, 57) and to facilitate contact with constituencies affected by human rights violations (CEDAW/C/GC/31/Rev.1, 77). Further, it has encouraged discussions "with religious communities and their leadership *with a view to lifting its reservation to article 16* , paragraph 1 (c), (d) and (g), *based on practices of other State parties in the region and in the Organization of Islamic Cooperation (OIC)* who found that article 16 is compatible with sharia law and, thus, opted not to introduce or to withdraw their reservation to the concerned article" (CEDAW/C/JOR/CO/5, 10, emphasis added; see also CEDAW/C/KWT/CO/6, 10; CEDAW/C/SGP/CO/6, 12; CEDAW/C/MYS/CO/6, 9; CEDAW/C/MRT/CO/4, 9; CEDAW/C/BHR/CO/4, 9).

Apart from that, the Committee has placed an emphasis on direct dialogue with religious leaders on human rights standards, such as facilitating dialogue with religious leaders "on the value of educating girls and the importance of addressing practices and customs that act as barriers to their participation at all levels of education" (CEDAW/C/GC/36, 55). In the context of concluding observations, the Committee has specifically called on a State party to "encourage *open and inclusive public debates and*

*undertake extensive consultations*, particularly with traditional and religious leaders and young people, *regarding the diversity of interpretation with regard to Muslim family laws and practices, in order to combat the justification of discrimination against women in the name of religion* and/or culture and *to develop consensus on the harmful nature of practices*, such as child marriage and polygamous, levirate and sororate marriages, and *undertake and disseminate an assessment of best practices of countries with similar cultural backgrounds*" (CEDAW/C/SEN/CO/8, 42, emphasis added).

Moreover, it has recommended to States parties to engage "all relevant stakeholders *in the preparation and implementation of [public discussions to prevent and promote the elimination of harmful practices]*, including local leaders, practitioners, grass-roots organizations and *religious communities*" (CEDAW/C/GC/31/Rev.1, 81, emphasis added). The Committee, thus, promotes an active contribution by different stakeholders, including faith-based communities, to the conduct of public discussions. Similarly, the Committee calls in its General Recommendation No. 40 on States parties to "conduct awareness-raising campaigns for – *and cooperate with* – relevant stakeholders, including […] *religious and faith-based leaders* […] to adopt a positive discourse on parity, and enhance the understanding that the full participation of women in all areas of decision-making, on an equal basis with men, is essential for women to enjoy their human rights and benefits the entire community", as well as to cooperate with relevant stakeholders, including religious and faith-based leaders "to conduct corresponding awareness-raising campaigns […] addressed to the general public of all ages, aiming for women, girls, men and boys to become transformative agents of change for gender equality" (CEDAW/C/GC/40, 31, emphasis added).

As a fascinating comparison, the Beirut Declaration on "Faith for Rights" recognizes the responsibility attributed to religious actors by "both religious precepts and existing international legal frameworks" (OHCHR 2018a, 15). Similarly to the CEDAW

Committee, the Beijing Platform for Action equally recognizes a more passive and a more active role for religious leaders. It suggests that *workshops and specialized education and training* are provided to "decision makers and opinion leaders at all levels of the community, including *religious and traditional authorities*, on prevention of HIV/AIDS and other sexually transmitted diseases and on their repercussions on both women and men of all ages" (United Nations 1995, 108, emphasis added). It equally calls for governments to "prohibit female genital mutilation wherever it exists and [to] give *vigorous support to efforts among* non-governmental and community organizations and *religious institutions* to eliminate such practices" (ibid., 232, emphasis added). Furthermore, religious groups are seen as important institutional actors whose "*active support and participation"* to implement the Beijing Platform for Action should be encouraged (ibid., 295, emphasis added).

Notably, the CEDAW Committee has recommended including religious leaders in initiatives related to faiths and human rights. For example, the Committee recommended to a State party to "expedite the repeal or amendment of all discriminatory laws identified by [its] Law Reform Commission […] and [to] *include religious leaders in the process of addressing issues of faith and human rights*, so as *to build on several 'faith for rights' initiatives* and identify common ground among all religions in the State party" (CEDAW/C/NGA/CO/7-8, 12, emphasis added). In a report under the inquiry procedure, it recommended to the State party to "*work with religious and traditional leaders to combat extremism against women and girls by reconciling faith with and raising awareness of the latter's human rights*, supporting educational programmes that promote values of tolerance and equality and strengthening the role played by those leaders in spreading moderate messages that reject gender-based violence against women" (CEDAW/C/NGA/IR/1, 117, emphasis added). In concluding observations for another State party, the Committee referred directly to the United Nations "Faith for Rights" framework, namely it recommended to the State

party to "*encourage religious (qadi) and common law courts*, law enforcement officers and imams *to respect, in their decisions and actions, the State party's commitments deriving from its ratification of the Convention* to ensure that Muslim women and girls enjoy equal rights in all aspects of family life, including in marriage, divorce, inheritance, marital property, adoption, burial and devolution of property on death, *including through the Faith for Rights initiative of the Office of the United Nations High Commissioner for Human Rights*" (CEDAW/C/GMB/CO/6, 10, emphasis added).

Specifically, the Beirut Declaration on "Faith for Rights" or its framework has been evoked in ten constructive dialogues since 2017. Over the past eight years, the CEDAW Committee has been using the "Faith for Rights" framework during the considerations of reports from Afghanistan, Botswana, Costa Rica, Fiji, the Gambia, Niger, Nigeria, Samoa, Saint Kitts and Nevis, and Thailand (OHCHR 2025b). In numerous other constructive dialogues, the interplay between religion and women's rights was addressed by Committee experts.

Among its most recent and prominent references to the "Faith for Rights" framework is the Committee's General Recommendation No. 40 on the equal and inclusive representation of women in decision making systems of 2024. Concretely, the Committee calls on States parties to "engage religious leaders and faith-based actors in the process of addressing areas of possible tensions between some interpretations of religious traditions and human rights, such as through *the Faith for Rights framework of the Office of the United Nations High Commissioner for Human Rights*" (CEDAW/C/GC/40, 31, emphasis added).

Furthermore, the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence has been referred to by the Committee during a constructive dialogue in 2017. Jointly with the Beirut Declaration, these were recommended to the State

party as "useful tools in encouraging different faith communities to work together to promote human rights" (CEDAW/C/SR.1518, 16).

The Committee has played a pioneering role in this regard. According to the Universal Human Rights Index, no other treaty body has referred to the Beirut Declaration, the United Nations "Faith for Rights" framework or the Rabat Plan of Action in those over 230.000 observations and recommendations that are featured in the index. A notable exception is the Human Rights Committee, which referred to these soft law standards in its most recent General Comment No. 37 on the right of peaceful assembly. It footnoted the Rabat Plan of Action and the Beirut Declaration on "Faith for Rights" as reference texts (CCPR/C/GC/37, 50), when discussing restrictions to the right of peaceful assembly in the context of Article 20 of the Covenant by noting that "peaceful assemblies may not be used for propaganda for war (art. 20 (1)), or for advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (art. 20 (2))".

Not only in its general recommendations and concluding observations, the CEDAW Committee has acknowledged that bridging faith and gender equality can necessitate dialogue at different levels with religious leaders and other stakeholders. It has also established a CEDAW Knowledge Hub in 2020 to support States parties in their practical implementation of the Convention and of the Committee's recommendations. Under the CEDAW Knowledge Hub, the Committee has cooperated with OHCHR on initiatives under the United Nations "Faith for Rights" framework.

To begin with, Committee members and OHCHR staff have provided briefings and participated in debates on the Beirut Declaration, the Rabat Plan of Action and CEDAW jurisprudence on the interplay of religion and women's rights (OHCHR 2025a). Such interventions took place for example at a side event of the Human Rights Council in June 2025 on countering hate speech at

the intersection of religion and gender; at a panel discussion at the Grand Mosque of Paris in March 2024 (Grande Mosquée de Paris, 2024); at the annual Women's Human Rights Advocacy Training in October 2024 to enhance faith-based organizations' capacity and skills to conduct women's human rights advocacy from the local to global level, organized by the World Council of Churches, Lutheran World Federation, ACT Alliance, World Renew, Norwegian Church Aid, Moravian Unity and Finn Church Aid; at a panel discussion on women of faith for rights and resilience, co-organized by Religions for Peace and the Global Peace Initiative of Women (Faith Pavilion 2023); and at a side event of the Commission on the Status of Women in March 2022 on the topic of religions and women's rights, co-organized by Religions for Peace, the Office on Genocide Prevention, the Special Rapporteur on Violence against Women, Its Causes and Consequences, and the Permanent Mission of South Africa to the United Nations.

Second, the CEDAW Committee and OHCHR have facilitated direct engagement between the Committee, faith-based leaders and other relevant actors on religions, beliefs and gender equality. For instance, they organized a peer-to-peer learning workshop in Rabat in Marocco in November 2023, in cooperation with the National Human Rights Council of Morocco (OHCHR 2023). The workshop offered an opportunity to religious leaders, women's rights experts, members of parliament, representatives of national human rights institutions, media professionals and academics to exchange on the implementation of the CEDAW Convention in the Middle East and North African region in the context of faith and women's rights. It built on the jurisprudence of the CEDAW Committee and the UN "Faith for Rights" framework to analyze the role of the different actors present in cases where religion, culture and tradition might hamper the full implementation of the Convention. Also during its Pacific Technical Cooperation Session in April 2025, the CEDAW Committee engaged with faith-based actors in a dedicated side-event on "the intersection of culture, religion and

gender in the Pacific, highlighting how cultural traditions and faith can both enable and challenge gender equality" (OHCHR 2025e).

Third, OHCHR has established partnerships with universities in different countries, with the aim to develop academic programmes in the area of human rights, gender equality and religion, based on the United Nations "Faith for Rights" framework. Students learn to analyze the complexities and challenges of different traditional, cultural and religious contexts, when it comes to promoting and protecting human rights – either as an optional class or as a university diploma. Often, they undertake such courses as part of their law, political or social science or media studies. Others are practitioners who directly work with faith communities or are themselves religious leaders. In one such cooperation, a group of Canadian students visited Geneva in May 2024 for a one-week programmes on religion and gender equality, organized by OHCHR. The study week featured classes on the Beirut Declaration and its 18 Commitments, the United Nations treaty bodies and CEDAW jurisprudence. It also provided the students with an opportunity to observe the public sessions of the CEDAW Committee and to exchange with its members, with a member of the Committee on the Rights of the Child, diplomats and civil society representatives.

Lastly, several CEDAW Committee members are active members of the "Faith for Rights" commUNity of practices. This network was established by the participants of the OHCHR peer-to-peer learning week workshops, in its fourth edition held in Geneva in November 2023 (Faith for Rights 2023). The commUNity of practices aims to "ensure continuity and mutual reinforcement among faith-based actors who contribute to the implementation of the United Nations 'Faith for Rights' framework and toolkit in situations where human rights and religion or belief have to be bridged and where 'faith' can stand up for human rights" (OHCHR 2024b, 11). Among its objectives is to "engage directly with UN treaty bodies and Special Procedures mandate holders to draw on

the jurisprudence, recommendations and authority of these bodies in support of activities under the 'Faith for Rights' framework" (ibid.). Since its establishment, the network has included religion and gender equality as one of its recurring focus areas during its annual peer-to-peer learning weeks and its quarterly calls, drawing on advice from a CEDAW member and contributions by OHCHR. For instance, the coordinating committee of the "Faith for Rights" commUNity of practices issued a statement on 28 May 2025 with the title "A Call to Dignity, Justice and Peace in the Middle East: A multifaith statement grounded in the 18 Commitments of the UN 'Faith for Rights' framework" (Faith for Rights 2025). The statement called "on faith leaders, governments, civil society and people of goodwill everywhere to uphold the 18 Commitments on 'Faith for Rights' as a moral compass in these dark times" (ibid., 10). It specifically referred to women among vulnerable groups in its elaboration of commitment V on non-discrimination and gender equality (ibid., 3). Further, the sixth annual meeting of the "Faith for Rights" commUNity of practices in October 2025 in Cambodia and Thailand was convened in a predominantly Dharmic context and featured a session on "Faith4Rights and Gender" (OHCHR 2025c). The annual meeting led to the adoption of the "Bangkok Declaration on Dharmic Perspectives on Faith for Rights" that "affirm[ed] the advancement of gender equality, recognizing that the dignity and agency of women and girls are integral both to cohesive societies and to the realization of universal human rights" (OHCHR 2025d).

Over the last decades, several States parties to the CEDAW Convention have made positive progress by amending national legislation and by lifting reservations to the Convention that were initially justified by religious considerations. This demonstrates that continued dialogue on faith and women's rights can bring about real change for women and girls towards gender equality. For instance, in 2020, the Republic of the Maldives withdrew some of its reservations to Article 16 (CEDAW/C/MDV/CO/6, 11;

United Nations 2025). The original reservation read: "the Government of the Republic of Maldives reserves its right to apply article 16 of the Convention concerning the equality of men and women in all matters relating to marriage and family relations *without prejudice to the provisions of the Islamic Sharia, which govern all marital and family relations of the 100 percent Muslim population of the Maldives*" (ibid., emphasis added). In 2014, Mauritania partially lifted its general reservation to the Convention, which declared that it approved the Convention "in each and every one of its parts *which are not contrary to Islamic Sharia* and are in accordance with our Constitution" (CEDAW/C/MRT/CO/4, 8; United Nations 2025, emphasis added). After the partial withdrawal, the reservation "continue[d] to apply in respect of articles 13 (a) and 16 of the Convention" (ibid.).

Equally in 2014, Tunisia withdrew all specific reservations to the CEDAW Convention (CEDAW/C/TUN/CO/7, 11; United Nations 2025). The religious-based reservations concerned nationality (Article 9 (2)) and marriage and family matters (Article 16 (c), (d), (f), (g) and (h)) (ibid.). They were lifted after years of lobbying by women's rights groups, leading to revisions of the Personal Status Code, and after the adoption of a new Constitution in January 2014 (Çalı/Montoya 2017, 33; Universal Rights Group 2019, 10). Overall, they coincided with efforts to remove discriminatory provisions in Tunisia's national legislation (ibid.). For instance, in 2017, the Government rescinded the 1973 circular that had banned marriages between Muslim women and non-Muslim men (A/HRC/40/58/Add.1, 67). Despite this progress, the CEDAW Committee regretted in its concluding observations of 2023 that "the State party has not yet withdrawn its general declaration on compatibility with sharia", which declares that Tunisia "shall not take any organizational or legislative decision in conformity with the requirements of this Convention where such a decision would conflict with the provisions of chapter I of the Tunisian Constitution" (CEDAW/C/TUN/CO/7, 11; United Nations 2025).

Similar engagement by civil society with the government on the interplay of faith and women's rights led to the withdrawal by Morocco of some of its reservations to CEDAW in 2011. Women's rights defenders, who were seeking to bring about change to Morocco's Family Code, led a grass-roots campaign to inform women about their rights under the CEDAW Convention (Çalı/Montoya 2017, 31–32; Universal Rights Group 2019, 11). This led, among others, to Morocco's ratification of the CEDAW Convention in 1993, albeit with religion-based reservations, as well as to the adoption of a new Family Code in 2004 and the adoption of a law of violence against women (ibid.). In 2011, Morocco withdrew its reservations to Articles 9 (2) and 16 concerning nationality and marriage and family matters, with the reservation to Article 16 specifically referring to incompatibility with Islamic Shariah (CEDAW/C/MAR/CO/5-6, 11 and 29; United Nations 2025). In another step towards gender equality, Morocco amended national legislation that had previously allowed a rapist to avoid prosecution by marrying the victim, if the victim was under the age of 18 years (Amnesty International, 2014).

Most recently on 4 November 2025, another Muslim-majority State party, Algeria, lifted one of its reservations that had "declare[d] that the provisions of article 15, paragraph 4, concerning the right of women to choose their residence and domicile should not be interpreted in such a manner as to contradict the provisions of chapter 4 (art. 37) of the Algerian Family Code" (United Nations 2025). In 2009, Algeria had already withdrawn its reservation to Article 9 (2) (CEDAW/C/DZA/CO/3-4, 7; United Nations 2025). In 2011, Singapore, as a non-Muslim majority State, notified the United Nations Secretary-General of a partial withdrawal of its reservations that had reserved "the right not to apply the provisions of articles 2 and 16 *where compliance with these provisions would be contrary to their religious or personal laws*" (United Nations, 2025, emphasis added). Finally, some State parties have made

progress towards lifting religious-based reservations. While they have not actually withdrawn their reservations, the Committee has recognized the positive effect of national dialogues and examinations of the issue (CEDAW/C/ARE/CO/4, 10; CEDAW/C/NER/CO/5, 12) or acknowledged commitments by States parties during constructive dialogues to consider withdrawing such reservations (CEDAW/C/MRT/CO/4, 9).

In conclusion, this review of jurisprudence shows that the CEDAW Committee regularly addresses issues, where religion and human rights, particularly women's rights, must be bridged. In its General Recommendations and constructive dialogues with States parties, the Committee had established jurisprudence on women's rights in the many areas, where these intersect with religions and beliefs. These concern the right to freedom of religion or belief, the multiple and intersecting forms of discrimination faced by women on the basis of religion, women's rights in plural justice systems and the interplay between religious contexts and interpretations with women's rights under many areas of the CEDAW Convention, such as in the areas of marriage and family matters, the right to education, gender stereotypes, gender-based violence against women and harmful practices. Through State party reviews, consultations on General Recommendations and other activities, the Committee meets with States parties, national human rights institutions, non-governmental organizations, victims and other stakeholders to engage on these issues.

Specifically, the CEDAW Knowledge Hub has been created as a means for peer-to-peer exchange on provisions of the Convention and their implementation in different religious and cultural contexts. In April 2020, the Committee issued its "Call for joint action in the times of the COVID-19 pandemic", and started a series of webinars (OHCHR 2024a, 35) exploring how various faith communities can scale up collaboration around the diverse challenges posed by COVID-19 with a human rights-based approach with respect to women and girls (CEDAW 2020):

"The key areas of these online webinars include gender-based violence against women, individual behaviours related to COVID-19, home schooling, working from home, creative modes of local solidarity and responding to discrimination against women in various aspects of public policies. There will be specific focus on young women working in the fields of education, media, technology and women faith actors. To achieve this, the Committee will also rely on its jurisprudence, which recognizes that education for gender equality and empowerment of women and girls is the most sustainable way to ultimately achieve the objectives of non-discrimination and equality of women and men. The Committee supports the appeal of UN Secretary-General António Guterres for a global ceasefire as well as his special appeal to religious leaders of all faiths to focus on the common battle to defeat COVID-19. The Committee also appreciates the statement of 19 March 2020 by Religions for Peace on the Coronavirus Crisis, stressing the responsibility of faith actors to translate ethical values into concrete actions and offering substantive ideas for learning, teaching, preaching and designing community development projects. […] The CEDAW Knowledge Hub initiative, with its imminent webinars about women rights, will be the signature contribution of CEDAW to a new thinking and joint action. The Committee invites all relevant stakeholders, including the private sector, to join in this initiative and hopes that it will lay the foundations, in collaboration with other relevant stakeholders, for a positive and enabling post COVID-19 environment that actualizes the principal lessons of the virus: no one is safe unless all are safe."

Importantly, in the context of religion and faith, the CEDAW Convention should not be seen as a juxtaposition of external, international values. It should rather be seen as a common heritage of all civilizations, including religious and cultural value systems. This approach is echoed in the Beirut Declaration, which fully embraces "*the universally recognised values* as articulated in international human rights instruments as common standards of our shared humanity" (OHCHR 2018a, 14, emphasis added). The Beirut Declaration further states that "we ground our commitments in this [Faith for Rights] declaration first and foremost in our conviction that *religions and beliefs share common core values of respect for human dignity, justice and fairness*" (ibid.).

While the CEDAW Convention is a common heritage of religious and cultural value systems, as exemplified by its almost universal ratification, it is also a living instrument. The CEDAW Committee has developed a rich jurisprudence in relation to areas where rights under the Convention intersect with religious beliefs, traditions and practices. It has also increasingly emphasized relatively recent related soft-law instruments and the role of faith-based actors to help reconcile perceived contradictions between faith and gender equality. The fact that the Committee has addressed these areas is proof as such, that the Convention is not separated from worldwide developments. The changing nature of global challenges, including in the sphere of religion and beliefs, requires new and continuing steps to consolidate and re-establish universal women's rights based on equality as a driving force for conflict prevention, lasting peace and sustainable development. As such, the CEDAW Convention is in itself an evolutionary instrument to permanently strengthen women's rights.

For instance, there are two areas, where further jurisprudence of the CEDAW Committee and engagement through the CEDAW Knowledge Hub, would be essential to promote gender equality through the Convention as a living instrument. One issue is the often-overlooked economic costs and consequences of insufficient

protection of women's rights in the context of religion and belief. As elaborated in part 3 of this chapter, violations of women's and girls' right to freedom of religion or belief on the one hand and the violations of their rights justified by religious interpretations, traditions and practices on the other hand have a tremendous impact on the whole lifecycle of women and girls as well as economic growth. The consequences limit women's and girls' opportunities due to discrimination in the areas of transmission of nationality at birth, education, marriage and family matters, employment, health and access to justice, as well as gender-based stereotypes, harmful practices and gender-based violence, digital acceleration and innovation, to name just a few. This negative impact reduces the productivity of women and deprives societies of women's full human capital and talents for national development.

Another area that deserves further exploration is the role and place of women in decision-making systems, as addressed in CEDAW's most recent landmark General Recommendation No. 40 (CEDAW/C/GC/40), and their specific link to women's rights in religious contexts. This concerns gender equality in religious decision-making systems, which would allow resolving some perceived contradictions between religious interpretations and women's rights. As analyzed above, the Committee has expressed concern, for instance, about "the unequal status of nuns compared to monks" in a State party (CEDAW/C/BTN/CO/10, 27). Regarding another State party, it recommended to "introduce temporary special measures to ensure the ordination of women as priests" and to "promote gender and human rights education at theological institutions" (CEDAW/C/WSM/CO/6, 30). Gender parity in religious leadership positions is of particular importance in the concerned State party, as it is a Christian nation according to part 1(3) of its Constitution (Constitute, 2025). Apart from that, the Committee has also recommended the appointment of Muslim women to positions in religious courts and alternative dispute

resolution, if the latter are compatible with the Convention (CEDAW/C/KEN/CO/8, 9). Addressing religious interpretations that limit the full implementation of the CEDAW Convention does not only require gender parity in religious decision-making systems, but also in leadership positions in other areas that have an influence on related national legislation, policies and programmes. These include leadership positions in political and public life at all levels, the media, education, health, the judiciary, and many other areas. The CEDAW Committee affirms, in its General Recommendation No. 40, women's right to equal and inclusive representation in all decision-making systems on equal terms with men (CEDAW/C/GC/40, 1). Such gender parity in decision-making systems of all kinds will allow dismantling some misinterpretations of religions and justifications on religious grounds that have limited women's rights in many areas covered by the Convention.

Apart from the dynamic interpretation of the Convention, it is also essential to underline that while the Committee affirms general principles, its jurisprudence is in many cases developed with a specific national context in mind. To give one example, religious extremism has manipulated religious sentiments and has placed specifically women and girls under pressure from their families, communities and States to adhere to faith-based norms. Religious attires are a case in point. On the one hand, as pointed out in part 3 of the chapter, the CEDAW Committee has interpreted the question of wearing religious symbols under the angle of protecting the rights of women and girls, who choose to wear such symbols. It has, thus, expressed concern about harassment experienced by women wearing the hijab (CEDAW/C/TUN/CO/6, 30–31). It has further held that banning the wearing of religious attires in schools and limiting regulations in the area of employment can have negative impacts on the rights of women and girls and, consequently have to be carefully evaluated (CEDAW/C/FRA/CO/7-8, 32–33;

CEDAW/C/NOR/CO/8, 29–30). On the other hand, the Committee has expressed grave concern about the imposition of a strict religion-based dress code on women and girls in a State party that was also used as a justification to curtail their right to secondary and tertiary education (UN Experts 2022a). The Chair of the Committee, jointly with other human rights experts, concluded that "taken together, these policies [on a strict dress code and other restrictions of women's and girls' rights in the States party] constitute a collective punishment of women and girls, grounded on gender-based bias and harmful practices" (ibid.). Consequently, any analysis of general principles established through the jurisprudence of the CEDAW Committee has to be weighted carefully against the specificities of the national context of the State party.

Secondly, the analysis in this chapter demonstrates that the CEDAW Committee attaches great significance to the role of faith-based actors in standing up for human rights and women's rights. While States become parties to the CEDAW Convention and are the main duty bearers, the Committee sees the achievement of gender equality as a responsibility of all women and men and of all communities, including faith-based communities. In this context, religious actors have a specific power and responsibility. Consequently, the Committee acknowledges that in sensitive areas of religion and women's rights a community-led approach through the support of faith-based actors can be most fruitful. The faith-based leaders who drafted the Beirut Declaration and its 18 Commitments shared this sense of responsibility. They noted that "*while States bear the primary responsibility* for promoting and protecting all rights for all, individually and collectively to enjoy a dignified life free from fear and free from want and enjoy the freedom of choice in all aspects of life, *we as religious actors or as individual believers do bear a distinct responsibility* to stand up for our shared humanity and equal dignity of each human being in all circumstances within our own spheres of preaching, teaching,

spiritual guidance and social engagement" (OHCHR 2018a, 17, emphasis added).

Finally, with the aim of recognizing the role of faith-based actors, the CEDAW Committee repeatedly recommended States to undertake "Faith for Rights" initiatives. It also made explicit references to the United Nations "Faith for Rights" framework, the Beirut Declaration and the Rabat Plan of Action, calling on States parties to use these existing soft law instruments. These are practical and implementable recommendations to States parties in often complex religious, cultural and traditional contexts. This reflects the pioneering role and innovative approach of the CEDAW Committee to address issues at the intersection of faith and gender equality.

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# CHAPTER VII.

# CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (1984)

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**Abstract:** The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted on 10 December 1984, and a monitoring body or treaty body, the Committee against Torture, was set up to ensure that the Convention is observed and implemented. The present chapter provides an analysis of the jurisprudence of this Committee concerning the intersection between the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and the right to freedom of religion or belief. After the introduction, the chapter addresses the religious influences during the *travaux préparatoires* of the Convention. The third section provides an analysis of the faith-related jurisprudence of the Committee, which covers a variety of issues such as non-refoulement, manifestation of discrimination and intolerance against religious minorities, deprivation of liberty, including conditions of detention, torture in the name of certain religious laws or interpretations, discrimination of and violence against women or girls, redress and other issues. Some selected issues of interpretation are addressed in the fourth section, where the jurisprudence of the Committee is compared with that of other key human rights mechanisms.

**Keywords:** Torture, ill-treatment, discrimination, intolerance, hate speech, religion or belief, religious minorities, deprivation of liberty, non-refoulement, redress.

## 1. Introduction

The eradication of the practice of torture in the world was one of the major challenges taken up by the United Nations only a few years after its establishment. In order to ensure adequate protection for all persons against torture and other cruel, inhuman or degrading treatment or punishment, over the past decades the United Nations has adopted universally applicable standards. These standards were ultimately embodied in international declarations and conventions.

The adoption on 10 December 1984 by the United Nations General Assembly of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Convention) rounded off the codification process to combat the practice of torture (A/RES/39/46, annex). Consisting of 33 articles, this core human rights treaty entered into force on 26 June 1987, after it had been ratified by twenty States.

The general object and purpose of the Convention is to strengthen the existing prohibition of torture by specific measures of criminal law aimed at deterring torture as well as other measures of a preventive nature. It also elaborates on the positive obligations that States need to undertake in order to protect this right (Zach 2019, 81). In accordance with Article 17 of the Convention, a monitoring body, the Committee against Torture, has been set up, with the main function of ensuring that the Convention is observed and implemented. The Committee met for the first time in April 1988 in Geneva and has since carried out intensive activities and adopted comprehensive jurisprudence, as will be outlined below. The Optional Protocol to the Convention (OPCAT), which entered into force on 22 June 2006, created the Subcommittee on Prevention of Torture with a mandate to visit places where persons are deprived of their liberty in the States parties (the Optional Protocol is commented on separately, see below chapter X).

Under Article 19 of the Convention, the Committee is mandated to examine reports on the measures that States parties are taking to implement the provisions of the Convention. As of November 2025, 175 States have ratified or acceded to the Convention (United Nations 2025), and all States parties are obliged to submit regular reports to the Committee. Its mandate also includes the possibility, among other functions, to undertake confidential inquiries when reliable information is received with well-founded indication that torture is being systematically practiced in a State party (Article 20) and to consider individual complaints (Article 22)

with regard to those States parties that have recognized the competence of the Committee to receive such complaints.

The Committee usually holds three four-week session per year in Geneva, where it examines State party reports and considers individual complaints. In the context of its examination of State party reports, the Committee also regularly receives written submissions from and meets with national human rights organizations, national preventive mechanisms and civil society organizations, including religious or faith-based organizations, prior to its public dialogue with the concerned State party. Following the dialogue, the Committee addresses its concerns and recommendations to the State party in the form of "concluding observations".

For the purposes of this Convention, the term torture means "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" for several purposes, including "for any reason based on discrimination of any kind" (Article 1(1)). However, the term torture "does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions" (ibid.).

While the prohibition of torture and ill-treatment as well as freedom of religion or belief are complementary human rights and both non-derogable, there is an important difference (A/HRC/58/49, 20). The prohibition of torture and ill-treatment is absolute, meaning that it does not permit any limitation or restriction. The prohibition of torture is part of customary international law, and it is also "recognized as forming part of *jus cogens* and entailing, on the part of States, obligations *erga omnes* towards the international community as a whole" (E/CN.4/1987/35, 73). *Jus cogens* or peremptory norms of general international law have been defined by the International Law Commission as "a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general

international law having the same character" (A/74/10, 56). Thus, torture is prohibited everywhere and in all situations, even in armed conflicts (A/HRC/58/49, 8). As formulated in Article 2 (2) of the Convention: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." The Committee has also absolutely rejected "any efforts by States to justify torture and ill-treatment as a means to protect public safety or avert emergencies" and "any religious or traditional justification that would violate this absolute prohibition" (CAT/C/GC/2, 5).

Freedom of thought, conscience, religion or belief is also absolute in its internal dimension (*forum internum*). However, the manifestation of freedom of religion or belief (*forum externum*) can, in exceptional circumstances, be limited following strict tests of legality, legitimacy and necessity (A/HRC/58/49, 20). Freedom of religion or belief has not achieved *jus cogens* status, and it requires a treaty obligation as well as domestic norms in order to be fully implemented. Nevertheless, if someone suffers torture by virtue of their religion or belief, this would be a violation of *jus cogens*. Furthermore, given its *erga omnes* character, "any State is entitled to invoke the responsibility of another State for a breach of a peremptory norm of general international law (*jus cogens*), in accordance with the rules on the responsibility of States for internationally wrongful acts" (ibid., 9). Consequently, the most egregious violations of freedom of religion or belief which involve torture and ill-treatment can be prosecuted by any State in the world.

As will be shown in the following, although the terms "religion" or "belief" do not directly feature in the text of the Convention against Torture, they are implied in the definition of torture through the formulation "for any reason based on discrimination of any kind". The prohibition of torture based on discrimination of any kind thus establishes the nexus between the prohibition of

torture and freedom of religion or belief (ibid., 15). In addition, preambular paragraph 3 of the Convention refers to Article 55 of the Charter of the United Nations, which reiterates the obligation of the States "to promote universal respect for, and observance of, human rights and fundamental freedoms". Article 55 (c) of the Charter makes the non-discrimination aspect of the clause even clearer as it encourages "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion" (Nowak/Birk/Monina 2019, 19). This means that States parties to the Convention must ensure the protection of individuals or communities who are especially at risk of torture or ill-treatment by virtue of their religious beliefs (CAT/C/GC/2, 21).

## 2. Religious influences during the travaux préparatoires

In 1975, the United Nations adopted its first Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (A/RES/3452(XXX), annex). It reinforces the idea that human rights are universal and must be protected (Hargrove 2023), including through norms safeguarding individuals from cruel and degrading treatment. The Declaration emphasizes that torture is an offence to human dignity, regardless of exceptional circumstances such as a state of war or a threat of war, international political instability or any other public emergency. The Declaration calls on each State to take measures to prevent torture and to ensure that victims have the right to complain and have alleged abuses impartially investigated. Claude Hargrove assessed that "[t]he impact of this declaration has been profound, inspiring global advocacy for the humane treatment of all individuals, influencing the liberation of political prisoners, and prompting reforms in various nations" (ibid.).

As outlined in chapter X of this book, when discussing the "OPCAT project" in the early 1970s there was heightening

international concern at the use of torture, principally in countries with right-wing dictatorships in various parts of the world. A clear product of this was the 1975 Declaration, and the process that resulted in the adoption of 1984 Convention against Torture. The point was also made that the entire concept – the "new idea" – was underpinned by, and arguably a manifestation of, the Christian beliefs of its undoubted progeniture, Jean-Jacques Gautier.

In fact, the 1975 Declaration was intended to be the starting point for further work against torture. In a separate resolution, also adopted on 9 December 1975, the General Assembly requested the Commission on Human Rights to study the question of torture and any necessary steps for ensuring the effective observance of the 1975 Declaration (A/RES/3453(XXX), 2). Two years later, the General Assembly formally requested the Commission on Human Rights to draft the text of a binding convention, in the light of the principles embodied in the 1975 Declaration (A/RES/32/62, 1).

The Commission on Human Rights began its work on this subject at its 1978 session. An informal, inter-sessional working group was set up to discuss this item, based on a draft convention presented by Sweden (E/CN.4/1285; Danelius 2008). States were also presented with a draft text submitted by the International Association of Penal Law (E/CN.4/NGO/213), whose definition only included acts of torture (Nowak/Birk/Monina 2019, 3). During each of the subsequent years until 1984 a similar working group was set up to continue the *travaux préparatoires* of the draft convention.

Discussions in the various working groups mainly evolved around how to distinguish torture from other forms of ill-treatment and the meaning of powerlessness. In terms of faith-based discussions in the drafting process, the interpretation of the lawful sanctions clause has been particularly controversial (Zach 2019, 24). The *travaux préparatoires* also demonstrate that coercion and discrimination were added to the definition of torture after several

debates, and the compatibility of certain forms of punishment prescribed by religious laws was also discussed by the delegates (ibid., 37):

> "Certain States argued that while the Convention was intended to strengthen the already existing prohibition of torture in international law, it was not intended to lead to reform of the system of penal sanctions in different States and that, if that had been the intention, the Convention would have been unacceptable to a number of countries. Certain Islamic States for example did not want to be party to an instrument which deemed the imposition of certain corporal punishments under the fundamental religious law of Islam, Shari'a, to be a breach of the Convention. It was also in the interest of these States that 'lawful' refer to national and not international law.
>
> On the other hand there were those States who thought that this was too far reaching an exception since it might be interpreted so as to allow States to practise methods which would normally be regarded as torture, by making them lawful sanctions under its own legal system. This ambiguity could mean for instance that the amputation of a hand for theft in certain Arab States following traditions of Islamic law would be lawful in one country but not in others. Many States argued for clarification whilst feeling it important to retain the clause in order to stop encroachment into national criminal law. They argued that there must be a limit beyond which sanctions provided for by national law are so cruel as to constitute torture."

In the end, delegates agreed upon the formulation in the last sentence of Article 1 (1) that torture "does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions", albeit without giving any further details on any related definitions or criteria. However, this facilitated broader acceptance and ratification by more States parties (Zach 2019, 39):

> "The result was that certain Islamic States were now offered an opening to be party to this instrument. The Working Group did not include the same exception in Article 16. During the 1981 Working Group it was suggested that a provision similar to the last sentence of paragraph 1 of Article 1 should be inserted in Article 16, in order to exclude from the scope of Article 16 suffering arising only from lawful sanctions, as had been done in the definition of torture in Article 1 of the draft Convention. That suggestion was opposed by several members who pointed out that the purpose of Article 16 was to prohibit the existence of cruel, inhuman or degrading treatment and punishment, not to legalize it by having such treatment incorporated into law. […] It has been pointed out that punishment on the basis of Shari'a law could now be in conflict with Article 16 of the Convention."

Some States made reservations or declarations related to religion and Sharia laws when ratifying or acceding to the Convention. In response, other States objected to such reservations, which they considered as incompatible with the object and purpose of the Convention. In 2012, the Government of the State of Qatar effected partial withdrawal of its initial general reservation made upon accession ("Any interpretation of the provisions of the Convention that is incompatible with the precepts of Islamic law and the Islamic religion"), while keeping in effect a limited general

reservation within the framework of Articles 1 and 16 of the Convention (United Nations 2025).

## 3. Faith-related jurisprudence

In addition to its comprehensive jurisprudence in the context of consideration of State party reports and individual communications, the Committee against Torture has so far adopted four general comments or recommendations on issues which need more clarification, or to which it believes that the States parties should devote more attention. As in the case of the other treaty bodies, such general comments are authoritative explanations and interpretations and provide guidance to States parties of the respective human rights treaties in terms of their international obligations. In the case of CAT, the general comments address the implementation of Article 2 (the obligation to prevent), Article 14 (the right to redress) and two general comments on Article 3 (non-refoulement).

The Committee has at times referred to incidents without specifically indicating that the perpetrators happened to be religious fundamentalist groups, including Boko Haram or the Taliban, or that the victims were part of a particular religious minority of the country in question. Such country contexts included the situations in Afghanistan, China, Nigeria and Viet Nam, and examples will be given below. There seems to be an increasing use of references specifically to faith in recent concluding observations from 2025, as the concluding observations themselves have become more detailed.

Although the right to freedom of religion or belief has not been at the forefront of the mandate of CAT from the outset, the developing jurisprudence of the Committee shows a variety of contexts where this issue has been highlighted and reflected upon: (1) the principle of non-refoulement; (2) manifestation of discrimination and intolerance against religious minorities, including hate speech and violent attacks; (3) deprivation of liberty,

including conditions of detention and institutionalization by faith-based organizations; (4) breaches of the prohibition of torture in the name of certain religious laws or interpretations (traditional harmful practices and corporal punishment); (5) discrimination of and violence against women or girls (or gender issues); (6) redress; and (7) other issues.

### 3.1 The principle of non-refoulement

The principle of non-refoulement forms an essential protection under international human rights, refugee, humanitarian and customary law. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations.

The principle is well established in multiple sources of international law, both customary law and treaty law. It is anchored in Article 33 (1) of the 1951 Convention Relating to the Status of Refugees, that forbids a country from deporting ("refoulement") any person to any country in which their "life or freedom would be threatened" on account of "race, religion, nationality, membership of a particular social group or political opinion".

The Convention against Torture held in Article 3 that non-refoulement emanated from larger protections from torture and inhumane treatment:

> "1. No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
>
> 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the

> State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

The principle is also found in the International Convention for the Protection of All Persons from Enforced Disappearance and in various regional instruments.

As an inherent element of the prohibition of torture and other forms of ill-treatment, the principle of non-refoulement is characterized by its absolute nature without any exception. In this respect, the scope of this principle under relevant human rights treaties is broader than that contained in international refugee law. The prohibition applies to all persons, irrespective of their citizenship, nationality, statelessness or migration status, and it applies wherever a State exercises jurisdiction or effective control, even when outside of that State's territory. Accordingly, any national law that grants amnesty, immunity or pardon for perpetrators of torture – be it on traditional, religious or other grounds – would undoubtedly violate the State's obligation under Article 4 and the absolute prohibition doctrine as stated in Article 2 (CAT/C/GC/2, 5).

Most of the individual communications received by the Committee refer to alleged violations by States parties of Article 3 of the Convention. In 2016, the Committee decided to revise its General Comment No. 1 (1997) "on the implementation of article 3 of the Convention in the context of article 22" (A/53/44, Annex IX), based on its experience in considering individual communications under Article 22 of the Convention, addressing allegations of violation by States parties of Article 3 of the Convention. In December 2017, it adopted its General Comment No. 4 (CAT/C/GC/4) which provides guidance to States parties and the complainants and their representatives on the scope of Article 3 and on how the Committee assesses the admissibility and the merits of the individual communications submitted to the Committee for its consideration.

The Committee indicated that "to determine whether there are substantial grounds for believing that a person would be in danger of being subjected to torture if deported, the Committee considers as crucial the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights, referred to in article 3 (2) of the Convention. Such violations include, but are not limited to: [...] (b) harassment and violence against minority groups" (CAT/C/GC/4, 28).

The Committee also clarified that it would assess "substantial grounds" and consider the risk of torture as foreseeable, personal, present and real when the existence of facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in case of the complainant's deportation. Indications of personal risk may include, but are not limited to the complainant's "(j) religious affiliation; (k) violations of the right to freedom of thought, conscience and religion, including violations related to the prohibition of conversion to a religion that is different from the religion proclaimed as State religion and where such a conversion is prohibited and punished in law and in practice" (CAT/C/GC/4, 45). In its jurisprudence, the Committee has also taken personal factors such as religion or religious affiliation into account in assessing the torture risk upon return (CAT/C/46/D/338/2008, 7.7; CAT/C/48/D/444/2010, 13.8; CAT/C/54/D/538/2013, 9.8; CAT/C/52/D/475/2011, 11.9).

As noted above, Article 3 provides for an absolute protection against refoulement. No one can be excluded from this absolute protection against refoulement; persons who pose a threat to national security and/or have committed serious crimes and who might therefore not be eligible for asylum are equally protected. Criminal proceedings against or convictions of a person are not a valid reason to disregard the non-refoulement principle. In this context, the Committee has found that indictments and criminal proceedings involving persons accused of religious extremism and

terrorist activities cannot be taken to prevail over the rights enshrined in Article 3 of the Convention, even if a State party invokes regional security.

A couple of illustrative cases include *Abed Azizi v. Switzerland,* where the complainant submitted that he would face a real risk of being subjected to treatment contrary to the Convention if he were deported to the Islamic Republic of Iran. The complainant, who had converted to Christianity, claimed that Christian converts were considered second-class citizens in Iran, targeted by radical Muslim groups and persecuted by their own families. In its consideration of the merits of the case, the Committee made extensive references to a variety of United Nations and other documents, including the country reports of the Special Rapporteur on the human rights situation in Iran and it also had regard to a press release by, *inter alia*, the Special Rapporteur on freedom of religion or belief on the situation in the country. The Committee found "that the complainant's conversion to Christianity and his affiliation with Kurdish political activists compound the risk that he will be persecuted if he is returned to the Islamic Republic of Iran" (CAT/C/53/D/492/2012, 8.8). It considered that there were substantial grounds for believing that the complainant would risk being subjected to torture if he were returned to Iran and concluded that the deportation of the complainant to Iran would constitute a violation of Article 3 of the Convention.

Another example is the case of *Abdussamatov and others v. Kazakhstan*, where the complainants, 27 Uzbek and 2 Tajik nationals, claimed that their extradition to Uzbekistan would constitute a violation by Kazakhstan of Article 3 of the Convention. They were practitioners of Islam and fled Uzbekistan for fear of persecution for practising their religion. In its consideration of the merits of the case, the Committee noted that all 29 complainants are Muslims reportedly practising their religion outside of official Uzbek institutions or belonging to religious extremist organizations. It also noted that the complainants were

extradited pursuant to a request from Uzbekistan accusing them of serious crimes, including religious extremism and attempts to overthrow the constitutional order, and on the basis of the State party's assessment that they posed a security threat to its citizens and citizens of other countries. The Committee reiterated its concern, expressed in its concluding observations, about forcible returns to Uzbekistan in the name of regional security, including the fight against terrorism, to unknown conditions, treatment and whereabouts. It also noted that the non-refoulement principle in Article 3 of the Convention is absolute and the fight against terrorism did not absolve the State party from honouring its obligation in this regard. In this context, the Committee also observed that the non-refoulement principle in article 3 of the Convention is absolute even if after an evaluation under the 1951 Convention relating to the Status of Refugees, a refugee was excluded under Article 1 F (c). The Committee concluded that "the complainants, who have all been charged with religious extremism or membership of extremist or terrorist organizations in Uzbekistan and were extradited by the State party on the basis of those charges, have sufficiently demonstrated their foreseeable, real and personal risk of torture upon return to Uzbekistan" (CAT/C/48/D/444/2010, 13.9) The Committee thus concluded that the State party's extradition of the complainants to Uzbekistan was in breach of Article 3 of the Convention.

The Committee has also addressed the principle of non-refoulement in the context of its review of state party reports, inter alia, of Cyprus (CAT/C/CYP/CO/4) and Thailand (CAT/C/THA/CO/2). In the case of Thailand, the Committee expressed its concern about the involuntary or forced repatriation of Vietnamese Montagnards, without mentioning directly that they were members of a religious minority.

### 3.2 Manifestation of discrimination and intolerance against religious minorities, including hate speech and violent attacks

In its General Comment No. 2, the Committee has elaborated in particular on the protection for individuals and groups made vulnerable by discrimination or marginalization (CAT/C/GC/2, 21). The principle of non-discrimination is a basic and general principle in the protection of human rights and fundamental to the interpretation and application of the Convention and, as noted above, non-discrimination is included within the definition of torture itself in Article 1 (1) of the Convention. The Committee has specifically emphasized that the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture (CAT/C/GC/2, 20).

The Committee has further reiterated that protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of religious belief or affiliation, or any other status or adverse distinction. States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection (CAT/C/GC/2, 21).

The Committee has both raised concerns about instances of violence against or discrimination of religious or belief minorities committed by or with the cooperation of State officials, including police officers and others, and it has highlighted the State party's positive obligations to protect such groups against violent or discriminatory acts committed by others, including instances of mob violence.

In its 2025 review of France, the Committee addressed instances of excessive use of force by the police and the gendarmerie. It remained deeply concerned about the numerous allegations of excessive use of force and ill-treatment, including physical and verbal abuse, by law enforcement officials, finding it troubling that "these cases, according to reports, disproportionately affect members of certain minority groups, in particular people of African descent, people of Arab origin or of the Muslim faith, Indigenous Peoples and non-citizens" (CAT/C/FRA/CO/8, 28). Concerns were also expressed "about numerous allegations that law enforcement officers make disproportionate and discriminatory use of their power to stop and search persons belonging to ethnic or religious minority groups and that such identity checks are not subject to systematic judicial oversight or appropriate statistical analysis" (ibid.).

Notwithstanding measures taken by France to combat hate crimes, the Committee elaborated a very detailed concern, indicating that it was "troubled by the large and increasing number of hate crimes motivated by racist, Islamophobic, antisemitic, xenophobic or homophobic prejudices and by the relatively small number of these crimes that have resulted in prosecution and conviction. It noted with concern the growing hostility towards persons belonging to ethnic or religious minority groups, including people of African descent, Roma, Muslims, Jews and lesbian, gay, bisexual, transgender and intersex persons" (ibid., 42). In terms of counter-terrorism measures, the Committee found it "regrettable that the State Party does not collect data, broken down by ethnic or religious identity, on the persons subjected to such measures and notes with concern that they are disproportionately imposed on people who are or are perceived to be of the Muslim faith or foreign origin" (ibid., 40).

In the 2024 review of Finland, the Committee expressed its concern at "the intensification of hostile sentiments towards persons belonging to ethnic or religious minority groups, including

people of African descent, Roma, Muslims and Russian and Swedish speakers" (CAT/C/FIN/CO/8, 38). When reviewing Sweden in 2021, the Committee acknowledged the legislative and other measures taken by the State party to combat hate crime, such as "the Police Authority's assessments of threats to religious buildings and communities, a forum on holocaust remembrance and combating antisemitism, and new pledges to encourage the remembrance of the Holocaust and to combat antisemitism, anti-Gypsyism and other forms of racism", but the Committee also expressed its concern at reported threats to minorities and marginalized individuals. In addressing its recommendations to Sweden, the Committee recalled "its position that the special protection of minorities or marginalized individuals or religious groups especially at risk is a part of the obligation of the State party to prevent torture or ill-treatment" (CAT/C/SWE/CO/8, 32–33).

The Committee has also specifically addressed reports of torture and ill-treatment of members of specific ethnic and religious minorities. In its 2025 review of Turkmenistan, the Committee was concerned about "reports indicating that individuals engaging in religious practices associated with unregistered or unauthorized religious groups, such as members of the Balochi minority, have been subjected to imprisonment. This includes allegations that Muslim men have had their beards forcibly shaved and have been compelled to consume alcohol and pork, which may amount to torture or cruel, inhuman or degrading treatment or punishment when inflicted for discriminatory purposes, on the basis of a person's religion or beliefs" (CAT/C/TKM/CO/3, 27). The Committee was also gravely concerned about reports of torture and other abuse directed against members of the Balochi minority, including the beating to death of one member and the ongoing detention of another. In its detailed recommendations addressing the intersection between the prohibition of torture and ill-treatment and the right to freedom of religion or belief, the Committee called on the State party to "(a) Prevent, investigate and

remedy any acts of torture or other cruel, inhuman or degrading treatment or punishment that are motivated by, or result in, discrimination on the grounds of religion or belief, including acts of violence, harassment or intimidation targeting individuals or communities because of their religion or belief, or the way in which they practise their religion; (b) Ensure that no person is subjected to torture or ill-treatment for exercising, or refusing to exercise, his or her right to freedom of religion or belief, including the right to adopt, change or renounce a religion or belief, and the right not to be coerced into any religious practice or observance; (c) Ensure that no person is subjected to torture or ill-treatment for exercising the right to freedom of religion or belief in the manner in which he or she wishes to do so" (CAT/C/TKM/CO/3, 28).

In 2021, the Committee decided to review Nigeria and examine the measures taken to protect or give effect to the rights recognized in the Convention in the absence of the initial report. In its subsequent concluding observations, the Committee appreciated the State party's commitment "to adopt measures to fight against impunity with an increased focus on the crimes carried out by Boko Haram", but the Committee noted with concern "the continually deteriorating security environment owing to the systematic attacks by non-State armed groups, as well as farmer-herder clashes, resulting in the displacement of around 2.9 million persons in the north-east, and reports of the use of children as fighters or otherwise exploited in forced marriage, sexual slavery or forced labour by Boko Haram" (CAT/C/NGA/COAR/1, 23). The Committee did not characterize Boko Haram as a religious fundamentalist group or Islamic sectarian movement. In engaging Nigeria's positive obligations, the Committee urged the State party to "[s]tep up efforts to ensure the safety and security of the population affected by the conflict, prevent violations of their human rights by any party to the conflict […]" (ibid., 24).

In its 2019 concluding observations on Bangladesh, the Committee expressed its concern at reports of intimidation, harassment and

physical violence, including sexual violence, committed against members of indigenous, ethnic and religious minority communities, including by or with the cooperation of State officials. Specific references were made to "recent allegations that members of Hindu communities in Pirojpur had had been subjected to violence and harassment, including the burning of their homes" and the case of a Hindu activist and lawyer, who was detained for insulting the Prime Minister and was then allegedly attacked and set on fire while in police custody, resulting in his death, which the State party delegation indicated had been ruled a suicide. One of the concrete recommendations addressed to Bangladesh was to "[c]onsider repealing legislation that criminalizes 'hurting religious sentiments', such as the Digital Security Act of 2018, given that such provisions are reportedly frequently abused as a means to enlist the authorities in the harassment of minority populations and seen as legitimizing the commission of private violence against persons accused of committing this offence" (CAT/C/BGD/CO/1, 23–24).

In its 2019 review of Bulgaria, concerns were expressed by the Committee at the reported marked increase since 2014 in the incidence of violence against minority groups such as Roma and Muslims and their places of worship, migrants, refugees and asylum seekers, Turks, Jews, persons of African descent, and members of sexual minorities, as well as human rights activists defending them. Among the recommendations, the Committee requested the State party to provide "information about the outcome of any proceedings in relation to the attacks carried out by the Ataka political party against the Muslim community in May 2011 near the Banya Bashi mosque in Sofia" (CAT/C/BGR/CO/6, 29–30).

The Committee elaborated on the positive obligation of Pakistan to protect religious or belief communities in the context of its review in 2017. The Committee expressed its concern about reports of violence against and inadequate efforts by Pakistan's

authorities to protect vulnerable individuals, particularly members of Shia, Christian and Ahmadiyya communities and individuals accused of blasphemy, from violence by non-State actors. The Committee referred to a recent case, where an individual was killed by a mob after being accused of blasphemy (CAT/C/PAK/CO/1, 36). In the context of its 2008 review of Algeria, the Committee was also concerned at "information received concerning many acts of mob violence against religious minorities and persons who are lawfully seeking alternative modes of expression and behaviour" (CAT/C/DZA/CO/3, 16).

When the Committee reviewed Indonesia back in 2008, it expressed its concern at incitement and acts of violence against the Ahmadiyah and persons belonging to other minority religious communities (CAT/C/IDN/CO/2, 19). The Committee was especially concerned that the Attorney-General had announced plans to make public a joint ministerial decree that would criminalize the activities of the Ahmadiyah. The Committee referenced a report of the Special Rapporteur on freedom of religion or belief, referring to the State party's intention to prohibit Ahmadiyah activities (E/CN.4/2006/5/Add.1, 163). The Committee was especially concerned "that State party officials who may authorize a decree banning the Ahmadiyah, thereby putting members of that community at further risk of ill-treatment and physical abuse, also express the view that the Ahmadiyah must refrain from 'provoking' members of the community, in effect blaming the group at risk" (CAT/C/IDN/CO/2, 19). In recalling its General Comment No. 2 in relation to the protection of members of groups especially at risk of ill-treatment, the Committee made several recommendations concerning investigations, prosecutions and punishment, condemnation of hate speech and violence, recruitment of persons belonging to ethnic and religious minorities into law enforcement, and finally it called on the State party to respond favourably to the request of the Special Rapporteur on freedom of religion or belief to visit the country (ibid.).

### 3.3 Deprivation of liberty, including conditions of detention, and institutionalization by faith-based organizations

Individuals in places of deprivation of liberty are entitled to protection against torture and ill-treatment. As explained above, it is an absolute right. Similarly, the right to freedom of religion or belief is not suspended for detained individuals (CCPR/C/21/Rev.1/Add.4, 8).

Guidelines related to the prohibition of torture and ill-treatment offer some basic standards to help States prevent these acts and, in doing so, to avoid interfering with the right to freedom of religion or belief (A/HRC/58/49, 23). Several documents are particularly relevant in this area: the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules, A/RES/70/175, annex); the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol 2022); and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules, A/RES/65/229, annex). The Principles on Effective Interviewing for Investigations and Information Gathering, often referred to as the Mendez Principles, also recognizes cultural or religious background as one of the intersecting risk factors in identifying and addressing the needs of interviewees in situations of heightened vulnerability (APT 2021, 135). In the context of its reviews of State party reports, the Committee also urges States parties to abide by these soft law principles when it comes to detention (e.g. CAT/C/DNK/CO/8, 19).

In terms of individual communications, the Committee has not yet considered the intersection between the two rights in detention settings in great detail. In the case of *Thabti v. Tunisia*, the complainant submitted that he had been placed in solitary

confinement, where he was not fed properly, denied the right to practise his religion and once again subjected to torture. However, he did not elaborate further on this. The Committee found violations of Articles 12 and 13 of the Convention but considered that there were insufficient elements to make a finding on the alleged violation of other provisions of the Convention raised by the complainant at the time of adoption of the decision (CAT/C/31/D/187/2001, 10.9). The Committee came to a similar conclusion in the case of *Abdelli v. Tunisia*, where the complainant had alleged that his right to practise his religion while in detention, along with other rights, was infringed by the administrative supervision measures applied against him (CAT/C/31/D/188/2001, 10.9).

In connection with its 2016 review of Saudi Arabia, the Committee, while appreciating the assurances of the head of the delegation that all prisoners could worship according to their religious beliefs, expressed its concern "at reports that only certain prisoners, primarily Sunni Muslims, are able to do so, in practice, and that, in law, this right is accorded solely to Muslim detainees" (CAT/C/SAU/CO/2, 30). When reviewing in 2015 the initial report of Iraq, concerns were expressed "about allegations of torture and ill-treatment, including rape and other forms of sexual abuse, against women in custody – mostly Sunni Muslims –, who are frequently detained for allegedly 'covering up' for their husbands or other male family members" (CAT/C/IRQ/CO/1, 15).

The Committee has also regularly addressed the issue of detention and prosecution based on broadly defined offences. One example was its consideration in 2015 of the People's Republic of China, where, while noting the delegation's statement that "government acts of intimidation and reprisals against citizens do not exist in China", the Committee remained concerned at "consistent reports that human rights defenders and lawyers, petitioners, political dissidents and members of religious or ethnic minorities continue

to be charged, or threatened to be charged, with broadly defined offences as a form of intimidation. Such offences reportedly include 'picking quarrels and provoking troubles', 'gathering a crowd to disturb social order' or more severe crimes against national security" (CAT/C/CHN/CO/5, 36).

In the context of its previous review of China in 2008, the Committee addressed the issue of "re-education through labour", recommending that the State party abolish this form of administrative detention (CAT/C/CHN/CO/4, 13). In particular, the Committee was "greatly concerned by the allegations of targeted torture, ill-treatment, and disappearances directed against national, ethnic, religious minorities and other vulnerable groups in China, among them Tibetans, Uighurs, and Falun Gong practitioners" (ibid., 22). The Committee found that targeting in particular religious minority groups and detaining them in administrative forms of detention such as the re-education through labour facilities, created a serious risk of torture and degrading treatment. In the subsequent review of China in 2015, the need for investigations into any allegation of torture, including in former "re-education through labour" facilities was highlighted, and that the results should be made public (CAT/C/CHN/CO/5, 43).

In the context of Viet Nam, the Committee also expressed in 2018 its concern about "the reported disproportionate number of detentions and the high number of deaths in custody of members of ethnic and religious minorities, in particular those living in remote areas of the country, as a result of torture and ill-treatment in police stations and other places of deprivation of liberty" (CAT/C/VNM/CO/1, 22). The Committee was also concerned at the treatment of persons associated with minority religious or ethnic communities and their subsequent suspicious deaths in custody, referring to the particular cases of a Buddhist, a Hmong Christian, a Pastor of the Montagnard Evangelical Church and another Montagnard Christian. Concerns were also expressed at the situation of the leaders of the Unified Buddhist Church of Viet

Nam, one of whom was allegedly under house arrest in a monastery (ibid.). Among the recommendations, the Committee called on Viet Nam to "ensure that the treatment of members of religious and ethnic communities by public officials or other persons acting in an official capacity is not based on discrimination of any kind in contravention of the Convention" (ibid., 23).

In preparation of the Committee's review of the United States of America in 2006, it transmitted a list of issues to the State party prior to the dialogue (CAT/C/USA/Q/2 ) in accordance with the usual practice. The Committee noted that it had received information, according to which the State party had authorized the use of interrogation techniques such as 20-hour interrogations, stress positions, isolation, sensory deprivation, hooding, exposure to cold or heat, sleep and dietary adjustments, use of dogs to instil fear, removal of clothing, forced shaving, use of female interrogators, physical contact and removal of religious items. The Committee also asked how the State party reconciled the use of such techniques with its obligations under Article 16 of the Convention (ibid., question 52). It further asked for detailed information on interrogation techniques authorized and practised in Guantánamo Bay, Afghanistan, Iraq, and in other places of detention under the State party's control. During the dialogue and in the subsequent concluding observations, the Committee raised the reported violations of the prohibition against torture and ill-treatment in relation to efforts to combat terrorism with the State party. The Committee reminded the State party that "the Convention applies at all times, whether in peace, war or armed conflict" (CAT/C/USA/CO/2, 14). With this in mind, the Committee expressed its concern that in 2002 the State party had "authorized the use of certain interrogation techniques that have resulted in the death of some detainees during interrogation", and the Committee regretted that "confusing interrogation rules" and techniques defined in vague and general terms, such as "stress positions", had led to serious abuses of detainees (ibid., 24). The

recommendation was to "rescind any interrogation technique, including methods involving sexual humiliation, 'waterboarding', 'short shackling' and using dogs to induce fear, that constitutes torture or cruel, inhuman or degrading treatment or punishment, in all places of detention under its de facto effective control, in order to comply with its obligations under the Convention" (ibid.). Although the explicit reference to religion or belief in the list of issues was not repeated in the concluding observations, we know today that different ways of humiliating the prisoners, including by using religious symbols to humiliate or by attacking the detainee's religion or belief, culture or values, were applied as part of the interrogations and that these methods will in all other circumstances be coined psychological forms of torture. This will be elaborated on under section 4.

Similar observations regarding forms of torture and ill-treatment were recently raised in the context of the review of Israel in November 2025. The Committee had received a large number of NGO reports prior to the review itself. During the interactive dialogue with the State party, one of the Committee experts referred to numerous reports regarding Palestinians "being exposed to abuse and torture during interrogations, including the use of tightly locked handcuffs, urination, humiliation and denial of religious rights, among others" (OHCHR 2025). The expert furthermore referred to detainees who reported having been subjected to "torture or other ill-treatment; severe beatings, including on the genitals; electric shocks; being forced to remain in stress positions for prolonged periods; deliberate inhumane conditions and starvation; waterboarding; and widespread sexual insults and threats of rape" (ibid.). The expert however noted that "Israel had disputed these claims today. Why should the Committee not believe the reports received from five alternative and reliable institutions?" (ibid.). In the concluding observations, adopted on 25 November 2025, the Committee expressed "its deep concern over allegations of repeated severe beatings, dog

attacks, electrocution, waterboarding, use of prolonged stress positions, sexual violence, threats against detainees and their family members, insults to personal dignity and humiliation such as being made to act like animals or being urinated on, systematic denial of medical care, excessive use of restraints, in some cases resulting in amputation, the performance of surgeries without anesthetic, exposure to extreme cold or heat, including boiling water, denial of adequate nutrition and water, deprivation of clothing, sleep and access to hygiene facilities and products, including feminine hygiene products, deprivation of light or darkness, use of loud music and noises, denial of the right to freely practice one[']s religion, and the forcible use of hallucinogenic medication, in a discriminatory manner, against Palestinians, and for purposes including the extraction of information or confessions and as a means of exacting punishment, including collective punishment" (CAT/C/ISR/CO/6, 28).

The Committee has also addressed instances of prison violence and deaths in custody. In the context of its review of North Macedonia in 2024, the Committee remained concerned that "little progress has been made in assessing the risks faced by and needs of individual prisoners in order to prevent inter-prisoner violence" and that certain groups of persons, including "those who belong to ethnic or religious minority groups are frequently at a higher risk of such violence" (CAT/C/MKD/CO/4, 16).

In its review of the initial report of Ireland back in 2011, the Committee expressed "its grave concern at the failure of the State party to protect girls and women who were involuntarily confined between 1922 and 1996 in the Magdalene Laundries, by failing to regulate and inspect their operations, where it is alleged that physical, emotional abuses and other ill-treatment were committed, amounting to breaches of the Convention" (CAT/C/IRL/CO/1, 21). Although it was common knowledge that the Magdalene laundries were operated by religious orders of the Catholic Church, the Committee did not make a clear reference to that at the time.

The Committee also expressed its grave concern at the lack of investigations, accountability and redress. In addition, the Committee expressed its grave concern that despite the findings of the report of the Commission to Inquire into Child Abuse, also known as the Ryan Report, that "physical and emotional abuse and neglect were features of the institutions" and that "sexual abuse occurred in many of them, particularly boys' institutions", there has been no follow-up by the State party (ibid., 20). Again, the Committee did not refer to the fact that these institutions were run by religious orders of the Catholic Church. The Committee qualified both issues as follow-up issues, or issues of particular concern, in its concluding observations. We will discuss the right to redress for those involuntarily confined in the Laundries below in section 3.6.

### 3.4 Breaches of the prohibition of torture in the name of certain religious laws, or interpretations (traditional harmful practices and corporal punishment)

As was highlighted above, the range of situations in which the rights to freedom of religion or belief and the prohibition of torture and ill-treatment can be violated concurrently is vast. This includes violations of the prohibition of torture in the name of certain religious laws or interpretations carried out by State or non-State actors.

One example is corporal punishments applied to individuals allegedly on the grounds of interpretations of religious texts. Corporal punishments imposed by the State or educational facilities have been repeatedly considered as falling within the ambit of torture and ill-treatment, regardless of the justification for them. Other examples directly or indirectly related to religious interpretations or cultural norms include issues raised regularly by special procedures, including female genital mutilation and other harmful traditional practices as well as certain forms of punishment prescribed by religious norms.

In the context of its review of Mauritania in 2018, the Committee expressed its concern that "the Criminal Code still contains provisions authorizing corporal punishment for crimes punishable by *hadd* penalties (public stoning to death, whipping and amputation), for some of which there is no statute of limitations, as well as by *qisas* penalties and blood money (*diya*), where the principle of retaliation is applied in cases of violence against an individual's physical integrity, and the punishment or pardon is left to the discretion of the victim or their family, in exchange for a payment" (CAT/C/MRT/CO/2, 34). It also noted its concern about the provisions of Article 303 of the Criminal Code, which stipulates that "there is neither crime nor offence when the homicide, wounds and blows have been ordered pursuant to the law, by a legitimate authority" (ibid.). The recent amendment to Article 306 of the Criminal Code rendering the death penalty mandatory for acts qualified as apostasy, with no possibility for those concerned to repent or appeal, was another source of concern to the Committee (ibid.).

When reviewing Nigeria in the absence of the initial report by the State party, the Committee was distressed in 2021 by reports that capital punishment could be imposed in 12 states that operated under sharia for offences such as adultery, apostasy, witchcraft or sexual relations between same sex persons. It was also distressed that such punishments might be inflicted on juveniles, owing to the vague definition of the child in sharia, which was linked to the onset of puberty, despite the State party's statement that death sentences could not be imposed on persons younger than 18 years of age. The Committee urged the State party to "[i]mmediately prohibit the death penalty for all persons under the age of 18, in compliance with federal law, including in the states that operate under sharia" (CAT/C/NGA/COAR/1, 27–28).

In relation to its review of Afghanistan in 2017 and under the heading "Use of torture and ill-treatment by non-State armed insurgency and terrorist groups and civilian casualties", the

Committee "deplored the presence of a wide range of armed groups, including the Taliban, Da'esh and Hizb-i Islami, perpetrating severe human rights abuses, including extrajudicial killing and corporal punishment, such as flogging and stoning" (CAT/C/AFG/CO/2, 21). Without specifically referring to these groups as religious fundamentalist groups, the Committee called on the State party to keep thorough documentation on the victims of torture and inhuman treatment in areas not under Government control, the types of violations of the Convention against them and the damages inflicted, as well as the identity, if known, of the alleged perpetrators, so that the State party can fully exercise its duties under the Convention when effective control is re-established and ensure that those found responsible are prosecuted (ibid., 22).

In relation to Egypt, while noting that Articles 93 and 151 of the Constitution established that international treaties ratified by the State party acquired the force of law upon promulgation, the Committee in 2023 regretted the lack of information on how potential conflicts between domestic laws, including those based on sharia law, and the Convention are resolved (CAT/C/EGY/CO/5, 7). It also regretted the lack of examples of cases in which the provisions of the Convention had been invoked before or directly applied by domestic courts (ibid.).

In the context of its review of the United Arab Emirates in 2022 and under the heading "Application of the Convention", the Committee noted the information provided by the State party regarding its declaration on Articles 1 and 16 of the Convention, which excluded pain or suffering arising from lawful sanctions from the definition of torture, and it welcomed the willingness of the State party to consider the withdrawal of that declaration. However, while noting that instances were rare or might not even exist in practice, the Committee remained concerned over the lack of information provided regarding the competence of courts, including sharia courts, in handing down corporal or capital

sentences that may constitute torture or cruel, inhuman or degrading treatment or punishment (CAT/C/ARE/CO/1, 9).

In connection with its review of the Maldives in 2018, the Committee expressed its concern at information concerning children in conflict with the law in the State party, such as penal legislation, according to which criminal responsibility starts at 10 years of age. It was also concerned that under sharia law, children are considered responsible from the age of 7, that minors can be sentenced to flogging even in cases when they are the victims of crimes, such as rape, and for fornication. Furthermore, the Committee was concerned at reports that juveniles are detained in conditions that are in violation of the Convention (CAT/C/MDV/CO/1, 13). Another issue of serious concern to the Committee was "the practice of 'judicial flogging' administered under a restrictive and/or hard line interpretation of sharia penalties, which is also allowed under the Penal Code, mostly as punishment for consensual extramarital sex" (ibid., 31). In this respect, the Committee noted with grave concern that this corporal punishment is also used against survivors of sexual abuse and assault and that 85 per cent of persons punished in this way are women and girls (ibid.).

When the Committee reviewed Pakistan (CAT/C/PAK/CO/1, 18), it expressed in 2017 its concern about reported discrepancies in the administration of justice, including with respect to the jurisdiction of the Federal Shariat Court, which created difficulties for victims of torture seeking justice, as referenced by the Special Rapporteur on the independence of judges and lawyers (see A/HRC/23/43/Add.2). The Committee was particularly concerned about reports that women victims of torture faced numerous obstacles in accessing justice, which leads to impunity and other violations of the Convention (CAT/C/PAK/CO/1, 18).

In its 2011 concluding observations on Ethiopia, the Committee noted "with concern that the jurisdiction of Sharia and customary

law courts in family law matters, although subject to the consent of both parties, may expose women victims of domestic or sexual violence to undue pressure by their husbands, families and to have their case adjudicated by customary or religious rather than by ordinary courts" (CAT/C/ETH/CO/1, 23). The Committee called on the State party to "provide for effective procedural safeguards to ensure the free consent of parties, in particular women, to have their case adjudicated by Sharia or customary courts, and ensure that all decisions taken by those courts can be appealed to higher courts (courts of appeal and Supreme Court)" (ibid.).

In its 2023 review of Ethiopia and under the heading of "traditional harmful practices", the Committee recommended that the State party should ensure effective implementation of the National Strategy and Action Plan on harmful traditional practices against women and children and the national costed road map to end child marriage and female genital mutilation/cutting by 2025, including by strengthening targeted measures to address discriminatory attitudes at the community level, including among actors in customary justice systems (CAT/C/ETH/CO/2, 27). It should also take measures to eradicate female genital mutilation, including through cross-border cooperation and increased awareness-raising among religious and traditional leaders and the general public, in cooperation with civil society, about the criminal nature of the procedure, its adverse effect on the human rights and health of women and the need to eradicate it and its underlying cultural justifications (ibid.). Similar types of recommendations were addressed to Chad, Egypt and Kenya, which were reviewed in 2022 and 2023, respectively.

In the context of its 2018 review of Senegal, the Committee expressed its concern at reports that the exploitation of children by Koranic teachers for forced begging was "a phenomenon that, far from declining, actually increased over the reporting period and that these children continue to be subjected to trafficking, forced

begging and extreme forms of abuse and neglect by the persons responsible for their care (marabouts)" (CAT/C/SEN/CO/4, 31). Concerns were also expressed at "reports of the connivance of the authorities in relation to this phenomenon and their failure to prosecute abusive marabouts, except in cases of deaths or extreme abuse of children" and that Koranic schools were "not subject to any official control" (ibid.). The Committee recommended, *inter alia*, that the State party should "(a) Operate a coordinated system of care for talibé children, in order to protect them from exploitation and abuse, and establish a monitoring and follow-up mechanism to prevent repeat offences; (b) Enhance the application of national laws and conduct impartial and thorough investigations into acts of trafficking, ill-treatment and sexual abuse of children in Koranic schools and other schools, and ensure that those responsible, including State agents who do not investigate such allegations, are prosecuted and, if convicted, punished with appropriate sanctions; (c) Expedite the adoption of a bill to regulate teaching in Koranic schools and allocate the necessary resources for the effective functioning of the inspection service" (ibid., 32; see also below chapter X and chapter XVIII). When the Committee reviewed Chad in 2009, it was also concerned at the frequent resort to corporal punishment in education, in particular in Koranic schools (CAT/C/TCD/CO/1, 32)

A special form of traditional practices are the attacks against persons suspected of being witches, and so-called "witch-hunts" are prevalent in various Sub-Saharan African countries. There are reports about mob violence against individuals suspected of witchcraft and a number of people have been killed in such incidences. Since these abuses and violations are first and foremost directed against women, the main part of this section, describing CAT's recommendations in relation to violence against women or girls who have been accused of witchcraft, will be addressed in the following section 3.5 about gender issues.

### 3.5 Discrimination of and violence against women or girls (or gender issues)

As noted above, in its landmark interpretative General Comment No. 2, the Committee expanded the scope of the issues covered considerably. The Committee noted that State reports frequently lacked specific and sufficient information on the implementation of the Convention with respect to women. It went on to emphasize that "gender is a key factor" and that "being female intersects with other identifying characteristics or status of the person such as race, nationality, religion, sexual orientation, age, immigrant status etc. to determine the ways that women and girls are subject to or at risk of torture or ill-treatment and the consequences thereof" (CAT/C/GC/2, 22). The contexts in which females are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes (ibid.).

The Committee thus confirmed that gender was a key factor and that being female intersects with other identifying characteristics or status of the person such as, inter alia, religion to determine the ways that women and girls are subject to or at risk of torture or ill-treatment and the consequences thereof (Sveaass/Gaer 2022, 177–192).

The Committee has consistently referred to the situation of women in the context of its review of State party reports. As highlighted above under section 3.4, some of these examples include the reviews of Pakistan with a reference to the Pakistan Shariat Court (CAT/C/PAK/CO/1) and of Ethiopia with reference to Sharia courts (CAT/C/ETH/CO/1).

In the context of its 2022 review of Chad and under the heading of sexual and gender-based violence, the Committee noted with concern the high levels of spousal abuse and the persistence of sexual violence, including rape. It was concerned about "low reporting rates by victims owing to cultural taboos and fear of

being stigmatized by their communities" and expressed its deep concern about "reports that most cases of spousal abuse and sexual violence are settled out of court through financial compensation under the authority of religious and traditional leaders" (CAT/C/TCD/CO/2, 21).

In its 2021 review of Nigeria in the absence of a report, the Committee remained alarmed by the ongoing widespread sexual and gender-based violence inflicted by Boko Haram and the lack of protection for girls and boys from kidnapping by armed groups between 2014 and 2021, according to reports (CAT/C/NGA/COAR/1, 31). The Committee urged the State party to continue its ongoing efforts to combat all forms of sexual and gender-based violence, especially those cases involving actions or omissions by State authorities or other entities which engage the international responsibility of the State party under the Convention (ibid., 32).

Over the last couple of years, the Committee against Torture has formulated recommendations regarding witch-hunting and witch-burning to a number of States parties, including Malawi in 2022, where the Committee expressed concern "about the reported physical violence inflicted on women in relation to accusations of witchcraft" (CAT/C/MWI/CO/1, 31). Furthermore, in the context of its review of Kenya in 2022, the Committee reiterated its concern "about reports of cases of lynchings, in particular of elderly women accused of witchcraft, and about the allegations that these acts have not been effectively investigated, prosecuted and punished, even in cases where there is video evidence of the lynching" (CAT/C/KEN/CO/3, 35).

In the review of Togo in 2019, the Committee was concerned about the fact that "many children continue to be victims of multiple forms of abuse on a daily basis and are exposed to various harmful practices, such as forced and early marriage, or face accusations of witchcraft" (CAT/C/TGO/CO/3, 32). Reviewing

Benin in 2019, the Committee recommended that the State party "[c]onduct awareness-raising campaigns about children's rights, infanticide and harmful practices such as female genital mutilation and witchcraft accusations, including in the remote areas where such practices persist" (CAT/C/BEN/CO/3, 33). Also in 2019, in the review of the Democratic Republic of Congo, the Committee expressed its concern, noting "the persistence of this and other harmful traditional practices, such as the verbal and physical violence, including lynching, inflicted on elderly women in relation to allegations of witchcraft" (CAT/C/COD/CO/2, 34). Similar concerns and recommendations were addressed to Burkina Faso in 2013 (CAT/C/BFA/CO/1, 21) and to Sierra Leone in 2014 (CAT/C/SLE/CO/1, 16) .

This means that accusations, lynchings and other violent forms of discrimination based on the ideas that witches and witchcraft exist, is far from ancient history. These constitute serious human rights violations that are clearly within the intersection between religion or belief and the prohibition of torture, and also closely connected to discrimination and violence against women and girls.

### 3.6 Redress

According to Article 14 of the Convention, each State party is required to "ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible". In its General Comment No. 3, the Committee explained and clarified to States parties the content and scope of the obligations under Article 14 (CAT/C/GC/3). The Committee considered that Article 14 is applicable to all victims of torture and acts of "ill-treatment" without discrimination of any kind, in line with the Committee's General Comment No. 2 (ibid., 1; Sveaass/Gaer/Grossman 2020).

The Committee also indicated that restitution is a form of redress designed to re-establish the victim's situation before the violation

of the Convention was committed, taking into consideration the specificities of each case. The preventive obligations under the Convention require States parties to ensure that a victim receiving such restitution is not placed in a position where he or she is at risk of repetition of torture or ill-treatment. In certain cases, the victim may consider that restitution is not possible due to the nature of the violation; however, the State shall provide the victim with full access to redress. For restitution to be effective, efforts should be made to address any structural causes of the violation, including any kind of discrimination related to, for example, gender, sexual orientation, disability, political or other opinion, ethnicity, age and religion, and all other grounds of discrimination.

General Comment No. 3 also underlined that the concept of redress includes restitution, compensation, rehabilitation, satisfaction and the right to truth, and guarantees of non-repetition. It further called on States parties to "ensure that access to justice and to mechanisms for seeking and obtaining redress are readily available and that positive measures ensure that redress is equally accessible to all persons regardless of [...] religious belief or affiliation, or any other status or adverse distinction, and including those marginalized or made vulnerable on bases such as those above" (CAT/C/GC/3, 32).

In the context of its review of Jordan in 2024, the Committee noted that the practice of "blood money" was a legal remedy under sharia law, as recognized by the Constitution, to compensate victims of harm, including torture, and that it neither prevented prosecution or punishment, on the one hand, nor mitigated penal responsibility, on the other. However, the Committee noted with concern "that the practice could discourage victims and survivors from seeking the truth through the civil justice system, which could lead to the denial of the right to full rehabilitation and result in impunity for acts of torture" (CAT/C/JOR/CO/4, 21). It also underlined that, "while compensation is an important form of redress, full rehabilitation requires a holistic approach for which

truth, acknowledgement of the wrongdoing, and the prosecution and punishment of perpetrators are indispensable" (ibid.).

In its groundbreaking 2014 concluding observations following its review of the initial report of the Holy See, the Committee expressed its concern at "the State party's response to the continued refusal by the four religious orders that ran the Magdalene laundries in Ireland to contribute to a redress fund for individuals subjected to abuse in those facilities" (CAT/C/VAT/CO/1, 18). It called on the State party to "encourage the provision of redress by individual religious orders to victims of violations of the Convention carried out by them and take additional steps to ensure that victims obtain redress as needed, including in the case of the Magdalene Laundries" (ibid.). The Committee also expressed in more general terms its deep concern at the "reported inability to obtain redress experienced by many alleged victims of violations of the Convention perpetrated by or with the acquiescence of persons acting in an official capacity for the State party" and "about allegations of past instances in which the State party has acquiesced to or authorized actions taken by certain church officials to protect assets from seizure by civil authorities for the purpose of providing redress to victims" (ibid.).

The summary of the Committee's initial review of Ireland is included in section 3.3 above. When the Committee reviewed Ireland again in 2017, it considered the pending follow-up questions from the previous reporting cycle (CAT/C/IRL/CO/2, 6) and it noted in particular that its recommendations to implement the recommendations contained in the Ryan report, and to investigate allegations of torture and ill-treatment at reformatory and industrial schools operated by religious orders of the Catholic Church, prosecute and punish perpetrators of such abuse and provide redress to the victims, had only been partially implemented (ibid., 23). It further noted that its recommendations to investigate allegations of ill-treatment of women at the Magdalen laundries operated by religious orders of the Catholic Church, prosecute

perpetrators and ensure that victims obtain redress and have an enforceable right to compensation had not been implemented (ibid., 25).

During the review in 2017, the State party was reminded of the fact that the concern regarding lack of investigation and no redress provided to the Magdalene Laundry survivors had also been raised by other UN treaty bodies. In 2014, the Human Rights Committee recommended that "[t]he State party should conduct prompt, independent and thorough investigations into all allegations of abuse in Magdalene laundries, children's institutions and mother and baby homes, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offence, and ensure that all victims obtain an effective remedy, including appropriate compensation, restitution, rehabilitation and measures of satisfaction" (CCPR/C/IRL/CO/4, 10). These points were repeated in 2022, when the Human Rights Committee reviewed Ireland again (CCPR/C/IRL/CO/5, 11–12).

On several occasions, the Committee on the Elimination of Discrimination against Women (CEDAW) has also expressed concern with regard to women subjected to severe violations in the church-driven institutions. In 2017, CEDAW urged Ireland "(a) To conduct prompt, independent and thorough investigations, in line with international human rights standards, into all allegations of abuse in Magdalen Laundries, children's institutions and Mother and Baby Homes, and allegations of symphysiotomy in order to prosecute and punish the perpetrators of those involved in violations of women's rights, and ensure that all victims/survivors of such abuse obtain an effective remedy, including appropriate compensation, official apologies, restitution, satisfaction and rehabilitative services; (b) To provide information in its next periodic report on the extent of the measures taken to ensure the rights of victims/survivors to truth, justice and reparations" (CEDAW/C/IRL/CO/6-7, 15).

The following year, the Committee against Torture considered a complaint against Ireland under the Article 22 individual communications procedure. The case was submitted in July 2018 by a woman, Elizabeth Coppin, who had herself been committed to the Magdalen laundries between 1964 and 1968, when she was between 14 and 18 years old. She alleged having been subjected to torture and cruel, inhuman or degrading treatment and punishment. The substantive issues raised in the case were lack of investigation; lack of redress and adequate compensation; and torture, cruel, inhuman or degrading treatment or punishment. On 4 December 2019, the Committee adopted a decision on admissibility of the case for reasons that included the lack of an independent investigation.

On 12 May 2022, the Committee adopted a decision on the merits of the case and, despite the concluding observations based on the Committee's own review of Ireland that clearly found that the conditions regarding redress were far from met, the Committee decided "that the facts before it do not reveal a violation by the State party of articles 12, 13, 14 and article 16 alone, or in conjunction with articles 12–14 of the Convention in favour of the State" (CAT/C/73/D/879/2018, 12). The Committee found that "the right to truth has generally been guaranteed through the operation of the investigation commissions, such as the Inter-Departmental Committee, and the restorative schemes established. Accordingly, the complainant's access to justice, albeit limited, has not amounted to a violation of article 14, read in conjunction with article 16, of the Convention" (ibid., 11.7). The Committee also concluded that "the protracted suffering of the complainant, between March 1964 and April 1968, although compounded in part by the lack of conclusive investigation and of recognition that she faced at least ill-treatment when in the Magdalen laundries, has not amounted to a violation by the State party of its obligations, effective from May 2002, under article 16 of the Convention alone, or in conjunction with articles 12 to 14" (ibid., 11.8).

This decision resulted in strong criticism from within the Committee itself as well as from the human rights community in general. Three out of the ten members of the Committee examining this communication presented their dissenting opinions (CAT/C/73/D/879/2018, annexes I and II), which is a rather unusual step for CAT members. The dissenting opinions highlighted that the majority's decision was inconsistent with the Committee's repeated findings and recommendations to Ireland in the context of the periodic reporting procedure since 2011, including a finding in 2017 that "the State party has not undertaken an independent, thorough and effective investigation into allegations of ill-treatment of women and children in the Magdalen laundries" (CAT/C/IRL/CO/2, 25). The main points presented by the dissenting experts were in line with the general understanding of the unwillingness by the State party to abide by the principles for redress and the recommendations of the UN treaty bodies. They highlighted in particular that the inconsistencies between CAT's prior statements and this decision "undermine the protective value of the Convention" (CAT/C/73/D/879/2018, annex I) and they argued that "it is incumbent on the Committee to offer some kind of genuine explanation of why it is reversing itself, and failure to do so risks undermining the respect for the Committee's work that is essential for it to be effective" (ibid., annex II; Mavronicola 2023).

The lack of consistency in the jurisprudence of the Committee is underlined in these dissenting opinions. After having twice recommended and found reasons to be concerned over lack of investigation and legal action, including by disclosing and documenting violations and providing survivors with individual measures of redress, the three experts found it unacceptable to support a decision of non-violation in this case. They argued that the State had in no way fulfilled the requirements laid out in CAT's General Comment No. 3 on Article 14, neither with regard to investigation nor redress.

In this context, it is worth recalling one of the important principles of General Comment No. 3, namely that "[s]ecuring the victim's right to redress requires that a State party's competent authorities promptly, effectively and impartially investigate and examine the case of any individual who alleges that she or he has been subjected to torture or ill-treatment. Such an investigation should include as a standard measure an independent physical and psychological forensic examination as provided for in the Istanbul Protocol. Undue delays in initiating or concluding legal investigations into complaints of torture or ill-treatment compromise victims' rights under article 14 to obtain redress, including fair and adequate compensation and the means for as full rehabilitation as possible" (CAT/C/GC/3, 25; Sveaass/Gaer/Grossman 2020). This principle seems to be breached in every way in the case of the Magdalene survivors, with no consequence for those responsible.

### 3.7 Other issues

Conscientious objection is the right to refuse military service or other obligations based on personal beliefs, often related to moral, ethical or religious grounds. The Committee has addressed this issue in a couple of instances in its jurisprudence. When reviewing Armenia in 2012, the Committee remained "concerned by the State party's acknowledgement that it continues to hold many individuals in detention for evading military service, some of whom are reportedly conscientious objectors who objected to the alternative service on grounds that it is supervised exclusively by military personnel" and the Committee recommended that Armenia "adopt the draft law on alternative military service and that it review the detention of all individuals imprisoned for refusing to perform the alternative service on religious grounds" (CAT/C/ARM/CO/3, 23). Concerns were also expressed in the context of the Committee's 2025 review of Ukraine in relation to "[a]lleged abuses committed by enlistment officers against civilians and conscripts, including conscientious objectors" (CAT/C/UKR/CO/7, 17).

The Committee has also addressed the issue of access to safe abortions and conscientious objection by medical practitioners. In the case of Ecuador, the Committee expressed in 2024 its concern "about the limited application of the Organic Act on the Voluntary Termination of Pregnancy in Cases of Rape due to institutional conscientious objection in medical centres" (CAT/C/ECU/CO/8, 41). It called on Ecuador to "ensure that women who are victims of rape have access to safe abortions and that conscientious objection by health professionals does not limit access to abortion" (ibid., 42). In the case of Bolivia, the Committee regretted in 2021 that "access to safe abortion is still not guaranteed owing to, inter alia, a lack of knowledge of the regulations, obstacles to obtaining a copy of the complaint and a lack of sufficient alternatives in cases of conscientious objection by medical practitioners" (CAT/C/BOL/CO/3, 28). In relation to Poland, the Committee expressed in 2013 its concern "about restrictions on access to abortion, especially for victims of rape, due to the refusal of some physicians and clinics to perform legal operations on the basis of conscientious objection. This leads women to resort to clandestine, often unsafe abortions with all the health risks they entail" (CAT/C/POL/CO/5-6, 23). The Committee referred to the 2012 World Health Organization technical and policy guidance on safe abortion and called on the State party to "ensure that the exercise of conscientious objection does not prevent individuals from accessing services to which they are legally entitled" (ibid.).

The Committee has also expressed concerns in relation to disrespect for burial rituals or the religious rituals associated with the dead. One such example is Botswana, where the Committee noted in 2022 that death sentences were "carried out without providing advance notice of the date and time of executions either to the individuals on death row or to their families or representatives, resulting in the individuals not knowing at any moment whether their execution is imminent, and the individuals and their families unable to have a final meeting. The fact that

hanging is still being used as a method of execution and that the bodies of those executed are not handed over to their families for burial further exacerbates the cruelty of the situation" (CAT/C/BWA/CO/1, 23). In relation to Belarus, the Committee in 2018 noted with concern that "persons on death row are placed in solitary confinement, the conditions of detention are deplorable, and the dates of executions or places of burial are not provided to the families in a timely manner, as required by the State party's law" (CAT/C/BLR/CO/5, 54). Regarding Honduras, particular concerns were expressed in 2016 at "reports indicating a pattern of extreme violence against women and girls, including abductions, disappearances, torture in 'mad houses' and the burial of bodies in clandestine grave sites" (CAT/C/HND/CO/2, 45).

In the context of its review of Israel in 2016, the Committee was concerned "at information that, at the time of the dialogue, the State party was postponing, on the basis of security concerns the return of the bodies of 18 Palestinians to their families […]" (CAT/C/ISR/CO/5, 42). The Committee upheld that States have a duty to return the bodies of deceased people to their families so they can be "buried in accordance with their traditions and religious customs" (ibid., 43; reiterated by the Committee in 2025 in CAT/C/ISR/CO/6, 25).

In its General Comment No. 2 (2007) on the implementation of Article 2, the Committee underscored the importance of compiling and analyzing disaggregated data to enable it to adequately evaluate the implementation of the Convention (CAT/C/GC/2, 23). It often refers to this in the context of country reviews. One such example is North Macedonia, where the Committee in 2024 regretted that the State party "does not compile comprehensive disaggregated data on investigations, prosecutions and convictions in cases of violence, including hate-motivated crimes, against members of ethnic and religious minority groups or against individuals on the basis of their gender identity or sexual orientation" (CAT/C/MKD/CO/4, 36).

## 4. Issues of interpretation

While the Convention Against Torture does not explicitly mention religion or belief, its provisions are clearly applicable in cases where individuals face torture or ill-treatment due to their religion or belief. As referred to earlier, the definition of torture itself contains a fourth element, namely for reasons of discrimination that covers acts, rejections and reprisals associated with religious beliefs or being part of religious or belief groups. The intersection of freedom of religion or belief and the prohibition of torture and ill-treatment is increasingly relevant in international law, particularly in the context of asylum, detention conditions, reprisals and state repression of religious minorities.

While the Committee has considerable jurisprudence referring to various faith-related matters, freedom of religion or belief and the prohibition of torture and ill-treatment have not necessarily been dealt with together, which is perhaps also not surprising given that the Convention against Torture does not specifically require the Committee to consider freedom of religion or belief in and of itself, as opposed to Article 18 of the International Covenant on Civil and Political Rights, which is monitored by the Human Rights Committee (see chapter IV of this book).

However, as was shown above, the principle of non-discrimination establishes the nexus between the two rights, and the interpretative general comments along with the CAT Committee's considerable jurisprudence have expanded the scope of the Convention. The jurisprudence of the Committee touches upon these issues, although not always explicitly. In its earlier jurisprudence, it referred to the Magdalene laundries without noting from the outset that they were operated by religious orders. Furthermore, the Committee referred to Boko Haram, the Taliban and others without specifying that they are religious fundamentalist groups, or to Chinese Uighurs or Vietnamese Christian Montagnards, without indicating that they are religious minorities.

There are also frequent references to torture, including psychological forms of torture, without necessarily outlining what this actually constitutes in terms of applying religion or belief and values as tools in the infliction of pain and suffering. The intersection between these two areas becomes even more evident when one considers more closely what in fact constitutes torture, or rather what intended infliction of pain and suffering, mental and/or physical actually implies, both in terms of individual suffering and effects on the group and community (Sveaass 2023, 166–194). Torture aims at humiliating and destroying by shaming, attacking identity and values, creating serious doubts and insecurities in relation to oneself as well as in relation to other people. Humiliation may destroy people's sense of worth and agency, leading to deep mistrust and often a sense of helplessness and powerlessness. Agency and sense of being in control over one's own life, ideas and values is something of utmost importance for humans to be able to function and be part of a community.

One way of humiliating people is by using or attacking their faith, their beliefs and values, often by coercing them to degrade, mock or disrespect what is most sacred, or dear to them. This leaves most people with a sense of having betrayed and done serious wrongs. And this adds to the feeling of being destroyed from the inside. Beliefs and values are strongly related to the sense of identity, and who a person is in the world.

Being punished for beliefs, faith or values, may in some people strengthen resistance and faith. We know this from examples of martyrs throughout history and from all religions. In her recent report, the Special Rapporteur on freedom of religion or belief uses the term "aggravated ill-treatment tailored to degrade people based on their religion or belief" (A/HRC/58/49, 71). This describes clearly how systematic and tailored acts to degrade, weaken and humiliate are based on using the person's faith and belief as tools. For most people, the attack on the belief system will mean attack on identity, agency and self-respect, and given the situations

described above, that is, being forced to renounce or degrade what seems important and sacred, may create serious and painful wounds that be life-long. This shakes not only the relationship to the belief system, but also to one's identity and how one sees and experiences oneself (Sveaass 2009, 303–324).

Torture breaks down both body and mind and has an impact on most levels of human functioning. As we know, torture can be carried out with physical violence as well as with psychological methods with no obvious physical force, and with serious mental and physical consequences. But all forms of torture attack the individual by creating an overwhelming power imbalance, total lack of oversight, confusing cues for orientation, no control on the part of the person, and a situation with no protection and no way to defend oneself. It is a situation where powerlessness may be felt in an extreme way, and it is often these aspects, not the physical pain, but the helplessness, the shame and the humiliated self that are responsible for the long-lasting scars and sequela of torture. And the consequences may be very long-lasting, on an individual level as well as on the level of the community (Perez Sales 2016; Sveaass 2017, 247–271).

As indicated above in section 3.3 in relation to the Committee's review of the United States of America in the context of the "war on terror", different ways of humiliating the prisoners were authorized as part of interrogations, and these methods will in all other circumstances be coined psychological forms of torture. This includes the creation of fear using known phobias, sexual humiliation of different forms, including sexual and religious forms of humiliation. Based on the information later provided in the Senate's own study of the Central Intelligence Agency's Detention and Interrogation Program (United States Senate 2014) and other studies done of these interrogation techniques, we know today that what was practiced was, among others, using dogs to intimidate Muslim detainees, crucifixion-like positions and mock religious imagery, disruption of prayer and denial of religious materials,

forced nudity or body positions experienced as particularly contrary to their belief and cultural identity. These forms of torture are categorized in the Istanbul Protocol as a method of torture, that is, "[b]ehavioural coercion, such as forced engagement in practices against the religion of the victim (e.g. forcing Muslims to eat pork)" (Istanbul Protocol 2022, 372(x)). Though these forms of treatment aiming at humiliation were never directly referred to in the concluding observations, they are clear examples of psychological torture, and the Committee recommended in 2006 that the State party "ensure that acts of psychological torture, prohibited by the Convention, are not limited to 'prolonged mental harm' as set out in the State party's understandings lodged at the time of ratification of the Convention, but constitute a wider category of acts, which cause severe mental suffering, irrespective of their prolongation or its duration" (CAT/C/USA/CO/2, 13).

When the Committee examined the United States of America again in 2014 (CAT/C/USA/CO/3-5), the use of certain interrogation techniques, including sensory deprivation, was questioned and psychological methods discussed. Based on recent scientific findings, sensory deprivation for long durations has a high probability of creating a psychotic-like state in the detainee (Daniel/Lovatt/Manson 2014, 106), which raises concerns of torture and ill-treatment (CAT/C/USA/CO/3-5, 17). Although the Committee's 2014 concluding observations did not specifically mention religion or belief, the application of psychological methods that intentionally create both confusion and deep humiliation, including isolation, making all forms of praying or other religious action impossible, makes this relevant in this context.

With regard to the re-education through labour facilities in China, as referred to above in section 3.3, although not mentioned by the Committee in its concluding observations specifically (CAT/C/CHN/CO/4; CAT/C/CHN/CO/5), there are credible reports describing the use of religious symbols and acts as ways of

degrading and humiliating persons in such conditions, that is forcing Muslims to eat pork and consume alcohol, denounce prayers, as part of ideological reprogramming (Amnesty International 2021).

In a recent and groundbreaking report on the intersection between the prohibition of torture and ill-treatment and the right to freedom of religion or belief (A/HRC/58/49), the Special Rapporteur on freedom of religion or belief emphasized that the dangers of discrimination on the grounds of religion or belief, either in an institutionalized form or through discriminatory practices, become much greater in the closed conditions of a detention facility, and the same holds true regarding violations of these two rights (ibid., 57).

Various soft law guidelines provide minimum standards that must be respected for States not to violate the rights of persons deprived of liberty. These norms include that places of deprivation of liberty must allow individuals to participate in spiritual and religious activities (Nelson Mandela Rules, A/RES/70/175, annex, 66), to receive education, including religious instruction (ibid., 104), to keep religious books (ibid., 66), to receive visits from spiritual or religious representatives (ibid., 65 (1) and 65 (2)), and equally not to be forced to take part in religious practices nor receive visits from religious representatives not aligned with their beliefs (ibid., 65 (3)). The jurisprudence of other international bodies on this topic has largely observed these rules in relevant cases (A/HRC/58/49, 63–65). However, questions as to whether there are forms of treatment which because of the religion or belief of the detainee might equate to ill-treatment, or even to torture, have yet to be explored in greater detail by the Committee against Torture (see above section 3.3). The Committee's recent and comprehensive concluding observations on Turkmenistan provide some welcome guidance in this respect (CAT/C/TKM/CO/3, 27–28).

In most of the Committee's reviews of State party reports, the situation of people with disabilities, and in particular patients in different kinds of psychiatric institutions, both public and private, are considered and recommendations provided to the States. A large part of the private institutions on the global level are run by faith-based organizations. According to the World Health Organization, "[t]he faith community at all levels, has played a key role in health emergency preparedness and response, and in many places, in ongoing health service delivery" (WHO 2025).

The Special Rapporteur on the rights of persons with disabilities noted in 2019 that social care institutions for persons with disabilities were still prevalent in many countries of Africa, Asia and Latin America, yet "[w]here public institutions do not exist, charity-run and traditional or religious centres operate" (A/HRC/40/54, 17). In its recommendations, the Committee will often make references to private institutions, without specifying the private actors responsible for these institutions. Although not explicitly mentioned by the Committee, there are no doubt several examples of breaches of the prohibition of torture and ill-treatment against people deprived of liberty in places run by religious organizations or churches. One such example are the so-called "prayer camps" led by traditional and faith healers, which are common in a number of African countries (ibid.).

In the Committee's review of Ghana in 2011, there were recommendations with regard to the main psychiatric hospital and serious examples of ill-treatment and unacceptable conditions were described (CAT/C/GHA/CO/1). However, the Committee did not refer directly to the private and faith-based institutions in the country. The Subcommittee on Prevention of Torture visited Ghana in 2019, and it visited the medical services provided by "prayer camps", conducting confidential interviews with both people deprived of liberty and staff members. The report from the visit to Ghana is not public. However, in the 2024 review of Ghana by the Committee on the Rights of Persons with Disabilities

(CRPD), the "prayer camps" were part of the dialogue. The CRPD expressed concern about "[t]he mistreatment received as a result of cultural and religious practices that consider persons with disabilities, especially persons with albinism, as a curse, resulting in their isolation, desertion and inhumane treatment, such as chaining and abuse in prayer camps" (CRPD/C/GHA/CO/1, 34). The CRPD recommended steps to be taken to "promote awareness of the rights and dignity of persons with disabilities to prevent their inhumane treatment and protect them from exile, death threats and abuse in prayer camps" (ibid., 35).

In November 2013, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited Ghana at the invitation of the Government. One of the main priorities of his country mission was to visit psychiatric centres and prayer camps to examine the treatment and living conditions of those with mental disabilities. In his subsequent report, the Special Rapporteur concluded that "[i]n the prayer camps, shackling of any duration, denial of food and medicine, inadequate shelter and involuntary treatment constitute torture" (A/HRC/25/60/Add.1, 92). The report also included several pertinent recommendations on this particular issue (ibid., 104–105). Other reports have underlined these problems, describing that "[i]n Ghana's prayer camps, people with mental health problems are chained, beaten, starved, and prevented from leaving, say human rights campaigners" (Edwards 2014, 15).

In the present section, we have tried to highlight a couple of intersecting issues that have so far not been explored in great detail by the Committee and would merit more attention. As noted above, the Committee receives information both from the State party and from other relevant stakeholders, such as national human rights institutions, national preventive mechanisms and civil society organizations, including non-governmental organizations. All stakeholders are encouraged to provide information on the intersection between the two rights in their periodic State party

reports and country-specific submissions. We concur with the conclusion of the Special Rapporteur on freedom of religion or belief that "addressing gaps regarding the intersection between these two rights can provide greater harmonization of practices and better protection of potential and actual victims of these human rights violations" (A/HRC/58/49, 2). The importance of the nexus between all related human rights is also affirmed in the Beirut Declaration on "Faith for Rights" (see below chapter XIV), and religious or humanist chaplains can indeed play a pivotal role in reporting torture and ill-treatment in places of deprivation of liberty (A/HRC/58/49, 24).

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# CHAPTER VIII.

# CONVENTION ON THE RIGHTS OF THE CHILD (1989)

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**Abstract:** Faith communities have been obvious and indispensable allies during the negotiations of the Convention on the Rights of the Child from 1979 to 1989, as well as for its ratification and implementation in the 196 States parties as of December 2025. During the *travaux préparatoires*, faith-based civil society organizations brought theological perspectives and strong advocacy messages on the agency, evolving capacities and empowerment of children. In recent years, the Committee's interpretive practice has increasingly recognized the significance of engaging faith actors, both as duty bearers, rights holders and as powerful allies and influencers within their communities. For example, faith actors and regional collaboration are key for advancing the withdrawal of more than 200 religiously-based reservations and declarations to the Convention on the Rights of the Child. In its practice, the Committee has consistently applied interpretive principles that safeguard the protection and promotion of children's rights as individual rights-holders. Thus, religious law or doctrine may be acknowledged as part of a child's life, but cannot supersede protections against discrimination, violence or harmful practices. The Committee has also provided interpretations to accommodate religious frameworks in areas such as alternative care, education or parental guidance, while insisting on adherence to common standards of the best interests of the child and respect for evolving capacities. At a time when human rights and the very notion of human dignity are increasingly under attack, the present chapter makes six recommendations, which aim to move from dialogue to transformation, and from collaboration to shared accountability.

**Keywords:** Rights of the child; reservations and declarations; violence against children; early marriage; freedom of religion or belief; religious education; climate and environment; spiritual development of the child.

## 1. Introduction

The Convention on the Rights of the Child (CRC) is not only a landmark in international law but also a framework that addresses questions of identity, values and belief. From its drafting to its implementation, the relationship between children's rights and religion has surfaced as both an area of convergence and contention. Religious traditions often affirm the dignity of children, yet – at times – religious or customary interpretations have been invoked to limit the realization of these rights or to condone their violation.

This chapter explores how faith and religion have influenced the Committee on the Rights of the Child, both through State parties' reservations and declarations as well as through the Committee's interpretive practice. It examines the ways in which religious arguments have been used to contest children's rights, but also how faith communities have emerged as essential partners in their protection and promotion. By looking at jurisprudence, interpretive developments and concrete examples of engagement, the chapter aims to highlight the opportunities and challenges of integrating religious perspectives into the advancement of children's rights.

## 2. Religious influences during the travaux préparatoires

> "Children are not the people of tomorrow, but are people of today. They have a right to be taken seriously, and to be treated with tenderness and respect. They should be allowed to grow into whoever they were meant to be – the unknown person inside each of them is our hope for the future."
>
> "Children compel us to pay attention to them; the only moments we notice and remember are when they bother and disturb us. We do not see when they

> are calm, serious, focused. We disregard the sacred moments when they talk to themselves, to the world, to God." (Korczak 1928)

These words are taken from the book *A Child's Right to Respect*, first published at the end of 1928, as a synthesis of Janusz Korczak's thinking and educational activities. As a Polish pediatrician, educator and writer, Korczak inspired the first draft of the Convention on the Rights of the Child, as proposed by Poland in 1979. Korczak proved that "there are no children – there are people" (Michalak 2017, 6).

## 2.1 Background

Faith communities have long played a vital, though often overlooked, role in the evolution of international human rights instruments. In many circumstances, faith communities and faith-inspired civil society groups have been at the forefront of the codification of human rights treaties, ensuring that principles such as respect for human dignity, compassion and care for those in need – core tenets of all major religions – were placed at the heart of these instruments. Across diverse faith traditions, sacred texts, prayers and practices uphold shared ethical imperatives: the sanctity of life, the inherent worth of every person, the protection of the vulnerable, especially children, whose sacredness is affirmed in all faith traditions – and the pursuit of peace. Long before these values were codified in human rights treaties, such moral teachings guided societies, calling on people to act with compassion, to protect those who suffer, to restore relationships after conflict, and to defend the right to life.

Faith communities were obvious and indispensable allies, when it came to the codification and ratification of the Convention on the Rights of the Child. Their key role in these processes has been well documented.

The drafting of the Convention on the Rights of the Child brought about an unprecedented, innovative and exceptional collaboration between faith-inspired civil society organizations, secular non-governmental organizations, governments and multilateral agencies. Spanning an entire decade of negotiations from 1979 to 1989, this process unfolded amid the tensions of the Cold War but nonetheless produced a forward-looking and comprehensive human rights treaty. The collaboration of civil society organizations, including faith-based groups, was also crucial to facilitate informal contacts across political divisions that produced positive outcomes and often helped to unlock conversations during the formal drafting sessions (Cantwell 2007).

During the drafting of the Convention on the Rights of the Child, several key groups sustained involvement and supported the core group of non-governmental organizations that worked closely with the governments. These groups included the International Catholic Child Bureau, the International Council of Jewish Women, the Bahá'í International Community, the World Federation of Methodist Women, and the Quakers. They stood out as key faith-based actors, working alongside secular organizations such as Amnesty International, Anti-Slavery International, Defence for Children International, the International Commission of Jurists, and Rädda Barnen (Save the Children Sweden). Together, these faith-inspired and secular non-governmental organizations provided key technical guidance and insights to the drafting of the Convention on the Rights of the Child, and later supported the ratification process across States, as well as the drafting of the Optional Protocol on the Involvement of Children in Armed Conflict.

During the *travaux préparatoires*, faith-based organizations were not only present, but they played a key role in shaping key provisions. Their contributions helped ensure that the Convention recognized the integral development of the child, encompassing spiritual and psychosocial dimensions alongside material needs. They also influenced the expansion of protections for children in conflict

with the law, ensuring that juvenile justice included the rights to recovery and reintegration, which constitute an innovative group of rights codified in the Convention. Furthermore, faith-based organizations contributed to the formulation of provisions addressing child labor, children with disabilities, the aims of education, and the protection of street children.

Faith-based civil society organizations brought theological perspectives and strong advocacy messages on the agency, evolving capacities and empowerment of children – visions that were novel at that time. These groups also contributed case studies and testimonies from congregations working with marginalized and vulnerable children; their voices were instrumental in fostering a clearer understanding of these issues among the drafters. It is recognized, for example, that the vision of the child expressed during the symposium organized by the International Catholic Child Bureau (BICE) at the end of the 1979 International Year of the Child, entitled "This Child Who Educates Us (*Cet enfant qui nous éduque*)" introduced an innovative understanding of the agency of the child that later influenced the Convention. This vision aligned with, and complemented, the writings of Dr. Janusz Korczak, whose thought profoundly shaped the drafting of the Convention – particularly the first draft proposed by Poland in 1979. Korczak's message emphasized respect for children, their inherent value as human beings and their capacity and competence. His book *A Child's Right to Respect*, which analyzes the role of adults and the place of children in society, is cited at the opening of this chapter.

Dr. Korczak, who was Jewish (born Henryk Goldszmit), died in the Treblinka death camp, along with the children from his orphanage, whom he refused to abandon when they were deported. As Marta Santos Pais, then Special Representative of the Secretary-General on Violence Against Children, stated at the commemoration in Poland of the 25th anniversary of the Convention on the Rights of the Child, its "vision of the child as a subject of rights is inspired by the writings, work and life of Janus

Korczak, a Polish pediatrician, educator and writer who reminded the world that children are not people to be, but people of today with rights and dignity, conscience, feelings, reason and opinion" (Santos Pais 2014).

The following section explores the engagement of several faith-based organizations in the drafting process, highlighting how they collaborated with other civil society organizations and governments, striving to find areas of convergence, with the goal to expand the protection of children by the States.

### 2.2 Where It All Started: 1979 International Year of the Child

The origins of the Convention can be traced back to the decision of the United Nations General Assembly of 21 December 1976 to declare 1979 as the International Year of the Child. The goal was to raise awareness among policymakers and the wider public about children's specific needs and to integrate child-focused programs into national development strategies (A/RES/31/169).

The International Year of the Child was largely the vision and accomplishment of Canon Joseph Moerman, a Belgian Catholic priest and then Secretary-General of the International Catholic Child Bureau (Cantwell/Plisson 2012). Educated in religion and ethics, Moerman was deeply concerned that issues affecting children were being overshadowed by politically charged debates on overpopulation and women's rights. He envisioned the International Year of the Child as a unifying, non-political moment centered on the universal figure of the child.

Moerman secured early support from various Christian and other faith-based organizations, including the Young Men's Christian Association and the World Council of Churches. Together, these organizations worked together to advocate that special international attention and priority is given to children, and that a special focus from the international community is paid to the needs of children, particularly the most vulnerable.

The Holy See also supported active work in the field of children's rights. In his address at the 34th session of the General Assembly of the United Nations on 2 October 1979, His Holiness Pope John Paul II referred to the International Year of the Child and he asked "whether there will continue to accumulate over the heads of this new generation of children the threat of common extermination for which the means are in the hands of the modern States" (A/34/PV.17, 46). He also quoted the preamble of the UN Charter, in which "the peoples of the United Nations, determined to save succeeding generations from the scourge of war" solemnly reaffirmed "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small" (ibid., 32; see also above chapter I).

The International Year of the Child, eventually coordinated by UNICEF together with civil society actors, including the now-defunct International Union of Child Welfare (IUCW), helped revive global attention to children's rights. It leveraged the momentum generated by the Year to reopen discussions on the need for a comprehensive international agenda for children's rights, a topic that had received little attention since the adoption of the 1959 UN Declaration on the Rights of the Child.

The International Year of the Child was also instrumental in bringing to the public attention a diverse range of children's needs and situations, that until that moment did not receive much political attention. The increased awareness about the situation of the most vulnerable children led to a larger than expected mobilization of civil society organizations and governments. This momentum, together with the Polish proposal and first draft of the Convention, eventually led the United Nations Commission on Human Rights to establish a Working Group to draft a Convention focusing exclusively on the protection of children.

The very first draft of the Convention proposed by the Polish government, while providing a strong source of inspiration and deeply rooted in the Polish historical experience of the suffering of Polish children during both World Wars, especially the horrors of displacement, forced labor and genocide, did not find much approval among the delegates of the Working Group. Polish lawyer Adam Lopatka ensured continuity and leadership of the Working Group throughout the ten-year drafting process, which initially included Member States and civil society, and only later saw the involvement of UNICEF, after Executive Director James Grant fully engaged the organization in the drafting efforts.

By 1983, the civil society group, bringing together faith-based and secular non-governmental organizations, had united under the NGO Group led by Defence for Children International (DCI). This coalition became increasingly influential, with civil society delegates often invited by Member States to participate in drafting task forces and providing technical guidance and inputs.

Faith-based groups such as BICE contributed case studies and testimonies from grassroots organizations working directly with vulnerable children, particularly victims of trafficking, in conflict with the law or child soldiers. Their contributions ensured that the lived realities of children informed the drafting of relevant provisions, that at the time were overlooked or not known by the members of the Working Group drafting the Convention.

BICE was particularly active in promoting thematic discussions and preparing case studies on various topics such as respect for children in situations of family and social breakdown, the evolving capacities of the child, the protection of street children, and particularly the provision on the reintegration and recovery of children in conflict with the law (CRC Article 29 on juvenile justice). All these contributions were grounded in BICE's theological and social teachings on the sacred vision and dignity of every child.

BICE's integral vision of the child as a moral, spiritual and social being, deserving of dignity and participation, resonated throughout the drafting process and had a strong influence in the shaping of CRC Article 6, which codified a holistic understanding of the child's development, encompassing psychosocial and spiritual dimensions.

BICE was especially influential in the drafting of articles related to juvenile justice (Articles 37–40). Drawing from its theological and child rights expertise, BICE emphasized the dignity of the child, the importance of rehabilitation over punishment, and the need for reintegration of children deprived of liberty. This approach reframed justice in terms of human dignity, aligning with broader Catholic social teachings.

Other faith-based organizations also made direct and lasting contributions to specific articles:

- Article 2 (non-discrimination): proposed by the International Council of Jewish Women.
- Articles 17 and 29 (access to information and aims of education): proposed by the Bahá'í International Community.
- Article 37 (children deprived of liberty): proposed by the World Federation of Methodist Women.
- Article 38 (children in armed conflict): proposed by the Friends World Committee for Consultation (Quakers).

Faith-based groups collaborated across religious and ideological lines. Despite theological differences – especially on issues like the definition of the family, the beginning of life and adoption – these issues were negotiated early on and referenced in the Preamble to secure consensus. As drafting articles about the beginning of life would have been contentious, it was agreed to define a child in Article 1 as "every human being below the age of eighteen years".

The CRC drafting process was conducted entirely by consensus. This collaboration was particularly remarkable given the Cold War context, which shaped much of international politics in the 1980s. The CRC managed to transcend East-West divides, partly because civil society actors, including faith-based groups, helped frame it as a universal, apolitical document centered on children's needs and rights. The NGO Group, officially established in 1983, became a trusted partner to the drafting committee, and religious actors were often directly invited by States to contribute to task forces.

Beyond the drafting phase, organizations such as BICE, the International Council of Jewish Women, the Bahá'í International Community, the World Federation of Methodist Women and the Quakers continued to champion the CRC's ratification and implementation. Additionally, the Quakers were particularly active in the promotion and codification of the Optional Protocol to the CRC on the involvement of children in armed conflict, which was drafted and adopted in 2000 (A/RES/54/263, annex I).

The long-term advocacy, engagement and technical guidance of these faith-inspired and secular civil society organizations were inseparable from the personal commitment, wisdom and vision of delegates such as Florence Bruce and Canon Joseph Moerman from BICE, Rachel Brett from the Quakers, Simone Ek from Rädda Barnen and Nigel Cantwell from DCI. Some of these individuals have shared their valuable insights for this chapter. Their collective efforts not only shaped the drafting and the subsequent ratification of the CRC but also catalyzed a global mobilization that, for the first time, brought unexpected recognition and raised awareness on issues such as child labor, the conditions of street children, sexual exploitation and forced disappearances, setting the political and development agenda and focus on children's needs that led to milestones like the Stockholm Congress in 1996.

## 3. Faith-related jurisprudence

### 3.1 The role of religion in the CRC: foundations for jurisprudence and dialogue

The CRC stands as a landmark treaty in international human rights law for its holistic vision of rights. In addition to being a legal instrument, the Convention embodies a comprehensive understanding of the child's development, recognizing children not only as legal subjects but as human beings whose physical, mental, spiritual, moral and social development need to be safeguarded, ensuring the protection of their right to a standard of living adequate for their development, as stated in Article 27 of the CRC.

The Convention more broadly embraces the holistic development of children, implicitly acknowledging the cultural and religious contexts in which they grow up and develop. It upholds the right of every child to enjoy their own culture and to profess and practice their own religion (Article 30), to be brought up with respect for the cultural identity of their parents (Article 29 (1) (c)), and to have due regard paid to their cultural, ethnic and religious background in all matters concerning the child (Article 20 (3)), in line with the overarching guarantee of freedom of thought, conscience and religion (Article 14). Article 17 recognizes the right of the child to access information, especially sources aimed at the promotion of social, spiritual and moral well-being and physical and mental health.

Many of the foundational principles of the CRC, such as the inherent dignity of the child and the imperative to protect children and ensure they can survive and thrive, are common principles among the world's major religions. Across diverse faith traditions, children are viewed as sacred gifts, entrusted to families and communities with profound responsibilities for their protection and flourishing. Concepts of human dignity, justice, care for the weak, and reverence for life form common threads between the CRC and religious principles. These convergences offer a common ground for engagement between human rights mechanisms and faith-based actors.

The jurisprudence of the Committee on the Rights of the Child, particularly its General Comments, Concluding Observations and decisions under the Optional Protocol on a Communications Procedure, serves as a critical guidance to States in the implementation of the Convention and addresses emerging challenges in the realization of children's rights. In its work, the Committee must navigate the complexity where children's rights intersect with tradition, beliefs and religion, and traditional or customary legal systems.

In recent years, the Committee's interpretive practice has increasingly recognized the significance of engaging faith actors, both as duty bearers, rights holders and as powerful allies and influencers within their communities. It has encouraged States to work with religious leaders in eliminating harmful practices, improving access to education, and strengthening child protection systems, while also highlighting the need for scrutiny where religious norms may infringe upon children's rights, particularly in relation to gender discrimination, corporal punishment, and the child's right to freedom of religion or belief.

Despite this positive engagement, the approach is not without tensions. In many parts of the world, the implementation of the CRC continues to face resistance from some religious or culturally conservative actors, often leading "anti-rights" movements. A study (Eurochild 2022) documented how organized networks in Europe, including faith-based and conservative civil society organizations, frame children's rights as undermining family authority, religious identity, moral order and national traditions. They often campaign against comprehensive sexuality education, the prohibition of corporal punishment, gender equality, the recognition of children's evolving capacities and agency in matters of belief and conscience. At times, religion is instrumentalized to justify harmful practices or oppose the advancement of children's rights, leading to polarized debates rather than constructive engagement. Misinterpretations of both religious doctrine and

children's rights law can further compound misunderstandings and hinder progress. Indeed, part of the resistance to the United States' ratification of the CRC is driven by influential lobbying by the so-called *Religious Right* (Witte/Browning 2012). These challenges reveal the importance of the Committee's interpretive work in clarifying that children's rights do not negate parental roles or religious freedoms but rather require their exercise in line with the best interests of the child.

It is with this in mind that reservations and declarations made to the Convention in the name of religion, as well as anti-child rights movements, may be seen as entry points for dialogue and not merely as obstruction to children's rights protection and fulfilment. The focus of these dialogues should be on the best interests of the child and their dignity, recognizing the shared values and intersections between faith and rights, and integrating solid, fact-based arguments that allow for mutual learning and engagement (Inter-American Children's Institute 2025).

The following section will address the reservations and declarations related to religion under the Convention to understand and analyze how those can be and are addressed through the Committee's jurisprudence.

### 3.2 Reservations and declarations to the CRC

Since the adoption of the Convention on 20 November 1989 (A/RES/44/25, annex), 196 States have ratified the treaty, only one State party short of universal ratification (United Nations 2025). However, the number of standing reservations and declarations to the treaty has remained high, currently at 357, with only 35 percent of reservations and declarations being withdrawn since adoption. Progress in removing these barriers to full protection of children's rights has slowed further in recent years; only four reservations have been withdrawn since 2015 by Thailand, Oman and Botswana, and none concerned religion.

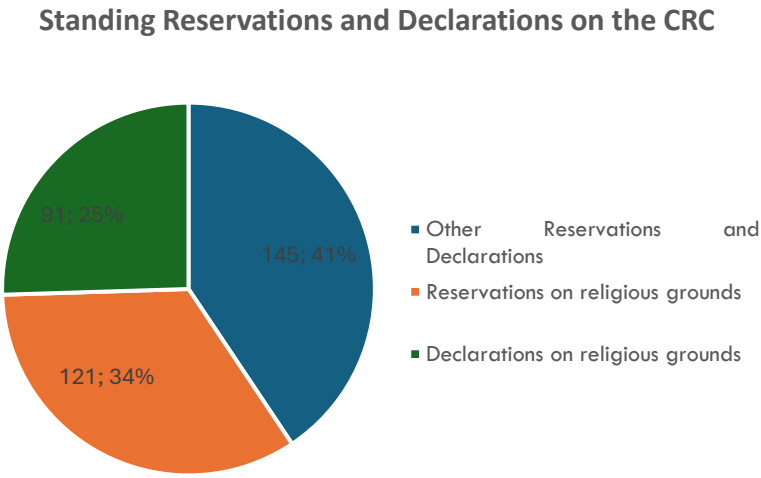



*Figure 1. Standing reservations and declarations on the CRC. Source: Arigatou International, 2025.*

When examining the text and State context of the standing reservations and declarations, it becomes clear that religious interpretation plays a decisive role in their continued existence. Of the currently standing 357 declarations and reservations, 212 were made on religious grounds, according to the methodology used in this analysis (Arigatou International 2025, 1). 121 of these were reservations and 91 were declarations, constituting 60 percent of total standing reservations and declarations. The articles with the greatest number of standing reservations and declarations are Article 14 with 48, Article 21 with 47, Article 40 with 29, Articles 17 and 38 with 20, and Article 13 with 18. In terms of religious reservations and declarations, all of the following Articles had at least one reservation or declaration made on religious grounds: 1, 6, 12, 13, 14, 15, 16, 17, 19, 20, 21, 24, 28, 29, 30, and 37. Article 14 has the highest number of reservations and declarations overall and consequently has the highest number of reservations and

declarations in the context of all those made on religious grounds; all 48 reservations and declarations made in respect to Article 14 were deemed to be influenced by religion under the methodology used, given both the content of the Article and the text of the reservations and declarations.

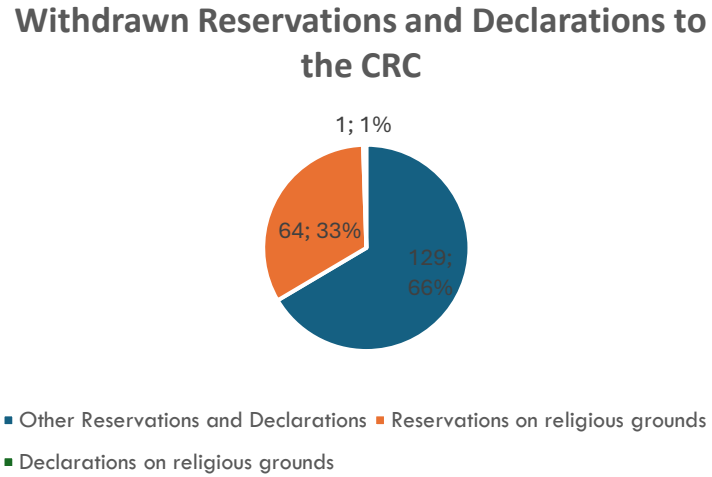



*Figure 2. Withdrawn Reservations and Declarations to the CRC. Source: Arigatou International, 2025.*

### 3.2.1 Reservations to Article 14

The large number of religious-based reservations and declarations to Article 14 stems from its core provision that establishes the right of the child to "freedom of thought, conscience and religion". Reservations to Article 14 are viewed as particularly problematic. For instance, the Islamic Republic of Iran made the following reservation upon ratification: "The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect" (Iran 1997). This reservation is vague and open to multiple interpretations potentially undermining the application of every provision of the

CRC, effectively eroding the State's commitment under the Convention, and constraining the Committee's capacity to hold it accountable. This raises a fundamental interpretive dilemma: do monitoring bodies have the competency to assess obligations that have been so extensively modified in light of religious law that their precise content is unclear (Salem 2020)?

### 3.2.2 Reservations to Article 21

Article 21, concerning adoption, has 34 of its 47 standing reservations and declarations made on religious grounds, mostly due to its perceived incompatibility with Sharia law, which does not permit adoption. However, an analysis of these reservations and declarations indicate that such objections to Article 21 are not strictly necessary given the article's precise wording (International Commission of Jurists 1994, 11–12). Article 20 (2) of the Convention provides that "States Parties shall in accordance with their national laws ensure alternative care" for a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment. Such alternative care explicitly includes "*kafalah* of Islamic law" (Article 20 (3)) – a form of care legally recognized in Islamic states. Moreover, Article 21 applies only to States that "recognize and/or permit the system of adoption". Religious reservations and declarations to Article 21 therefore appear to serve more as symbolic affirmations of a State's commitment to Islamic practices and values, rather than addressing a substantive legal conflict with the Convention.

To understand this alternative framework more fully, it is useful to examine the origins and development of *kafalah* within Islamic law and its recognition in international child rights instruments. *Kafalah* is an alternative family-based care system rooted in Islamic law that provides for the care and protection of children who are deprived of parental care. It is defined as a voluntary commitment by an individual or family (*kafil*) to assume responsibility for the daily

care, education and well-being of a child (*makful*), without severing the child's biological lineage or inheritance rights (UNICEF 2023, 4–5). Derived from the Arabic term meaning "to take care of" or "to sponsor", *kafalah* is grounded in Islamic teachings that regard the care of orphans and abandoned children as both a moral duty and an act of faith. The system emphasizes preserving the child's identity and family ties while ensuring their protection and nurturing in a family setting. Unlike adoption, which is not permitted under Sharia law due to the prohibition of altering a child's lineage, *kafalah* allows for the provision of long-term care while respecting the child's right to their name and ancestry. In this sense, *kafalah* provides a culturally and religiously appropriate mechanism for ensuring children's care, security and belonging within Muslim communities.

As mentioned before, *kafalah* is explicitly recognized in international child rights instruments, bridging Islamic legal traditions with global child protection standards. Article 20 of the Convention on the Rights of the Child acknowledges *kafalah* of Islamic law as one of the legitimate forms of alternative care for children deprived of a family environment, alongside foster care and adoption. It is further mentioned in the *Guidelines for the Alternative Care of Children* (2009) as a "stable" and "definitive" protection measure, and in Article 3 (e) of the *1996 Hague Convention on the Protection of Children* as a means to safeguard the child and their estate (UNICEF 2023, 6). The *Declaration on the Rights and Care of the Child in Islam* (1994) also reaffirms the principle that every child has the right to grow up in a family, either their natural one or through *kafalah*, when deprived of parental care.

The formal recognition of *kafalah* in international law underscores its value as a bridge between religious norms and universal children's rights, offering an example of how faith-based traditions can align with international standards to protect and promote children's well-being within their cultural and religious contexts.

However, it is important to mention that the practice of *kafalah* faces some challenges that complicate its consistent recognition as a child protection measure and, in some cases, risk undermining children's rights. One major challenge stems from the lack of clear legal recognition and status of children placed under *kafalah*, which often results in uncertainty about who holds parental authority and legal responsibility for the child. In many countries, *kafalah* does not create a parent–child relationship in law, meaning the child may not automatically acquire the *kafil*'s nationality, inheritance rights or full access to social services and protections available to biological children. In many contexts, *kafalah* can be revoked at any time, and the absence of compulsory birth registration or clear family registry entries further exposes children to legal and social vulnerability (ISS/IRC 2020, 3–4). An additional challenge is that children born out of wedlock are disproportionately placed under *kafalah*, reflecting societal stigma rather than best-interest considerations and highlighting the need for preventive and inclusive family support policies, especially for single mothers (ibid., 4). These weaknesses are compounded by outdated legislation and the absence of complaint mechanisms, which leave children without formal recourse in cases of abuse or rights violations.

Additional challenges emerge in the realm of international *kafalah*, where the diversity of legal systems between Islamic and non-Islamic countries creates significant jurisdictional and procedural obstacles. Some Islamic countries strictly prohibit the transnational placement of children under *kafalah*, while others allow it only under restricted conditions or alongside adoption (ibid., 5). Conversely, many receiving countries lack legal provisions recognizing *kafalah*, leaving children in a "grey zone" of uncertain residence status, limited access to benefits, and weak protection frameworks. In other cases, *kafalah* placements are later converted into full or simple adoptions, contrary to the laws of the child's country of origin and in violation of the principle of preserving

biological identity (ibid., 6). Such conversions may occur without adequate evaluation of the child's adoptability or informed consent from biological parents, effectively bypassing international safeguards outlined in the *1996 Hague Convention on the Protection of Children* and Articles 20–21 of the CRC. Closing these gaps calls for more effective cooperation between countries, clearer legal and procedural safeguards, and stronger communication between judicial authorities that prioritize the child's rights and well-being above procedural or cultural considerations.

### 3.2.3 Reservations to Article 17

Regarding Article 17, which has 20 standing reservations and declarations, 15 are based on religious grounds. Article 17 concerns the child's right to access information and material from a diversity of national and international sources, especially those aimed at promoting their social, spiritual and moral well-being as well as their physical and mental health. Reservations on religious grounds often stem from concerns that children may access materials that conflict with the religion or values of the State or that undermine the authority of parents as recognized in domestic law, particularly where parents seek to guide or restrict such access in accordance with their beliefs.

### 3.2.4 Reservations to Article 13

A similar pattern is seen concerning Article 13, which guarantees the child's right to freedom of expression. Of the 18 standing reservations and declarations, 15 were made on religious grounds. In both articles, the link to religion arises from the potential tension between children's rights to access information or express themselves freely and the desire of States and parents to align such rights with prevailing religious or moral frameworks.

### 3.2.5 Religious and cultural rationale behind reservations

However, not all reservations and declarations made on religious grounds intend to restrict the freedom or rights of the child.

The interpretative declaration made by Belgium to Article 14 (1) and the declaration of the Netherlands to the general article, do not explicitly limit the freedom of religion guaranteed under Article 14. Rather, in the case of Belgium, the declaration specifies that its interpretation of the provision is consistent with Article 18 of the International Covenant on Civil and Political Rights and Article 9 of the European Convention on Human Rights, affirming that the right of the child to freedom of thought, conscience and religion includes the freedom to choose his or her religion or belief (United Nations 2025). The declaration by the Netherlands points out that in accordance with the International Covenant on Civil and Political Rights, the child is allowed the freedom of religion or belief as soon as the child is old or mature enough to make such a choice (ibid.). While this approach acknowledges the child's evolving capacities, the authority granted to parents under the Covenant may also leave space for interpretations that limit the child's independent exercise of this right under Article 14.

Two other European States with a declaration and reservation to Article 14 are Poland and the Holy See, respectively. Their rhetoric is more limiting of children's freedom of religion. In the case of Poland, the rights given to children under Articles 12 and 16 are to be exercised with respect to parental authority and in accordance with Polish customs and traditions. While not explicitly relating to religion, the formulation "customs and traditions" is frequently influenced by the religious norms of the community that regulate a child's place within it (Kmak 2021, 47–49). Similarly, the Holy See seeks to protect parental authority to educate children in accordance with their religious beliefs, but the religious nature of the State, which acts as the governing body of the Catholic Church, underscores the likely influence of religion in its reservations and declarations to the CRC.

Of the 17 States with standing reservations or declarations to Article 14, only the Netherlands, Belgium, Poland and the Holy See are in Europe. Three additional States with objections to

Article 14 are Kiribati in Oceania, as well as Morocco and Algeria in Africa. The primary objections to Article 14, however, come from States in the Middle East and Asia. Outside Europe, these reservations are more explicit in their religious foundations, with 10 of them directly referencing Islam or Sharia law. Other articles frequently cited as conflicting with Islam in reservations or declarations include Articles 13 and 16, which concern the freedoms to which children are entitled, and Articles 20–21, which address adoption. Articles 13, 14, 17, 20 and 21 are also among those with the highest numbers of reservations or declarations overall. This suggests a strong correlation between such reservations and religious considerations, primarily Islam, but also other belief systems. In some cases, reservations are linked to traditional customs or values, as in Kiribati, or to domestic legislation, as in Mali. These customs, values and laws are often shaped or reinforced by religious norms.

In the case of Mali's reservation to Article 16, Islam is not explicitly mentioned. Instead, the reservation states that the article is inapplicable in light of the Mali Family Code. This code stipulates that children are subject to parental authority, thereby granting parents the right to interfere in the child's life in ways that may conflict with the protections afforded under Article 16 (OHCHR 2024). While the religious influence is not overt, the drafting of the Mali Family Code involved constant consultation with Islamic organizations (Budoo 2018, 1115 and 1120). Furthermore, in 2018, the African Court on Human and Peoples' Rights found that the Code applied Islamic law to inheritance and customary practices (ibid., 1124). This context may help explain a tolerance for certain customary practices that infringe upon the child's right to privacy, family, home, or correspondence as protected under Article 16.

### 3.2.6 Geographical analysis

When analyzed by region, Europe has the largest number of States with reservations or declarations to the CRC (24), but the Middle East shows the highest concentration of explicitly religious ones (11), most of which remain in force. Asia accounts for the greatest number of standing reservations and declarations on religious grounds (63), followed by the Middle East (58) and Africa (31). Asia also records the highest number of withdrawals (34), more than twice that of the Middle East (16). This regional pattern closely mirrors the global distribution of Muslim populations: over 60 percent of the world's Muslims live in Asia, while the Middle East–North Africa region has the highest proportion of Muslim-majority States (Pew Forum on Religion and Public Life 2009, 28–31). Together, these trends show that reservations rooted in Islam are concentrated in these regions, whereas in Africa and Oceania, they often blend with customary law and traditional values influenced by religion.

Europe and the Americas also demonstrate the ongoing influence of religion, though largely through Christian traditions. Europe has 37 reservations and declarations on religious grounds, and the Americas has 12. Beyond the examples of Poland and the Holy See, many relate to Catholic teachings on family and reproduction. For instance, the Holy See's reservation and Poland's declaration to Article 24 (2) (f) interpret "family planning" exclusively within "morally acceptable", natural methods. Similarly, predominantly Catholic States such as Argentina and Guatemala interpret "child" as encompassing life from conception to age 18 (Statista 2022; U.S. Department of State 2023). In Poland, the prevailing moral framework significantly restricts the exercise of reproductive rights, a reality reflected in the country's low access to contraception (Mozolewska 2024). These examples illustrate that across regions, religious traditions – Islamic, Christian and others – continue to shape State interpretations of children's rights, though the specific articles and doctrinal bases vary.

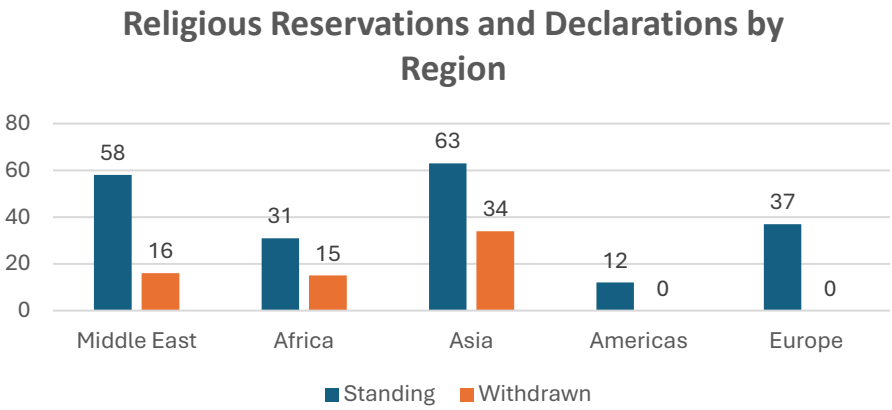



*Figure 3. Standing versus withdrawn religious reservations and declarations by region. Source: Arigatou International, 2025.*

The lack of withdrawal of a reservation or declaration on religious grounds since 2015 (which was only a partial withdrawal by Brunei Darussalam) may be further attributed to the limited mobilization of civil society specifically aimed at pressuring States to withdraw such reservations. Civil society does still play a critical role advocating for the removal of reservations and declarations. For instance, Child Rights Coalition of Malaysia publishes reports on children's rights and emphasizes the standing reservations Malaysia has due to their incompliance with domestic law, which includes Sharia law (CRC Malaysia 2024, 34). Reports like these can help supplement the United Nations Universal Periodic Reviews that evaluate compliance with human rights treaties, including the CRC, and can encourage states to make recommendations to Malaysia to remove its reservations. The Committee on the Rights of the Child reviews compliance with the CRC within the first two years of a state's ratification of the treaty and every five years subsequently. Non-governmental organizations play a key role in this process by submitting their own reports, drawing on their field expertise and engagement with local populations.

### 3.2.7 Symbolic and practical implications of religious reservations

Any absence of a strong civil society campaign to remove religiously-based reservations may partly reflect the perception that many of these reservations do not directly harm children in practice. In some cases, they serve primarily symbolic purposes, expressing a State's commitment to its faith rather than imposing legal or practical restrictions. For example, several Islamic States have entered reservations to the CRC's provisions on adoption, even though these provisions do not apply where adoption is not recognized in domestic law. Under Islamic law, *kafalah* serves as an accepted form of alternative care. Such symbolic reservations are difficult for civil society to challenge without appearing to question the religious belief itself, as they do not inherently imply neglect or harm. Similarly, in some States where Catholicism influences public life and policymaking, declarations extending the definition of the child to life beginning at conception reflect religious doctrine but arguably broaden, rather than narrow, the scope of protection under the CRC.

By contrast, certain reservations have more direct implications for harmful practices. Corporal punishment is a prominent example. While some interpretations of Sharia law have historically permitted corporal punishment under specific conditions, its application is highly contested. The Islamic Republic of Iran, as noted earlier, lodged a reservation excluding provisions deemed incompatible with Islamic law, a position that may contribute to maintaining corporal punishment despite ratification of the CRC (Global Initiative to End All Corporal Punishment of Children 2013). In Malaysia, corporal punishment remains legal in schools, and the State has entered a reservation to Article 28 (2), which protects children from disciplinary measures inconsistent with their human dignity (Owen 2013, 2). Although Sharia law applies only to Muslims in Malaysia, corporal punishment is still permitted in all settings (ibid., 1). Malaysia and Singapore also maintain

reservations or declarations to Article 37, which prohibits torture and other cruel, inhuman, or degrading treatment or punishment, thereby allowing the continuation of corporal punishment in some contexts. In Turkey, the reservation to Article 17 has been linked to governmental control of the media, which it uses to promote Islamic values, thus limiting children's free access to diverse information sources (Kenes/Yilmaz 2024).

It is important to note, however, that the legal status of corporal punishment under Sharia does not necessarily reflect its widespread practice. An increasing number of Islamic scholars and religious leaders challenge its permissibility, arguing that it stems more from sociocultural norms than from authentic religious doctrine and contradicts the broader ethical objectives of Islamic law. Therefore, it should not be assumed that all States invoking Sharia-based reservations to the CRC actively practice or endorse corporal punishment. Interpretations of Sharia are diverse, and reformist perspectives increasingly advocate for non-violent, dignity-based approaches to child discipline.

While several reservations and declarations made on religious grounds do not inherently condone harmful practices – and in some cases may even aim to broaden the scope of protection for children – others have been used to justify the continuation of practices that contravene the spirit of the CRC. This raises a critical question: how can such practices be challenged in ways that are both culturally and religiously sensitive?

The path forward lies in fostering open and respectful dialogue with faith leaders to better understand the religious reasoning behind certain reservations and to collaboratively challenge interpretations that result in rights violations. Such engagement is essential even in contexts where States have not entered formal reservations, as harmful practices may persist through prevailing religious or cultural norms.

### 3.3 Committee's approach to addressing reservations and declarations to the CRC

Throughout the years, the Committee has consistently provided recommendations to States to address reservations and declarations, particularly those based on religious or customary law, that may limit the full realization of children's rights. These recommendations are made in the spirit of constructive dialogue, respectful of cultural and religious contexts, while reaffirming the universality of children's rights. The Committee's approach includes encouraging States to narrow the scope of their reservations, review interpretive declarations, and withdraw reservations and declarations where possible. It also promotes active engagement with civil society to provide alternative reports and advocate for the progressive withdrawal or clarification of such reservations and declarations.

#### 3.3.1 Narrowing the scope of reservations and recommending their withdrawal

The Committee has encouraged States to limit the scope of their reservations, particularly those that are perceived as blanket exclusions of CRC obligations based on religious or customary law. For instance, the Committee can either recommend clarification of the scope to reduce potential incompatibility with the CRC or its total withdrawal. This is especially evident in cases involving Article 14 on freedom of religion, Article 21 on adoption and Article 24 (3) on harmful practices.

An example of this are the 2016 Concluding Observations to the Islamic Republic of Iran, whereby the Committee acknowledged existing reservations but encouraged the State party to limit their application and ensure they are not used to justify violations of children's rights (CRC/C/IRN/CO/3-4, 10). Another example are Saudi Arabia's reservations entered "with respect to all such articles as are in conflict with the provisions of Islamic law." The Committee expressed concern about this general reservation

giving precedence to Sharia Law over international treaties and recommended the State Party to review the general nature of the reservation with a view to withdrawing it (CRC/C/SAU/CO/3-4, 6; Universiteit Leiden).

The Committee also consistently calls for reviewing reservations which are made based on customary or religious law that are incompatible with the Convention on the Rights of the Child. For instance, in the Concluding Observations on the second periodic report of the Holy See (CRC/C/VAT/CO/2, 11–14), the Committee welcomed the statement that a possible withdrawal of its reservations to the Convention is currently under consideration, but reiterated its concern about the Holy See's reservations to the Convention, which undermine the full recognition of children as subjects of rights and condition the application of the Convention on its compatibility with the sources of law of the Vatican City State. It recommended the withdrawal of all reservations and prioritization of the Convention over internal laws. The Committee was also concerned that some of the provisions of the Canon Law are not in conformity with the provisions of the Convention, particularly those relating to children's rights to be protected against discrimination, violence and all forms of sexual exploitation and sexual abuse. The Committee recommended that the Holy See undertakes a comprehensive review of its normative framework, particularly Canon Law, with a view to ensuring its full compliance with the Convention.

### 3.3.2 Reviewing and withdrawing interpretive declarations

Declarations can be used by States to clarify or specify their understanding of a particular provision. However, those do not exclude the legal effect of the treaty. The Committee has provided clear recommendations to States to withdraw declarations whenever those seek to limit the State's obligations under the CRC, as those might be considered reservations.

For instance, Algeria made the following declaration:

> "The provisions of paragraphs 1 and 2 of Article 14 shall be interpreted by the Algerian Government in compliance with the basic foundations of the Algerian legal system, in particular:
>
> - With the Constitution, which stipulates in its Article 2 that Islam is the State religion and in its Article 35 that 'there shall be no infringement of the inviolability of the freedom of conviction and the inviolability of the freedom of opinion';
> - With Law No. 84-11 of 9 June 1984, comprising the Family Code, which stipulates that a child's education is to take place in accordance with the religion of its father."

The CRC Committee stated that this declaration amounts to a reservation and it reiterated the recommendation that Algeria should review its interpretative declarations with a view of withdrawing them (CRC/C/DZA/CO/3-4, 9–10).

### 3.3.3 Engaging civil society organizations

The Committee has increasingly emphasized the pivotal role of civil society organizations, including faith-based actors, in advancing the implementation of the Convention, particularly where religious or customary norms intersect with children's rights. Civil society organizations, including faith-based groups, can submit alternative reports that may provide alternative narratives which counter State justifications for maintaining harmful practices, offering rights-based interpretations grounded in local values and traditions. They play a critical role in monitoring the implementation of rights in religious settings, ensuring that faith institutions are spaces where children's rights are respected and upheld.

Religious leaders can act as trusted bridges between the State and communities, facilitating dialogue on sensitive issues and helping to align religious teachings with the Convention's principles (Arigatou International 2019). The Committee has explicitly recognized the critical role of religious communities as influencers of families and communities, by providing recommendations to ensure stronger collaborations with faith leaders to tackle harmful practices through engaging them in awareness-raising campaigns and training programs in their communities.

In Nepal, for instance, the Committee recommended that the State party "develop awareness-raising campaigns and programmes on the harmful effects of early marriage on the physical and mental health and well-being of girls, as ordered by the Supreme Court of Nepal in *Sapana Pradhan Malla and others v. Government of Nepal* in 2006, targeting households, local authorities, religious leaders, judges and prosecutors" (CRC/C/NPL/CO/3-5, 40).

### 3.4 Engaging faith-based actors and regional collaboration to advance the withdrawal of reservations

Efforts are also being made in some parts of the world to foster engagement of faith communities in the protection of children's rights and to deepen dialogue and collaboration with governments. In Latin America, for instance, the collaboration between Arigatou International and the Inter-American Children's Institute (IIN-OAS) has focused on strengthening the knowledge and capacity of both State institutions and faith-based civil society organizations to engage in meaningful multi-stakeholder cooperation. Central to this effort has been the search for a common language between the values of the world's main religions and the principles of the CRC, recognizing the potential of faith actors to mobilize their access, social and spiritual capital to transform attitudes and behaviors, reinforce child protection systems, and support the implementation of public policies for children's rights and well-being.

This collaboration draws on *Faith and Children's Rights: A Multi-Religious Study on the Convention on the Rights of the Child* (Arigatou International 2019), the first global comparative analysis of how Bahá'í, Buddhist, Christian, Hindu, Jewish, Muslim and Sikh teachings converge with the principles of the CRC. Developed in partnership with scholars and faith leaders worldwide, the study provides both an empirical and theological foundation for multi-faith engagement in children's rights, demonstrating shared ethical commitments to dignity, protection and participation. It also quoted then High Commissioner for Human Rights Michelle Bachelet, who stated in 2019 that "'Faith' can indeed stand up for 'Rights' so that both enhance each other" (ibid., 61). The study has informed numerous regional and national initiatives, including capacity-building for State and faith actors in several parts of the world.

A key outcome of this collaboration has been the development and delivery of an online course based on the above-mentioned study on *Faith and Children's Rights*, which has enabled the participation of State officials and faith actors from fourteen countries across Latin America. The course has provided a platform for participants to learn about shared values and principles, document perspectives on co-responsibility as duty bearers (Children in Focus 2025), and explore practical modalities for cooperation. This process has also informed the current development of a tripartite collaboration model that seeks to create systematic connections between States, faith-based civil society organizations, and the IIN-OAS as the regional intergovernmental body. This model proposes a structured mechanism through which State policy commitments are systematically linked to the mobilization capacities of faith actors, while regional oversight ensures continuity, coherence and accountability in advancing children's rights across the Americas.

## 4. Issues of interpretation

While the previous sections have examined the existence and persistence of reservations and declarations, and the Committee's recommendations regarding them, the following section presents cases of interpretation of critical articles and analyzes how the provisions of the CRC are read and applied in contexts where religious law or practice exerts normative authority.

In its practice, the Committee has consistently applied interpretive principles that safeguard the protection and promotion of children's rights as individual rights-holders. This means that religious law or doctrine may be acknowledged as part of a child's life, but cannot supersede protection against discrimination, violence or harmful practices. At the same time, the Committee has also provided interpretations to accommodate religious frameworks in areas such as alternative care, education or parental guidance, while insisting on adherence to common standards of the best interests of the child and respect for evolving capacities.

Interpretation also exposes the Committee's silence and gaps on specific topics. Despite repeated tensions around freedom of religion or belief, there is no General Comment clarifying the scope of Article 14, leaving inconsistencies in how children's religious autonomy is weighed against parental authority and State obligations. Likewise, broad religious reservations are often addressed through dialogue but rarely through systematic interpretive clarification, creating uneven outcomes. These gaps suggest the need for developing a more systematic and explicit interpretation of children's rights that not only reconciles religious and traditional law with CRC standards but also offers States concrete interpretive pathways for alignment.

### 4.1 Violence against children

Article 19 calls on States parties to "take all appropriate legislative, administrative, social and educational measures to protect the child

from all forms of physical or mental violence". The Committee has consistently interpreted this to understand corporal punishment – including "smacking", "spanking" and "slapping" – to be methods of violence. Some Christians have objected to this interpretation, citing biblical references which purport to encourage the use of the "rod" as an acceptable method of discipline for children. Yet others understand the biblical reference to the "rod" as illustrative of the practice of shepherds in biblical times of carrying a rod to extend the length of their arms and guide their sheep forward, but not to beat them with it. Accordingly, these groups understand the biblical reference to be consistent with the CRC, in that the disciplinary action from the parent or caregiver is to provide non-violent guidance as to the right direction the child should take.

The CRC has called upon the United Kingdom to "[e]xplicitly prohibit, as a matter of priority, corporal punishment in all settings, including in the home, throughout the State party, including the overseas territories and the Crown dependencies of Guernsey and the Isle of Man, and repeal the legal defence of 'reasonable punishment' in England and Northern Ireland" (CRC/C/GBR/CO/6-7, 31). Wales has officially abolished the common law defence of reasonable punishment, including smacking, effective since 21 March 2022. However, opposition to this abolition had been expressed by faith-based organizations such as The Christian Institute, which considered it a misrepresentation to equate "a controlled smack by a loving parent as equivalent to child abuse" (The Christian Institute 2019, 1).

It is important to highlight instances where religious communities have not only played a key role in protecting children but have also actively challenged interpretations of religion used to justify violence against them. In Somalia, where Female Genital Mutilation and Cutting (FGM/C) remains highly prevalent, religious leaders have taken notable steps to oppose the practice: in 2013, 18 leaders in Puntland signed a *fatwa* against FGM/C, witnessed by government ministers, and in 2014 the president of

Puntland approved an official policy outlawing all forms of FGM/C. In 2018, the Ministry of Religious Affairs in Somaliland issued a *fatwa* banning the most severe form, Type III (FGM Country Research Initiative 2023). More recently, while the 2024 constitutional review reaffirmed a prohibition of FGM, gaps remain in the absence of a unified national law. Nonetheless, important advances are taking shape at the regional level: Somaliland adopted a national Anti-FGM policy backed by strong religious leadership rejecting the practice as un-Islamic; Galmudug became the first federal state to criminalize FGM, supported by women's groups and UN engagement; and Jubaland followed with survivor-led advocacy and religious councils affirming that FGM lacks religious legitimacy. These examples underscore the crucial role of faith leaders and communities, working alongside grassroots mobilization, survivor voices and youth activism, in addressing harmful religious interpretations and advancing children's rights (UNICEF Somalia 2025).

In The Gambia, where FGM was criminalized in 2015 under the Women's (Amendment) Act, this progress came under threat in early 2024 when a bill seeking to repeal the ban was introduced, backed by conservative religious and cultural groups. Following intense public debate and parliamentary hearings, including testimony from health experts, survivors and religious leaders affirming that FGM has no basis in Islam, members of the National Assembly travelled to Egypt to consult Al-Azhar scholars, who confirmed that the practice is not required by religion. On 15 July 2024, informed by this guidance and strong domestic advocacy, the National Assembly rejected the repeal bill and reaffirmed the ban (IPU 2024; UN News 2024; WHO 2024; The Guardian 2024). This example highlights both the fragility of legal protection when confronted by religiously framed opposition and the essential role of religious and community leaders in shaping narratives that uphold, rather than undermine, children's rights.

### 4.2 Early marriage

In its General Comment No. 4, the Committee recommends setting the minimum age for marriage with and without parental consent to 18 years for both girls and boys (CRC/GC/2003/4, 9 and 20). However, many national legislations allow children to marry at a younger age with the consent of a public authority and/or consent of parents. Child marriage increases the risk of sexual and physical violence against girls, early pregnancy, and negative impacts upon their physical and mental health. Girls who are married at a young age invariably do not continue their education, which in turn impacts their employment prospects.

Although 88 per cent of States parties set a minimum of 18 years for marriage, many allow for these exceptions, and 30 percent legally permit girls to marry before 15. It is regrettable that some customary and religious legal systems which exist alongside civil law permit early marriage and undermine legal protection for children which have been put in place by States. The sanctioning of age disparities in marriage further exacerbates gender inequalities (Girls not Brides).

In Iraq, recent amendments to the Personal Status Law came into force in February 2025, which have raised concerns for women and children's rights, particularly concerning child marriage (Reliefweb 2025). Whilst national law in Iraq establishes a minimum age of marriage of 18, the amendments provide exceptions that allow girls to marry from the age of 15 with the consent of a judge, based on his or her assessment of the maturity and physical capacity of the girl. These provisions have sparked significant controversy, particularly the possibility that religious interpretations of the law could allow for marriages of younger girls in certain circumstances. The Committee on the Rights of the Child called upon Iraq to ensure a minimum age of marriage of 18 years for both boys and girls is enforced, and to prohibit temporary (*mut'ah*) and forced marriages (CRC/C/IRQ/CO/5-6, 30).

In Nigeria, early and child marriage are serious concerns in several of the 36 states. No national report has been submitted to the Committee on the Rights of the Child since 2010, leading to concerns that critical issues such as this are not being addressed or brought to public and international attention (Abuja 2023). To try to address this protection gap, civil society actors, including faith-based organizations, have turned to other United Nations mechanisms to encourage advocacy for neglected issues. In 2017, the World Council of Churches, in partnership with the Christian Council of Nigeria and other local partners, carried out a series of workshops with children from member churches in different regions of Nigeria to ensure that their voices were heard on issues which affect them, ahead of the Universal Periodic Review of the country in 2018. Both children and adults considered that the full acceptance and implementation of the Child Rights Act in the 12 states which had not yet accepted it – including its prohibition of marriage under the age of 18 – would represent a significant step forward for the recognition and protection of the rights of the child throughout Nigeria. These states are located in the northern regions of Nigeria, where Sharia law is often integrated into the legal system. The recommendation for the full ratification of the Child Rights Act in all Nigerian states was raised by several member and observer states of the Human Rights Council, and in the following years, all but two states in Nigeria domesticated this Act ("State and the Child Rights Act" 2025).

To support churches worldwide in similar efforts, the World Council of Churches has developed the toolkit *Out of the Shadows and Into the Light*, which includes spiritual life resources to help faith communities address child exploitation and abuse. The Lenten resource *True Freedom* was developed jointly by the World Council of Churches and the Church of England to help churches confront modern slavery, particularly its impact on children (World Council of Churches 2022; World Council of Churches and Church of England 2023).

### 4.3 Freedom of thought, conscience and religion

The promotion and protection of the child's right to freedom of religion or belief is enshrined in the CRC through Article 14, together with the right of the child to freedom of thought and conscience. The article further calls for respect to the rights and duties of parents or legal guardians to provide direction to the child in the exercise of this right, in a manner consistent with the evolving capacities of the child.

In addition, Article 12 addresses the child's right to express views in matters affecting him or her, and the right to be heard. The Committee's General Comment No. 12 on the right of the child to be heard emphasizes the importance of considering children's views "in all matters affecting them", confirming that this formulation was used when the drafters of the Convention rejected a proposal to define these matters by a list, which would have limited the consideration of a child's or children's views (CRC/C/GC/12, 27). Accordingly, it can be understood that it was the intention of the drafters of the CRC, to ensure that a child has the right to be heard in matters regarding their religious beliefs and practices.

In practice, this raises complex interpretive questions. For example, the Committee has considered cases involving compulsory religious instruction in schools, the right to opt out of religious activities, and the recognition of children's evolving capacities to dissent from parental religious affiliation. In its Concluding Observations on the United Kingdom in 2023, the Committee urged the State party to repeal legal provisions requiring compulsory attendance in collective worship and to establish statutory guidance ensuring that children, including those under 16, can withdraw from religious classes without parental consent. It further recommended preventing the use of religion as a selection criterion for school admissions in England and called for the revision of the religious education syllabus in Northern Ireland to ensure it includes education on, and respect for, a diversity of religions (CRC/C/GBR/CO/6-7, 26).

In its Concluding Observations on Ireland, the Committee urged the State party to guarantee the right of all children to practice freely their religion or belief. It called for amendments to the *Education (Admission to Schools) Act 2018* and the *Equal Status Acts* to remove exceptions allowing discrimination in school admissions based on religious or "ethos" grounds, and to establish statutory guidelines ensuring children's right not to attend religious classes. The Committee also recommended that Ireland develops a time-bound strategy, with adequate resources, for meeting its targets for increasing the availability of multi-denominational schools by 2030 and setting a target with a time-bound strategy and adequate resources for increasing the availability of non-denominational schools (CRC/C/IRL/CO/5-6, 21).

Developed in consultation with both secular and faith actors, the 2015 report of the Special Rapporteur on freedom of religion or belief on the topic of children's rights (A/70/286) underlined that, while children are inherently rights-holders, their ability to realize those rights depends greatly on a supportive family environment. The World Council of Churches was a particularly active contributor to this report. The CRC itself recognizes the family as the "natural environment for the growth and well-being of all its members and particularly children" (preamble). This recognition translates into several provisions safeguarding the relationship between parents and children, including the right to know and be cared for by one's parents (Article 7), the protection against separation from parents except in exceptional circumstances (Article 9), and the principle of shared parental responsibility for the upbringing of the child (Article 18). Article 5 further highlights the responsibility of parents to provide "appropriate guidance and direction" to the child, while Article 14 (2) explicitly refers to parental rights and duties to guide the child in exercising freedom of religion or belief (A/70/286, 20–22). Together, Articles 12 and 14 underscore that children are not passive recipients of religious direction but active rights-holders. Parental responsibilities must

therefore be understood not as an imposition of beliefs, but as a duty to support the child in developing their own convictions in accordance with their evolving capacities. Ensuring this requires States to respect the child's agency, provide space for children to articulate their own ideas and beliefs, and create safeguards when parental or community pressures threaten to override the child's autonomy.

### 4.4 Religious education, indoctrination and harmful practices in religious schools

While religious institutions often play a positive role in providing education for marginalized groups, evidence also shows that in some contexts, faith-based schools have been used for indoctrination or to justify practices harmful to children's rights. Research on *madrasahs* in parts of Pakistan and Afghanistan, for example, highlights instances where teaching has been leveraged to recruit children for militant purposes or to promote intolerance toward other sects and faiths (Christian Solidarity Worldwide 2018, 27). Similar concerns appear in West Africa's *daaras*, where religious schooling has at times led to forced child begging and physical abuse under the guise of religious discipline (Right to Education Project 2020). Across faith traditions, studies of Christian, Hindu and Buddhist institutions reveal parallel problems, ranging from coercive conversion and gender-based discrimination to systemic sexual abuse in residential schools (as presented below), illustrating that indoctrination and violations of children's rights are not unique to any single religion but rather to weak oversight and unregulated authority in faith-based education.

Religious actors play a key role in the provision of education for the poor and marginalized, yet some religious schools may provide education that is religiously discriminatory or coercive, whether in form or content (Petersen 2020, 7). One major source of discrimination lies in curricula and textbooks, which in many settings "nurture the formation of divisive stereotypes, very often

around religion" (ibid., 8, citing UNESCO 2017). Textbooks may portray certain religious or belief minorities as "heretical", "misguided" or "a threat to national unity", while ignoring or distorting their contributions to society (Petersen 2020, 9). Such portrayals reinforce exclusion and stigmatization, perpetuate loss of identity among minority students, and contribute to broader cultures of intolerance and polarization.

The Beirut Declaration and its 18 Commitments on "Faith for Rights" (see below chapter XIV) also calls for reviewing and refining "curriculums, teaching materials and textbooks wherever some religious interpretations, or the way they are presented, may give rise to the perception of condoning violence or discrimination" (A/HRC/40/58, annex II, commitment XII), while promoting pluralism and diversity in education. These concerns echo UNESCO's *Making Textbook Content Inclusive: A Focus on Religion, Gender and Culture*, which found that instructional materials frequently omit or misrepresent minorities, fostering stereotypes instead of critical thinking and respect for diversity (UNESCO 2017, 7).

Such practices contravene Article 14 and particularly Article 29 of the CRC, which requires education to promote the child's full development and to foster respect for human rights, dignity and diversity. Article 29 (1) (c) explicitly directs education toward "the development of respect for the child's parents, his or her own cultural identity, language and values […] and for civilizations different from his or her own", which encompasses the child's own religion or belief and that of others. Beyond avoiding indoctrination, education should therefore actively nurture empathy, respect for diversity, ethical reflection, and cooperation across religious and cultural differences. The Committee on the Rights of the Child, in its General Comment No. 1, interprets Article 29 as placing an obligation on States to ensure that education actively prepares children to live respectfully and peacefully with people of different backgrounds and beliefs.

The Committee underscores that education should go beyond the simple transmission of knowledge to foster understanding, tolerance and respect among all groups, including those of different ethnic, national and religious identities (CRC/GC/2001/1, 4, 9 and 11).

These principles are echoed in the UNESCO *Recommendation on Education for Peace and Human Rights, International Understanding, Cooperation, Fundamental Freedoms, Global Citizenship and Sustainable Development,* which calls on States to promote an education that encourages "the understanding and valuing of diverse perspectives, ways of life, worldviews, religions, beliefs and philosophies of life" (UNESCO 2023, 26). Pedagogical approaches grounded in these principles such as ethics education, global citizenship and interreligious or intercultural education, demonstrate that quality education should create learning opportunities that enable children to engage with others, to understand the religious beliefs and identities of those different from themselves, and to do so through transformative pedagogies that promote reflection, dialogue, and mutual understanding and respect. Evidence from multi-country evaluations shows measurable impact: reductions in prejudice, stereotyping and bullying based on religion or belief; increased empathy and ethical decision-making among learners; and strengthened teacher capacities to manage diversity in the classroom (Arigatou International 2018; Arigatou International 2024; Bourn 2015). Consistent with UNESCO's *Delors Report* (1996), which identified "learning to live together" as a central pillar of education, these pedagogies illustrate that safeguarding freedom of religion or belief in education is not only about protecting children from coercion, but also about equipping them to live respectfully and peacefully with others in pluralistic societies.

### 4.5 Freedom of religion or belief and children in residential religious institutions

Placing children in religious institutions for the purposes of education and upbringing is common in many cultures and religious communities. Children might attend daily or live there in a quasi-permanent residential situation. Parents may make this decision to continue an established religious or cultural practice, from a belief that this is in their child's best interests, or because of economic reasons, including poverty, loss of a parent or primary care giver, or the care giver's absence or inability to provide this care. For some children, such a decision is truly in their best interests, and many thrive in a healthy environment where they experience a level of stability and development not previously enjoyed. However, for many others, this is not the case, and the views of the child on this decision have often been ignored, or the child too young to make such a decision or understand the implications.

Research into the situation of child monks in Buddhist monasteries in the Himalayas revealed that in some monasteries, child monks may face harmful disciplinary practices, including physical punishment, or psychological measures like shaming or isolation. While discipline is often seen as essential for teaching respect and obedience, these practices can sometimes cross into abuse. The lack of oversight in certain monasteries can lead to situations where child monks endure harsh conditions, including inadequate food, long working hours or physical punishment (Parkes 2017). The research concluded that most children did not choose monastic life but ended up there as an escape from difficult home lives. The involvement of their parents in their lives was minimal, with few visits or contact due to financial or work constraints. This situation reflects the complex intersection of parental care, economic hardship and religious education, which underscores the importance of ensuring children's well-being.

The practice of *devadasi* in Hindu Culture raises similar tensions between a cultural and religious practice and the rights of the child. The *devadasi* system means "servant of God" and involves girls – some as young as four years old – being "married" or "dedicated" to a temple deity. These girls often come from Dalit communities and are required to serve the temple for life. Once dedicated, a *devadasi* cannot remarry due to her supposed "marriage" to the deity. However, individuals from the community, particularly those from dominant castes, are permitted to engage in sexual relations with her, which can result in the sexual exploitation of these girls by temple priests and other powerful individuals (Khan 2019).

Although the *devadasi* system has been declared illegal in most states in India, it continues to persist, particularly in certain rural states of India, due to deeply ingrained cultural traditions and ineffective enforcement of laws. The system's endurance highlights the challenge of eradicating practices tied to centuries old customs.

### 4.6 The evolving capacities of the child

In discussions at the expert roundtable on Faith and Children's Rights in April 2025, participants highlighted an important jurisprudential gap in the application of Article 5 of the CRC, particularly in relation to Article 14, which addresses freedom of thought, conscience and religion.

In 2023, the Committee adopted a Statement on Article 5 of the CRC, in response to growing political and ideological pushbacks against children's rights worldwide (Committee on the Rights of the Child 2023). While the Statement reaffirms the critical role of parents and guardians in guiding the child's exercise of rights, it notably emphasizes Articles 5 and 18 (on parental responsibilities), but omits Article 14 (2), which specifically outlines the duty of parents to guide the child in the exercise of their freedom of religion, consistent with their evolving capacities. This omission is significant, particularly in contexts where freedom of religion or belief is heavily contested or subject to religiously-based

reservations. It is, therefore, important to promote the integration of Article 14 (2) into future interpretations and guidance on evolving capacities, to reinforce that the child's religious autonomy must be recognized and supported progressively as they develop. This suggestion points to the need for a coherent and interconnected understanding of Articles 5, 12 and 14, especially when addressing religious education, family guidance, and the child's right to form and express their beliefs.

This recommendation is particularly relevant in settings where religious norms may influence parenting models, education curricula, or community expectations. By explicitly aligning freedom of religion or belief with the principle of evolving capacities, the Committee can offer clearer guidance to States and faith actors on how to balance parental rights and religious upbringing with the child's growing agency and personal convictions.

### 4.7 Climate and environment

The right of the child to enjoy a healthy environment is expressed in Article 24 (c) and (e); furthermore Article 29 (e) directs the education of the child to include respect for the natural environment. In 2023, recognizing the "urgent and systemic threat to children's rights globally" of the "extent and magnitude of the triple planetary crisis, comprising the climate emergency, the collapse of biodiversity and pervasive pollution", the Committee adopted General Comment No. 26, outlining the legal obligations of States to take preventive, precautionary and remedial measures to protect children from environmental harm, which includes regulating polluters, reducing emissions and ensuring environmental justice (CRC/C/GC/26). The General Comment also calls for the empowerment of children to participate in environmental decision-making, and have their contributions and concerns taken seriously.

The General Comment was inspired by a group of 16 children environment activists from a dozen countries, who in 2019

brought a petition under the Optional Protocol to the CRC on a Communications Procedure, protesting the lack of government action on the climate crisis. Some of these young people were members of churches but expressed concern at the silence of the churches when they were advocating for action by the world's governments. Whilst finding "that the collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location" (CRC/C/88/D/104/2019, 10.10), the Committee held the communication inadmissible for failure to exhaust domestic remedies (ibid., 10.21). The case left substantial issues unresolved, signaling the need for clearer guidance on States' obligations regarding climate change and children's rights (World Council of Churches 2023).

Religious engagement in environmental protection and the climate emergency has been both obstructive and supportive. Some faith actors have remained silent, or even have resisted action to address climate change, viewing environmentalism as politically liberal or conflicting with eschatological beliefs concerning the end of the world, and the ultimate destiny of humanity.

However, many have spoken out in support of action. Pope Francis repeatedly framed climate change as a moral issue, urging global action to protect the planet and the poor and most vulnerable, who are particularly affected. Similarly, Ecumenical Patriarch Bartholomew of the Greek Orthodox Church declared environmental degradation a sin and has worked to promote ecological awareness (Alper 2022).

Ummah for Earth, an alliance of over 30 organizations worldwide, focuses on empowering Muslim communities to take climate action and to transition away from fossil fuels, and the Faith for Earth Coalition (UNEP) brings together a wide range of faith actors to combat pollution and climate change. The Women, Faith,

and Climate Network and GreenFaith are further examples of the dynamic role of faith leaders in speaking truth to power in order to preserve creation and tackle climate emergency root causes.

Recognition has been made of the need for intergenerational justice – it is the children of today who will be left to deal with an ever-worsening climate emergency created by the generations who came before them. The World Council of Churches has placed a special focus on children's rights in the context of the environment and climate change, as one of the three pillars of its *Churches Commitments to Children* programme. In response to pleas by children and youth, an initiative tackling the root causes of the climate emergency was developed shedding light on the moral imperative to engage with financial service providers. The initiative *Hope for Children Through Climate Justice* builds on the above-mentioned 2019 complaint to the Committee on the Rights of the Child, and equips faith actors to submit cases of climate litigation to national and international courts.

### 4.8 The spiritual development of the child

Spiritual development is explicitly recognized in the CRC as part of its holistic vision of the child, most notably in Article 27, which affirms every child's right to a standard of living adequate for their physical, mental, spiritual, moral and social development. Although the CRC does not frame this dimension in religious terms, it captures an aspect that faith-based organizations and religious communities have long understood as central to children's well-being. Spiritual development is not synonymous with religious upbringing; rather, it concerns nurturing the child's capacity to find meaning, purpose and belonging through relationships with self, others, nature and the transcendent (Uribe 2021). This holistic understanding resonates deeply with faith traditions that view the child as a moral, spiritual and social being. Religion provides structured expressions of these spiritual dimensions through belief systems, rituals and moral teachings, and faith communities often

serve as important spaces for fostering children's inner development. In this sense, religious communities serve as crucial vehicles for nurturing children's spiritual well-being, but spirituality also extends beyond the boundaries of organized religion to include secular and intercultural forms of transcendence and belonging. Recognizing this distinction allows the CRC and States parties to affirm the spiritual dimension of children's rights without privileging any single faith or worldview.

The inclusion of spiritual development in the CRC builds on a long historical trajectory in which faith-inspired understandings of the child helped shape international human rights discourse. The 1924 Geneva Declaration of the Rights of the Child (A.107.1924.IV) and the 1959 UN Declaration of the Rights of the Child (A/RES/1386(XIV)) both recognized the need to provide for children's material and spiritual development, a dual emphasis rooted in both religious and humanitarian traditions that viewed the child as a being of inherent dignity and sacred worth (Uribe 2021). While the CRC avoids explicit religious references, its recognition of the spiritual dimension affirms a vision shared by many faith-based actors who see children's holistic well-being and development as an inherent part of their human flourishing.

The Convention itself shows how religion influenced the explicit inclusion of "spiritual development" in four of its Articles (17, 23 (3), 27 (1) and 32 (1)) often at the proposal of religiously motivated delegations such as the Holy See and Italy (Haugen 2018). The Committee on the Rights of the Child has further elaborated this understanding across its interpretive practice: in General Comment No. 1 on the aims of education (CRC/GC/2001/1, 3, 7 and 12), which situates spiritual development within holistic learning; General Comment No. 7 on early childhood (CRC/C/GC/7, 26), emphasizing its role in early well-being; General Comment No. 13 on freedom from all forms of violence (CRC/C/GC/13, 15 and 62), which recognizes the harm caused by violence to children's holistic well-being, including

their spiritual development; General Comment No. 15 on the right to health (CRC/C/GC/15, 16), linking health to spiritual and emotional care; and General Comment No. 17 on play, leisure, cultural life and the arts (CRC/C/GC/17, 14–15 and 40), which describes play and nature as an essential component of children's integral development. Collectively, these interpretations underscore that the spiritual dimension is not peripheral but central to the realization of the child's dignity, survival, and full development under Article 6 (2).

Many religious traditions affirm children's innate worth and the moral responsibility to nurture them toward compassion, peace and justice, values that resonate with the aims of education in Article 29. Yet Haugen's review of more than two hundred State reports also shows how references to "spiritual development" can be co-opted for nationalist, moralizing or exclusionary purposes, for instance, when spirituality is used to justify loyalty to the State, enforce religious conformity or suppress critical thinking (Haugen 2018). This ambivalence reveals the need for interpretive guidance clarifying that "spiritual development" in the CRC must always advance children's autonomy, equality, and freedom of religion or belief.

Faith-based education and child-care institutions illustrate this delicate balance. When properly regulated, such institutions can foster children's spiritual and ethical growth in line with the CRC's holistic approach; when unregulated, they can potentially become sites of indoctrination or abuse.

Both Haugen's analysis and current debates regarding what spiritual development actually means from a children's rights perspective point to the urgency of a General Comment on children's spiritual development. Such a document would help States operationalize Article 27's reference to the child's "physical, mental, spiritual, moral and social development", while clarifying the legitimate role of religion in promoting, rather than constraining, this right.

It would also provide normative guidance for engaging religious communities as partners in child protection, education and holistic well-being, while ensuring that interpretations of faith never override the child's best interests or dignity.

### 4.9 Recommendations

As the present chapter has shown, navigating the intersection between children's rights and the rights and responsibilities of parents, and the influence of religious communities, requires a careful balance between upholding the universality of children's rights and engaging with diverse religious worldviews in a respectful and constructive manner.

By encouraging interpretive practices, dialogue and meaningful partnerships with faith actors, the Committee can better address the root causes of resistance to critical child rights and offer a way forward. Strengthening this dimension of its work will be critical to address the ways in which religious or traditional frameworks continue to be used to delay the realization of children's rights or to justify their violation. Ultimately, engaging with religion not only as a challenge but also as a resource can enrich the Committee's jurisprudence and open avenues for change and enhance the protection of children.

At a time when human rights and the very notion of human dignity are increasingly under attack, faith leaders, communities and movements must mobilize as defenders of children's rights. Their moral authority and social reach position them not only as partners but as indispensable allies in safeguarding the inherent dignity of every child. As Gary B. Melton (cited by Veerman 2020, 87) concisely stated in 2010: "people of faith are natural child advocates. [...] It is time to recognize that churches and other religious institutions are well suited by doctrine, mission, structure and resources to be at the forefront of the quest for recognition and fulfilment of children's rights".

Against this backdrop, the following recommendations aim to move from dialogue to transformation, and from collaboration to shared accountability:

(a) **Develop a General Comment on Article 14:** The Committee can prioritize the development of a General Comment clarifying the relationship between parental guidance, evolving capacities of children, and freedom of religion or belief. Given that many reservations and challenges relate to the application of Article 14, this would provide authoritative guidance and allow for better monitoring.

(b) **Better collaboration between religious actors and governments:** The Committee can integrate in its concluding observations that States foster constructive partnerships with religious actors to allow for dialogue on the interpretation of harmful practices justified on the basis of religion, and reinforce alignment between child rights and religious values. These recommendations should go beyond asking governments to include religious actors in awareness-raising campaigns and training programs, to actual engagement and dialogue with them. Governments and faith leaders can co-create mechanisms of accountability, ensuring that religious norms serve as instruments for realizing – rather than restricting – children's rights.

(c) **Increased engagement between faith leaders and the Committee:** A day of General Discussion on the CRC and spiritual development of children could initiate this engagement and further develop existing collaborations. The outcomes could be a starting point for the consideration of the aforementioned General Comment on spiritual development.

(d) **Promote regional models of engagement:** Creating spaces for collaboration between governments, regional intergovernmental bodies and faith-based actors can advance implementation of children's rights at the national level by

mobilizing the capacities of faith actors and enhancing the accountability of the State. Such models can enhance peer learning, mobilize the social and moral voices of religious communities, and help contextualize rights-based approaches in settings where religious traditions play a central role

(e) **Monitor and challenge harmful practices:** The Committee could systematically monitor and address harmful practices that are justified on religious or customary grounds, while also documenting positive examples where religious communities have played a constructive role in protecting children's rights and supporting the withdrawal of reservations by States. Highlighting such good practices can strengthen the Committee's recommendations and provide useful guidance for other States on how to engage with religious actors to advance the realization of children's rights.

(f) **Respond to the global backlash against children's rights:** In light of the increasing erosion of human rights norms and the growing politicization of religion, the Committee should call for a collective ethical and institutional response to defend children's rights as an expression of shared human dignity. Faith leaders, religious communities and interfaith movements should be explicitly urged to speak out against narratives that dehumanize or marginalize children, particularly girls, LGBTQ+ children, those on the move or from minority religious groups, and to address the misuse of religion to justify discrimination or violence. The Committee could encourage States to protect civic space for faith-inspired advocacy on children's rights, support capacity-building for religious institutions to engage in rights-based action and publicly reaffirm that protecting every child's dignity is both a legal and a sacred imperative.

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# CHAPTER IX.

# INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (1990)

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**Abstract:** The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted in 1990, but only entered into force in 2003, after 20 States ratified it. More than 35 years after its adoption, the Convention

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remains the least ratified of the United Nations' core human rights treaties. As of November 2025, only 60 States have ratified it. The Convention is supervised by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, which comprises fourteen experts, in accordance with Articles 72–75 of the Convention. The Committee considers reports from States Parties in relation to their observance of the Convention and has issued comprehensive General Comments. However, as of November 2025, the Committee is not yet able to receive communications from other States Parties or individuals, given that not enough States have deposited the requisite declaration for this mechanism to enter into force. Despite references to freedom of religion or belief and non-discrimination on the basis of religion in the Convention, the Committee has rarely addressed issues related to freedom of religion or belief and migrant workers and their families. Nevertheless, the Committee has raised some critical points in this regard, which will be further explored in this chapter. Migrant workers and their families face greater vulnerability and aggravated discrimination on grounds of, or due to, their religion or belief, yet numerous opportunities remain to recognize, address and advance these rights in this arena.

**Keywords:** Migrant workers; freedom of religion or belief; religious freedom; discrimination based on religion or belief; rights of migrants; citizenship.

## 1. Introduction

As "the first global instrument for the protection of the rights of migrants" (Iza 2024, 676) and "the most comprehensive international treaty in the field of migration and human rights" (de Guchteneire/Pécoud 2009, 1), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW or "the Convention") is vital for millions who work outside their country of origin. Yet, this treaty is largely

unknown to its beneficiaries and is also overlooked in academic discussions. While some work has been produced more generally on issues of migration and freedom of religion or belief (Bielefeldt/Ghanea/Wiener 2016; Santini/Spatti 2020; Ghanea/Alves Pinto 2025; A/80/205), the specific question of freedom of religion or belief in the ICMW has received scant attention.

This chapter attempts to elucidate why there has been such a lack of interest in this treaty and to highlight some critical discussions regarding freedom of religion or belief that have been raised in relation to migrant workers. It will start by presenting the context and legal framework related to the topic, then explore religious influences during the *travaux préparatoires*, in order to better understand the related jurisprudence on the subject, and the issues it has raised and clarified.

### 1.1 Institutional context

The ICMW was adopted on 18 December 1990, and entered into force on 1 July 2003, in accordance with Article 87 (1) of the Convention. As of November 2025, there are 60 Parties to the Convention (United Nations 2025), the vast majority of which are not primarily destination countries for migrant workers and their families. This illustrates the ICMW's major weakness, as scholars have explained that "[a]s long as destination countries have not ratified it, the Convention will suffer from a severe handicap – it is meant to protect the world's migrants but has no validity for the vast majority of them" (de Guchteneire/Pécoud 2009, 39). Indeed, as another author recognizes, the Convention is also distinguished for the fact that it is "the longest of the UN instruments, it had the slowest progress between adoption and entry into force, and it has the smallest number of participating countries" (Battistella 2009, 47). The challenge, therefore, lies at the door of the destination or receiving countries of employment. The very potential of the

protection offered by the ICMW rests on the wider ratification of the treaty by such States.

The Convention is overseen by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW or "the Committee"), which is composed of 14 members in accordance with Articles 72–75 of the Convention. It was established on 1 January 2004, and, like other United Nations human rights treaty bodies, it is composed of independent experts entrusted with considering States Parties' reports and examining communications received. The latter draws from the optional commitment of States Parties to Articles 76–77 of the Convention. Article 76 enables communications from other States Parties, and Article 77 allows for individuals claiming rights violations under the ICMW to submit communications to the Committee – yet neither has entered into force as of November 2025. Ten States Parties need to declare the competence of the Committee under each of these articles before they come into force. Yet, so far only Ecuador, El Salvador and Guinea-Bissau have recognized the competence of the Committee with regard to inter-state complaints, and only four States parties – namely Ecuador, El Salvador, Mexico and Uruguay – have recognized the same competence in relation to individual communications (United Nations 2025).

### 1.2 Economic context

Given that the ICMW focuses on the protection of migrant workers, it is essential to consider the economic situation of its States Parties. Out of the 60 Parties, only four (Chile, Guyana, Seychelles and Uruguay) are considered by the World Bank as "high income countries", though none of them were regarded as such when they signed, ratified or acceded to the treaty (Metreau/Young/Eapen 2024). Also, the vast majority of States Parties had a negative net migration when they ratified the treaty, meaning that more people had emigrated from these countries

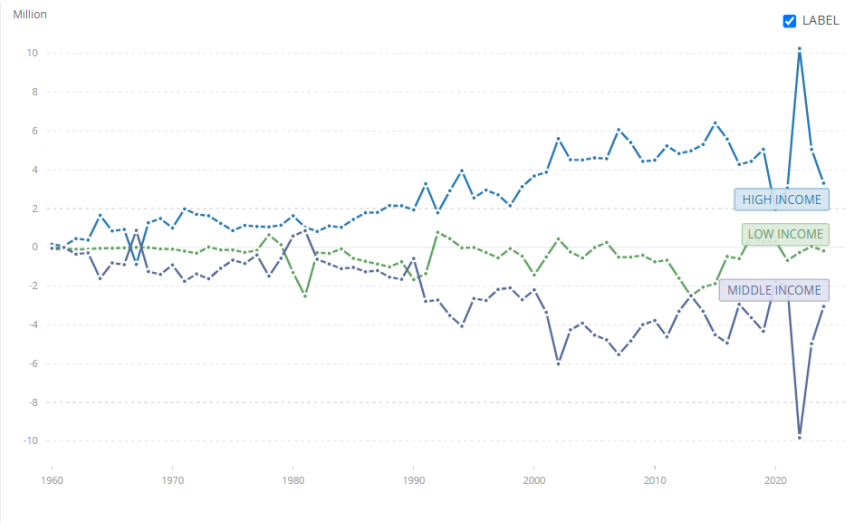
than immigrated to them (World Bank 2025). Consequently, the States Parties to the ICMW are likely to be more concerned about protecting their citizens abroad than with providing additional rights for migrant workers and their families in their jurisdiction, who find themselves in situations of greater vulnerability.

Even in the States Parties that have a positive net migration, such as Syria, Chad and Colombia, this factor has resulted from a sudden influx of refugees rather than from migrant workers and their families (ibid.). Yet refugees are not entitled to the protection of the ICMW according to Article 3 of the Convention. Consequently, the ratification of the Convention does not impose a significant burden on these States Parties to protect migrant workers and their families.

This observation, while primarily socio-economic in nature, is relevant because it demonstrates that migrant workers in high-income countries are, in most instances, not protected by the Convention's objective to protect them and their families. On the contrary, migrant workers and their families are left vulnerable in some States, not only in relation to freedom of religion or belief, but in relation to all rights present in the Convention. The CMW highlighted this point in relation to Chile in its concluding observations on the State's second periodic report, acknowledging that "as a country of origin of migrant workers, it has made progress in protecting the rights of its nationals working abroad" (CMW/C/CHL/CO/2, 4). However, in the same paragraph, the Committee "notes with concern that, as a destination country, the State party appears to be facing a number of challenges in respect of the protection of the rights of migrant workers and members of their families" (ibid.).

States must protect the rights of their citizens at home and abroad, but the expectation they place on other States to protect their citizens' rights should lead to a higher degree of protection for migrant workers in their own jurisdictions. It seems obvious that

the protection of migrant workers is not just for their own workers abroad. This attitude highlights the hypocrisy many States exhibit in international law, particularly relevant high-income States, most of which have not ratified the ICMW. The graphic below illustrates this point by showing States' net migration by income level (World Bank 2025):




Thus, as this brief socio-economic commentary demonstrates, the lack of engagement by United Nations Member States with this treaty, reflected in the limited output of the CMW, is but a symptom of the lack of engagement with the human rights of migrant workers and members of their families.

### 1.3 Legal Framework

The ICMW defines a migrant worker as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national" (Article 2). The ICMW is to apply through the entire migration process, including "preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well

as return to the State of origin or the State of habitual residence" (Article 1 (2)). The expression "members of their family" includes "persons married to migrant workers or having with them a relationship that, according to the applicable law, produced effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family" (Article 4).

From the outset of the Convention, it is insisted that provisions of the ICMW apply to all migrant workers and members of their families "without distinction of any kind such as [...] religion or conviction" (Article 1 (1) and Article 7). Alongside that assertion, preambular paragraphs 9 and 14 recognize situations of vulnerability and the insufficient international protection of migrant workers and members of their families. Under Article 12 of the Convention, the right to freedom of religion or belief of migrant workers and their families is protected as follows:

> "1. Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.
>
> 2. Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.
>
> 3. Freedom to manifest one's religion or belief 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.

> 4. States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

Mirroring the International Covenant on Civil and Political Rights (ICCPR), the Convention upholds the protection of migrant workers and their families against coercion that would impair their freedom to have or adopt a religion or belief of their choice, and the rights of parents and/or legal guardians to ensure the moral and religious education of their children in conformity with their own convictions are guaranteed. Significantly, the limitations to manifesting their freedom of religion or belief under ICMW's Article 12 (3) are identical to Article 18 (3) of the ICCPR (Nafziger/Bartel 1991, 782).

Other relevant rights include the ICMW's protection of equality before the law and equal protection of the law (Article 18), equal treatment for the children of migrant workers (Article 30), equality of treatment in access to education, housing, health services and in participation in cultural life (Article 43).

## 2. Religious influences during the travaux préparatoires

### 2.1 ICMW's travaux préparatoires

Work towards drafting the ICMW started in 1972. The Economic and Social Council (ECOSOC) resolution 1706 (LIII), adopted on 28 July 1972, deplored and condemned the "Exploitation of labour through illicit and clandestine trafficking" in relation to the illegal transportation of workers from African countries to some Europe countries "in conditions akin to slavery and forced labour, which constitute an extreme outrage to the human person" (E/5209, 17, preambular para. 3). It instructed the Commission on Human Rights (predecessor to the UN Human Rights Council) to consider

this question. On 15 November 1972, the UN General Assembly was deeply concerned at this *de facto* discrimination, called for an end to the discriminatory treatment suffered and called on the States concerned "to ensure the improvement of arrangements for receiving such workers" (A/RES/2920(XXVII), 1), and for the Commission on Human Rights to prioritize the work on this matter. In this way, the UN General Assembly "was establishing a linkage between discrimination against migrants and racial discrimination" (Battistella 2009, 52), later also amplified by the 1978 Geneva First World Conference to Combat Racism and Racial Discrimination (ibid., 53; A/CONF.92/40).

The Economic and Social Council revisited the matter in 1973 and requested the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities to produce a report on this topic. The Sub-Commission, in turn, instructed its member, Ms Halima Warzazi, on 19 September 1973, to lead on this report on the exploitation of labour through illicit and clandestine trafficking. Whilst human rights would call on such migrant workers to become "full members of the host society", the report bemoaned their "tragic situation" (E/CN.4/Sub.2/L.640, 3), especially where they arrived through illicit and clandestine means rather than as legal migrants. Issues discussed included family reunion, decent and proper housing if required through rent control, education of their children and vocational training for them, trade union rights, security in residency, and other ICCPR rights, the feminization of migration in some parts of the world such as Venezuela, social security, racial dimensions of their treatment, the overlap with the refusal to open pathways for seeking refugee status, and the intransigent hate speech against migrants.

As the report pointedly observed, "the illegal migrant has only two alternatives – to be sent back to his wretched existence or to work as a slave. It is always a vicious circle!" (ibid., 12). Warzazi's recommendations address countries of origin as well as of

destination, and conclude that if all rules were observed, "migration could be one of the most reliable means of promoting bilateral co-operation and also a better understanding between the peoples of the countries concerned" (ibid., 29). Warzazi "recommended the drawing-up of a United Nations convention on the rights of migrant workers" at the World Conference to Combat Racism and Racial Discrimination in Geneva in 1978 and in General Assembly resolution 33/163 on measures to improve the situation and ensure the human rights and dignity of all migrant workers (OHCHR 2005, 2).

Following the adoption of General Assembly resolution 34/172 of 17 December 1979 (A/RES/34/172), a working group open to all Member States was established in 1980 to draw up a convention. The initial preliminary draft was presented in 1981, but the final text of the ICMW was ultimately adopted on 18 December 1990 and came into force only a dozen years later, on 1 July 2003, in accordance with Article 87 (1) of the Convention.

### 2.2 Subtle religious influences during the travaux préparatoires

The religious influences during the ICMW's *travaux préparatoires* are not as overt as in earlier UN human rights documents such as the Universal Declaration of Human Rights (see above chapter II). Still, the Convention enshrines values which are shared in religious traditions. Principles such as human dignity (Articles 17 and 70), equality and non-discrimination (*i.a.* Article 7), and protection of the family (*i.a.* Articles 44 and 45) are reflected in modern secular norms which have been considered religious values for millennia. These values have been highlighted in the Beirut Declaration and its 18 Commitments on "Faith for Rights" (see below chapter XIV), both documents that provide several examples of how these values are portrayed across different religious or belief traditions.

There are a few factors that could have led to a more understated religious influence during ICMW's *travaux préparatoires*. One point

to consider is that the ILO Convention on Migrant Workers (1975, C143) does not explicitly mention freedom of religion or belief or non-discrimination based on religion or belief; instead it addresses generally the "basic human rights of all migrant workers" (Article 1). While the need for a comprehensive list of human rights in the Convention was raised among some participants of the *travaux préparatoires* (Böhning 1991), it is essential to note that the ILO Convention is silent on religion. It is also important to observe that the discussions surrounding the ICMW took place in a much more secular environment than, for example, the Universal Declaration of Human Rights. The ICMW was also finalized after the Cold War, and was perhaps obliged to utilize a perceived neutral language, rather than one with religious undertones, so that it could be more easily accepted by former Communist States.

Influence is difficult to gauge, especially in the drafting of international treaties, but three considerations suggest that relevant discussions on religion could have influenced the ICMW text. First, some representatives during the *travaux préparatoires* came from predominantly religious societies and were likely aware of texts related to religious values applied to migrant workers. A notable example is the encyclical *Laborem Exercens* by Pope John Paul II, issued in 1981, which could have influenced representatives from majority-Catholic States and the Holy See to take a similar stance on migrant workers. The Pope, despite being a migrant worker himself, considered emigration in certain circumstances "a necessary evil" (John Paul II 1981, 23). Still, he also highlighted the importance of non-discrimination, including on religious grounds, to protect migrant workers (ibid.):

> "The most important thing is that the person working away from his native land, whether as a permanent emigrant or as a seasonal worker, should not be *placed at a disadvantage* in comparison with the other workers in that society in the matter of working rights. Emigration in search of work must

> in no way become an opportunity for financial or social exploitation. As regards the work relationship, the same criteria should be applied to immigrant workers as to all other workers in the society concerned. The value of work should be measured by the same standard and not according to the difference in nationality, religion or race."

Second, faith-based organizations, such as Caritas Internationalis and the World Council of Churches, tend to participate in these meetings and would likely have sought to exert religious influence on this process, as they did at the United Nations more generally (Lehmann 2016; Berger 2022). Furthermore, it is well-reported that faith-based organizations continue to support the rights of migrant workers to this day (*i.a.* Nicholson 2018).

Finally, discussions regarding the inclusion of the right to freedom of religion or belief in the ICMW reveal some tensions among State representatives, suggesting religious influences on the *travaux préparatoires*. According to academic commentary (Bielefeldt/Ghanea/Wiener 2016, 470), discussions regarding the right to freedom of religion or belief in the ICMW were not unanimous, as:

> "representatives of the USSR, Finland, the Federal Republic of Germany, India, and Sweden expressed their preference for using the wording of article 18 of the ICCPR, whereas Morocco placed on record its wish to retain the wording of article 1 of the 1981 Declaration (which notably does not refer to freedom 'to adopt' a religion), stressing that 'according to Islam, a Muslim could not change his religion or adopt another religion' and that 'Islam did not recognize the fact of not having a religion.' [Footnote: A/C.3/41/3, paras 124 and 130.]"

To sum up, while important historical, political, religious and institutional factors certainly played a role in the drafting of the ICMW, it is difficult to ascertain if or how much religion influenced the *travaux préparatoires* of the Convention. The factors presented should not be overlooked in trying to understand the religious influences during the *travaux préparatoires* of the ICMW, yet the causal nexus between faith and the text of the Convention remains hypothetical at best.

## 3. Faith-related jurisprudence

### 3.1 Jurisprudence

There is no jurisprudence from the CMW on inter-state complaints or individual cases. The reason for that, as mentioned above, is that most States Parties have chosen not to deposit declarations stating the competence of the Committee to decide inter-state and individual communications. According to Articles 76 (2) and 77 (8), ten States Parties are required respectively to make declarations accepting the competence of the CMW to consider communications from States and individuals, respectively.

### 3.2 Concluding observations

While the Committee cannot yet receive inter-state or individual communications, it still retains its functions as a supervisory body of the treaty. The CMW performs this function primarily through its concluding observations. States Parties to the treaty are required to submit an initial report within one year after the entry into force of the convention for said State, and then every five years, or whenever the Committee requests one (Article 73 (1)).

There seem to be only two concluding observations on freedom of religion or belief, one directly on the topic in relation to Cabo Verde and another, somewhat indirectly, in relation to Sri Lanka. Starting with the latter, in 2009 the Committee expressed concern that the provisions in the Sri Lankan Constitution to protect "against discrimination and the right of peaceful assembly,

freedom of association and freedom to form and join a trade union, apply only to citizens" (CMW/C/LKA/CO/1, 25). Consequently, migrant workers and members of their families did not enjoy the same level of protection that Sri Lankan citizens did. The CMW then requested Sri Lanka to rectify this issue in accordance with Article 7 of the Convention (ibid., 26). This did not happen, as in 2016 during the second periodic review the Committee reiterated its recommendation to Sri Lanka. However, in this instance, the Committee was more emphatic, suggesting that Sri Lanka should amend its Constitution "to prohibit direct and indirect discrimination on the basis of all the grounds specified in the Convention" (CMW/C/LKA/CO/2, 26–27). This raises important questions of interpretation regarding human rights being granted only for citizens, and the vulnerability that it causes to migrant workers and members of their families. Consequently, this point will be elaborated further in the next section.

The concluding observations on Cabo Verde explicitly mention freedom of religion or belief, noting that its Constitution guarantees this right to everyone. However, the Committee noted with concern that legal amendments requiring "religious groups to obtain the notarized signatures of 500 members before they may commence any activities in the State party, might pose obstacles for immigrant communities for exercising their right to freedom of thought, conscience and religion" (CMW/C/CPV/CO/1-3, 35). Migrant workers and members of their families might belong to a minority religion or belief group where they live. Consequently, the requirement for a certain number of members to commence religious activities certainly interferes with the right of many migrant workers to exercise their freedom of religion or belief. Such interference is unlikely to meet the threshold for justified limitations on freedom to manifest one's religion or belief, in line with Article 12 (3) of the ICMW (ibid., 36).

### 3.3 Reports to the General Assembly

The Committee, as is the norm with human rights treaty monitoring bodies, presents annual reports to the UN General Assembly on its implementation of the Convention in accordance with Article 74 (7) of the ICMW, including its considerations and recommendations. In searching the 23 annual/sessional reports of the Committee between March 2004 (A/59/48) and July 2025 (A/80/48), the words "religion", "religious" or "belief" are rarely mentioned. A notable exception is the 2021 report (A/76/48, 38(e)) regarding the imperative towards the prevention, detection and response to inter alia "religious profiling of migrants by public authorities". This relates to the collaboration between the Committee and the Global Alliance of National Human Rights Institutions to advance five sets of objectives to support the implementation of the Global Compact for Safe, Orderly and Regular Migration. One of these five areas for their collaboration is to establish "mechanisms to prevent, detect and respond to racial, ethnic and religious profiling of migrants by public authorities, as well as systematic instances of intolerance, xenophobia, racism and all other multiple and intersecting forms of discrimination" (ibid.).

### 3.4 General Comments

Given the impossibility of receiving communications, the Committee has been able to devote more time to drafting General Comments, which have helped advance understanding of migrant workers' rights. The first General Comment focused on domestic workers, where the Committee highlighted potential intersectional discrimination that leaves some migrant workers in an even more vulnerable situation. This happens, among other factors, because migrant workers are naturally from a different country of origin, their migration status might not be stable, they often receive lower salaries for the job they perform, women might face additional risks related to their gender, and a different religion might also

impact how migrant domestic workers are perceived (CMW/C/GC/1, 7, 13 and 48). Despite being self-evident, not all intersectional analyses take into consideration freedom of religion or belief, and the Committee should be commended for not overlooking the fundamental freedom of migrant domestic workers "to practise the religion or belief of their choice […] individually or in community with others, in public and in private" (ibid., 48). During the elaboration of this General Comment, Caritas Internationalis had also highlighted "that migrant domestic workers were sometimes hidden away or locked up in their employer's house, which made the implementation of their rights under article 12 of the Convention especially problematic" (CMW/C/SR.152, 13).

In a similar fashion, CMW's General Comment No. 2 scrutinized the rights of migrant workers in an irregular situation and members of their families. Some migrant workers might come in an irregular situation for a variety of reasons, yet they cannot be deprived of their fundamental rights if their situation changes in the country of destination (CMW/C/GC/2, 5). Even in extreme situations, where migrant workers and members of their families might be deprived of their liberty, they should never be deprived of their inherent dignity. To address this issue, the Committee appropriately stressed that (ibid., 36, emphasis added):

> "In order to respect the inherent dignity of migrant workers and members of their families who are deprived of their liberty, States parties are obliged to ensure adequate conditions in line with applicable international standards, including the provision of adequate sanitary, bathing and shower facilities; adequate food (*including appropriate food for those observing religious dietary laws*) and drinking water; the right to communicate with relatives and friends; access to qualified medical personnel, and *adequate opportunities to practise their faith*, for example."

In its third and fourth General Comments, the Committee chose to focus on the rights of children in the context of migration and drafted them together with the Committee on the Rights of the Child. CMW's General Comment No. 3 focuses on the human rights of children in the context of international migration (CMW/C/GC/3), while General Comment No. 4 gives attention to State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return (CMW/C/GC/4). In both instances, the General Comments address the context of multiple vulnerabilities and include religion as a factor that can make children from certain religious groups less protected, either because of direct discrimination or because of domestic norms that are structurally discriminatory. CMW's General Comment No. 3 highlights that religious affiliation can indeed lead to specific vulnerable situations for children of migrant workers (CMW/C/GC/3, 3, 21 and 42). The Committee also pointed out that unaccompanied children should be offered an equal opportunity in legal and administrative cases, as the State should provide such children (ibid., 36, emphasis added):

> "with a translator in order that they may express themselves fully in their native language and/or receive support from *someone familiar with the child's ethnic, religious and cultural background*. These professionals should be trained on the specific needs of children in the context of international migration, including gender, *cultural, religious and other intersecting aspects*."

General Comment No. 4 further emphasizes that "[n]ationality laws that discriminate with regard to the transmission or acquisition of nationality on the basis of prohibited grounds, including in relation to the child and/or his or her parents' race, ethnicity, religion, gender, disability and migration status, should be repealed" (CMW/C/GC/4, 25).

General Comment No. 5 (2021) deals with the increasingly frequent use of detention of migrants across several regions of the world. In these circumstances, the Committee recommends that if immigration detention must take place, it should not take place in a punitive facility, and if that happens, States must ensure "sufficient food in line with the physical and health conditions of the migrants and their religious beliefs, and access to safe water and sanitation and to health care, including health-care professionals, independent from detaining authorities" (CMW/C/GC/5, 83).

Finally, CMW's General Comment No. 6 (2024) describes the convergent protection of the rights of migrant workers and members of their families through the Convention and the Global Compact for Safe, Orderly and Regular Migration (CMW/C/GC/6). This Global Compact (A/RES/73/195, annex), often abbreviated as GCM, is "the first intergovernmental agreement, prepared under the auspices of the United Nations, to cover all dimensions of international migration in a holistic and comprehensive manner" (OHCHR 2025). This intention to cover all dimensions of international migration is reflected by the attention given to matters related to freedom of religion or belief in the Compact's objectives. GCM's Objective 7 addresses particular vulnerabilities in migration, such as those of "members of ethnic and religious minorities" (A/RES/73/195, annex, 23(b)). Objective 15 of the Compact draws attention to the provision of basic services to migrants without discrimination (ibid., 31). Another important aspect of the Compact deals with matters related to the negative portrayal of migrants, including the stereotyping of those members of religious groups (ibid., 33). In this instance, the Compact not only notes that stereotyping takes place in many societies, but call upon States to "[e]stablish mechanisms to prevent, detect and respond to racial, ethnic and religious profiling of migrants by public authorities", as well as (ibid.):

> "Engage migrants, political, religious and community leaders, as well as educators and service providers, to detect and prevent incidences of intolerance, racism, xenophobia and other forms of discrimination against migrants and diasporas, and support activities in local communities to promote mutual respect, including in the context of electoral campaigns."

The Committee's General Comment No. 6 highlights the relationship between these issues related to religion in the Compact and those in the Convention in several paragraphs (e.g. CMW/C/GC/6, 21, 25 and 26). It is also important to note that other United Nations documents have equally addressed the need for States to combat stereotyping of religious groups (A/HRC/22/17/Add.4, appendix; see below chapter XIII), and the role of religious communities in preventing discrimination (A/HRC/40/58, annexes I and II; see below chapter XIV). The #Faith4Rights toolkit (OHCHR 2024, 40) also refers to the quote of the Rabat Plan of Action on the prohibition of incitement to religious hatred in the *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations* (OHCHR 2017, 126).

## 4. Issues of interpretation

### 4.1 Citizenship

Some States grant citizens more rights than non-citizens, or restrict constitutional recognition or rights only to citizens. Given the dominance of States in international law, this practice is often assumed to be unproblematic. Human rights law, however, imposes duties on States to protect everyone within their jurisdiction, not only citizens. Consequently, States parties to international treaties need to adapt their domestic legislation to reflect the treaties that they have ratified if their legislation does not protect non-citizens equally. This may seem like a purely

theoretical question, but the implications of such differential treatment can be devastating. For example, the Constitution of Myanmar (2008) protects, in its Article 34, the freedom of religion or belief of its citizens. The majority of the Rohingya from Myanmar are Muslims (a minority religious group in the country), but they are not considered citizens of Myanmar; hence, their vulnerability was heightened (Pérez-León-Acevedo/Alves Pinto 2021, 462). While this was not the only reason why the Rohingya were persecuted and forcibly displaced, the *de facto* statelessness of the Rohingya certainly contributed to the systemic oppression of the group by the State (A/HRC/39/CRP.2, 460). Consequently, even though Myanmar is not a State Party to the ICMW, its severe violations of the rights of members of the Rohingya illustrate how persons deprived of citizenship are in constant vulnerability.

The CMW has paid attention to this issue, recognizing that migrant workers can be treated less favourably and have fewer protections than citizens in certain countries, despite contributing actively to said countries. The Committee has underscored this point twice in relation to Sri Lanka (CMW/C/LKA/CO/1, 25; and CMW/C/LKA/CO/2, 26). Sri Lanka's Constitution is indeed puzzling when it comes to non-discrimination on grounds of religion and the protection of freedom of religion or belief. Article 12 of the Constitution (2023, emphasis added) provides that:

> "(1) All *persons* are equal before the law and are entitled to the equal protection of the law.
>
> (2) No *citizen* shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds."

Does that mean that all persons are equal before the law, but only citizens cannot be discriminated against? The language of the constitutional text is unclear. Similarly, Article 10 of the Constitution protects every person's freedom of thought,

conscience and religion, but Article 14 reserves the freedom to manifest this right only to citizens. As a result, the Constitution alone does not seem to protect migrant workers and their families against discrimination, nor other human rights, including their freedom of religion or belief.

The issue of freedom of religion or belief being a right in some jurisdictions afforded only to citizens has been addressed by several Special Rapporteurs on freedom of religion or belief. In 2008, Special Rapporteur Asma Jahangir dedicated a thematic report on citizenship issues and religious discrimination in administrative procedures (A/63/161). Special Rapporteur Heiner Bielefeldt raised this issue during his country visit to Cyprus (A/HRC/22/51/Add.1, 56). Special Rapporteur Ahmed Shaheed noted that "citizenship can be used by the State to attempt to sidestep its obligations to promote and protect the human rights of persons belonging to religious or belief minorities" (A/75/385, 27). More recently, in 2025, Special Rapporteur Nazila Ghanea drew attention to this matter in her thematic report on "people on the move" (A/80/205, 12–16). This thematic report focused attention to the freedom of religion or belief of migrant workers and members of their families, and highlighted that (ibid., 55):

> "States routinely neglect – and often restrict – the freedom of religion or belief of migrant workers and their families. Some legal codes do not even guarantee such freedom for non-nationals, in a blatant departure from international obligations. Other legal systems are applied in such a way as to restrict the freedom of religion or belief of the 'average' migrant worker, alleging that certain practices can be carried out only by those on missionary or religious-worker visas."

A few scholars have also mentioned the issue tangentially, including in relation to Myanmar (Pérez-León-Acevedo/Alves

Pinto 2021) and more broadly (Salama/Wiener 2022, 147). A recent push for a more theological and sociological concept of "full citizenship" has been advanced by religious leaders, for example by Pope Francis and the Grand Imam of Al-Azhar Ahmad Al-Tayyeb in *A Document on Human Fraternity for World Peace and Living Together* (Holy See/Al-Azhar 2019). Some academics have noted the positive aspects of such religious initiatives (Marshall 2025); nevertheless, from a legal doctrinal perspective, the notion of "global citizenship" does not appear to generate additional protection for migrant workers and their family members in terms of freedom of religion or belief. Furthermore, the notion of "global citizenship" removes the conceptual clarity that more general human rights treaties provide, for instance, Article 18 of the International Covenant on Civil and Political Rights, which creates a legal obligation for States Parties to protect everyone's freedom of religion or belief, an obligation that has been confirmed by the Human Rights Committee (CCPR/C/112/D/2131/2012, 9.2).

Consequently, the call by the CMW for States to repeal discriminatory provisions regarding migrant workers and members of their families, as it did in relation to Sri Lanka (CMW/C/LKA/CO/2, 27), has been a highly positive development in emphasizing the pertinence of the ICMW. The Convention was drafted precisely to guarantee that migrant workers and members of their families are granted the same level of protection as citizens in State parties to the ICMW. The Committee, performing its supervisory role in this matter, has noted a constant gap in protection, which had only been flagged by a few mandate holders and scholars, and has contributed in this manner to solidify the understanding that non-nationals have the same rights as citizens in States parties to human rights treaties.

### 4.2 Conclusion

It is clear from the general comments and annual reports to date that the Committee has hardly scratched the surface of its potential

jurisprudence and elaboration of either religion or belief as a discriminatory ground that increases the vulnerabilities faced by migrant workers and members of their families, or their enjoyment of freedom of religion or belief as an equal basis for others. Given the reflection on this important intersection in the 2025 report of the UN Special Rapporteur on freedom of religion or belief (A/80/205), collaboration in this area appears ripe for exploration. Further collaboration between the CMW and other United Nations entities (Grant/Lyon 2017) will likely be welcomed.

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# CHAPTER X.

# OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (2002)

**Malcolm Evans[1] and Elīna Šteinerte[2]**

**Abstract:** The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) sets out a unique architecture for preventing torture and ill-treatment. This is achieved through an

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interplay between forward-looking regular visits to all places of deprivation of liberty by the OPCAT's treaty body, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and the National Preventive Mechanisms, the establishment of which is the key obligation of each OPCAT State party. As such, the work of the SPT is unique among the United Nations treaty bodies – its jurisprudence is grounded in the direct personal observations of its members made during such visits, offering unparallelled first-hand evaluation. This also offers unique insights into the relationship between the two non-derogable rights, freedom from torture and freedom of religion or belief, as it happens in practice, in places usually closed to public eye: prisons, police cells, psychiatric institutions, social care homes, etc.

**Keywords:** Torture, ill-treatment, prevention, Subcommittee on Prevention of Torture, National Preventive Mechanisms, deprivation of liberty.

## 1. Introduction

While it is not unusual for the United Nations human rights treaties to have optional protocols, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is not a "usual" optional protocol for three key reasons. First, and possibly most significantly, it is the only optional protocol to a UN human rights treaty which establishes its own treaty body, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) which, strikingly, is the largest UN treaty body, composed of 25 members.

Why so? Arguably because of the second key distinguishing feature of OPCAT – this is not an optional protocol that sets out an additional right or normative framework for the implementation of a right or indeed a complaints mechanism in case of a violation.

Rather, the *raison d'être* of OPCAT is rooted in the idea that the obligation to prevent torture, as envisaged in Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), can be implemented through a system of regular, unannounced visits to all places of deprivation of liberty. Each OPCAT State party accepts such visits, by default, upon ratification of the Optional Protocol, and it is the SPT which is to carry out these visits – hence the number of its members being 25.

But even with 25 members, it is clear that the SPT could not ensure true regularity of such visits and so, the third key distinguishing feature of OPCAT emerges. This is the central obligation of each State party: establishment of their own National Preventive Mechanism (NPM). There is no exact blueprint in the OPCAT as to how these NPMs ought to look like, albeit essential requirements are set. Among these, most notable are the requirements towards the functional independence of the NPM as well as independence of its personnel, the requisite resources and specific powers and mandate as set out in the OPCAT. Significantly, as the key part of the torture prevention architecture of the OPCAT, each NPM is tasked with a proactive, forward-looking mandate of prevention of torture through a system of regular, unannounced visits to all places of deprivation of liberty – akin to the mandate of the SPT.

Consequently, the torture prevention architecture of the OPCAT rests on the *in situ* work by two counterparts: the SPT and NPMs. These two sets of bodies are to work complementarily, building on each other's work – visiting a wide variety of places of deprivation of liberty, making system-orientated recommendations that would lessen the likelihood of occurrences of torture and ill-treatment, and engaging the authorities in a proactive (if need be even confidential) dialogue as to the implementation of these recommendations. This is a system that has been operational for nearly two decades now; the SPT has carried out over a hundred

visits to all regions of the world, and it is safe to say that the visits of now nearly eighty NPMs around the globe would run into hundreds of thousands. As such, the uniqueness of the OPCAT architecture is plain to see – the SPT is the only United Nations treaty body with jurisprudence so well rooted in national realities of its States parties.

Freedom of religion or belief does not feature in the text of OPCAT directly, but that is not to say that it had no impact upon the drafting process of the Optional Protocol or the subsequent work of the SPT.

## 2. Religious influences during the travaux préparatoires

The lack of discernable faith-based influences in the formal drafting process of the OPCAT is hardly surprising, given the nature of those processes within the United Nations system. The days in which intergovernmental debate might focus on the appropriateness of making references to the deity in human rights documents (as was the case in the drafting of the Universal Declaration of Human Rights, a document on which the influence of religious thinkers and thought is well known and well documented, see above chapter II) appear long gone, and the sources of inspiration for human rights treaties are today more routinely located in more secularized concepts, such as human dignity, equality and non-discrimination.

Yet this does not mean that faith-based influences were not at work in what might be called the "OPCAT project". The origins of much of the "modern" human rights movement owes its origin to passionate individuals who, drawing on their own religious faith, sought to utilize the structures emerging in the post Second World War era to offer better protections for others, through the emergent language of human rights, much as in the past had been the case after the First World War with the focus on minority rights, and before then with the emergence of international humanitarian law in the 19th Century. Indeed, it was the work of

the International Committee of the Red Cross (ICRC) which provided the original inspiration for what became the OPCAT, and the source of that inspiration was an impassioned individual, Jean-Jacques Gautier – and behind this lay his Christian faith.

Gautier was from Geneva, a private banker, a life-long protestant, and – like so many in Geneva – very familiar with the work of the ICRC. In the early 1970s there was heightening international concern at use of torture, principally in countries with right-wing dictatorships in various parts of the world. A product of this concern was the 1975 UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (A/RES/3452 (XXX)), and the process that resulted in the adoption of 1984 UN Convention against Torture (A/RES/39/46, annex). It was at the same time and in this context that Gautier made the seemingly simple suggestion that if the ICRC could visit places of detention during times of war and armed conflict, why could similar systems not be put in place to seek to ensure compliance with the international prohibition of torture during times of peace? Having first aired his suggestion in 1974, it was publicly presented in October 1976 in the Geneva-based journal *La Vie Protestante*.

This place of publication reflects the religious underpinnings of Gautier's commitment to the fight against torture, something which his own writings make clear, even if this has not been particularly highlighted in the commentaries on the subject. For example, in 1977 Gautier was invited to address an audience of Swiss Pastors on the subject of his proposal, during which he said the following (Mischler 2003, 74; emphasis in the original):

> "Ce supplice trop ingénieux ne vous rappelle-t-il pas quelque chose ? Lorsque le Christ à Gethsémané priait dans l'angoisse, Saint Luc nous raconte que sa sueur tombait sur le sol comme des caillots de sang. Nous savons que le Christ ne craignait pas la mort, qui pour

> lui représentait le retour glorieux aux côtés de son Père, mais le terrible supplice de la **Croix**. Nous ne pouvons pas oublier que la Croix, qui est notre signe de ralliement, était d'abord un **instrument de torture**. C'est une des raisons pour lesquelles les Chrétiens ne peuvent pas rester indifférents devant la torture."

He went on to say that (ibid.):

> "Puis-je vous rappeler que dans le récit du **jugement dernier**, le Christ nous demande d'assister non seulement les pauvres, les étrangers et les malades, comme le recommandait déjà la morale judaïque, mais aussi les **prisonniers**, ignorés jusque là par les préceptes hébraïques. Il va de soi, me semble-t-il, que cette assistance aux prisonniers – qu'ils soient innocents ou coupables – doit s'adresser d'abord aux plus malheureux d'entre eux, les victimes de la torture."

Unsurprisingly, Gautier then sought (and received) support for his project from, inter alia, the World Council of Churches (which has its administrative centre in Geneva) and from other Christian-based organizations dedicated to combatting torture, in particular, *l'Action des chrétiens pour l'abolition de la torture* (ACAT, founded in 1974) and its international federation (FIACAT), both of which maintained their commitment throughout the long process of drafting the OPCAT. Gautier sought support for the project from many quarters, including in 1979, from Pope John Paul II, when he wrote to appraise the Pope of the project and to encourage his support in the fight against torture (ibid., 110).

This is not to suggest that many others involved in the drafting process have not been influenced and inspired by their religious beliefs to support the "OPCAT project". It is beyond the scope of this section to attempt to chart this, or to identify and assess the practical impact of such others on the final form and structure of

the OPCAT. Indeed, this would be an almost impossible endeavour. The official *travaux préparatoires* are, to say the least, unilluminating of motivations, being generally limited to relatively brief summaries of discussions, rather than records of those discussions themselves, and accompanying drafts. The most major systematic Commentary (Nowak/Birk/Monina 2019) records no incidence of any discussion bearing on religion at all. Furthermore, one of the authors of the present book chapter (Evans), who attended many of the official and unofficial working group sessions as an observer, can recall no substantive consideration of issues concerning religion within the process. Other commentaries on the process also have nothing of substance to say about religion in the OPCAT context (e.g. Evans/Haenni-Dale 2004; Murray/Steinerte/Evans/Hallo de Wolf 2011). This does not mean that there were no such considerations or influences, but it seems safe to say that to the extent that there may have been, they have left no discernable trace. What can be said, however, is that the entire concept – the "new idea" – was underpinned by, and arguably a manifestation of, the Christian beliefs of its undoubted progeniture, Jean-Jacques Gautier (Haenni 1997).

## 3. Faith-related jurisprudence

While it is fair to say that the freedom of religion or belief has not been at the forefront of the SPT's mandate, there are three key elements from its jurisprudence warranting a special attention in this context: (1) the prohibition of discrimination on the basis of religion and prevention of torture; (2) the meaning of "place of deprivation of liberty"; and (3) respect for freedom of religion or belief in places of deprivation of liberty as an element in the broader context of prevention of torture and ill-treatment.

### 3.1 The prohibition of discrimination on the basis of religion and prevention of torture and ill-treatment

The broad reach which the SPT adopts to implement its preventive mandate without a doubt requires examination of the national legal

systems from the torture prevention vantage point so as to scrutinize the legislation for any (potential) risk factors which may enable or indeed aid occurrences of torture and ill-treatment in practice. To this end, the importance of full and proper transformation of the definition of torture in domestic legislation, as per Article 1 of the UNCAT, is an obvious starting point. Given the reference to discrimination in the torture definition set out in Article 1 of the UNCAT, the SPT has read this as also encompassing prohibition of discrimination on the basis of religion or belief. Consequently, during its visits to OPCAT States parties, the SPT has, for example, criticized national legislation which refers solely to "racial discrimination" in its definition of torture. According to the SPT, such reference is incomplete and non-compliant with the requirements of Article 1 of UNCAT "because of their presumed religious beliefs and practices, whether inside or outside places of deprivation of liberty" (CAT/C/82/2, annex II, 5).

This is an important acknowledgement of the impact that religious-based discrimination may have on the very foundations of torture, that someone might be subjected to this most abhorrent practice for no other reason than their religious beliefs and highlighting the importance of this in the context of preventing torture and ill-treatment. This also echoes the findings of other UN mechanisms as, for example, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, who in 2022 recorded "increasingly evident practice" of transferring individuals for detention purposes to different jurisdictions, "justified under the banner of countering terrorism or extremism that engage non-refoulement concerns", targeting minorities, religious and ethnic groups and, as such, raising profiling and non-discrimination concerns (A/HRC/49/45, 27).

### 3.2 The meaning of the term "place of deprivation of liberty"

As already highlighted above, the SPT is not a "regular" UN treaty body nor is the OPCAT a "regular" UN human rights treaty, with the idea of *in situ* visits to OPCAT States parties de facto replacing the "traditional" mode of supervision of implementation of the obligations undertaken. Such visits, as stipulated in Article 4 of the OPCAT, are to be allowed to any place under the State's jurisdiction or control "where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence", noting that "deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority". Recognizing the far-reaching effects of this very broad definition which is bound to challenge accepted understanding of the term "deprivation of liberty" in many jurisdictions, especially in regard to what is seen as less traditional places of deprivation of liberty such as social care settings, in 2024 the SPT adopted its very first General Comment (CAT/OP/GC/1), devoted to Article 4 of the OPCAT.

This General Comment makes two significant contributions to the interface of freedom of religion or belief and prevention of torture and ill-treatment as per the system of the OPCAT. Firstly, it clarifies that people may be deprived of their liberty in, broadly speaking, religious-run settings such as religious communities and facilities with religious affiliations, special boarding and religious schools (CAT/OP/GC/1, 51). With regard to the former, as the SPT addresses disability-specific deprivation of liberty, it also notes that this may include situations where there may be no legal or administrative order confining persons with disabilities to a certain facility but the lack of support compels them to remain in living situations that deprive them of their liberty and may subject them to harmful practices, which, in turn, can occur in family homes and

in institutional arrangements, including religious communities and prayer camps (ibid., 57). Similarly, the SPT has highlighted practices amounting to torture and ill-treatment taking place in institutions or entities with religious affiliations that allegedly provide shelter for or "treat" people with psychosocial disabilities, homeless persons, people who use drugs, LGBTIQ+ persons or others, including those abandoned by their families (CAT/C/82/2, annex II, 10); whilst people there are not free to leave, these facilities are traditionally not considered to be places of deprivation of liberty as such.

With regard to the latter, the SPT refers to its visit to Senegal, in the context of which it carried out visits to so-called *daaras*, Qur'anic schools in the country, concluding that some such schools functioning under a closed regime indeed constitute places of deprivation of liberty, run with a tacit consent of the State (CAT/OP/SEN/RONPM/1, 30). The SPT especially highlighted these to alert the Senegalese NPM that it ought to include these *daaras* in its regular visit program since until the SPT's visit, the Senegalese NPM did not consider these to be places of deprivation of liberty (ibid., 31).

The second important contribution of the General Comment vis-à-vis the freedom of religion or belief and torture prevention architecture of the OPCAT relates to the mandate of the NPMs. The SPT makes it clear that "the concept of places of deprivation of liberty is not fixed or limited. It evolves with time, allowing for the inclusion of novel situations and circumstances of deprivation of liberty that may arise in new contexts. Equally, the inclusion of places where persons may be deprived of their liberty signifies the importance of the autonomous decision-making in this regard by the Subcommittee and national preventive mechanisms" (CAT/OP/GC/1, 59).

This is a hugely important statement, bolstering the mandate of the NPMs worldwide, underlining the importance of the autonomy of

their decision-making and thus equipping them with a strong argument to challenge the authorities of their respective States in every case when they might be denied access to a certain place, facility or setting which the NPM considers to be falling under their OPCAT visiting mandate. This is particularly significant for any deprivation of liberty occurring in places and settings which are not traditionally viewed and/or accepted as constituting a "place of deprivation of liberty" which may also include facilities and settings run by religious organizations.

In one country, for example, the SPT visited the extensive premises of a religious community which included areas set aside for "treating" those with psychosocial disabilities. Whilst the community itself accepted the legitimacy of the visit, the State questioned its compatibility with the OPCAT mandate. Given that the State itself was referring persons to that facility, it was clear that there were no grounds for this criticism. The wording of the General Comment on Article 4 makes it clear that such places do indeed fall within the visiting jurisdiction. In an earlier visit, the SPT was denied access to an orphanage run by a religious institution on the grounds that it was a private facility and not state-run. Again, the General Comment makes it clear that such facilities fall within the visiting mandate. In all these instances, the religious bodies concerned were undertaking activities which fell within the regulatory scope of the State and thus within the purview of the State as a public authority.

### 3.3 Respect for freedom of religion or belief in places of deprivation of liberty as an element in the broader context of prevention of torture and ill-treatment

In the context of its numerous visits to wide variety of places of deprivation of liberty, the SPT has raised alarm about the treatment of the persons deprived of their liberty as well as their conditions of detention from the perspective of freedom of religion or belief as it intersects with the prevention of torture and ill-treatment.

First and foremost, the SPT has noted that the "the infliction of torture and other ill-treatment may arise, inter alia, through denial of possibilities to practise religion and denial of or acts against religious artifacts and other symbols central to a person's faith and other religious rituals, including prayer times and special dietary requirements" (CAT/C/82/2, annex II, 5). This very much echoes the findings of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances who in their 2010 Joint Study on Secret Detention (A/HRC/13/42) similarly noted prohibition to pray and to observe religious fasting, as well as being taunted in various ways for and/or during praying as practices amounting to torture and ill-treatment of detainees in various secret detention places.

The SPT has also emphasized the principle of non-discrimination amongst the various religious beliefs as, for example, following its 2016 visit to Cyprus, the SPT whilst welcoming the fact that both men and women are permitted to visit detainees in the women's facility during Christian festivals such as Christmas and Easter, expressed regret that this practice only seems to extend to Christian celebrations and recommended its extension also on the occasion of religious festivals of other religious traditions, when appropriate (CAT/OP/CYP/1, 44–45). Somewhat similarly, at the conclusion of 2014 visit to the Maldives, the SPT noted the need for prisoners "to have access to books, including books of religious observance or instruction other than the Quran, and to be able to study" (CAT/OP/MDV/ROSP/2, 61). The same approach of equality has been applied in relation to traditional practices and beliefs, as evidenced by the 2016 visit to Chile, at the conclusion of which the SPT recommended ensuring that Mapuche people could observe their cultural traditions and customs in accordance

with international standards in that area, in the same manner as other specific groups of detainees who were allowed to practice their religions freely (CAT/OP/CHL/1, 120–121).

Further, when visiting facilities run by religious organizations, the SPT has criticized conditions in some where individuals may have been deprived of water and food, beaten, tied up or placed in solitary confinement in the dark, in addition to a total absence of appropriate psychiatric care for persons with psychosocial disabilities (CAT/C/82/2, annex II, 10). In relation to the daily regime and rehabilitation, for example, following its visit to Belize in 2018, the SPT recommended that the rehabilitation programs and prison broadcasting systems respect the cultural and religious diversity of the prison population (CAT/OP/BLZ/ROSP/1, 93). Following the 2016 visit to Kazakhstan (CAT/OP/KAZ/1, 99), the SPT commented on the need to ensure prisoners access to religious services as well as to books of religious observance and to instruction in prison in accordance with international norms, in particular rule 66 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules, A/RES/70/175, annex). In the context of visits to New Zealand in 2013 (CAT/OP/NZL/1, 76) and to the former Yugoslav Republic of Macedonia in 2017 (CAT/OP/MKD/1, 46), the SPT has noted the failure of the States to pay due attention to religious considerations in providing meals to detainees.

Finally, the SPT has also been mindful of the detrimental effect that some traditional and religious practices may have upon the absolute prohibition of torture and ill-treatment. Thus, following its 2010 visit to Liberia, when commenting upon the traditional justice measures applied in the criminal justice context, the SPT noted that such could lead to illegal or arbitrary detention, as well as torture or ill-treatment, including flogging, burning and poisoning (which, in certain cases, had led to death). Emphasizing the State's duty to promote and protect all human rights and fundamental freedoms, particularly those outlined in their

international obligations, regardless of their social and cultural systems and while acknowledging that social, cultural and religious traditions might inform the development of national justice mechanisms, the SPT nevertheless highlighted that such traditions must not undermine or jeopardize the implementation of international human rights law and recommended aligning the specific traditions with the international obligations, ensuring that any traditional justice systems are subject to review and oversight by official judicial authorities to prevent illegal detention and torture or ill-treatment (CAT/OP/LBR/1, 95–97).

## 4. Issues of interpretation

The special nature of the OPCAT mandate, which is prevention, means that the SPT does not focus so much on determining "compatibility" or "compliance" with human rights standards as with recommending measures that make it less likely for torture and ill-treatment to occur. As it has said in its *Approach to the Prevention of Torture* (CAT/OP/12/6, 5(f)), "there is no logical limit to the range of issues that, if explored, might have a preventive impact". As a result, it is just not possible to set out what prevention might entail in any given conduct – though the efficacy of certain key preventive safeguards is well known, attested (Carver/Handley 2016) and reflected in SPT practice. A further manifestation of this "preventive" orientation of its work is that it has eschewed setting out quasi-formal statements of "preventive standards", choosing to focus more on *in situ* assessments of "what might work".

For the purposes of this book, this means that there is little to be gleaned by comparing the work of the SPT with that of other international human rights mechanisms. It may well be that there are dissonances – or even contradictions – between what the SPT recommends and what others might be promulgating but this ought not to be a matter of concern. SPT recommendations are preventative, not determinative. It is already well understood that

preventative recommendations may "run ahead" of an applicable legal norm; indeed, the very point of preventive work can be to create what has been called a "cordon sanitaire" (Evans 2015, 234) around the treatment of detainees, with the intention of making it less likely that their treatment will "cross the threshold" into ill-treatment (*Muršić v. Croatia*, App No 7334/13). So cross-institutional and jurisdictional jurisprudential comparisons are fundamentally inappropriate in this context. It is not what prevention is about.

That said, it is equally clear that the work of the SPT takes note of the work of other bodies and internationally-agreed standards when exercising its preventive mandate and this may account, in part, for the relative paucity of its engagement with matters concerning religion or belief. There are a number of reasons for this.

First, whilst the OPCAT entered into force in 2006, within Europe the Council of Europe's Committee for the Prevention of Torture (CPT), established under its Convention on the Prevention of Torture, has been operating since 1989. Unlike the SPT, the CPT has been more forthright in setting out statements of preventive standards over the years in many areas concerning detention (Bicknell/Evans/Morgan 2018). In its 35 years of work, it has said very little about standards concerning religion in places of detention, other than noting issues related to religious dietary requirements and some aspects of religious practice. Notably, whilst it has had much to say about access to legal and medical professionals and services, it has said nothing systemic about access to spiritual or religious professionals and services, thus contributing to the sense that they are not a significant component of a detained person's wellbeing. This is despite Article 29 of the 2006 European Standard Minimum Rules on the Treatment of Prisoners (Rec(2006)2-rev) setting out some high-level principles. There has, then, been no tradition of preventive mechanisms engaging with questions concerning the practice of religion by detainees as an aspect of prevention.

This is unfortunate at several levels. For example, in numerous countries the reality is that religious representatives and organizations play a vital role in providing essential services within places of detention, including food, water and medical assistance. They also often provide a channel of communication with families which otherwise might not happen. In countries where official oversight bodies and independent inspection mechanisms may be lacking, it is frequently the case that representatives of religious communities have the capacity to access detention facilities and are well placed to offer practical assistance and, where appropriate, raise concerns. Certainly, their knowledge base is often considerable. After all, they are generally considered by detaining authorities as welcome visitors, and are often called on to help detainees who are in crisis, or are in need of pastoral support. As a voice trusted by both detainees and detention staff, they can play an important role in the life of all.

A second reason is that the SPT rarely – if ever – seeks to meet with representatives from religious communities alongside other civil society organizations or professional bodies when visiting countries in order to gain insights into places of detention, or indeed solicit information from them in advance of a visit. The SPT does, for example, seek to meet with representatives from national or local Bar Associations or medical organizations. It may well be that religious organizations would be reluctant to engage with the SPT, but it certainly falls within the SPT's mandate to seek to do so. There is also an asymmetry here: as has been pointed out, the SPT has been willing and able to visit religious settings when it considers them to pose a risk of ill-treatment, but it has failed to view religious organizations as potential interlocutors for the purposes of prevention. It has occasionally toured facilities for religious worship within places of detention, and spoken with users of them, but rarely at its own instigation. Nor has the SPT raised the significance of engaging with members of religious communities with NPMs or suggested that they systematically

explore faith-based provision. Whilst it would be wrong to suggest there has been no consideration of such matters, it would be fair to describe its practice as unstructured and rare.

Thirdly, this may well have reinforced the failure to explore routinely questions concerning the practice of the freedom of religion or belief by those in detention, or to explore systematically the provision of spiritual and religious assistance to detainees. As explained above, the SPT has engaged with elements of this from time to time, but in a somewhat piecemeal fashion and largely in the context of other concerns, such as indigenous rights, traditional justice, dietary requirements, and so on. And when doing so it has not sought to take advice from religious leaders, practitioners, prison chaplains, etc. It has approached these questions largely on the basis of assumption and presumed knowledge. What remains lacking is a more systematic approach to the potential of religion and engagement with religion to contribute to the prevention of torture.

Finally, there is the question of whether there are forms of treatment which because of the religion or belief of the detainee might equate to ill-treatment, or even to torture. Examples might include forced cutting of hair or shaving of facial hair – a routine practice in many detention settings but for some religious believers something that has a heightened significance. Differential concepts of physical modesty, including head coverings, raise similar questions. The inability to engage in certain religious ceremonies or rituals may have a very different impact on believers from some religious traditions than others. The need to take into account the psychological effect of deprivation of the ability to practice one's religion is real, but often understanded. The European Prison Rules, for example, says that "The prison regime shall be organized *so far as is practicable* to allow prisoners to practice their religion and follow their beliefs" (Article 29, emphasis added). This is very similar to Rule 66 of the Mandela Rules, which equally speaks of the right of every prisoner to satisfy the needs of his or her religious

life *so far as practicable* (emphasis added). This is a very low level of protection and opens the door to ill-treatment justified by administrative convenience in ways which would not be tolerated in relation, for example, to the provision of medical or legal services.

These are all under-explored issues in the work of the SPT and more generally. There is an irony here, given that – as outlined earlier – the inspiration for the OPCAT was fueled at least in part by religious commitment and theological belief. However, there are signs of change: in 2025, the UN Special Rapporteur on Freedom of Religion or Belief issued a report on the inter-play between torture and religion (A/HRC/58/49, see also above chapter VII). Whilst tentative and in someways scene-setting, this perhaps opens the way for a closer engagement between these two fundamental and non-derogable rights: freedom from torture and freedom of religion or belief.

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# CHAPTER XI.

# CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (2006)

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**Abstract:** The adoption of the Convention on the Rights of Persons with Disabilities (CRPD) in 2006 and subsequent authoritative interpretation by the related treaty body and special procedures mandate-holders has closed a protection gap for persons with disabilities. It has also updated international human

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rights law with fresh (re-)interpretations, for example addressing open or concealed forms of structural discrimination in order to accomplish a barrier-free society. Furthermore, the principle of "reasonable accommodation" is innovative and the CRPD, with its 193 parties as of November 2025, is so far the only legally-binding international human rights treaty requiring reasonable accommodation as an integral part of its non-discrimination agenda. The Special Rapporteur on freedom of religion or belief expressed hope that the CRPD may serve as a "general door opener in this regard". By invoking "the International Covenants on Human Rights" and reaffirming "the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms", the preamble of the CRPD also implicitly corroborates the significance of freedom of religion or belief. However, the Convention's drafting history shows that the initial suggestion by some States (including the Holy See) and a faith-based non-governmental organization to include an article on the right to participate in cultural life and religion was ultimately not retained. Thus the final text of the CRPD does not refer to freedom of thought, conscience, religion or belief, which remains surprising and – in the eyes of critics – constitutes a missed opportunity for clarifying key questions in this underexplored area.

**Keywords:** Persons with disabilities; autonomy; inclusion; accessibility; reasonable accommodation; freedom of religion or belief; religious scriptures.

## 1. Introduction

The significance of the Convention on the Rights of Persons with Disabilities (CRPD) for human rights practice and theory can hardly be overestimated. Not only does the Convention close a painfully felt protection gap; it also provides no less than a new perspective on the whole spectrum of human rights. By integrating previously ignored experiences and sensitivities of persons with

various disabilities into international human rights law, the CRPD updates the human rights approach in general. All the foundational principles of human rights receive fresh and innovative (re-)interpretations. For instance, Articles 3 (a), 16 (4) and 25 (d) of the Convention strengthen the empowerment component that defines human rights by insisting on the "autonomy" of persons with disabilities. At the same time, freedom is spelled out more clearly than before as a relational – rather than narrowly individualistic – concept, for example with Article 19 recognizing "the equal right of all persons with disabilities to live in the community, with choices equal to others". To be able to live a life in freedom requires cooperation and assistance; this is not only true for persons with special needs, but it also ultimately applies to everyone. One of the hallmarks of the Convention is the principle of inclusion. Although this concept is not entirely new (see for example the Durban Declaration and Programme of Action, A/CONF.189/12, 10), it has received international prominence in human rights debates through the CRPD, which requires its States Parties to "take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community" (Article 19).

In the area of non-discrimination, too, the Convention shows innovative features by placing particular emphasis on the need to tackle open or concealed forms of structural discrimination, with the purpose of accomplishing a barrier-free society. Barriers are even part of the CRPD's definition of disability, "which results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others" (preamble lit. e). From this understanding follows the task to detect and overcome such barriers, wherever they may exist. The keyword here is accessibility (Article 9). While freedom from any barriers is a long-term goal for the whole society, individuals can claim specific case-related adjustments under the title "reasonable

accommodation". No one is supposed to sit and wait until barrier-free society has eventually been accomplished.

In Article 2, the Convention defines reasonable accommodation as "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms". Article 5 (3), which deals with equality and non-discrimination, demands that "States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided". While this wording allows for a certain degree of pragmatic flexibility, the denial of serious attempts to provide reasonable accommodation henceforth counts as discrimination. This is an important step forward in international anti-discrimination law.

The CRPD furthermore has significance for the understanding of universality. Surely, the very concept of human rights implies the claim to universal validity for "all members of the human family", to cite from the preamble of the Universal Declaration of Human Rights. Human rights are per definition universal rights – or this is the guiding idea. However, the universalistic language of human rights has often been mixed with all sorts of particularistic biases. In retrospect, it is obvious that human rights used to privilege (and frequently continue to privilege!) male over female or European over non-European perspectives. The voices of persons with disabilities, or of members of minorities and Indigenous Peoples, were largely absent in human rights debates. However, such examples of ignorance are obviously incompatible with true universality. To put it positively, the universality of human rights is – and will always be – work in progress. Human rights represent "universality on probation" (Bielefeldt 2022, 75–80). The awareness of continued probation guides an attitude of constant self-criticism with the purpose of detecting gaps and eradicating existing biases. In this context, too, the CRPD represents one important step forward towards a more credible reformulation of universal human rights broadly.

In keeping with this broad aspiration, the CRPD covers various areas of societal life: family and parenthood, accommodation and mobility, education, health care, employment, the sciences and the arts, political participation, media and access to information etc. What is conspicuously missing in the text of the CRPD, however, is the right to freedom of religion or belief. The Convention merely once mentions religion, namely in its preamble under the various grounds of discrimination. Whereas many of the rights enshrined in the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR) again occur in the CRPD, often with the addition of new aspects, this is not the case with freedom of religion or belief. Of course, it would be wrong to infer that freedom of religion or belief has no relevance for persons with disabilities. By invoking "the International Covenants on Human Rights" (lit. b) and reaffirming "the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms" (lit. c), the preamble of the CRPD implicitly corroborates the significance of freedom of religion or belief as well. However, the Convention fails to formulate an explicit update of freedom of religion or belief from the perspective of persons with disabilities. In the eyes of critics, this is a missed opportunity.

## 2. Religious influences during the travaux préparatoires

As mentioned above, the only reference to the term *religion* can be found in the Convention's preamble in lit. p, which expresses concern "about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status". Pursuant to Article 5 (2) of the CRPD, "States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all

grounds", yet religion or belief is not spelled out in the operative part of the Convention as one of the prohibited discrimination grounds.

Reaching consensus during the *travaux préparatoires* was not easy in view of different legal, political, economic and religious perspectives (Cisternas Reyes 2026, 50). In the *Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*, in 2004 Kenya, Holy See, Uganda, Namibia and Philippines had initially suggested to include an article on the right to participate in cultural life and *religion* (emphasis added). According to this suggestion, the States Parties would have recognized "the fundamental right of persons with disabilities to practise a religion of their choice and shall take all appropriate measures to ensure that persons with disabilities: a. Enjoy the opportunity to develop their spirituality and practise their faith; b. Have access to houses of worship, shrines and sites of religious importance; c. Can belong to a community of believers and participate fully in the life of the congregation and in the rites, ceremonies and sacraments that are part of worship; d. Have access to appropriate religious education and receive instruction in the format that best suits their needs; e. Will be protected from religious abuse, exploitation and coercion" (A/AC.265/2004/5, 67). During the third session of the Ad Hoc Committee in June 2004, the World Union for Progressive Judaism fully supported the proposals to add the right to have access to religious activities and services, and it also suggested a new paragraph recommending that all cultural and religious materials be accessible.

However, the facilitator's draft of 12 August 2005 did not retain this suggested reference to religion, but rather entitled the draft Article 24 "Participation in cultural life, recreation, leisure and sport", also noting that "Additional text on religion may not be suitable here since it is not about freedom of religion, but more about discriminatory practice against persons on the basis of

his/her disability" (United Nations 2005). Yet this argument does not seem fully convincing since persons with disabilities may also have specific protection needs regarding their freedom of religion or belief, beyond a narrow focus on non-discrimination as outlined by the facilitator. A more compelling point was raised by Ireland in June 2004, expressing grave reservations against Kenya's proposed wording, as it "would significantly restrict" the rights of persons with disabilities (PWD) and "unintentionally elaborates a separate right to freedom of religion in relation to PWD, which undermines the general right which they already possess under international law", notably Article 18 of the ICCPR as well as related jurisprudence and resolutions (United Nations 2004).

The result was that the final text of the CRPD, as adopted by the United Nations General Assembly on 12 December 2006, did not refer to freedom of thought, conscience, religion or belief, unlike for example Article 14 of the Convention on the Rights of the Child (see above chapter VIII) or Article 12 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (see above chapter IX).

## 3. Faith-related jurisprudence

### 3.1 Committee on the Rights of Persons with Disabilities

Following ratification by the twentieth State party, the CRPD and its Optional Protocol both entered into force on 3 May 2008. As of November 2025, the Convention has 193 States Parties, which is the second-highest number of ratifications, accessions or formal confirmations of any United Nations human rights treaty (i.e., just behind the 196 States Parties of the Convention on the Rights of the Child). Through the Optional Protocol to the CRPD, so far 108 parties have also recognized "the competence of the Committee on the Rights of Persons with Disabilities to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims" of CRPD violations.

Following the first election of twelve experts in 2008, the size of the Committee on the Rights of Persons with Disabilities has been increased to 18 members since 2010, in line with Article 34 (CRPD/CSP/2010/3, 2). It considers periodic reports by the States Parties and makes suggestions in its concluding observations. The Committee shall also consult "other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions" (Article 38). It reports every two years to the General Assembly and to the Economic and Social Council on its activities, also making suggestions and general recommendations based on the examination of reports and information received from the States Parties (Article 39). The Committee provides authoritative guidance about the interpretation of CRPD provisions through general comments, which aim at helping States Parties to fulfil their human rights obligations.

In its General Comment No. 2 (2014), the Committee stressed that accessibility should be provided to all persons with disabilities, regardless of the type of impairment, without distinction of any kind, including religion (CRPD/C/GC/2, 13). Article 9 of the CRPD requires States parties to identify and eliminate obstacles and barriers to accessibility to, inter alia, buildings, roads, transportation and other indoor and outdoor facilities, which include "areas for social interaction and recreation, cultural, religious, political and sports activities", as the Committee commented (ibid., 17).

In its General Comment No. 6 (2018), the Committee explained the problem of "intersectional discrimination", which occurs when a person with a disability or associated to disability suffers discrimination of any form on the basis of disability, combined with, colour, sex, language, religion, ethnic, gender or other status (CRPD/C/GC/6, 19). It also reminded States Parties of their

obligations "to collect and analyse appropriate data and research information in order to identify inequalities, discriminatory practices and patterns of disadvantage, and analyse the effectiveness of measures promoting equality", observing that in data collection often "no differentiation is made according to impairment, gender, sex, gender identity, ethnicity, religion, age or other layers of identity" (ibid., 34).

For example, in its concluding observations on the initial report of Myanmar, the Committee in 2019 noted "with concern the absence of meaningful consultation and effective participation mechanisms to ensure that the views, opinions and concerns of persons with disabilities, including women and children with disabilities, persons with intellectual or psychosocial disabilities, persons affected by leprosy, and persons with disabilities from ethnic or religious minorities, are included at all stages of decision-making processes by public authorities at all levels" (CRPD/C/MMR/CO/1, 7). The Committee was also concerned about multiple and intersectional discrimination, "especially against women with disabilities belonging to ethnic or religious minorities, in all spheres of life" (ibid., 13) as well as about conflict-related violence, including sexual and gender-based violence, which had "led to physical, psychosocial and other disabilities, disproportionately affecting a large number of Rohingya women and girls" (ibid., 31). The Committee recommended that Myanmar strengthens "the humanitarian protection for persons with disabilities affected by conflict and humanitarian emergencies, including those belonging to ethnic and religious minorities, particularly in northern Rakhine, Shan and Kachin States" (ibid., 22).

In its concluding observations on the initial report of Bangladesh, the Committee in 2022 acknowledged that the State party was "temporarily hosting more than 1.1 million Rohingya refugees and that there is a large number of persons with disabilities among them" (CRPD/C/BGD/CO/1, 5). Yet the Committee was concerned about the "absence of civil documentation, such as

official birth, marriage and death certificates, of children with disabilities, in particular refugee children with disabilities belonging to the Rohingya community" (ibid., 37) and it recommended Bangladesh to "ratify the Convention relating to the Status of Refugees and the Protocol thereto, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, and repeal the Foreigners Act of 1946, which is targeted mainly at Rohingya Muslims" (ibid., 38). The Committee also expressed concerned about "[r]eligious laws that are discriminatory against or deny the right to marriage of persons with disabilities, in particular women with disabilities, persons affected by leprosy and persons with intellectual and/or psychosocial disabilities", and it recommended the State party to "[e]liminate religious laws that are discriminatory against or deny the right to marriage of persons with disabilities" (ibid., 45–46).

As a recent example, the Committee in its concluding observations on the initial report of Mauritania in 2023 recommended adopting "a comprehensive definition of discrimination on grounds of disability, including multiple and intersectional disability, encompassing age, race, gender, ethnicity, religion, language, sexual orientation, nationality and migration status, or any other status" (CRPD/C/MRT/CO/1, 10). The Committee also recommended strengthening "the implementation of national legislation and the national action plan on the voluntary abandonment of female genital mutilation in *wilayas*, to eliminate this practice, and strengthen awareness-raising campaigns, training and programmes, involving community and religious leaders" (ibid., 28), as already urged in 2018 by the Committee on the Rights of the Child (CRC/C/MRT/CO/3-5, 27).

### 3.2 Special Procedures

In their reports, Special Procedures mandate-holders have also addressed the role and responsibilities of religious leaders and faith-based actors concerning issues related to disability. For

example, the first Special Rapporteur on the rights of persons with disabilities, Catalina Devandas-Aguilar, noted in her mission report on Kuwait the intention expressed by the Ministry of Awqaf and Islamic Affairs to raise public awareness about the rights of persons with disabilities during Friday prayer sermons (A/HRC/43/41/Add.1, 23). Her successor, Special Rapporteur Gerard Quinn, referred in his country report on Jordan to a fatwa issued in 2014 and adopted by the Jordanian Department for the Rendering of Formal Islamic Law Opinions, which prohibited the forced sterilization of girls with disabilities. He commended this as "an important step in advancing the sexual and reproductive rights of girls and women with disabilities" (A/HRC/52/32/Add.2, 58).

Issues of disability even occur in foundational religious scriptures and theological debates. It is interesting to note in this context that various impairments typically receive quite different positive or negative assessments. While blindness may appear as a typical corollary of inward-looking wisdom or even prophesy, deafness hardly ever meets with a similarly positive appreciation. Cognitive impairments may even receive interpretations as alleged manifestations of negative karma or a curse, which may encourage the rhetoric of "blaming the victim".

Furthermore, major world religions have linked leprosy – also known as Hansen's disease – to sin and impurity (A/HRC/56/59, 10). The Special Rapporteur on the elimination of discrimination against persons affected by leprosy (Hansen's disease) and their family members, Beatriz Miranda-Galarza, noted in 2024 that "[f]ear and ignorance leading to negative reactions within communities often stem from deeply rooted religious beliefs and practices passed down through generations" (A/79/152, 71). Her predecessor, Special Rapporteur Alice Cruz, in 2019 also referred to "the persistence of religious beliefs (grounded in different religious traditions) that classify leprosy as the result of sins committed in current or past lives by the affected person or by the affected person's ancestors; God's punishment on the

individual and/or the family; a curse pronounced by ancestors; sorcery; possession by evil spirits; and punishment for adultery and/or sexual promiscuity" (A/HRC/41/47, 53). She highlighted as good practice several awareness-raising activities that bring together different stakeholders, including traditional and religious leaders in countries such as Brazil and Burundi (A/HRC/41/47, 89). The Human Rights Council Advisory Committee also recommended providing "information to social leaders, including religious leaders, on how addressing leprosy in their teachings or written materials may contribute to the elimination of discrimination against persons affected by the disease and their family members" (A/HRC/15/30, 13(f)).

Furthermore, persons with albinism in some countries live in constant fear of being killed or mutilated due to associations of witchcraft ascribed to certain body parts. The first Independent Expert on the enjoyment of human rights by persons with albinism, Ikponwosa Ero, noted as best practice a project in Mali, which was supported by various religious leaders and traditional healers as well as the Ministries of Justice, Health and the Police force (Independent Expert 2020). She also highlighted a model of training developed by an international non-governmental organization, which uses religious teachings to educate communities about the harm of accusing children of witchcraft. The Independent Expert stressed that "[w]hen this message is disseminated by reputable religious leaders or religious organizations, it bolsters the argument that the prohibition of harmful practices is in harmony with the majority of religious or cultural beliefs" (A/75/170, 35). She also recommended that Governments, together with civil society and academia, "develop and implement long-lasting awareness-raising campaigns, as they are critical to addressing harmful practices and rampant myths affecting the enjoyment of human rights by persons with albinism" (A/HRC/34/59, 98). This thematic report was also quoted by the Committee on the Rights of Persons with Disabilities in its Views

on three individual communications relating to attacks against persons with albinism in the United Republic of Tanzania, which also required the State party to "ensure that the practice of using body parts for witchcraft-related practices is adequately and unambiguously criminalized in domestic legislation" (CRPD/C/18/D/22/2014, CRPD/C/20/D/23/2014 and CRPD/C/22/D/24/2014). In 2025, the second mandate-holder, Independent Expert Muluka Miti-Drummond, referred to these three communications, in which the Committee had "identified attacks, mutilations and trafficking in body parts as extreme forms of disability-based discrimination" (A/HRC/58/57, 33) This illustrates the interplay between United Nations treaty bodies and special procedures mandate-holders, who strategically cross-reference to their respective reports and case law with a view to clarifying the human rights obligations and responsibilities of duty-bearers.

## 4. Issues of interpretation

### 4.1 Reasonable accommodation: an example of cross-fertilization

As mentioned in the introduction, the principle of reasonable accommodation is one of the CRPD's innovative components. In the face of structural discrimination, persons with disabilities can demand specific adjustments in their environment, with the caveat that this should not impose a disproportionate or undue burden on the institution requested to enact such measures of accommodation. This represents a new and courageous step in the ongoing fight against discrimination. To date, the CRPD is the only legally-binding international human rights treaty requiring reasonable accommodation as an integral part of its non-discrimination agenda.

The concept of reasonable accommodation itself, however, has a history traceable back to 1963 when the United States Supreme Court decided the case of Adeil Sherbert, a Seventh-Day-Adventist who had lost her employment because of her refusal to work on Saturdays (374 U.S. 398 (1963)). The administration had rejected

her claim for unemployment compensation, arguing that she herself had been responsible for the loss of her job. However, the claimant finally won her court case, with regard to her religious freedom. Acknowledging her sincerely held religious conviction, the United States Supreme Court found that the requirement to work on Saturdays imposed a substantial extra burden on Adeil Sherbert. According to the Court, such a burden would require justification in the name of a "compelling state interest". In the absence of such compelling state interest, the respective person could rightly demand accommodation of her religious needs. This *Sherbert* case marks the beginning of a whole series of court cases in the United States of America on religiously motivated claims for accommodation. From its start in the U.S. jurisdiction, the concept of reasonable accommodation begun to influence the jurisdiction in other countries as well.

At first glance, the impression may arise that reasonable accommodation privileges members of minorities. However, what on the surface seems tantamount to "extra treatment" favouring minorities, merely compensates (or tries to compensate) the extra burdens which members of minorities typically have to live with. The seemingly neutral standards in a society frequently reflect particularist assumptions, which members of the predominant majority may just take for granted. One example is the seven-day week, with Sunday counting as the holy day earmarked for religious worship and devotion. Obviously, this weekly structure mirrors the hegemony of one religious tradition – to the disadvantage of minorities. Reasonable accommodation is an attempt to at least provide some relief for members of minorities. Far from giving privileged treatment, reasonable accommodation, when adequately applied, may lead to a more complex understanding of equality and non-discrimination, because it actively takes the concerns of minorities into account.

Although historically first developed as a response to concerns of religious minorities, reasonable accommodation can analogously

be used to accommodate the needs of other minorities, too. The adoption into the CRPD is the obvious example. It is in fact the CRPD that has elevated reasonable accommodation into a requirement of international human rights law – albeit specifically connected to the needs of persons with disabilities. This does not preclude long-term repercussions on other areas of non-discrimination, where reasonable accommodation may serve as guiding principle in the future. Hence, the adoption of reasonable accommodation illustrates how different areas of human rights law can mutually support or even mutually inspire each other.

This was also highlighted in the 2014 report to the General Assembly by the then Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt (A/69/261, 60): "For all the significance and potential that reasonable accommodation holds to combat discrimination, legislators and courts have by and large been reluctant to apply the principle as a legal entitlement. The Special Rapporteur hopes that the Convention on the Rights of Persons with Disabilities may serve as a general door opener in this regard, including beyond the specific area of disability." Furthermore, he referred to the spirit of Article 5 of CRPD to argue that "the provision of reasonable accommodation should be understood as part of the legal responsibility of States, including as regards the guarantee of freedom of religion or belief. […] Denying a person accommodation in situations where such measures would not amount to a disproportionate or undue burden could accordingly qualify as discrimination, depending on the circumstances of the particular case. Moreover, individuals should have the option of resorting to legal remedies in order to challenge any denial of accommodating measures that could be reasonably enacted. The serious implications of indirect discrimination on the full enjoyment of freedom of religion or belief for all certainly call for a legal course, without which reasonable accommodation would remain a mere act of mercy" (A/69/261, 62).

### 4.2 The absence of freedom of religion or belief in the CRPD: a missed opportunity

Unlike the right to freedom of expression, the right to education, access to health care and many other human rights provisions, the right to freedom of religion or belief ultimately did not make it into the final text of the CRPD, even though it is of course relevant for persons with disabilities. The CRPD unambiguously places itself in the context of international human rights law as it developed in the wake of the Universal Declaration of Human Rights, thus implicitly corroborating the significance of freedom of religion or belief as an integral part of human rights. Nonetheless, the absence of an explicit article on freedom of religion or belief remains surprising and – in the eyes of critics – also disappointing.

Religion or belief is an important factor in the lives of countless persons with disabilities (Jelinek-Menke 2021). Apart from the fact that they – like anyone else – often cherish religious or belief-related convictions and concomitant individual and communitarian practices, many of the institutions established to serve special needs of persons with disabilities are run by faith-based organizations. While traditionally reflecting a charity-based understanding, many of these institutions have meanwhile made formal commitments to the CRPD. As a requirement of credibility, this necessitates critical and self-critical discussions about their own role in facilitating or hindering the full inclusion of persons with disabilities within society, as demanded by the CRPD.

In June 2025, the outcome document of the Second Parliamentary Conference on Interfaith Dialogue in Rome encouraged engagement with "religious representatives and leaders and faith-based actors in the process of addressing areas of possible tensions between some interpretations of religious traditions and human rights" (Rome Communiqué 2025, 3), which echoed General Recommendation No. 40 of the Committee on the Elimination of Discrimination against Women (CEDAW/C/GC/40, 31).

The Rome Communiqué also encouraged ensuring "meaningful and inclusive participation by women, youth, persons with disabilities and people in vulnerable situations in political, cultural, religious, social, economic and public life" (Rome Communiqué 2025, 3). It also acknowledged "the indispensable role of faith communities in supporting people in vulnerable situations" (ibid., 2).

The Second Parliamentary Conference on Interfaith Dialogue in Rome was characterized by a "convergence of faith and politics in the service of peace" (Pavey 2025). As a participant in Rome, who is also a person with disabilities, Şafak Pavey noted: "One moment that stood out to me was when the steep public entryway posed a barrier to my participation. In a gesture of respect and inclusion, the Papal Office's Swiss Guard offered me passage via the more accessible papal steps through the Holy Door, following the audience with His Holiness Pope Leo XIV. As I ascended those historic steps, I found myself in a place of tradition, yet one marked by the urgency of our present crises. Pope Leo XIV spoke of the moral imperative to protect the vulnerable within the context of his Jubilee of Governments, and he offered a blessing" (Pavey 2025).

In his address to members of the Inter-Parliamentary Union, Pope Leo XIV also highlighted that "[t]he Universal Declaration of Human Rights, approved and proclaimed by the United Nations on 10 December 1948, is now part of humanity's cultural heritage. That text, which is always relevant, can contribute greatly to placing the human person, in his or her inviolable integrity, at the foundation of the quest for truth, thus restoring dignity to those who do not feel respected in their inmost being and in the dictates of their conscience" (Pope Leo XIV 2025).

Yet there are examples in past and present of religious organizations denying persons with certain disabilities – in particular persons with cognitive impairments – access to places of

worship, preventing their full participation in religious ceremonies or precluding their candidacy as members of the clergy. It seems fair to assume that the CRPD's principle of inclusion, as inter alia enshrined in Article 19, has a bearing on religious communities as well. However, the question on how to settle potential conflicts between individual claims to inclusion versus the autonomy of religious organizations and institutions still warrants systematic clarification. Therefore, the absence of an explicit provision on freedom of religion or belief in the CRPD is regrettable – even more so against the background of much insecurity in this underexplored area.

The right to freedom of religion or belief, inter alia, empowers people to explore new readings of religious traditions based on different backgrounds and experiences (Bielefeldt/Wiener 2020, 101–104). Just as women or LGBTIQ persons have embarked on projects of feminist or queer theologies, disability can likewise become the entry-point for theological innovation, culminating in ideas of a "disabled God" (Eiesland 1994). Such projects may contribute to enhancing a sense of dignity, in line with Article 24 (1) (a) of the CRPD, amongst people many of whom have long personal histories of marginalization and exclusion. To be sure, the absence of an explicit reference to freedom of religion or belief in the text of the CRPD does not prevent anyone from engaging in such explorative theological endeavours. Everyone is free to also base such activities on their right to freedom of religion or belief, as anchored in international human rights law broadly.

Nonetheless, critics have a point when complaining about a missed opportunity. In the words of Russel Whiting and Sándor Gurbai: "Excluding the concept of spiritual or religious rights from the convention [CRPD] means an important element of the 'liberatory voice' has been silenced" (Whiting/Gurbai 2015, 119).

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# CHAPTER XII.

# INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE (2006)

**Nathan Reyes**[1]

**Abstract:** The crime of enforced disappearance inflicts a unique harm, leaving victims "neither fully alive nor fully dead" and rupturing the ability of families to perform the sacred rites they believe are essential for a loved one's passage from life to death. This chapter is guided by a critical inquiry into how the international human rights framework and mechanisms engage with this "spiritual harm". It asks: what happens when the mortal remains of a loved one are never found or recovered? Through a multidisciplinary examination of law and practice, it argues that while the International Convention for the Protection of All Persons from Enforced Disappearance is flexible, its secular framework has rendered its treaty body partially blind to this

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dimension of harm. Despite meaningful engagement with the right to the truth, remembrance and the dignified return of mortal remains, the Committee on Enforced Disappearances has otherwise failed to apply a differential lens to the unique vulnerabilities and needs related to faith. To address this, the present chapter argues that a close and structured engagement with grassroots faith communities, inspired by the "Faith for Rights" framework, could help bridge this gap and equip the Committee to address the spiritual harm of enforced disappearances more substantially.

**Keywords:** Enforced disappearance; spiritual harm; right to the truth; burial rites; mortal remains; remembrance; sacred duty; funeral traditions; freedom of religion or belief; religious minorities; secularism; translation gap; faith-sensitive lens; grassroots engagement; faith communities.

## 1. Introduction

### 1.1 Modern and ancient archetypes

The human rights violation and crime of enforced disappearance is thought by many to find its origins in the *Nacht und Nebel* (Night and Fog) decree, issued by Nazi Germany on 7 December 1941 (E/CN.4/2002/71, 7; Finucane 2010, 175). Field Marshal Wilhelm Keitel, charged with issuing and implementing the directive, characterized the decree as a fundamental innovation: "in the case of such offences like imprisonment, even life imprisonment at hard labor is regarded as a sign of weakness. The only way to succeed in giving a lasting scare to the people is to decree the death penalty or by taking measures which will leave the family and the population uncertain as to the fate of the offender" (Keitel 1941, 198). Rarely if ever before had humanity seen a codification of state terror designed so explicitly to erase individuals and sow fear among their loved ones and communities.

In one testimony from the "Nuremberg trials" (or International Military Tribunal (IMT) proceedings), a student recounts the enforced disappearance of a Jewish professor of medicine from Paris: "I know from an absolutely reliable source that he had taken no part whatsoever in activities directed against the German occupation authorities in France. They found out that he was a Jew and as such he was arrested and deported. He drifted into Buchenwald by way of Auschwitz and Monovitz" (IMT 1946, 249). These words reveal that the purpose of the *Nacht und Nebel* decree was not only "to give a lasting scare to the people", but to serve as a tool specifically designed for the targeted persecution and erasure of certain groups, including religious minorities.

While this is not the first time enforced disappearance was used to silence or intimidate, the IMT proceedings played a key role in defining the crime of enforced disappearance under international humanitarian law as they examined its application to the conduct underlying enforced disappearance. The Tribunal relied heavily on customary international law, finding the widespread or systematic practice of enforced disappearance to constitute both a war crime and a crime against humanity, due to the violation of "family rights" – including the right to know the fate of a loved one – causing "mental cruelty" and "constant fear and anxiety" among families and communities (Finucane 2010, 180).

Yet before it was a human rights violation – long before it became a customary prohibition in times of war even – enforced disappearance as a practice existed, and the main tools against it were morality and conscience, deeply rooted in faith. It is seen in the biblical story of Joseph, sold by his brothers from his home in Hebron (today's Palestine) into slavery, consequently disappearing into the machinery of the Egyptian state, presumed dead by his father, and cut off from his identity. This is not only a story but an archetype of the crime that contains its core elements: the severing of family ties by a trusted group (his brothers), the loss of identity, the anguish of not knowing for the parent, and the exercise of

arbitrary power and removal from the protection of the law. It echoes the "first crime, the first disappeared person, the first investigation and the first murderer who lies to the interrogator", seen in the story of Cain and Abel (Dulitzky 2022). That this story is a foundational narrative for understanding enforced disappearance in Judaism, Islam and Christianity tells us how the crime itself has persisted, been adapted and adopted across the ages by all peoples.

### 1.2 Disappearance and spiritual harm

Enforced disappearance is a crime that defies simple categorization. While international law today defines it through its cumulative elements – deprivation of liberty, concealment of fate/whereabouts, and placing the person outside the protection of the law (Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance) – its impact extends beyond the legal, political and social realms, enduring so long as the truth about the victim's fate and whereabouts remains obscured. Across countless cultures and faith traditions, death is not an end but a passage, a sacred journey that requires the active care of the living family and community through specific rites and rituals. Families and communities suffer not only the loss of their loved one, but the rupturing of their ability to perform the ceremonies they believe are essential for their loved one's peaceful transition, reincarnation, or entry into the afterlife (Bourguignon/Dermitzel/Katz 2021, 18).

Jovan Plaku – whose father was forcibly disappeared in Albania – found words for this harm, as he spoke on the topic of state reparations at a conference on enforced disappearance hosted by the Organization for Security and Co-operation in Europe (OSCE 2022, 356):

> "the state has failed to recognise that reintegration is both spiritual and material. In a certain way, reintegration has been seen as a set of measures aimed

> at 'sealing' the mouth, but not healing the wounds. The wounds of the relatives of those executed by the regime will remain open, as long as the ordeal of our executed loved ones is not over; their remains will not rest in peace and we will be unable to remember and honour them like any man would remember and honour their loved ones who have passed away."

The crime of enforced disappearance intrinsically causes such spiritual harm, as it uniquely leaves its victims "neither fully alive nor fully dead" (Dulitzky 2022, 666).

In Islamic tradition, by way of example, funeral rites are deeply linked to ensuring the dignity and respect of the dead (Al-Dawoody 2017, 761). The process involves the ritual washing of the body (*Ghusl*), after which the body is shrouded in simple, clean white cloths known as the *Kafan*, a practice that symbolizes humility and the equality of all believers in death. The central rite is the *Salat al-Janazah*, the funeral prayer, which is performed in congregation. The body is placed with the head facing the *Qibla* (the direction of Mecca), and verses from the Qur'an are recited as the grave is filled: "From the earth We created you, and into it We shall return you, and from it We shall bring you out once again" (Noor 2019, 86). Enforced disappearance makes every step of this sacred process impossible. The denial of the body prevents the *Ghusl* and *Kafan*, leaving the family with the knowledge that their loved one was not purified or honored in accordance with their belief. The inability to hold a *Salat al-Janazah* denies the community its right and duty to pray for the soul of the departed, while the lack of a body prevents the proper burial facing Mecca and deprives the family of a place for mourning and remembrance: a site to visit and offer prayers for their loved one. Since it is a collective obligation, the entire Muslim community will bear the guilt if a Muslim body is not buried (Al-Dawoody 2017, 764).

Interwoven throughout biblical stories and modern examples, truth and remembrance are consistently vital for resisting the erasure of a loved one – "the second murder of the victim" – and to the family and community's ability to perform burial or similar rites in accordance with their traditions and beliefs (OSCE 2022, 298). Cain's attempt at deception when faced with God's question – "where is Abel thy brother?" – serves as a foundational story for truth-seeking, the imperative to acknowledge the act of disappearance, and clarify the fate of the missing (Dulitzky 2022). In public demonstrations in Argentina, the names of the missing are still today called out only for the crowd to respond with a loud "presente!" – an expression of the significance of acknowledging the presence of the disappeared, even in their absence (Byron 2011). In this way, families defy their disappearance from public memory, collective consciousness, and the passage of time. Rather than fading to oblivion, the memory of their loved one becomes a source of stories, unity, solace, and a vital tool in their pursuit of the truth (Mattei 2016).

### 1.3 Thesis and roadmap

The journey to a specific prohibition of enforced disappearances in international law was a long and winding process, culminating in 2006 with the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). In keeping with established principles of secularity in international law, the drafters of this treaty anchored it in the neutral language of law and universal suffering. They did so to prioritize addressing important gaps in international law and to gain the widest acceptance among states (E/CN.4/2002/71). Yet despite the formal secularism of this process, an undercurrent of faith flowed from the participation of families of the disappeared and ground-level actors during the *travaux préparatoires*, manifesting in the inclusion of the right to the truth, the notion of remembrance, and significantly, the imperative to locate, respect and return the mortal remains of the disappeared (Article 24 of the

ICPPED). In its way, the treaty is a pioneer among secular instruments for engaging with spiritual harm through the lens of truth and the dignified return of remains.

But what happens when there are no remains? Such is the reality most families and communities of the missing face (A/HRC/60/35, 3). This question will guide this chapter's critical inquiry. It asks that faith be understood not merely as a motivation for perpetrators or a characteristic of targeted groups, but also as an intrinsic dimension of the impact of enforced disappearance – the unique harm it inflicts, for example, in rupturing the ability of families and communities to perform the ceremonies they believe essential for their loved one's transition from life to death, and the needs that arise from this.

Through a multidisciplinary examination of law and practice, this chapter will argue that while the Convention's flexibility and breadth of interpretation leave room for a nuanced approach to the spiritual harm of disappearances, its secular framework gave rise to a treaty body that remains partially blind to this harm, and has largely failed to apply a differential lens to the unique vulnerabilities and needs of victims with relation to their faith, in contrast to the differentiated approach the Committee frequently takes toward other particular groups.

To develop this argument, section 2 will first examine the *travaux préparatoires* of the ICPPED, noting the muted voices of faith during its drafting, but also its powerful undercurrent through families and ground-level actors. Section 3 will analyze the Convention's application in the jurisprudence of key United Nations mechanisms: its treaty body, the Committee on Enforced Disappearances (CED), the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID), and two Special Rapporteurs (on freedom of religion or belief; and on minority issues). Finally, inspired by the "Faith for Rights" framework and my own years searching for the missing and

accompanying their families, I will argue that a close, structured and practical engagement with grassroots faith actors and communities will meaningfully contribute to bridging this gap, equipping the CED in particular to more substantially engage with the spiritual harm of enforced disappearances and the needs and vulnerabilities that arise therefrom.

This chapter looks to the CED's differentiated approach toward women and children (CED/C/URY/CO/1, 38) as a template for the faith-sensitive lens it adopts, with the aim of understanding the particular vulnerabilities, harms and needs related to sincerely-held beliefs, and specifically in connection with the interruption of the passage from life to death. The analysis focuses on the *travaux préparatoires* and subsequent jurisprudence that engage with these themes, reference specific (i.e. differential) approaches taken to the subject matter, and employ particular language. This is structured along four axes – (a) mapping, (b) clustering, (c) analysis, and (d) recommendations – and seek to identify and examine divergences, convergences and gaps (Salama 2011).

An important limitation of this analysis is that it critiques the system from the outside; I am not privy to the hallway discussions, nor the source identity of anonymous interventions during the *travaux préparatoires*. A comprehensive review and analysis of the jurisprudence of international courts – both interstate and criminal – is beyond the scope of this chapter, but would also nuance and enrich its findings.

This chapter does not claim to present an exhaustive examination. Its purpose is two-fold: (1) to suggest potential tools and insights for members of the CED to engage more holistically with unseen vulnerabilities, harm and needs; and (2) to contribute to a growing discussion on the real and potential links between faith and human rights, specifically with relation to enforced disappearance, from a practitioner's perspective.

## 2. Religious influences during the travaux préparatoires

### 2.1 The meandering path toward a Convention

Before a comprehensive international convention could be drafted, the international community had to reckon with the complexity of the multifaceted nature of the crime of enforced disappearance. An enforced disappearance is not merely an arbitrary detention, nor simply an extrajudicial killing. Its victims are not limited to the disappeared person but extend to family members and "any individual who has suffered harm as the direct result of an enforced disappearance" (Janina 2022, 143), for whom its impact may constitute a form of torture (CAT/C/SR.870, 49). It is a "crime of suspended time" and "organized not knowing" – the "simultaneous commission of violations of several human rights, such as protection against torture and inhuman or degrading treatment, the right to life, liberty and security, the right to a fair and public trial and the right to recognition of legal status and to equal protection of the law" (E/CN.4/2003/71, 16). This is why the crime of enforced disappearance has historically been understood and prosecuted not as enforced disappearance as such, but for the underlying constitutive violations of law, particularly in times of armed conflict. Part of the significance of the Nuremberg trials' conviction of Keitel and others was in their finding that the customary laws of war prohibited the conduct underlying enforced disappearance since the 19th century. Yet, outside of armed conflict, enforced disappearance long remained largely undefined as a legal violation (Finucane 2010, 178).

A fundamental shift in state practice, and a resultant crystallization of the international response, was spurred by the "dirty wars" of Latin America during the 1970s and 1980s. The legal ambiguity around enforced disappearances was widely exploited during peacetime by states such as Chile, Colombia and Argentina, to intimidate and silence students, activists, journalists and other perceived opponents, labelled "subversives" or "terrorists" by

authorities (Rauschenbach/Jimenez/Webster 2022, 382). Against this backdrop, in 1978 the UN General Assembly first expressed deep concern about "reports from various parts of the world relating to enforced or involuntary disappearances of persons as a result of excesses on the part of law enforcement or security authorities" (A/RES/33/173, preamble). This in turn set the stage for the establishment of the UN Working Group on Enforced or Involuntary Disappearances in February 1980, creating the first dedicated UN body to act as a channel of communication between families and states in the search for the missing (E/CN.4/RES/1980/20).

As jurisprudence increasingly uncovered the extent of enforced disappearance as a state practice – notably the Inter-American Court of Human Rights' seminal 1988 ruling on *Velásquez Rodríguez v. Honduras* – momentum continued to grow toward a comprehensive prohibition (Finucane 2010). The adoption of the Declaration on the Protection of All Persons from Enforced Disappearance by the General Assembly in 1992 (A/RES/47/133) created the most comprehensive foundation for a future convention, though it remained non-binding. The first legally binding international treaty to explicitly address enforced disappearance was the Inter-American Convention on Forced Disappearance of Persons, adopted in 1994 in Belém, Brazil (Díaz Palacio/Lozano Martínez/Góngora-Meraet, 2025). The 1998 Rome Statute and subsequent 2005 study on customary law by the International Committee of the Red Cross (ICRC) further drove the development of a specific prohibition in international humanitarian and criminal law. However, the true tipping point for human rights law came in 2001, with the release of a comprehensive report commissioned by the UN Commission on Human Rights and undertaken by Manfred Nowak, an independent expert. Nowak exhaustively examined the existing legal framework and identified critical gaps, including the absence of a specific, non-derogable right not to be disappeared. His report

noted that even the "right to the truth" remained a vague concept in international law (E/CN.4/2002/71, 78).

### 2.2 A secular basin, with an undercurrent of faith

The expert working group that was consequently convened by the UN Commission on Human Rights between 2003 and 2005 meticulously documented the process in four reports that form the core of the *travaux préparatoires* of the ICPPED (E/CN.4/2003/71, E/CN.4/2004/59, E/CN.4/2005/66 and E/CN.4/2006/57). Their mandate was clear: fill the critical gaps in international law identified by Nowak through drafting a single universally acceptable and legally binding treaty.

A review of these reports shows the Convention's drafters sought to draw from the established canons of international human rights, humanitarian and criminal law, each as a distinct legal corpus with its own approach (E/CN.4/2003/71, 20). From the definition of the crime and its consequences to the scope of state obligations, every discussion was deliberately anchored in the neutral language of legal precedent – an echo of the imperative articulated by the Human Rights Committee in its General Comment No. 22: "the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations […] for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition" (CCPR/C/21/Rev.1/Add.4, 8). We see this further illustrated in the participants' exclusive focus on referencing other international legal instruments like the United Nations Charter and the Universal Declaration of Human Rights in the preamble, and in the absence of a language of morality and faith (E/CN.4/2005/66).

While some actors affiliated with faith were present, their roles were circumscribed: the Holy See, for instance, was represented by observers, and no explicit faith-based interventions were documented during the drafting process. Some formally faith-based participants from civil society, such as the International

Federation of Action by Christians for the Abolition of Torture, were symbolic in their presence during the drafting process, yet their voices too were muted in its documentation. This calculated secularism was likely seen as necessary to ensure the resulting instrument could survive the complexities of multilateral negotiations and gain the widest possible ratification – among the most important and challenging goals for the CED (Janina/Decaux 2021, 46). The result: a powerful and pioneering legal instrument, but one that is also marked by what was left unsaid.

Nevertheless, an undercurrent of faith deeply influenced this process, seen most clearly through victims' family associations like the Latin American Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM) and the "grandmothers of Plaza de Mayo". For, even as they use the required secular language in their formal UN submissions, the families, and by extension their advocacy, were deeply informed by Catholic social teaching and liberation theology in Latin America (Gindele/Schraml 2023; Díaz Palacio/Lozano Martínez/Góngora-Meraet 2025). Their influence had already set a meaningful precedent: their decades-long advocacy for a convention alongside such organizations as the "Vicaría de la Solidaridad" of the Archdiocese of Santiago, and their notable submission of a draft text for the 1994 Inter-American Convention on Forced Disappearance of Persons, were instrumental in shaping the text of this first treaty on the crime (ibid.), that then served as a direct blueprint and source of inspiration for the ICPPED (Janina/Decaux 2021). This influence was also deepened by the active participation of specialized organizations such as the ICRC, which, albeit secular, are by their nature closely informed by engagement with families, faith actors and others on the ground – and whose broader work recognizes a "significant and under-utilized role that religious actors [...] can play in respecting and ensuring respect for [law]" (Massingham/McRuvie 2025).

The confluence of these currents in the *travaux*'s secular basin helped create a strong push for accountability, mindful of the "organized not knowing", as described by independent expert Louis Joinet (E/CN.4/2003/71, 21). But it was in no small part the faith-informed influence of families and ground-level actors that helped cement what is possibly the Convention's most innovative feature (Galvis Patino 2021, 62): its inclusion of the "right to know the truth" as a core tenet of the treaty (preamble and Article 24 of the ICPPED), over objections by certain states such as the United States of America (E/CN.4/2006/57, 86–87 and annex II). It was the first binding human rights treaty to do so (CED/C/24/D/4/2021, annex). This in turn played a role in this right's trajectory, from "still a fairly vague concept in international law" (E/CN.4/2002/71) to a right "widely recognized in international law [...] as an autonomous right at the international level, and through state practice at the national level" (A/HRC/16/48, 39). It is the hard-won inclusion of the right to the truth that paved the way not only to the notion of remembrance, but significantly, to the imperative that mortal remains be "respected and returned to their families in such a way as to ensure a dignified burial consistent with the wishes and religious and cultural customs of the families and their communities" (CED/C/CAF/CO/1, 28).

The story of the Convention's drafting is a story of necessary pragmatism. In "translating" a language interwoven with faith and morality, its drafters produced a legal architecture of accountability, designed as a specific antidote to state evasion, yet also open enough to interpretation so as to be flexibly adapted to differential approaches (Article 24 of the ICPPED). However, this same process resulted in a "translation gap" that has since influenced its application by its treaty body, whose disposition toward a legalistic lens that equips it so well to address the crime's legal components has left it partially blind to the specific

vulnerabilities, harm and needs that arise in relation to one's sincere beliefs around the soul of their loved one.

## 3. Faith-related jurisprudence

How have this framework's nature and undercurrents influenced efforts in practice to understand and address a wound so interlinked with faith and tradition? On the one hand, the legacy of family associations, organizations like the ICRC and civil society during the *travaux préparatoires* has contributed to concrete engagement by the CED and others with this dimension, deeply interconnected with the right to the truth, the notion of remembrance, and the right to the dignified treatment and return of mortal remains (Janina/Decaux 2021). On the other hand, the CED has largely failed to apply a differentiated lens to the unique harm and specific needs or vulnerability of people with relation to their faith (if this facet of identity is even noted), in contrast to the differentiated approach the Committee frequently takes toward women and children, among others. By failing to apply this lens, the CED falls short in some instances of acknowledging and addressing spiritual harm, such as that inflicted by the interruption of the passage from life when the mortal remains of the missing cannot be found or recovered. The complementarity of action of other mechanisms, notably the WGEID and the Special Rapporteurs, goes a step toward bridging this. Still, a gap remains.

### 3.1 The Committee on Enforced Disappearances (CED)

The ten-member Committee on Enforced Disappearances was established as the treaty body to the ICPPED with its entry into force on 23 December 2010. It has since reflected its practice in a number of documents, such as concluding observations to states, annual reports, substantive statements, (regular) statements, case decisions, follow-up reports on these, visit reports, a general comment (CED/C/GC/1), and a set of *Guiding principles for the search for disappeared persons* (CED/C/7). This analysis examines a diverse selection of 94 documents from this body of jurisprudence.

The treaty body's jurisdiction is growing but limited; as of November 2025, there are 77 States parties and 98 signatory States to the Convention, of which 30 have explicitly recognized the competence of the CED to consider individual communications pursuant to Article 31, and 30 have recognized its competence to consider inter-state communications pursuant to Article 32 (A/80/56, 1).

The lasting legacy of the influence of family associations and ground-level actors on the Convention is reflected not only in the CED's recognition that close cooperation with victims' associations is "essential for the promotion and implementation of the Convention" (Janina/Decaux 2021), but throughout the jurisprudence of its treaty body. It has guided the Committee's consistent engagement with core tenets of the ICPPED: truth, remembrance and the dignified treatment and return of mortal remains. The right to "know the truth" and/or "to know the fate and whereabouts" of a disappeared person is directly referenced by the CED in 73 of the 94 documents examined in this chapter. While this is typically done through a legalistic lens, one committee member, Juan Pablo Albán-Alencastro, went a step further by proposing in a partly concurring opinion that the collective right to the truth serves not merely a symbolic function but contributes to the "moral reconstruction of society", which, together with the "recognition of the suffering and dignity of the victims, [can] alleviate the traumatic effects of human rights violations, restoring in those affected a sense of belonging" (CED/C/24/D/4/2021, annex, my translation). Through these words we glimpse the undercurrent, flowing from notions of dignity, belonging, a "moral fabric" of society, and healing, explicitly linked to a right to the truth that is both individual and collective.

This right is intrinsically linked to the sacred duty of remembrance. The CED regularly gives this notion practical and meaningful effect by recommending the establishment of "historical memory programmes" and the protection of memorial sites

(CED/C/COL/CO/1, 34; CED/C/HND/OAI/1, 22; CED/C/SRB/OAI/1, 39). Importantly, the Committee has also challenged the misuse of "secularism" as a pretext to erase or suppress the memory of enforced disappearances, both in formal history (i.e. schools) and in the failure to protect and preserve remembrance sites, as it did in the case of Uruguay (CED/C/URY/OAI/1, 20).

The CED's engagement with the spiritual dimension of this crime in jurisprudence becomes most explicit, however, in its approach to mortal remains – a crucial aspect of the grieving process (Bourguignon/Dermitzel/Katz 2021, 18). In a powerful reflection of the wishes of families of the missing, the CED has established a clear and unique standard: mortal remains must be handled and returned to families in a dignified manner, and in accordance with the wishes, norms and customs of the families and their communities (CED/C/COL/CO/1, 26(f); CED/C/28/D/5/2021, 12(d)). Interestingly, the word "religious" was first explicitly used in this context by the treaty body in a concluding observation in April 2025 (CED/C/CAF/CO/1, 28(c)), suggesting the CED may be engaging more explicitly with the spiritual dimension of enforced disappearance as it matures. In any case, the treaty body's jurisprudence has by and large demonstrated a nuanced understanding of the sacred importance of funeral rites and traditions for families and communities. This is also apparent in its 2019 *Guiding principles for the search for disappeared persons*, in which the CED affirms the requirement to "take into account [...] the needs expressed by the family members in the context of their cultural norms concerning funerals" (CED/C/7, principle 7, para. 3). In acknowledging the spiritual importance of mortal remains, the secularism of the treaty body's framework makes its most direct accommodation for the spiritual duty of families and communities to enable their loved one's passage from life to death.

However, these successes also bring to light the jurisprudential gaps in the CED's engagement with the spiritual dimension of enforced disappearances. Take the example of the treaty body's work on Iraq in connection to the Yezidis – an ancient religious minority that have for centuries faced persecution due to their faith, considered heretics by the self-proclaimed Islamic State of Iraq and the Levant (ISIL/Da'esh). On the one hand, the Committee explicitly acknowledges the religious identity of the victims and is consistent in its requests that statistical data be disaggregated in such a way as to better understand patterns of persecution (CED/C/IRQ/VR/1, 87). The CED expressed concern at how "children, especially of Yezidi origin, who were born following the rape of their mother by Daesh… [after some] mothers had to leave their children in orphanages on a temporary basis with the intention to get them back, [...] the mothers are told that their child was 'given' (sold) to another family, allegedly with the direct involvement of State agents" (INT/CED/STA/IRQ/50819/E, 4). It has recognized the religious facet of both motive of the perpetrators and identity of the victims. Yet despite this, the CED stops short of taking a differential lens to the unique harm and needs arising from this persecution, and specifically enforced disappearances, on the victims (families, communities) in light of their sacred beliefs and traditions. The formal recommendations the CED makes in its concluding observations on Iraq remain strictly procedural, embedded in a secular framework – i.e. establishing criminal responsibility (CED/C/IRQ/CO/1, 13) and protecting mass graves for forensic evidentiary purposes – with no explicit exploration of their potentially sacred or ritual significance. Although the CED succeeds in acknowledging faith, it treats it as merely a group characteristic for administrative and evidentiary purposes, without seeking corresponding substantive remedies that truly engage with and address the deep and widespread spiritual harm of the Yezidi genocide.

This is not to say the CED is unable or unwilling to adopt a differential lens to the specific vulnerabilities, harm and needs of particular groups. It consistently does so with regard to the impact of enforced disappearances on women and children: "in the case of women, [enforced disappearance] exposes and makes them particularly vulnerable, as direct victims, to sexual and other forms of violence, and, as relatives of a disappeared person, to violence, persecution and reprisals. In the case of children, it makes them especially vulnerable to losing their identity. In this context, the Committee places special emphasis on the need for the State party to ensure that women and children who are victims of enforced disappearance are provided with special protection and assistance" (CED/C/URY/CO/1, 38). This should be applauded, and is looked to as a template for this chapter's own lens and its recommendations. A differentiated approach such as a gender perspective is referenced in an impressive 81 of the 94 documents by CED reviewed for this chapter. Specific consideration is made in several of these for the "particular needs" of other groups such as LGBTIQ+ (CED/C/GC/1, 39), persons with disabilities, ethnic minorities and indigenous persons, among others (INT/CED/STA/COL/60557/S, 1; CED/C/GMB/CO/1, 54).

Yet this same jurisprudence never makes mention of faith, religion or belief in the context of its approaches. Nowhere is this omission more glaring than in the CED's *Guiding principles for the search for disappeared persons*; Principle 4 ("The search should follow a differential approach") details the vulnerabilities and considerations of particular groups with relation to gender, age, sexual orientation, indigenous identity, disability and others, but does not mention faith, religion or belief (CED/C/7). The result is a void for the countless families who will never recover the remains of their loved one (as most never do), leaving the anguish that these families and communities endure unseen by the treaty body mandated to interpret and recommend reparations as outlined in the ICPPED, including "satisfaction" pursuant to its Article 24.

### 3.2 The Working Group on Enforced or Involuntary Disappearances

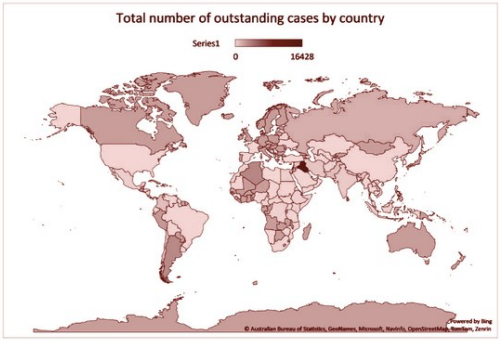


figure i - source: A/HRC/54/22, annex III (2023)

The WGEID is a thematic special procedure of the Human Rights Council, consisting of five members, established in 1980 with a large mandate to assist families in determining the fate or whereabouts of their relatives, that later expanded to include monitoring states' compliance, and assisting them to implement the requisite norms (A/HRC/WGEID/102/2, 4). It deals with disappearances for which governments can be held accountable and does not accept cases arising from armed conflict. It fulfills a role of "complementarity" with the CED due to its wider scope and universal mandate, covering all UN Member States regardless of ICPPED ratification (E/CN.4/2006/57, 51). Between 1980 and May 2025, it registered and transmitted 62,904 cases to Governments of 115 States, of which 49,664 remain unresolved (A/HRC/60/35, 3), which is almost 79 percent of the transmitted cases. The geographical diversity of the WGEID's caseload, seen in figure I, truly shows how global a phenomenon enforced disappearance is.

Inherently less legalistic and more multidisciplinary as an instrument, unconstrained by the structure of a single treaty, the WGEID goes a step further than the CED in acknowledging the unique spiritual injuries and needs arising from enforced disappearances. We see one example of this in the WGEID's work concerning Uyghurs, which was quoted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in its

2022 *Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China* (citing, *inter alia*, A/HRC/WGEID/115/1). The Assessment explicitly built upon numerous interventions by the Working Group, and observed it to have played a crucial early warning function on the issue in 2018 by reporting a "dramatic" increase in cases from the region (OHCHR 2022, 1). It importantly framed the disappearances not as isolated legal violations but as integral to a systematic campaign of religious and cultural erasure. The report found that the State's legal framework gave such broad interpretation to "extremism" as to "often explicitly targeting standard tenets of Islamic religion" and creating an environment "in which religious or cultural practice or expression is conflated with 'extremism'" (ibid., 84). This is a strong illustration of the principle of complementarity in action, with the WGEID playing a key role in widening the lens on the issue.

Similar to the CED, the Working Group succeeds in taking a differentiated, or "faith-sensitive" approach with relation to mortal remains as it recommends that remains be returned "in accordance with their own tradition, religion or culture" in its *General comment on the right to the truth in relation to enforced disappearance* (A/HRC/16/48, 39). It takes this approach a step further in the report on its visit to Ukraine in 2018, as it urges "respect for victims and their religious beliefs" throughout exhumation and identification (A/HRC/42/40/Add.2, 42). However, the WGEID also faces similar limitations as the CED. Outside the context of the treatment and return of mortal remains, the WGEID does not appear to seek to apply a differential lens to the specific harm associated with the rupture of the transition between life and death and of the sacred duties of families and communities in this sense. It somewhat ironically comes closest to identifying such a lens as it describes "a gender perspective", observing "that the effects of enforced disappearances are lived and faced in different ways by women and girls due to gender roles, which are deeply embedded

in history, tradition, *religion* and culture" in its *General comment on women affected by enforced disappearances* (A/HRC/WGEID/98/2, preamble, my emphasis). The litmus test of this chapter's examination – the question "what happens in the absence of remains?" – remains without response from this Working Group.

### 3.3 Thematic Special Rapporteurs

Although not focused on enforced disappearances per se, the thematic mandates of the UN Special Rapporteurs appear less cautious and less bound by legalistic frameworks than the treaty body and Working Group, allowing them to engage with issues through specific lenses such as religious freedom or the protection of minorities. An example of this is in the still-unresolved enforced disappearance of Gedhun Choekyi Nyima, declared to be the eleventh reincarnation of the Panchen Lama in 1995 by the Dalai Lama, and disappeared along with his family by Chinese authorities three days later. The Special Rapporteur on freedom of religion or belief has for decades characterized this act not just as a violation of personal liberty but as a "grave interference with the freedom of belief of the Tibetan Buddhists who have the right to determine their clergy in accordance with their own rites and who have been deprived of their religious leader" (E/CN.4/2006/5/Add.1, 95), further noting a pattern of state behavior aimed at weakening and controlling the influence of "reincarnates" in Tibetan society (A/HRC/7/10/Add.1, 55). The harm inflicted is understood here as flowing from a violation of religious duty and a severing of spiritual lineage.

As the work of this UN special procedure is examined by other independent experts, it is nuanced and deepened, the overlapping of thematic lenses reducing their respective blind spots. The Special Rapporteur on minority issues, for example, builds toward a broader differential lens on spiritual harm: "millions of persons belonging to religious minorities globally [have] frequently faced discrimination, social exclusion, marginalization and, in many

instances, harassment, persecution and violence. It [is] the primary duty of states… [to take] positive and preventive actions through active engagement with religious minorities" (A/HRC/34/53, 41). In the language of these mechanisms we see alternatives to the CED's approach, suggesting the "translation gap" is not an inevitable feature of international law.

### 3.4 The gap

The diverse lenses used by different human rights mechanisms are greatly strengthened by the complementarity of action between these. Yet none of these mechanisms apply a holistic differentiated approach to faith such as that taken to gender – the CED least of all. The resultant gap in the treaty body's practice is echoed in the testimonial of the family member of a disappeared person (OSCE 2022, 391):

> "Neither I nor any of the disappearance victims I know receive any kind of comfort or spiritual or psychological help, no. [Enforced disappearance] happens and you have to get over it and learn to live without [help]."

## 4. Issues of interpretation

### 4.1 A faith-sensitive lens

If the CED were to apply a differential lens for faith as robustly as it does for gender, what would it look like? While the treaty body has not yet developed such a lens, its own jurisprudence on women and children provides a template for its formulation (CED/C/URY/CO/1, 38). Taking inspiration from this, the Committee could, for example, wish to emphasize the particularly cruel effect of enforced disappearances on families and communities whose sacred duties and beliefs concerning the passage of the soul are violated. In the case of family and community members, it denies them the ability to perform essential rites and rituals, and, as custodians of their traditions,

subjects them to a state of continuous spiritual anguish and unresolved duty. In the case of the disappeared person, it makes their spirit, in light of their sincere beliefs, especially vulnerable to being unable to complete its sacred journey. In this context, the CED could place special emphasis on the need for the State party to ensure that families and communities who are victims of this spiritual harm are approached with sensitivity to their beliefs and traditions, and are provided with reparations and forms of satisfaction adapted to their needs.

### 4.2 More than words

A lens is more than a collection of words, however; it is a deep shift in understanding that recognizes dimensions often overlooked by secular approaches, particularly concerning vulnerabilities, potential harm, and real needs. It involves seeing faith as not a characteristic but as the essential framework through which many communities perceive harm, find resilience, and map their path to healing. It is in learning to *ask*, "in your tradition, what happens after death, and what do you believe is the consequence of being unable to perform these rites for your loved one?"

It is in learning to *listen* and *see* the world as lived by another, that one begins to understand why Indigenous mediators might invoke a spiritual connection with nature to provide protection during a high-risk process (Gindele/Schraml 2023, 7), or how traditional cleansing ceremonies for former girl soldiers in Sierra Leone can be crucial for their psychosocial recovery and reintegration into the community (Ager/Stark/Olsen/Wessells/Boothby 2010, 74). The interweaving of the individual with the collective becomes more evident through this lens; so does the way enforced disappearance breaks down social ties, creates a climate of fear and distrust within communities, and fragments communities (Rauschenbach/Jimenez/Webster 2022, 384). Albán-Alencastro's notion of a "moral reconstruction of society" rooted in collective

truth and remembrance of the disappeared (CED/C/24/D/4/2021, annex) echoes this same understanding.

This is why a faith-sensitive lens can be developed not in abstract, but only through close, meaningful and ongoing engagement with ground-level faith communities. Faith-based actors are themselves part of the social fabric, and often serve as the first responders and most enduring sources of support for families and communities (Lutheran World Federation/Islamic Relief Worldwide 2018, 16). They are primary stakeholders of the knowledge that the legal system lacks. They provide essential psychosocial support to victims' families, create rituals of remembrance that defy the crime's aim of erasure, and engage in advocacy for truth. This is underscored in the UNHCR's *Partnership Note on Faith-based Organizations, Local Faith Communities and Faith Leaders* (UNHCR 2014, 8):

> "religious actors [...] can leverage significant social, physical and spiritual assets for the benefit of communities. They are widely present in all parts of a given country due to their vast networks. Their presence does not necessarily depend upon external or international funding. They often remain long after international attention has faded, and funding has declined."

Community-level engagement with faith runs deeper than only designing tools and training actors to adopt a differentiated approach; it means that understandings, approaches and actions are truly shaped by the participation and knowledge of faith actors and communities. This echoes the evolution of the "Faith for Rights" framework into a peer-to-peer learning process that today encourages the inclusive development of a nuanced contextual understanding among all participants (Salama/Wiener 2023, 29). This is how a lens is crafted.

### 4.3 Grassroots engagement with faith

A meaningful engagement with the spiritual dimension of enforced disappearance requires a new modality that is more specific and granular than current practices by the CED. The treaty body's established channels, primarily written submissions, structured visits and formal briefings, are essential for gathering legal and factual information from organized civil society. However, these mechanisms also risk creating a "procedural trap", in which the voices of well-resourced, legally sophisticated organizations (capable of translating their language to the neutrality and secularism of law) leave little space for the voices of the grassroots faith-based actors and communities who are the true first responders to spiritual injury. A genuine understanding of the ordeal of the family or community who believe their loved one's soul to be in peril, cannot be gained in a written submission or formal briefing in Geneva. Addressing the resultant needs requires moving past dialogue in abstract to the kind of partnership that recognizes what faith communities are already doing. This could be gained by orienting country visits toward this purpose, as these typically last weeks and allow a much deeper dive into the lived realities of the context; however, these are also limited in number and frequency, with only three country visits conducted so far by the treaty body (CED/C/MEX/VR/1; CED/C/IRQ/VR/1; CED/C/COL/VR/1).

Rather, this engagement could begin as a practical, natural outgrowth of the "Faith for Rights" framework, focused on specific discussion and engagement designed not only to develop a more nuanced understanding of the impacts of enforced disappearance, but also the specific ways in which the CED may concretely help translate and address the spiritual dimensions of this impact. This could involve holding confidential workshops with the local pastoral agents who are the true "first responders", to learn their vocabulary for spiritual harm and to ask questions such as, "what is the consequence of being unable to perform these

rites for your loved one", and, "what alternatives may exist for this situation?"

It could mean establishing formal partnerships with trusted faith networks and/or faith-based human rights offices to refer families and communities suffering from the loss of a disappeared loved one, to create secure, continuous channels for receiving documented information on cases, and to serve as early response systems. It will inevitably mean that when formulating recommendations on reparations for the unfound, the CED should actively solicit and reference adapted rituals or remedies, such as symbolic burials, which families and faith communities have already created for themselves. Rituals that affirm the "presence" of the disappeared, challenge the state's narrative of erasure, and mend the fabric of communities and societies – all the while navigating the fragility of community trust. In the fullness of time, it would shift the Committee's legal concept of "satisfaction" from an aspirational principle into a practice that is more deeply and genuinely restorative for the victims and their communities.

Such exchanges would represent a two-way street of learning, inherent to a peer-to-peer framework and exemplified by "Faith for Rights". Just as CED members would be trained *by* faith communities to gain the understanding and tools they need, so would the treaty body and other experts train key members of faith communities, such as in secure documentation methods and practical guidelines to *do no harm*, drawing from the expertise of organizations specialized in the search for the missing, such as the ICRC. It must be interlinked not only with faith institutions but with those from the faith community actively engaged in the struggle, such as the "grandmothers of Plaza de Mayo" in Argentina, who harnessed their grief to meticulously document violations as a moral duty of "bearing witness". These are the actors and communities who sustain victim resilience – who journey with families and communities, offer psychosocial support, create rituals of remembrance designed to provide a

remedy for the spiritual harm, and provide a space for collective mourning that official mechanisms cannot offer. For former girl soldiers in Sierra Leone, "cleansings were led by local spiritual healers [...] with a short period of retreat from the village, during which time the girls and young women sang and cooked together. There then followed a ritual washing of each participant. The ceremonies concluded with a community-wide celebration to symbolize the re-entry of the girls and young women into the community" (Gindele/Schraml 2023, 74). It is these actors and communities that must become integral to the CED's work.

### 4.4 "Belief is what remains": Recommendations

The present chapter, like the story of so many victims of enforced disappearance, has no conclusion. What it does offer are practical recommendations to members of the CED, to more meaningfully engage with all who will never lay their loved one to rest – for whom belief is what remains.

#### (1) Develop and integrate a faith-sensitive analytical lens

The CED is encouraged to endeavour to develop and integrate a faith-sensitive analytical lens into the integrality of its work, modelled on its own experience employing a differential approach to women and children (example outlined in section 4.1), among others. It should consistently ask how enforced disappearance inflicts unique harm on victims with relation to their sincerely held beliefs, including through the rupturing of sacred duties concerning the passage from life to death. This should be done at all stages, from the drafting of lists of issues prior to a State party review, to its formulation of concluding observations and follow-up reports.

#### (2) Systematize a three-phase framework for grassroots engagement

The CED could consider adopting a three-phase framework to enhance its direct engagement with faith actors:

(a) The treaty body may conduct a systematic stakeholder mapping of grassroots faith communities, pastoral networks providing direct support to families, and other relevant actors, with a view to convening thematic briefings focused on the specific spiritual harms experienced by victims in the context (State) under review, using the peer-to-peer methodology of the "Faith for Rights" framework;
(b) During its country visits, the CED could adapt its protocol to integrate explicit faith-sensitive approaches and questions into its workshops and interactions with grassroots actors. A faith-sensitive, trauma-informed toolkit can help provide the vocabulary of spiritual harm directly from those affected and those who support them from the faith community;
(c) The Committee may establish a "two-way street of reciprocal training", in which treaty body members and other experts provide specific tools to faith actors (i.e. on referral networks) while, in turn, receiving orientation from faith communities on the spiritual dimension of disappearances.

**(3) Develop a general comment on spiritual harm and reparations**

The CED may initiate a process to develop a new general comment dedicated to the spiritual harm of enforced disappearance and the needs that arise from this, with special consideration to reparations. This thematic general comment could build upon the treaty body's existing jurisprudence dealing with the right to the truth and the dignified return of remains, but go a step further. It could explicitly address the legal and remedial void left when remains are never found, and provide guidance to State parties on how to provide forms of satisfaction that are sensitive to the beliefs and traditions of families, such as by formally recommending and supporting symbolic rituals.

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# CHAPTER XIII.

# RABAT PLAN OF ACTION ON THE PROHIBITION OF ADVOCACY OF NATIONAL, RACIAL OR RELIGIOUS HATRED THAT CONSTITUTES INCITEMENT TO DISCRIMINATION, HOSTILITY OR VIOLENCE (2012)

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**Abstract:** Balancing the promotion of freedom of expression with the protection from incitement to hatred or violence has always

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posed challenges for policymakers and regulators. In response, between 2008 and 2012, international experts drafted the Rabat Plan of Action to provide guidance on addressing advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, while protecting fundamental freedoms. The Rabat Plan recognizes concerns about both the non-prosecution of perpetrators who have crossed the incitement threshold, and the persecution of minorities under the guise of vague domestic incitement laws. The Rabat Plan identifies legal and policy approaches to address incitement that meet international human rights standards. Its impact is demonstrated by how it has been used by key actors, including references in four judgments of the European Court of Human Rights as well as in a separate opinion by two judges of the Inter-American Court of Human Rights. National courts, national human rights institutions, and audio-visual media regulatory authorities have also relied on the six-part "threshold test" of the Rabat Plan which requires an assessment to be made of the severity of the incitement based on the context, speaker, intent, content, extent and likelihood of harm. At the global level, more than 400 United Nations documents have referred to the Rabat Plan, including 70 resolutions adopted by the General Assembly or Human Rights Council. United Nations treaty bodies have also referenced the Rabat threshold test, notably the Committee on the Elimination of Racial Discrimination in its general recommendation on combating racist hate speech, as well as the Human Rights Committee in its General Comment on the right of peaceful assembly. With regard to online content moderation, Meta's Oversight Board has applied the Rabat threshold test in more than a dozen decisions, which may have a significant impact for over 3 billion monthly active users of Meta's platforms globally, but also upon wider debates about and the understanding of the limits of freedom of expression online.

**Keywords:** Incitement to hostility, discrimination or violence; online hate speech; freedom of expression; freedom of religion or belief.

## 1. Introduction

Historically, balancing two critical goals – shielding communities from incitement to hatred or violence, and upholding fundamental freedoms (especially freedom of expression) – has presented significant challenges for policymakers and regulators alike. Nevertheless, recent shifts have sparked a renewed surge of debate across public, political, legal and academic spheres, all centered on the core questions and dilemmas that underpin how protection from incitement to hatred is – or should be – regulated.

A key driver of this shift is the unprecedented growth in global migration, which has made most modern societies far more diverse in terms of ethnicity, religion and culture. Yet in many cases, this diversification has been paired with rising social unease and tension between different groups – conditions that not only fuel hate speech but also amplify its harmful effects (Rosenfeld 2012, 283). All too often, intolerance of diversity – or pushback against multiculturalism – is framed as defending national identity or cracking down on irregular immigration. In practice, this frequently manifests as negative stereotyping, profiling, stigmatization and demonization of minority communities and migrant groups (A/HRC/7/19, 17; A/HRC/9/12, 6; A/HRC/15/53, 5; A/67/537, 24). Compounding this, there has been a resurgence of political parties with overtly racist and xenophobic agendas, whose rhetoric actively promotes or incites hatred toward ethnic and religious minorities (A/HRC/7/19, 47–50; Schweppe/Walters 2016, 3). Adding to these challenges, rapid advances in information and communication technology (ICT) have become a powerful tool for spreading hate speech – boosting its impact, speed of dissemination and visibility (A/67/537, 33). Globalization's dual dimensions – the geographic (growing migration) and the virtual (the ICT revolution) – prompt incidents of hate speech to escalate rapidly: what starts as a local dispute can quickly spiral into a global crisis, with consequences that cross borders and affect communities worldwide.

Against this backdrop of globalized dynamics of incitement to hatred, the nature and scope of States' obligations under international human rights law in this area have acquired significant attention. Article 20 (2) of the International Covenant on Civil and Political Rights (ICCPR) obliges States Parties to prohibit by law any advocacy of national, racial or religious hatred when it amounts to incitement to discrimination, hostility or violence. After a comprehensive examination of the state of implementation of Article 20 (2) of the ICCPR worldwide, the Office of the United Nations High Commissioner for Human Rights (OHCHR) flagged the "problem of insufficient national legislation or of new, vague and unclear provisions that have been introduced and are open to misuse" (OHCHR 2013, 7).

Significantly, the "Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence", which was adopted by experts in October 2012, identified some national anti-incitement laws as "excessively narrow or vague" and related jurisprudence as "scarce and ad hoc" (Rabat Plan 2012, 11 and 15). It raised concern about both the non-prosecution of perpetrators who crossed the incitement threshold, and the persecution of minorities under the guise of vague domestic incitement laws (ibid., 11). The Rabat Plan exposed how although Article 20 (2) has laid down a robust international legal standard that requires – rather than merely permits – States to prohibit by law the expressive conduct outlined in it, the Article lacked a consistent, globally accepted normative content. The OHCHR recognized the significant uncertainty regarding the national legal rules needed to enforce the norm prohibiting incitement to hatred; such ambiguity leaves ample room for States to interpret the provision and implement it according to their own discretion.

There was a clear need to provide guidance to prosecutors and judges, as well as other relevant state actors (e.g. police and law enforcement) on how to apply national incitement laws effectively

and in a manner consistent with international human rights law. Such guidance is an important factor to avoid excessively prohibitive laws that suppress legitimate speech, inconsistent applications of laws, and restrictive interpretations of laws in ways that undermine the obligation's preventive function – its central value from a policy perspective. The Rabat Plan represents a crucial step in delivering this guidance.

A primary goal of the Rabat Plan is to raise awareness and deepen understanding of Article 20 (2) of the ICCPR, and in particular, to encourage an interpretation of the article that aligns with other human rights – most notably under freedom of religion or belief (Article 18) and freedom of expression (Article 19). To clarify when speech crosses the line into "advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence" as per Article 20 (2) of the ICCPR, the Rabat Plan proposes a six-part threshold test (ibid., 29). It recommends that courts and prosecutors use a case-by-case approach when applying this threshold test to determine whether incitement has occurred or not, and its severity.

The first element of the test is the social and political context in which the speech was made and shared. Notably, this emphasis on context reflects a clear conclusion – drawn from extensive analysis of relevant laws and legal precedents – that context is vital when assessing whether a particular statement is likely to incite discrimination, hostility or violence. The Rabat Plan explicitly notes that context "may have a direct bearing on both intent and/or causation" (ibid., 29(a)).

The second element centers on the speaker: their social position, status, and how they are perceived by the audience the speech targets.

Third is intent, which the Rabat Plan frames as the "activation of a triangular relationship between the object and subject of the speech act as well as the audience".

Fourth is the content and form of the expression, assessing how provocative or direct the speech is, as well as the structure, style and type of arguments it uses.

Fifth is the reach of the speech, including its scope, public nature, scale, audience size, frequency and the medium through which it is shared.

The sixth and final element is the likelihood of harm, identifying "some degree of risk of harm" and a "reasonable probability that the speech will successfully incite real action against the target group", with the understanding that this link (causation) should be relatively direct.

Elbahtimy has argued that the challenges in developing and strengthening international standards on protecting against incitement to hatred stem largely from five inherent features of this norm (Elbahtimy 2021). These features are: the "emotive" component, the "incitement" component, tensions between the equality rights of targeted groups and the liberty rights of speakers, the "group identity" component, and the "religion" component. Furthermore, these five core features represent the biggest barriers to building a unified body of supranational hate speech jurisprudence, particularly when it comes to defining clear parameters or strict tests for identifying when hate speech crosses into the prohibited category (ibid.). Ultimately, the Rabat Plan aims to resolve the uncertainties in definition, dilemmas around threshold (when does speech become prohibited?) and tensions tied to these five features. The Rabat Plan offers a unique chance to engage systematically with the challenging aspects of the norm prohibiting incitement to hatred.

## 2. Religious influences during the travaux préparatoires

Ahead of the adoption of the Rabat Plan of Action in October 2012, the OHCHR organized consultations at the global and regional levels, notably an expert seminar in Geneva (OHCHR

2008) and a series of five expert workshops held in Vienna, Nairobi, Bangkok, Santiago de Chile and Rabat (OHCHR 2013). The invited panelists included United Nations treaty body members, notably from the Committee on the Elimination of Racial Discrimination and the Human Rights Committee, as well as thematic Special Rapporteurs, including on racism, internally displaced persons, freedom of religion or belief, as well as freedom of opinion and expression. In addition, current or former members of regional human rights mechanisms contributed through expert papers and oral presentations, including the former OSCE Personal Representative on Combating Intolerance and Discrimination against Muslims, a Representative to the ASEAN Intergovernmental Commission on Human Rights, and the former Special Rapporteur for Freedom of Expression of the Inter-American Commission of Human Rights at the Organization of American States. Furthermore, national human rights institutions participated in the expert workshops, for example the Chairperson of the Kenya National Commission on Human Rights. States were invited as observers, listening first to the experts and other participants, and then taking the floor at the end of each session, thus reversing the order of traditional intergovernmental meetings (Salama/Wiener 2023a, 27). While formal religious leaders were not among the invited panelists, several civil society representatives and faith-based actors from various religious or belief backgrounds participated in the regional expert workshops and contributed through oral and written inputs to the *travaux préparatoires* of the Rabat Plan.

This resulted in the Rabat Plan's recommendation that non-governmental organizations, national human rights institutions and other civil society groups should create and support mechanisms and dialogues to foster intercultural and interreligious understanding and learning (Rabat Plan 2012, 56). Furthermore, the text calls for initiatives from various sectors of society, with a view to rendering religious/community leaders more ethically

aware and socially responsible (ibid., 35). It also outlines three core responsibilities of political and religious leaders, namely that they (a) "should refrain from using messages of intolerance or expressions which may incite violence, hostility or discrimination", (b) they "have a crucial role to play in speaking out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech", and (c) they should make "clear that violence can never be tolerated as a response to incitement to hatred" (ibid., 36). This formulation was also taken up five years later in the Beirut Declaration and its 18 Commitments on "Faith for Rights" (see below chapter XIV), which expanded on the third point by emphasizing that violence cannot be justified by prior provocation (A/HRC/40/58, annex I, 22). In the High Commissioner's introductory statement to the expert workshops and her subsequent report to the Human Rights Council, Navanethem Pillay had also "urged religious and political leaders to do their utmost to restore calm" and she "condemned the violence, including murders, that has taken place in reaction to such incidents in various parts of the world" (OHCHR 2013, 4).

## 3. Faith-related jurisprudence

### 3.1 Regional human rights courts

The Rabat Plan of Action has been welcomed as "an important step in clarifying state obligations" (ARTICLE 19, 2012) and described as "a global blueprint for combating 'hate speech'" (Parmar 2014, 21; Parmar 2018, 4). Its impact upon the development of faith-related norms, particularly legal norms, can best be seen through its deployment by courts, especially the regional human rights courts who are key actors within the regional human rights systems that serve to reinforce and complement the international human rights system. Some of the most interesting decisions in the case-law of these regional human rights courts refer to the interrelationship between freedom of expression and freedom of religion or belief.

As of November 2025, the Rabat Plan has been referenced in a number of judgments of the European Court of Human Rights and the Inter-American Court of Human Rights, albeit not the African Court of Human and Peoples' Rights. What appears clear from these handful of cases is that the Rabat Plan is being referenced in regional human rights jurisprudence, though such references are still rare and remain inconsistent, suggesting that regional courts still seem uncertain about how to view the text in terms of its normative value.

To date, the Rabat Plan of Action has been noted within four judgments of the European Court of Human Rights, which is unsurprising given that it is the most active of the regional human rights courts. Interestingly, all four judgments concerned faith-based content or religious communities. The most important reference by the European Court of Human Rights to the Rabat Plan of Action appeared in *Mariya Alekhina and others v. Russia* (App No 38004/12) concerning the criminal convictions and imprisonment of members of the punk band "Pussy Riot". The European Court of Human Rights quoted from paragraph 15 of the Rabat Plan of Action, concerning the problems of existing domestic legal frameworks from the point of view of Article 20 of the ICCPR, under the section on UN sources in the part on "Relevant International Materials" (ibid., 10). In her partly dissenting opinion, Judge Elósegui further stated her "conclusions are also strengthened" by the Rabat Plan of Action, specifically its recommendation that a range of domestic sanctions in response to incitement to hatred should be clearly distinguished and the six-part threshold test to determine whether a particular expression constitutes a criminal offence. This recognition by the European Court of Human Rights of the Rabat Plan of Action as an important source in this case was clearly prompted by the high value placed upon that text in the third-party interventions of ARTICLE 19, Amnesty International and Human Rights Watch (ibid., 187 and 190–191). Almost six years after its adoption, the

application of the Rabat Plan of Action in the "Pussy Riot" case acknowledged and served to further reinforce the status of the text. Though the Rabat Plan of Action was not referenced to as such in the critical "Merits" part of the judgment, the decision points to how the implementation and integration of its soft law standards could be furthered through the express acknowledgement and engagement by regional human rights courts.

The Rabat Plan of Action has been referenced indirectly in three other judgments besides the "Pussy Riot" case. In two judgments, it is recalled by the European Court of Human Rights within one of the sources which have been reproduced in the "International Materials" section. In *Rabczewska v. Poland* (App No 8257/13, 26), the European Court of Human Rights cited Human Rights Council resolution 22/31 on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief. In that case, the Court found a violation of Article 10 of the European Convention on Human Rights (ECHR) in relation to the criminal conviction of a pop star for her statements about the Bible and its authors.

In *Sanchez v. France* (App No 45581/15, 56), the Grand Chamber upheld the criminal conviction of a parliamentary candidate for incitement to hatred or violence against Muslims for failing to promptly delete posts on his Facebook wall. In deciding that there was no violation of freedom of expression, the Grand Chamber cited the thematic report on hate speech of the UN Special Rapporteur on freedom of opinion and freedom of expression to the General Assembly (A/74/486), which referred to the Rabat Plan of Action.

Lastly, in the case *Budinova and Chaprazov v. Bulgaria* (App No 12567/13, 49), the European Court of Human Rights acknowledged that the European Roma Rights Center had "referred extensively" to the Rabat Plan of Action in its third-party

submissions in the case. The Court unanimously found that there had been a violation of Article 14 ECHR in conjunction with Article 8 ECHR in the case, which concerned public statements against Jews as well as Roma. The way the Rabat Plan of Action is referenced in these cases suggests that the European Court of Human Rights may consider it as a form of soft law and is mindful of its traction amongst civil society.

With respect to the region of the Americas, the text has been referenced in a separate opinion to the 2022 judgment of the Inter-American Court of Human Rights in *Baraona Bray v. Chile* (2022 Series C No. 481, concurring and partly dissenting opinion of Judges Sierra Porto and Hernández López, 37). Interestingly, this case did *not* concern religious content – unlike all the cases at the European Court of Human Rights featuring the Rabat Plan of Action, and also the Inter-American Court of Human Rights' landmark 2001 judgement concerning prior censorship, *"The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile* (2001 Series C No. 73) – but rather concerning defamation charges. In *Baraona Bray v. Chile*, the Court upheld the complaint of an environmental advocate who had been criminally convicted for defamation for accusing a politician of supporting deforestation. In doing so, it emphasized that statements or opinions on environmental issues and the role of public officials deserve special protection in a democratic society because they are of public interest. After recognizing that freedom of expression can have profound effects on other human rights through instances of hate speech or advocacy of terrorism, the separate opinion recalls States' obligations to address incitement to genocide and incitement to racial discrimination, citing Article III of the Genocide Convention and Article 4 of the International Convention on the Elimination of Racial Discrimination (though not, oddly, Article 20 of the ICCPR) before quoting almost the entirety of paragraph 20 of the Rabat Plan of Action, which distinguishes three levels: (a) expression that constitutes a criminal offence; (b) expression that

is not criminally punishable, but may justify a civil suit or administrative sanctions; and (c) expression that does not give rise to criminal, civil or administrative sanctions, but still raises concern in terms of tolerance, civility and respect for the rights of others. For Judges Sierra Porto and Hernández López, the Rabat Plan of Action clearly had a significant normative value for it to be relied upon this way after treaty law.

There is clearly scope for the regional human rights courts to pay greater attention to the Rabat Plan of Action, particularly in cases concerning prohibitions on expressions considered blasphemous or religious insult on which it takes a very clear normative position in relation to such forms of expression: "States that have blasphemy laws should repeal them, as such laws have a stifling impact on the enjoyment of freedom of religion or belief, and healthy dialogue and debate about religion" (Rabat Plan 2012, 25). In doing so, it quotes and reinforces the Human Rights Committee's General Comment No. 34 (CCPR/C/GC/34, 48). The position of the Rabat Plan of Action against blasphemy laws stands in contrast to earlier judgments by the European Court of Human Rights such as in *Otto-Preminger-Institut v. Austria* (App No 13470/87) and *Wingrove v. the United Kingdom* (App No 17419/90), but also in *E.S. v. Austria* (App No 38450/12), which came six years after the Rabat Plan of Action was adopted. In that judgment of 2018, the European Court of Human Rights upheld the conviction of an Austrian woman who had been found guilty of "publicly disparaging an object of veneration of a domestic church or religious society – namely Muhammad, the Prophet of Islam – in a manner capable of arousing justified indignation" (ibid., 12). After referring to various international sources, including General Comment No. 34 and Human Rights Council resolution 16/18 (although not the Rabat Plan of Action), the Court reiterated "that a religious group must tolerate the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith, as long as the statements at issue do not incite

to hatred or religious intolerance. Article 188 of the Criminal Code [of Austria] does not in fact incriminate all behaviour that is likely to hurt religious feelings or amounts to blasphemy, but additionally requires that the circumstances of such behaviour were capable of arousing justified indignation, and thus aims at the protection of religious peace and tolerance" (ibid., 52).

The 2022 judgment in *Rabczewska v. Poland* (App No 8257/13) stands therefore in marked contrast. As mentioned above, the European Court of Human Rights held that there was a violation of freedom of expression as a result of the applicant's criminal conviction for offending religious feelings or insulting religious objects or figures. However, the influence of the Rabat Plan of Action was only through another referenced source, Human Rights Council resolution 22/31, despite the fact that it was relied upon heavily by the third-party intervention of ARTICLE 19. That intervention highlighted, for example, "[t]he crux of the Rabat Plan of Action is that violence and discrimination, as well as the advocacy of hatred constituting incitement to these acts, is best prevented through open dialogue rather than through censorship" (ARTICLE 19 2018, 38). Instead of protecting the feelings of religious believers through criminal law and undue restrictions on freedom of expression, communicative counter-strategies are suggested (ibid., 40):

> "HRC Resolution 16/18 and the Rabat Plan of Action similarly set out a series of positive policy measures States should take to create an enabling environment for both the rights to freedom of expression and freedom of religion or belief. Several of these actions, for example in the field of education, are preventative. Others are more reactive, for example, that public officials should avoid engaging in advocacy of hatred, and speak out against incidents of intolerance, as the European Court has also urged. This

> demonstrates that international human rights law does view religious intolerance as a potential human rights concern, and the obligation of the State is not to do nothing in response to incidents of religious intolerance: certain interventions into public discourse may be necessary, though they do not need to limit the right to freedom of expression, and indeed it may be counter-productive to resort to censorship."

Interestingly, in its intervention, ARTICLE 19 also referred to the Rabat Plan for "numerous examples of persecution of religious minorities or dissenters, but also of atheists and nontheists, as a result of legislation on what constitutes religious offences or overzealous application of laws containing neutral language" (Rabat Plan 2012, 19).

### 3.2 Regional soft law: Council of Europe

In May 2022, the Council of Europe Committee of Ministers adopted its long-anticipated Recommendation to Council of Europe member States on combating hate speech (CM/Rec(2022)16). The substantial Explanatory Memorandum that accompanies and fleshes out the meaning of the Recommendation explicitly references the Rabat Plan of Action six times, although the UN text clearly had a more diffuse and indirect impact upon the approach taken within the Council of Europe text towards combating hate speech. The extent of the impact of the Rabat Plan in the drafting of the Recommendation was principally due to the fact that it was developed by experts in the field – specifically the Committee of Experts on combating hate speech (ADI/MSI-DIS), which was established as a subordinate body to the Steering Committee on Anti-discrimination, Diversity and Inclusion (CDADI) and the Steering Committee on Media Information Society (CDMSI) – rather than judges. Though it is not legally

binding, the Recommendation has potentially far-reaching impacts upon the development of laws and policies on hate speech, including incitement to hatred, in relation to a wide range of key actors – specifically public officials, elected bodies, political parties, internet intermediaries, media, civil society organizations, and legal practitioners involved in bringing cases – across the 46 Member States of the Council of Europe.

For example, the set of factors for assessing the severity of hate speech and for calibrating appropriate responses and remedies are informed by the six-part threshold test and the Rabat Plan is mentioned as one of the sources (Council of Europe 2022, 20). Furthermore, the Recommendation that content moderation policies and practices by Internet intermediaries should be guided by "human rights law and standards" is explained with explicit reference to the Rabat Plan (ibid., 34). The latter's recommendation to political parties to "adopt and enforce ethical guidelines in relation to the conduct of their representatives, particularly with respect to public speech" is also referenced in the Explanatory Memorandum (ibid., 43). Likewise, it highlights the importance of cooperation for implementing non-legal measures, especially in the field of education, and effectively identifying, monitoring and analyzing hate speech, again with reference to the Rabat Plan (ibid., 46–47).

Thus, the Explanatory Memorandum may pave the way for more awareness of the Rabat Plan's full scope and usefulness as a source of reference, both by the European Court of Human Rights and domestic courts in the Council of Europe region, but also by the media and other actors. The focus in the Explanatory Memorandum on holistic policies resonates also with Special Rapporteur Heiner Bielefeldt's 2013 report to the Human Rights Council, in which he highlighted that "one of the most remarkable messages contained in the Rabat Plan of Action is that what we require above all in order to prevent and respond to incidents of incitement to hatred are policies which promote a creative and

productive use of freedom of expression" (A/HRC/25/58, 61) as well as voluntary ethical guidelines for media reporting, self-regulatory supervision, support for community media, and facilitation of a non-discriminatory participation of religious minorities within mainstream media (ibid., 63).

### 3.3 Regional standards: the OSCE

Beyond the context of the Council of Europe, the impact of the Rabat Plan of Action has been felt in the context of other international intergovernmental organizations operating at a regional level, indicating the interpenetration of international norms through regional organizations. Notably, the Rabat Plan has permeated into the work of the Organization for Security and Co-Operation in Europe (OSCE), where it has been regularly used as a source of reference by the OSCE's institutions, notably the Office for Democratic Institutions and Human Rights (ODIHR) and the Office of the Representative on Freedom of the Media (RFoM), but also civil society organizations, and UN experts such as the Special Rapporteur on freedom of religion or belief (Bielefeldt 2014) in their engagement with those institutions.

Significantly, the Rabat Plan has been recalled as such in a range of publications produced by OSCE institutions to promote the application of OSCE's norms, principles and commitments, specifically those in the "third" or "human dimension" which concern human rights. Several practical guides and policy guidances draw on the Rabat Plan, and many of these address directly or indirectly religious actors and communities. These include: *Belief, Dialogue, Security: Fostering Dialogue and Joint Action Across Communities*, which replicates the six-part threshold test in urging states to "look at international standards laid out in the Rabat threshold test of incitement to hatred" (OSCE/ODIHR 2024a, 33–34); *Hate Crime Prosecution at the Intersection of Hate Crime and Criminalized "Hate Speech"*, which draws on the Rabat Plan throughout (OSCE/ODIHR 2024b, 20, 23, 30, 31, 32, 38, 43, 50,

87); *Freedom of Religion or Belief Security Guidance*, which draws on the Rabat Plan in setting out what "legitimate restrictions can be imposed on incitement to discrimination, hostility or violence" (OSCE/ODIHR 2019, 28–40); the *Guidelines on the Protection of Human Rights Defenders*, which references the Rabat Plan to support "appropriated awareness-raising and capacity-building measures" in relation to incitement directed against human rights defenders (OSCE/ODIHR 2014a, 128); and *Prosecuting Hate Crimes* which identifies the prevailing opinion "that there is a high threshold for criminal prosecution of incitement to hatred" (OSCE/ODIHR 2014b, footnote 10). There are other ODIHR texts that also reference the Rabat Plan, such as *Hate Crime Laws: A Practical Guide* (OSCE/ODIHR 2022, second edition, footnote 32) and *Guidelines for Observation of Election Campaigns on Social Networks* (OSCE/ODIHR 2021, 24).

In addition, the importance of Rabat Plan is considered within expert reports and opinions, such as the consultation report *State practices and the role of civil society in relation to incidents of desecration of religious texts, including Quran-burning* (OSCE/ODIHR 2024c, 30–31), the *Comments on the Criminalization of "Separatism" and related Criminal Offences in Moldova* (OSCE/ODIHR 2023, CRIM-MDA/490/2023, 25 and 52) and *Opinion on Certain Provisions of the Criminal Code of Bulgaria Pertaining to Bias-Motivated Crime, "Hate Speech" and Discrimination* (OSCE/ODIHR 2018, HCRIM-BGR/320/2018, 18 and 54–55). While most of these documents have been developed or commissioned by ODIHR, there are important reflections on the Rabat Plan by the RFoM too: the 2015 Non-Paper on *Propaganda and Freedom of the Media* notes that the Rabat Plan is of "particular relevance" in understanding the meaning of Article 20 (2) of the ICCPR (OSCE/RFoM 2015, 34–35); the *Safety of Female Journalists Online: A #SOFJO Resource Guidance* urges states to adopt "interpretations of human rights law contained in the Rabat Plan of Action" (OSCE/RFoM 2020, 85); and the background information to the 2022 OSCE-wide Event

on Countering Hate Speech recalls the Rabat Plan alongside the 2022 Council of Europe Recommendation "as a useful source of reference" (OSCE 2022).

Of course, none of these references to the Rabat Plan are by a court or a norm-setting body, and the OSCE itself is an intergovernmental organization based on *political* rather than legal commitments. But the range of documents and regularity with which the Rabat Plan is recognized by the OSCE institutions and other actors suggests that it has become an important tool in giving meaning to those commitments, irrespective of their status, and thereby has a bearing for religious communities and actors across the OSCE's 57 participating states which, by encompassing states in North America and Asia, stretches beyond the Council of Europe region.

### 3.4 National courts and audio-visual media regulatory authorities

At the national level, the High Court of Sri Lanka relied on the six-part threshold test of the Rabat Plan in the case of *Edirisooriya Arachchige Jayani Nathasha Edirisooriya v. Officer-in-Charge, Criminal Investigation Department and others* (HCEBA/1335/2023), holding that the suspect who had been arrested for a comedic statement that allegedly offended Buddhists, did not commit any offence. In its related recommendation, the Human Rights Commission of Sri Lanka concluded that the comedian's freedom from arbitrary arrest and detention, her right to equality and equal protection of the law, as well as freedom of expression had been infringed by the police officers (A/80/287, 25). Furthermore, in the judgment on *Mohamed Razik Mohamed Ramzy v. Officer-in-Charge, Criminal Investigation Department and Others*, the Supreme Court also endorsed guidelines that cited the Rabat threshold test (Human Rights Commission of Sri Lanka 2020) and the Supreme Court required law enforcement authorities to consider whether there is an "imminent danger" that the impugned expression would cause

actual harm, while stressing that the national legislation "should not be understood as criminalizing blasphemy" (SC/FR/135/2020, 37).

In addition, several national audio-visual media regulatory authorities have collaborated on using the Rabat Plan of Action. For example, the three regulatory authorities in Morocco, Tunisia and Côte d'Ivoire organized a roundtable in 2016 around the pilot project on hate speech in audio-visual media, in order to implement the six elements mentioned in the Rabat Plan of Action. A practical guide published by the *Organisation Internationale de la Francophonie* outlined the experience from the Moroccan *Haute Autorité de la Communication Audiovisuelle*, using the Rabat threshold test as the foundation for developing a hate speech barometer based on six elements to detect and evaluate statements by assessing the author, intent, content, context, target and scope of the speech (OIF 2018, 133). In 2019, the Special Rapporteur on freedom of religion or belief welcomed in his country mission report on Tunisia "that the methodology used by the Independent High Authority for Audiovisual Communication for monitoring hate speech is rooted in international human rights approaches, including the six-part threshold test of the Rabat Plan of Action" (A/HRC/40/58/Add.1, 90). This illustrates how courts, national human rights institutions and audio-visual media regulatory authorities have considered this soft law instrument useful and applied it in their jurisprudence or practice, as acknowledged also by international human rights experts.

### 3.5 United Nations human rights bodies

Since its adoption, the Rabat Plan of Action has been regularly referenced by a broad range of United Nations actors, including by senior officials and human rights bodies, especially in the context of faith-based communities and freedom of religion or belief. As of November 2025, the UN Official Document System yields references to the Rabat Plan of Action in more than 400 UN

documents, including in 70 resolutions adopted by the General Assembly and Human Rights Council. Most of them have a religious dimension, on subjects such as freedom of religion or belief (e.g. A/RES/80/202; A/HRC/RES/58/5), combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief (e.g. A/RES/80/200; A/HRC/RES/58/29), countering religious hatred constituting incitement to discrimination, hostility or violence (A/HRC/RES/53/1), or the promotion of interreligious and intercultural dialogue (e.g. A/RES/79/316). Other pertinent thematic resolutions relate to the right to privacy in the digital age (A/RES/79/175; A/HRC/RES/54/21), terrorism and human rights (A/HRC/RES/57/11) as well as preventing and countering violent extremism (A/HRC/RES/30/15). Furthermore, the country-specific resolutions on the situation of human rights in Myanmar called for continued steps and necessary measures "to combat incitement to hatred and violence against ethnic, religious and other minorities, including Rohingya, in accordance with the Rabat Plan of Action" (e.g. A/HRC/RES/58/20, 48; see also below chapter XIV). The various cross-references highlight the "complementarity" (A/73/362, 63; Salama/Wiener 2022, 55) of the expert-led Rabat Plan of Action and intergovernmental resolutions on combating intolerance based on religion or belief.

In the context of the Universal Periodic Review (UPR), Myanmar also received two related UPR recommendations during its review in January 2021, i.e. to adopt a comprehensive law to combat all forms of discrimination, in line with the Rabat Plan of Action (A/HRC/47/13, 33.73), as well as to abolish the anti-discrimination law to prevent the advocacy of national, racial or religious hatred that constitutes incitement to discrimination in accordance with the Rabat Plan of Action (ibid., 33.74). However, following the military coup by the Myanmar armed forces on 1 February 2021 (A/HRC/RES/49/23), the Human Rights Council

subsequently decided to postpone the consideration and adoption of the outcome of the UPR review of Myanmar until the General Assembly made a decision on the representation of Myanmar (A/HRC/50/2, 9).

Furthermore, the State of Qatar accepted in 2014 the UPR recommendation to "[i]ntegrate the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence in the national legislation regulating the media and religious institutions, and ensure the actual implementation of the Plan" (A/HRC/27/15, 124.34).

To date, there have been few references to the Rabat Plan in the treaty bodies' jurisprudence on individual cases, with two exceptions so far in individual opinions. In the case of *Mohamed Rabbae, A.B.S. and N.A. v. The Netherlands* (CCPR/C/117/D/2124/2011, annex VII), the Human Rights Committee member Olivier de Frouville partially dissented from the majority by arguing that even if a statement is made in the context of public and political debate this does not confer total immunity on it, footnoting the above-mentioned reference to the specific responsibilities of political and religious leaders (Rabat Plan 2012, 36). By contrast, in the case of *TBB-Turkish Union in Berlin/Brandenburg v. Germany*, decided in 2013 by the Committee on the Elimination of Racial Discrimination (CERD/C/82/D/48/2010), Carlos Manuel Vazquez referred in his dissenting opinion to the Rabat Plan for supporting his argument that "incitement" requires at least a reasonable possibility that the statement could give rise to the prohibited discrimination, and that criminal prosecution should be a last resort (CERD/C/82/3, footnotes 4 and 11). He also quoted the related OHCHR report, reiterating that "[t]he right to freedom of expression implies that it should be possible to scrutinize, openly debate and criticize belief systems, opinions and institutions, including religious ones" (OHCHR 2013, 11).

From a normative perspective, the most significant references to the Rabat Plan of Action have been within two authoritative interpretations of human rights treaty provisions by the relevant committees. An early reference to the Rabat Plan of Action was adopted by the Committee on the Elimination of Racial Discrimination already in 2013, in its General Recommendation No. 35 on combating racist hate speech (CERD/C/GC/35, 15–16, 29 and 35). Here, the Committee commented that "States parties should take into account, as important elements in the incitement offences" elements which are part of the six-part threshold test (ibid., footnote 18).

More recently, the Human Rights Committee adopted in 2020 its General Comment No. 37 on the right of peaceful assembly. The Committee referenced the Rabat Plan of Action in setting out the circumstances when an "assembly may be deemed violent" – namely, if "authorities can present credible evidence that, before or during the event, those participants are inciting others to use violence, and such actions are likely to cause violence; that the participants have violent intentions and plan to act on them; or that violence on their part is imminent" (CCPR/C/GC/37, 19, footnote 19). This demonstrates the adaptability and applicability of the approach of the Rabat Plan to Action, and particularly its six-part threshold test, to the interpretation of human rights standards concerning incitement to violence more widely. General Comment No. 37 also footnotes the Rabat Plan of Action – as well as the Beirut Declaration on "Faith for Rights" – in stating that "[p]articipation in assemblies whose dominant message falls within the scope of article 20 must be addressed in conformity with the requirements for restrictions set out in articles 19 and 21" (ibid., 50, footnote 60).

The consideration of reports submitted by States parties can also be an entry point for discussing the Rabat threshold test. In 2016, the delegation of Kazakhstan acknowledged that the legal definition of extremism under its national law had been criticized

as overbroad and that "the authorities were working to improve it, also taking account of the Rabat Plan of Action" (CCPR/C/SR.3271, 64). Yet the Human Rights Committee "remains concerned about the broad formulation of the concepts of 'extremism', 'inciting social or class hatred' and 'religious hatred or enmity' in article 174 of the Criminal Code, and the use of said provision, along with the Law on Countering Extremism to unduly restrict freedoms of religion, expression, assembly and association" (CCPR/C/KAZ/CO/3, 17).

Furthermore, when interacting with the delegation of Ethiopia in 2022, a Human Rights Committee member asked for "additional information on the Media Proclamation, as the Committee had received reports that the provisions of the new law were vague and not in keeping with international best practice, as outlined in the Rabat Plan of Action" (CCPR/C/SR.3930, 48). In its concluding observations to Ethiopia, the Human Rights Committee referred to ensuring freedom of expression and the right of peaceful assembly, in accordance with its general comments No. 34 and No. 37 (CCPR/C/ETH/CO/2, 40 and 42).

The Rabat Plan has also been raised by senior officials in several United Nations reports and public statements. For example, the Secretary-General called on States and other stakeholders to "advance their understanding and application of the Rabat Plan of Action and its threshold test for clarifying the scope of speech that contravenes human rights law" (A/78/241, 54). After the Rabat Plan's adoption in 2012 under the leadership of then High Commissioner Navi Pillay, her successors in the position of High Commissioner for Human Rights have continued to champion the action plan. In his opening statement at the Rabat+5 Symposium in 2017, then High Commissioner Zeid recognized that the Rabat Plan "was an audacious start in articulating the human rights responsibilities of a number of actors" and was already leaving an "impressive" mark (OHCHR 2025, 108). In August 2019, then High Commissioner Michelle Bachelet addressed the Security

Council in an Arria-formula meeting on advancing the safety and security of persons belonging to religious minorities in armed conflicts, reiterating that the Rabat Plan emphasized the role of politicians and religious leaders in preventing and speaking out against intolerance, discriminatory stereotyping and instances of hate speech (A/HRC/43/28, 35).

In another Arria-formula meeting, the Executive Director of the non-profit organization Access Now stressed that "[a]ny restriction on social media must reflect the U.N. Strategy and Plan of Action on Hate Speech and the excellent Rabat Plan of Action" (Solomon 2021). At a panel discussion of the Human Rights Council in 2024, High Commissioner Volker Türk stressed that the Rabat Plan "provided detailed guidance regarding the distinction between speech or actions that incited discrimination, hostility or violence, and those that might be critical or even contemptuous but did not incite discrimination, hostility or violence" (A/HRC/56/39, 9).

The *Detailed Guidance on Implementation for United Nations Field Presences* also relies extensively on the Rabat threshold test, notably for assessing the severity of hate speech (United Nations 2020, 13–18). On the OHCHR website, the Rabat test is currently available in open access in 34 translations (OHCHR 2020).

The Special Rapporteur on freedom of opinion and expression highlighted in a communication to Meta that it "has a responsibility to ensure that its content policies and content moderation approaches comply with international human rights standards, including the international standards for restricting content, the requirement to prohibit content that is likely to incite violence, hostility or discrimination on certain protection grounds, and the guidance on hate speech provided by the Rabat Plan of Action" (Special Procedures 2025).

## 4. Issues of interpretation

### 4.1 Online hate speech

The accelerated spread of bigotry as well as racial and religious intolerance in the digital space has been described as "new vectors of venom" and a "tsunami of hatred" (Guterres 2019). In an open letter to the Chief Executive Officer at Twitter (rebranded as X since 2023), the United Nations High Commissioner for Human Rights also flagged that "hate speech has spread like wildfire on social media platforms in countries with starkly different cultural, political and religious contexts – with horrific, life-threatening consequences for thousands of people" (Türk 2022).

For example, twenty UN special procedures raised in 2022 with Google the harmful impact of racist hate speech, including misogynistic hate speech, incitement to hatred and racism targeting people of African descent and spreading on social media such as Google. In their joint letter, they noted that the Rabat Plan of Action "represents a useful guidance in distinguishing between permissible speech and speech that may amount to incitement" (Special Procedures 2022, 11).

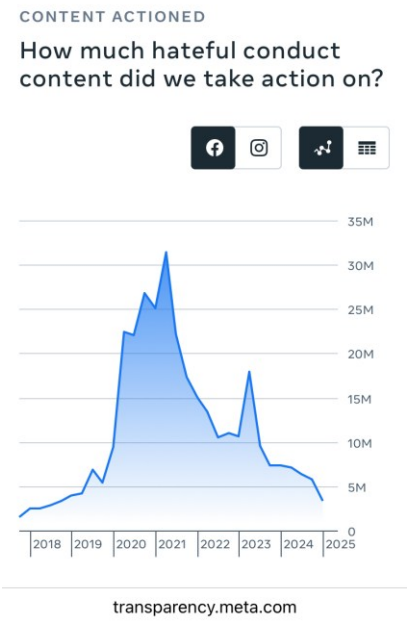
On 18 April 2024, eight UN special procedures mandate-holders sent separate communications to Google, Meta, Telegram and X Corp., urging them to adopt the model definition of hate speech and incitement, in line with Articles 19 (3) and 20 of the International Covenant on Civil and Political Rights and the standards spelled out in the Rabat Plan of Action, when addressing advocacy of national, racial or religious hatred that may constitute incitement to discrimination, hostility or violence. In the annex of their joint communication, the UN independent experts also stressed that businesses should adopt content policies based on international human rights law and enforcing the rules in line with international human rights standards, including relevant UN treaties, guidance from treaty bodies and special procedures mandate holders and the Rabat Plan of Action (Special Procedures 2024).

While Telegram and X Corp. did not respond to this communication by UN special procedures, Google noted that "hate speech such as content targeting any religious or ethnic communities is not allowed on our products that host user-generated content", with YouTube having removed as of 30 April 2024 more than 110,000 videos, terminated more than 5,000 channels, and removed more than 160 million comments following the attack in Israel on 7 October 2023 and during the ensuing conflict in Gaza (Google 2024).

Furthermore, Meta replied that its "policies are designed to address content that may amount to incitement to violence, hatred, or genocide. We have adapted the principles of the Rabat Plan of Action into actionable content policy tools, including escalation-based frameworks to evaluate speech attacking concepts (as opposed to people) and content involving state threats to use force" (Meta 2024).

For example, the quarterly transparency reports of Meta show that it had taken action, i.e. by removing posts and comments on Facebook, covering photos or videos with a warning or disabling accounts, of 31.5 million pieces of content from 1 April to 30 June 2021 for violating its policies on hate speech (Meta 2025). 31.5 million pieces within three months equates to statistically taking action on hate speech content on Facebook more than four times per second. This peak number includes both content that Meta actioned after someone reported it (2.4 %) and content found proactively by Meta (97.6 %). Obviously, this is technically only feasible by relying on automated systems to detect any policy violations, notably through the use of machine learning classifiers to identify potentially harmful content and automatically action it. But the technology is not yet capable of identifying nuanced elements in certain contexts of speech (Hatano 2023, 149) and artificial intelligence is arguably not intelligent enough to fully assess the six-part threshold test of the Rabat Plan of Action on a case-by-case basis. Furthermore, Meta's Chief Global Affairs

Officer announced policy and enforcement changes in January 2025, outlining that the company would "continue to focus these systems on tackling illegal and high-severity violations, like terrorism, child sexual exploitation, drugs, fraud and scams", while for less severe policy violations Meta would "rely on someone reporting an issue before we take any action" (Kaplan 2025). Comparing the numbers of the last quarter of 2024 with the first quarter of 2025, this resulted in a drop of more than 40% of pieces actioned by Meta for "hateful conduct", which has replaced since 7 January 2025 its previous content moderation policy on "hate speech".




## 4.2 Oversight Board decisions

Meta's Oversight Board was established in 2020 as an independent organization comprising global experts to hold Meta accountable to its community standards for Facebook, Instagram and Threads, as well as to its human rights commitments. Pursuant to the Oversight Board Charter, it has binding authority to uphold or overturn Meta's content moderation decisions, while the Board may also issue non-binding recommendations that Meta is required to respond to. The Board has published more than a dozen decisions that explicitly refer to the Rabat Plan of Action and apply its threshold test to online content moderation. Several of these decisions also have a direct link to incitement to religious hatred and violence as well as blasphemy accusations.

In its 2023 decision *Communal Violence in Indian State of Odisha*, the Board analyzed Meta's human rights responsibilities based on international standards, including the Rabat Plan of Action and the 2019 report by the Special Rapporteur on freedom of religion or belief, to which the Beirut Declaration and its 18 Commitments on "Faith for Rights" were annexed (A/HRC/40/58). When analyzing the risks posed by violent content, the Board highlighted that stone pelting during religious processions was reported to have a widespread and organized nature that had been observed to trigger Hindu-Muslim violence (Oversight Board 2023a).

In the decision *Iran Protest Slogan*, the Board applied the Rabat threshold test to a Facebook post containing a caricature and it found the content to be unambiguously political and non-violent in its intent, directly criticizing a government and its leaders of serious human rights violations and drawing attention to the abuse of religion to justify discrimination. In the Board's view, this content posed very little risk of inciting violence, and thus its removal and the additional penalties of account restrictions were held neither necessary nor proportionate (Oversight Board 2023b).

However, in its 2024 decision *Pakistan Political Candidate Accused of Blasphemy*, the Board examined the six Rabat factors and found it was necessary and proportionate to remove the post in question. It held that there was "a likelihood of imminent harm given the context around blasphemy allegations in Pakistan, where such accusations pose a serious risk of physical harm and even death" (Oversight Board 2024). The connection between advocating hatred and the harms it causes – whether framed as a causal link or one based on likelihood – is not necessarily direct or immediate. Instead, it is cumulative, unfolding over time, and filtered through the mental and emotional experiences of those affected. Proving that an act of hate advocacy was truly "inciting" violence or discrimination is inherently complex. This is because establishing and measuring incitement with precision or empirical evidence is fraught with difficulties. These challenges, in turn, create

significant obstacles for both interpreting and enforcing the norm that bans incitement (Elbahtimy 2021, 180). In this 2024 decision, the Oversight Board also quoted the Rabat Plan of Action and United Nations Human Rights Committee General Comment No. 34, recommending that blasphemy laws should be repealed, as they often cultivate religious intolerance and lead to persecution of religious minorities and dissent.

In 2025, the Board reviewed three different Facebook posts and held in its decision *Posts Supporting UK Riots* that the removal of these posts was necessary and proportionate considering the six-part Rabat threshold test. The context of ongoing riots in the United Kingdom had been marked by escalating violence seeking to target specific groups; the content of the posts would be clearly understood as encouraging people to join the riots, either directly, or by deploying dehumanizing and hateful language towards Muslims and immigrants; the posts of even non-influential figures encouraging specific acts of violence had the potential to go viral; and the likelihood of a single hateful post inciting additional unrest and violence was considered significant (Oversight Board 2024). It was also concerned about Meta being too slow to deploy crisis measures, noting that this should have happened promptly to interrupt the amplification of harmful content.

The Oversight Board is a unique experiment in the adjudication of online content moderation decisions. While the Oversight Board demonstrates an exceptional level of substantive engagement with the Rabat Plan of Action, and its considerations are important for the users of Meta's platforms and can help to shape approaches to online content moderation by other platforms and actors more generally, it is important to keep in mind that it is a "flawed interpreter" of international human rights norms because it lacks democratic, judicial and socio-cultural legitimacy, as Andreas Kulick effectively argues (Kulick 2023, 167).

Nonetheless, the decisions of the Oversight Board discussed above illustrate how content moderation policies and their enforcement should be consistently guided by the six factors of the Rabat Plan of Action in order to address the "real" incitement cases that indeed cross the threshold test, while fully protecting minority rights and freedom of expression for the other cases (Rabat Plan 2012, 11). As highlighted by the UN High Commissioner for Human Rights, the use of the Rabat threshold test in more than a dozen decisions by the Oversight Board "may have a significant impact for online content moderation affecting over 3 billion monthly active users of Facebook globally. However, more needs to be done to effectively address hate speech online, including by listening to those most affected by online hate speech and providing better channels for raising concerns and getting prompt action" (Türk 2024, 63).

### 4.3 Adapting the threshold test for online content moderation?

Already in 2019, the then Special Rapporteur on freedom of expression David Kaye suggested in his report to the United Nations General Assembly that the six factors of the Rabat Plan of Action "should have weight in the context of company actions against speech as well. They need not be applied in the same way as they would be applied in a criminal context. However, they offer a valuable framework for examining when the specifically defined content – the posts or the words or images that comprise the post – merits a restriction" (A/74/486, 49). In 2025, his successor Irene Khan highlighted that the ICCPR and Rabat Plan could resolve the "struggle to find an even keel between too much moderation, which stifles free speech, and too little moderation, which facilitates disinformation and hate speech" (A/80/341, 102). Special Rapporteur Irene Khan also stressed that adherence by digital platforms "to universal standards is not only 'right' but also 'wise', as it gives legitimacy, public acceptability and coherence to companies in their global business across borders" (ibid., 100).

Online content moderation is not only a binary question of keeping or deleting a specific post, but the options for social media companies include a scale of measures such as restricting content only to users above a certain age, blurring, labeling, not recommending, demoting, removing, blacklisting content, or deleting the user's account and reporting to law enforcement. The international law obligations of States when imposing criminal sanctions are different from the human rights responsibilities of businesses, including to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services (UN Guiding Principles 2011, 13(b)). In one case decided in 2022, *Knin Cartoon*, the Oversight Board thus focused only on four factors of the Rabat threshold test (context, intent, content and extent), thereby de-emphasizing for online content moderation purposes the importance of the speaker's status and the likelihood of imminent harm, arguing that "Meta can legitimately remove posts from Facebook that encourage violence in a less immediate way" (Oversight Board 2022). However, in previous and subsequent decisions, it analyzed again each of the six factors from the Rabat Plan of Action to support the removal of posts (Salama/Wiener 2023b, 97).

In order to avoid opening a Pandora's box, it does not seem advisable to completely rewrite the six-part threshold test for online content moderation purposes, but instead it is possible to take into account the specificities of the digital age when applying the existing six factors on a case-by-case basis. For example, the virality of a specific post may be high even though the societal status of the content creator would traditionally not be considered as elevated. After all, a social media influencer does not need to be a political or religious leader in order to have a considerable number of followers online. The Rabat threshold test is already geared towards considering the individual's "standing in the context of the audience to whom the speech is directed" (Rabat Plan 2012, 29(b)), which can easily be applied to the digital space.

Similarly, the likelihood of imminent harm may be affirmed when equality rights and freedom of expression of other online users are jeopardized through the post in question. The Rabat Plan stresses that "[t]he action advocated through incitement speech does not have to be committed for said speech to amount to a crime. Nevertheless, some degree of risk of harm must be identified" (ibid., 29(f)). This was also alluded to by the Oversight Board in its decision *Knin Cartoon*: "In this case, depicting the Serbs as rats and calling for their exclusion while referencing historical acts of violence, impacts the rights to equality and non-discrimination of those targeted. This justifies removing the post. Many Board Members also believed that the content had a negative impact of [sic] the freedom of expression of others on the platform, as it contributed to an environment where some users would feel threatened" (Oversight Board 2022).

In more general terms, in order to implement the norm prohibiting incitement to hatred, a highly nuanced balance must be achieved between two sets of interests: the equality and liberty rights of speakers, and those of members of targeted groups. The interplay between the twin values of liberty and equality within this norm is multi-layered and intricate. By its nature, the norm operates by imposing limits on speakers' freedom of expression. Yet liberty is not advanced solely by safeguarding a broader array of expressive acts: for members of targeted groups, liberty itself can be compromised if they are not shielded from the harms of hate speech. This is because unaddressed hate speech often suppresses their ability to participate or speak out. The primary underlying purpose of the norm prohibiting incitement to hatred is to advance the equality of members of these targeted groups. That said, equality as a value can also be threatened when speakers' freedom of expression is unduly restricted. For these reasons, interpreting and applying the norm should not be simplified to resolving perceived tensions – or even outright conflicts – between equality and liberty, nor should it involve prioritizing one value above the other (Elbahtimy 2021, 180).

Consistent application of the threshold test and principles embodied in the Rabat Plan of Action would provide guidance to social media companies for online content moderation policies and to national lawmakers as they craft legislative provisions for relevant incitement offenses. Additionally, it would introduce much-needed structure, consistency, and rigour to the methods that courts use when delivering rulings in cases involving incitement to hatred. More detailed clarification of the procedural elements involved in legally interpreting the norm providing protection against incitement to hatred serves to uphold and safeguard its core universal normative content. This stands in contrast to simply allowing the norm to splinter into disjointed approaches at the national levels – approaches that are rooted in specific historical contexts, shaped by cultural factors, influenced by political considerations, and tailored to individual countries.

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# CHAPTER XIV.

# BEIRUT DECLARATION AND ITS 18 COMMITMENTS ON FAITH FOR RIGHTS (2017)

**Diane Alai[1], John Graz[2] and Michael Wiener[3]**

**Abstract:** The Beirut Declaration and its 18 Commitments on "Faith for Rights" were conceived and adopted in 2017 by theistic, non-theistic, atheistic and other believers as well as United Nations

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[1] **Diane Alai** was Representative of the Baha'i International Community to the United Nations in Geneva from 1992 to 2023. She is also a member of the Council of Experts of the International Religious Freedom or Belief Alliance. For many years she chaired the NGO Committee on Freedom of Religion or Belief in Geneva of the Conference of Non-governmental Organizations in Consultative Relationship with the United Nations. She holds a Master's degree from *Institut libre des relations internationales et des sciences politiques* as well as a postgraduate degree in international relations from *Centre international de formation européenne*.

[2] **Dr. John Graz** obtained his Licentiate in Theology at the Adventist Faculty of Theology in 1971, then his Licentiate and Master's Degree in History at the Paul Valery University of Montpellier, and in 1986 his Doctorate at the Sorbonne University/Paris IV. He exercised pastoral ministry to students in Montpellier and then in Pau. Between 1995 and 2015 he was elected Director of the Department of Public Affairs and Religious Freedom at the World Headquarters of the Adventist Churches and Secretary General of the International Religious Liberty Association. From 2003 to 2014, he was also secretary general of the Conference of Secretaries of the Christian World Communions.

[3] **Dr. Michael Wiener** has been working since 2006 at the Office of the United Nations High Commissioner for Human Rights. He has been a Visiting Fellow of Kellogg College at the University of Oxford since 2011. During his 2022 UN sabbatical leave, he was also a Senior Fellow in Residence at the Geneva Graduate Institute of International and Development Studies. He holds a Master of Laws from the University of London, and his doctoral thesis at the University of Trier focused on the mandate of the UN Special Rapporteur on freedom of religion or belief. The views expressed in this chapter are those of the co-authors and do not necessarily reflect the views of the United Nations.

independent experts. While the 18 Commitments were not adopted by States as legally binding hard law norms, they have been considered as potentially behavior-affecting soft law standards, in view of related references in over 100 United Nations reports by treaty bodies, special procedures, the Secretary-General, the High Commissioner for Human Rights, States, non-governmental and faith-based organizations, or regional mechanisms. The "Faith for Rights" framework emphasizes the primordial role played by human interpretations of religious texts in line with international human rights law. Since 2020, the #Faith4Rights Toolkit has proposed methods of action, providing a practical resource for those who wish to lead, facilitate or engage in peer-to-peer learning. The suggested interactive exercises are designed to foster experiential learning and sharing among the participants. Furthermore, the Toolkit's annex includes more than a dozen hypothetical scenarios, including short cases to debate and more detailed moot court cases to deepen reflection and critical engagement. The "Faith for Rights" framework sends a powerful message of solidarity to those who suffer persecution, and it also facilitates jointly defending freedom of thought, conscience, religion or belief, as a cornerstone of universal human rights.

**Keywords:** Faith-based actors; religious leaders; human rights responsibilities; peer-learning; #Faith4Rights Toolkit.

## 1. Introduction

The issue of religion has always been a sensitive and somehow controversial point at the United Nations, particularly in the human rights context. The idea that religions as such are not a subject protected by international human rights law, but rather that "everyone has the right to freedom of thought, conscience and religion", as proclaimed in Article 18 of the Universal Declaration of Human Rights (UDHR), has faced some challenges and resulted in many intergovernmental consultations.

The divisive debate around the "defamation of religions" resolutions that was held at the United Nations between 1999 and 2010 (Schwab 2021) ultimately resulted in the consensual adoption of Human Rights Council resolution 16/18 in 2011, which clearly has "persons" as the subjects of this intergovernmental text (A/HRC/RES/16/18). As also referred to in previous chapters, the Rabat Plan of Action and the Istanbul Process for Combating Intolerance, Discrimination and Incitement to Hatred and/or Violence on the Basis of Religion or Belief have confirmed and furthered this understanding.

The Geneva NGO Committee on Freedom of Religion or Belief of the Conference of Non-governmental Organizations in Consultative Relationship with the United Nations, as well as its counterpart in New York, have also offered spaces where representatives of faith-based organizations, as well as secular organizations defending freedom of religion or belief, had the opportunity to collaborate in ensuring the correct understanding of Article 18 of the UDHR and of the International Covenant on Civil and Political Rights.

Yet some, including religious leaders, have been expressing the idea that the Universal Declaration of Human Rights was a Western creation and thus, that it did not take into account the religious values of the East and atheistic beliefs. This insinuation made a certain segment of the world's peoples doubtful about universal human rights and their value in applying them to their lives and their interactions with others. However, the members of the UDHR Drafting Committee came from Australia, Chile, China, France, Lebanon, United Kingdom, United States of America, and the Union of Soviet Socialist Republics. Diverse opinions and beliefs were also injected in 1948 during a total of 81 meetings of the General Assembly's Third Committee, which debated 168 formal draft resolutions to amend provisions during the *travaux préparatoires*. The plenary of the General Assembly again discussed proposed amendments and on 10 December 1948 ultimately

adopted the UDHR, with 48 United Nations Member States in favour and 8 abstaining, but none voting against (see above chapter II).

Almost seven decades later, the initiative of the Office of the High Commissioner for Human Rights (OHCHR) to gather theistic, non-theistic, atheistic and other believers as well as United Nations independent experts in order to observe the concept of human rights from a completely different angle was extraordinarily innovative. It did not start from the premise of the UDHR or international human rights law, but rather from religious, spiritual and philosophical texts, allowing for at least one of them to speak to nearly anyone on the face of the earth. Instead of elaborating fairly legalistic and often abstract concepts, this process tapped into the core belief of the individual. The experts gathered in Beirut in 2017 were able to collaborate with one another in order to distill from the holy scriptures and other texts from their faiths and traditions the numerous commonalities that were contained in all of them, and see how they ultimately aligned with most human rights principles. Of course, it would be naïve to imagine that all agreed on the various faiths and traditions present on an equal footage, as participants came from various Christian, Jewish and Muslim denominations and also included Baha'is and Humanists. There was, however, a common commitment that allowed everyone to collaborate and add to the thinking and joint drafting, rather than watering down the text.

While it was not possible to have all traditions present at the expert workshop in Beirut, nor do all the different articles contain reference to each religious text – although many could have been added – yet the Beirut Declaration and its 18 Commitments have been used widely in the international context. Furthermore, the #Faith4Rights Toolkit and its peer-to-peer learning workshops share universal concepts at the grassroots, which in turn inject additional ideas and good practices back into the global debate, thus serving as a genuine two-way street (Faith for Rights 2025c).

## 2. Religious influences during the travaux préparatoires

With a view to addressing incitement to national, racial or religious hatred as well as upholding the dignity and equal rights of all human beings, OHCHR had organized between 2008 and 2017 more than a dozen meetings, expert seminars and regional workshops, including in Geneva, Vienna, Nairobi, Bangkok, Santiago de Chile, Rabat, Amman, Manama, Tunis, Nicosia and Beirut. The Beirut workshop in March 2017 closely resembled the expert meetings on freedom of religion or belief that the International Religious Liberty Association (IRLA) has organized for many years – often in collaboration with United Nations representatives, religious leaders from various faiths, and government officials. The task of shaping and articulating the 18 Commitments on "Faith for Rights" in the Beirut Declaration aligned perfectly with the joint values, as they are all directly related to promoting and defending Article 18 of the Universal Declaration of Human Rights.

The structure of the program in Beirut – particularly the use of small working groups – greatly facilitated interaction and the building of strong relationships. The working groups were assigned with drafting the (preambular) Beirut Declaration and the (operative) 18 Commitments, as well as exploring options for civil society follow-up. Each working group had a moderator and rapporteur, who included two Treaty Body members, a UN Special Rapporteur, an academic and a faith-based civil society leader – with perfect gender balance, as also the expert workshop had 50% women and 50% men participating. It also included theistic, non-theistic, atheistic or other believers (OHCHR 2025, 9), as all of them are equally protected under freedom of thought, conscience, religion or belief.

The whole work had been well-prepared, and each participant significantly contributed to improving and finetuning the outcome document. After some discussion in Beirut about pros and cons,

the participants decided to include "illustrative and non-exhaustive" quotes from their own religious or belief texts to support the 18 Commitments on "Faith for Rights". These quotes refer for example to Abdu'l-Bahá, Ancient Egyptian Middle Kingdom, A.J. Ayer, Bahá'u'lláh, Buddha, Confucius, Golden Rule, Guru Granth Sahib, Hadith, Imam ʿAlī ibn Abī Ṭālib, Jalāl al-Dīn Muḥammad Rūmī, Mahābhārata, New Testament, Qur'an, Rigveda, Sitting Bull, Shantideva, Talmud and Torah. In a similar vein, they also quoted from joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and General Comment No. 18 of the Committee on the Rights of the Child on harmful practices. This resulted in the first UN document (A/HRC/40/58, annexes I and II) which systematically juxtaposes human rights commitments with religious or belief texts.

At the end of the "Faith for Rights" report and outlook (OHCHR 2025, 126–127), a list of more than 140 supporters of the Beirut Declaration is included, in alphabetical order by the supporters' first names and without indicating any theological or academic titles and religious affiliations. After all, everyone can only individually pledge to implement the "Faith for Rights" commitments or to abstain from specific actions that go against international human rights. It reaffirms the importance of fundamental freedoms in the context of human rights and faith, highlighting the key role that faith-based actors can and should play in promoting these freedoms.

Thanks to volunteers from faith-based organizations and Indigenous Peoples as well as translation services from the United Nations, the Beirut Declaration and its 18 Commitments are available online in so far nineteen different languages, including Albanian, Arabic, Bulgarian, Chinese, English, Farsi, French, German, Greek, Hindi, Kurdish, Portuguese, Quechua, Russian, Serbian, Spanish, Turkish, Ukrainian and Urdu. These freely accessible translations show respect for linguistic diversity and facilitate peer-to-peer learning in languages used by religious or belief minorities and Indigenous Peoples (Faith for Rights 2024a, 10).

### 3. Faith-related jurisprudence

Already in his 2018 report to the General Assembly, the Special Rapporteur on freedom of religion or belief Ahmed Shaheed highlighted the complementarity and practical usefulness of the Rabat Plan of Action (see above chapter XIII) and the Beirut Declaration and its 18 Commitments as "soft law standards" (A/73/362, 62–63). While they were not adopted by States as legally binding hard law norms and remain "primarily aspirational" (Benyahia 2025, 112), these two instruments "could arguably be considered as – potentially – behavior-affecting soft law or at least as 'softish law' in the making" (Bielefeldt/Wiener 2020, 179). If such instruments are widely accepted, they "tend to legitimize conduct, and make the legality of opposing positions harder to sustain", and they may also "acquire binding legal character as elements of a treaty-based regulatory regime" (Boyle 2018, 123). In view of the direct involvement of and follow-up by United Nations human rights treaty bodies and special procedures mandate-holders, this seems applicable to the Beirut Declaration and its 18 Commitments, as their "authoritative content and persuasive nature derive from the fact that the 'Faith for Rights' framework has been jointly conceived and unanimously adopted by members of UN human rights mechanisms, faith-based actors, academics and civil society organizations" (Salama/Wiener 2022, 41). Furthermore, several States have also referred to the Beirut Declaration and 18 Commitments, notably by arguing that its national legislation was in conformity with these international standards (responding to a communication by UN Special Rapporteurs) or by recommending their implementation as essential tools for tackling religious intolerance in a human rights-compliant manner (see below examples from the intergovernmental debates at the General Assembly and Human Rights Council).

As of December 2025, the "Faith for Rights" framework has been referred to in over 100 United Nations reports, which translates

statistically to more than one pertinent report per month since the adoption of the Beirut Declaration in March 2017. These UN reports (OHCHR 2025, 51–106) were submitted either by treaty bodies, special procedures, the Secretary-General, the High Commissioner for Human Rights, States, non-governmental and faith-based organizations, or regional mechanisms, as outlined below.

### 3.1. Treaty bodies

In addition to adopting concluding observations on the reports by States Parties and considering individual complaints, UN treaty bodies may also publish general comments/recommendations, which serve as authoritative guides on the interpretation of the particular human rights treaty that they are monitoring. The UN Human Rights Committee in its General Comment No. 37 (CCPR/C/GC/37, 50) footnotes the Rabat Plan of Action and the Beirut Declaration on "Faith for Rights" in order to provide guidance that participation in assemblies whose dominant message falls within the scope of Article 20 of the International Covenant on Civil and Political Rights (on advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence) must be addressed in conformity with the requirements for restrictions set out in Article 19 (on freedom of expression) and Article 21 (on the right of peaceful assembly). Human Rights Committee member Christof Heyns, who acted as rapporteur for drafting this general comment, explained the addition of this footnote reference by noting that the Rabat Plan of Action and Beirut Declaration "contained widely accepted observations on how article 20 should be interpreted" (CCPR/C/SR.3646, 30).

Furthermore, the Committee on the Elimination of Discrimination against Women (CEDAW, see above chapter VI) quoted "Faith for Rights" in its General Recommendation No. 40 on the equal and inclusive representation of women in decision-making

systems. The Committee noted that "some misinterpretations of religion and culture can shape gender stereotypes" (CEDAW/C/GC/40, 30) and it recommended States Parties to "[e]ngage religious leaders and faith-based actors in the process of addressing areas of possible tensions between some interpretations of religious traditions and human rights, such as through the Faith for Rights framework of [OHCHR]" (CEDAW/C/GC/40, 31).

In addition, the Committee on the Elimination of Discrimination against Women referred to "Faith for Rights" in its consideration of reports by States Parties or in its concluding observations on Afghanistan, Botswana, Costa Rica, Fiji, The Gambia Niger, Nigeria, Saint Kitts and Nevis, Samoa and Thailand (CEDAW 2025). For example, the Committee recommended that Nigeria expedite repealing or amending "all discriminatory laws identified by the Nigerian Law Reform Commission following its comprehensive audit of discriminatory laws in the State party and include religious leaders in the process of addressing issues of faith and human rights, so as to build on several 'faith for rights' initiatives and identify common ground among all religions in the State party, as acknowledged by the delegation" (CEDAW/C/NGA/CO/7-8, 12). The Minister of Women Affairs and Social Development, Senator Aisha Jummai Alhassan, stated that the Government of Nigeria "hoped to draw inspiration from the Rabat Plan of Action, the Beirut Declaration and the Lebanese approach as it set about intensifying its advocacy efforts" (CEDAW/C/SR.1518, 19).

With regard to The Gambia, the Committee encouraged religious and common law courts, law enforcement officers and imams "to ensure that Muslim women and girls enjoy equal rights in all aspects of family life, including in marriage, divorce, inheritance, marital property, adoption, burial and devolution of property on death, including through the Faith for Rights initiative" (CEDAW/C/GMB/CO/6, 10). The Committee also recommended Thailand to "strengthen measures to eliminate

child, forced and polygamous marriage, including through adequate penalties and by entering into a dialogue on faith and rights under the Faith for Rights framework with the Central Islamic Council of Thailand and religious and customary leaders" (CEDAW/C/THA/CO/8, 50). Lastly, the Committee urged international partners of Afghanistan "to provide technical assistance for constitutional and legal reform processes, support the documentation of violations of international humanitarian law and human rights law, and facilitate dialogue between the de facto authorities and constitutional law experts, Islamic scholars and women's rights advocates in order to develop frameworks that reconcile religious principles and international human rights obligations, including through the application of the Faith for Rights framework" (CEDAW/C/AFG/CO/4, 10).

### 3.2. Special Procedures

Several Special Rapporteurs have also used the "Faith for Rights" framework in their communications with States, country reports on their missions as well as thematic reports to the General Assembly and Human Rights Council.

In two allegation letters sent to Algeria in 2021, the Special Procedures mandate-holders quoted Commitment XI, which urges States that still have anti-blasphemy or anti-apostasy laws to repeal them, since such laws have a stifling impact on the enjoyment of freedom of thought, conscience, religion or belief as well as on healthy dialogue and debate about religious issues (DZA 7/2021). The second allegation letter also referred to Commitment VI on the right of persons belonging to minorities to participate equally and effectively in cultural, religious, social, economic and public life, as recognized by international human rights law (DZA 10/2021). In its responses of 22 September 2021 and 20 January 2022, the Government of Algeria noted that the European Court of Human Rights found in the case of *E.S. v. Austria* (38450/12) that the domestic courts had carefully balanced the applicant's right

to freedom of expression with the rights of others to have their religious feelings protected and to have religious peace preserved in Austrian society. Thus the Government of Algeria concluded that the anti-blasphemy provision in Article 144 bis 2 of the Algerian Penal Code was neither in opposition to the Rabat Plan of Action nor to the 18 Commitments on "Faith for Rights" (MPAG/839/21). However, in its concluding observations on the fourth periodic report of Algeria, the UN Human Rights Committee had reiterated its concerns about this article and called for releasing from prison all persons whose conviction had stemmed from having exercised their right to freedom of expression (CCPR/C/DZA/CO/4, 43–44).

In November 2021, three Special Rapporteurs sent a communication to the Taliban as the new *de facto* authorities in Afghanistan, quoting Commitment VI in the references to international human rights and humanitarian law (annex I) as well as to relevant Islamic principles that converge with these obligations (annex II). The latter aimed at supplementing "the capacity of all stakeholders to engage in dialogue to consolidate the observance of the international human rights obligations of Afghanistan, in line with the 'Beirut Declaration and its 18 Commitments on Faith for Rights'" as well as the Vienna Declaration and Programme of Action (AFG 3/2021, 16). While the Taliban did not reply to this allegation letter by the three Special Rapporteurs, in a subsequent exchange regarding the attack on Kaaj Educational Center in Kabul which targeted mainly members of the Hazara minority (OTH 108/2022), the Taliban responded that "[a]ll Afghans have equal rights in this country, including all ethnic groups and religious minorities, indiscriminately. On the other hand, the prevention of religious ceremonies of the minorities is in contradiction with the teachings of the holy religion of Islam and the Afghan culture" (37317).

In a separate communication to Denmark, three Special Rapporteurs shared their observations and comments on the

amended Danish Penal Code, which since December 2023 prohibits in section 110(e) any improper treatment of writings with significant religious importance for a recognized religious community or an object that appears as such. With a view to ensuring that the legislation was in line with international human rights standards, they reiterated that the repeal of anti-blasphemy laws had been continuously called for by the Human Rights Committee, by Special Procedures and was also recommended by the Rabat Plan of Action and the 18 Commitments on "Faith for Rights" (DNK 1/2023). Yet the Danish Government responded that the purpose of the amendment was not primarily to protect religious minorities against hate speech, but rather to protect national security, as implied by the placement of the prohibition in the chapter of the Danish Penal Code concerning crimes against the security of the State, and noting the assessment by the Danish Security and Intelligence Service that "the terrorist threat has intensified within the already high level due, among other things, to the systematic insulting and denigrating burnings of the Quran" in Denmark (23/32542).

Furthermore, four Special Procedures mandate-holders sent an allegation letter in October 2024 concerning decisions by the French Government and French sports governing bodies aimed at prohibiting women and girls from wearing clothing ostensibly demonstrating a religious affiliation, including a *hijab*. The annex of the allegation letter (FRA 7/2024) quoted from a thematic report by the Special Rapporteur on freedom of religion or belief, who reiterated Commitment IV of the "Faith for Rights" framework, warning "against the use of the notion of 'State religion' to discriminate against any individual or group as well as against the use of 'doctrinal secularism', which risks reducing the space for religious or belief pluralism in practice" (A/HRC/37/49, 89). Special Rapporteur Ahmed Shaheed also echoed an academic commentary, stressing the importance of ensuring that States "will continually strive to create spaces of inclusiveness for all as an

active and ongoing endeavour" (Bielefeldt/Ghanea/Wiener 2016, 355–359).

In May 2025, seven Special Procedures mandate-holders sent a communication to Ukraine concerning the alleged targeting and discrimination against members of the Ukrainian Orthodox Church (UKR 1/2025). They also quoted a 2018 thematic report to the General Assembly (A/73/362, 79), in which the Special Rapporteur on freedom of religion or belief called upon States to disseminate and implement "the Rabat Plan of Action, the Beirut Declaration on Faith for Rights and the Fez Plan of Action, which provide a chart of specific commitments as well as a number of practical measures to address the related phenomena of incitement to religious hatred, discrimination and violence". They also stressed that no limitations based on "national security" are foreseen in Article 18 (3) of the International Covenant on Civil and Political Rights, quoting also the Human Rights Committee that "restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant" (CCPR/C/21/Rev.1/Add.4, 8). Yet in its response, the State Service of Ukraine for Ethnic Policy and Freedom of Conscience noted that "[w]hen a member of the clergy in their sermon justifies the killing of Ukrainians, calls for cooperation with the occupiers, or disseminates narratives of hostile propaganda — this is not the exercise of the right to freedom of religion, but an act that falls under legal responsibility" (371/017).

In the context of country visits, the Special Rapporteur on freedom of religion or belief referred to the "Faith for Rights" framework in his 2019 mission report on Tunisia (A/HRC/40/58/Add.1, 91), reiterating the above-mentioned recommendation from his 2018 thematic report to the General Assembly. Furthermore, in his 2020 mission report on Sri Lanka, he quoted Commitment IV and recommended "drawing on the action plan described in Human Rights Council resolution 16/18, and the Beirut Declaration on

Faith for Rights and its 18 commitments, in activities designed to promote interreligious dialogue and foster pluralism" (A/HRC/43/48/Add.2, 58 and 92). In addition, the 2023 report on the Maldives mission of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism particularly referred to the "Faith for Rights" commitments "on preventing the use of the notion of 'State religion' to discriminate against any individual or group; on revisiting religious interpretations that appear to perpetuate gender inequality and harmful stereotypes or even condone gender-based violence; on publicly denouncing all instances of advocacy of hatred that incites to violence, discrimination or hostility; on monitoring interpretations, determinations or other religious views that manifestly conflict with universal human rights norms and standards; on refraining from oppressing critical voices and urging States to repeal any existing anti-blasphemy or anti-apostasy laws; and on refining curriculums, teaching materials and textbooks" (A/HRC/52/39/Add.1, 24).

### 3.3. Secretary-General

Since 2017, the United Nations Secretary-General has quoted the "Faith for Rights" framework in his thematic reports, notably on effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; on combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief; and on promotion of a culture of peace and interreligious and intercultural dialogue, understanding and cooperation for peace. Additional references can be found in the Secretary-General's report on the United Nations Human Rights Training and Documentation Centre for South-West Asia and the Arab Region, outlining the 2018 Tunis workshop on the role of youth faith actors in promoting human rights in the Middle East and North Africa region, in which

participants "analysed the Beirut Declaration on Faith for Rights and its 18 commitments on Faith for Rights, and discussed their potential integration into capacity-building and education programmes to address religious radicalization of youth" (A/74/262, 20).

Furthermore, the Secretary-General's reports to the Security Council on the United Nations operation in Cyprus highlighted the translation by the Religious Track of the Cyprus Peace Process of the Beirut Declaration and its 18 Commitments into Greek and Turkish (S/2018/25, 27) as well as thematic seminars on human rights, religious awareness and gender issues (S/2020/23, 35). The Secretary-General's report on his mission of good offices in Cyprus also acknowledged the role of the Religious Track in upholding their commitment "to peacebuilding and reconciliation, responding to cases of vandalism and provocation at places of worship and issuing public statements counteracting displays of hate with calls for religious freedom, coexistence and peace" (S/2021/5, 16).

In 2024, the Secretary-General emphasized in a thematic report to the General Assembly that "several religious leaders who are part of the Faith for Rights 'commUNity of practices' have advocated for people of all faiths to have unimpeded access to their places of worship, and they have also condemned incitement to violence, discrimination or hostility in the name of religion. Exchanges of lessons learned and promising practices of interfaith harmony and mutual respect should continue to be promoted, including through the 'Faith for Rights' framework" (A/79/284, 65).

### 3.4. High Commissioner for Human Rights

The High Commissioner has referred to "Faith for Rights" in more than 40 thematic reports (OHCHR 2025, 77–94), for example on combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief; on the rights of persons

belonging to national or ethnic, religious and linguistic minorities; on the role and contribution of civil society organizations, academia, national human rights institutions and other relevant stakeholders in the prevention of human rights abuses; on international cooperation in the field of human rights; on youth and human rights; on conscientious objection to military service; on a world of sport free from intolerance; and on the panel discussion on countering religious hatred constituting incitement to discrimination, hostility or violence. In the above-mentioned panel discussion of the Human Rights Council in March 2024, the High Commissioner recommended effective initiatives to build societies in which expressions of hatred were considered socially unacceptable, and he noted that since 2017 the "Faith for Rights" framework has been engaging Governments, religious authorities and a wide range of civil society actors in peer exchanges about concrete efforts on the ground (A/HRC/56/39, 10). One of the panelists, Thiago Alves Pinto, stated that he had successfully used the peer-to-peer learning methodology of the #Faith4Rights Toolkit with religious and community leaders in several countries (A/HRC/56/39, 56). As a result of meetings co-organized in May 2024 in Paris and Cambridge, several academics and civil society actors from Australia, Brazil, Chile, Costa Rica, France, Lebanon, Maldives, Nigeria, Norway, Tunisia, the United Kingdom and the United States also created an inter-university "Faith for Rights" platform (A/HRC/58/34, 63).

In country-specific reports, the High Commissioner noted for example in his 2018 update on the situation of human rights of Rohingya people that the 18 Commitments on "Faith for Rights" could be useful to address advocacy of hatred that incites to violence, discrimination or hostility, particularly when it is conducted in the name of religion or belief (A/HRC/38/CRP.2, 49). The High Commissioner's follow-up report in 2020 underscored the critical role of political and religious leaders in speaking out firmly and promptly against intolerance,

discriminatory stereotyping and instances of hate speech, noting that the "Faith for Rights" Commitments can provide a roadmap and that the #Faith4Rights Toolkit, which translates this vision into 18 practical modules of peer-to-peer learning for faith actors, academic institutions and training experts, is a useful resource (A/HRC/43/18, 39).

With regard to the human rights of migrants, OHCHR referred to the "Faith for Rights" framework in the *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations* (OHCHR 2018, 5) as follows:

> "The Beirut Declaration and its 18 commitments on 'Faith for Rights' (adopted by faith-based and civil society actors working in the field of human rights in March 2017) include the pledges to support and promote equal treatment in all areas and manifestations of religion or belief and to denounce all forms of discriminatory practices; as well as to refine the curriculums, teaching materials and textbooks wherever some religious interpretations, or the way they are presented, may give rise to the perception of condoning violence or discrimination."

### 3.5. States

In a letter addressed in September 2018 to the Secretary-General, the Permanent Representative of Austria to the United Nations shared the report from the international conference on the occasion of the 25th anniversary of the 1993 World Conference on Human Rights in Vienna. The recommendations included a "call upon religious leaders to implement the Faith for Rights Declaration and Plan of Action and the Rabat Plan of Action in regard to action against incitement to hatred" (A/73/399, annex, 64).

During the intergovernmental debate in New York of the General Assembly on promoting interreligious and intercultural dialogue

and tolerance in countering hate speech, the European Union noted in July 2023 that a delicate balance had been found since 2011, allowing a consensual approach through Human Rights Council resolution 16/18, "which, in turn, led to important achievements such as the Rabat Plan of Action, the Istanbul Process for Combating Intolerance, Discrimination and Incitement to Hatred and/or Violence on the Basis of Religion or Belief and the Beirut Declaration on Faith for Rights. All these documents share the premise that the threshold for unlawful incitement must be set high, based on an analysis of the context, and that limitations of freedom of expression must remain the exception" (A/77/PV.94, 18). In an explanation of vote on behalf of the Nordic countries (disassociating themselves from the reference to "in violation of international law" in the thirteenth preambular paragraph of the adopted General Assembly resolution A/RES/77/318), Denmark also referred to the Rabat, Istanbul and Beirut standards and a rich normative framework from which to draw when distinguishing "between acts that are offensive and morally reprehensible, yet legal, and acts that constitute incitement to discrimination, hostility or violence and are, therefore, unlawful" (A/77/PV.94, 23).

At the above-mentioned panel discussion of the Human Rights Council in March 2024, State representatives noted that experiences from the "Faith for Rights" initiative should continue to be exchanged and that the Rabat Plan of Action also provided a useful tool for guidance (A/HRC/56/39, 40). In April 2024, the European Union member States in Geneva also highlighted that they stood ready to revitalize the Istanbul Process and would continue to work on the basis of the Rabat Plan of Action, taking the Beirut Declaration into account, and they stated that the "international community should continue to foster and implement essential tools of that nature that could help States to tackle religious intolerance in a human rights-compliant manner" (A/HRC/55/SR.54, 42).

### 3.6. Non-governmental and faith-based organizations

The 18 Commitments on "Faith for Rights" have also been picked up by non-governmental and faith-based organizations. For example, the G20 Interfaith Forums in Argentina and Japan recommended reducing incitement to hatred by supporting religious leaders and faith-based actors in fulfilling their human rights responsibilities as summarized in the Beirut Declaration and its 18 Commitments (A/HRC/43/28, 49). Furthermore, the Global Partners Forum on Faith Action for Children on the Move called, in its action plan, for designing and implementing projects and initiatives aimed at promoting respect for and an understanding of minority groups, including those with different beliefs, faiths and religions, to reduce violence and xenophobic narratives and nurture peaceful societies.

Since 2017, the World Council of Churches has incorporated the "Faith for Rights" framework in its training sessions on engaging with the treaty bodies and other human rights mechanisms, which "has helped participants to better understand how to frame their concerns and recommendations into the language of international law" (Philpot-Nissen 2026, 514). Shortly before the seventy-fifth anniversary of the Universal Declaration of Human Rights, the Lutheran World Federation and the World Council of Churches also included in their joint morning prayer in the Ecumenical Centre in Geneva a faith response, affirming each of the 18 Commitments on "Faith for Rights" and recognizing that acts of discrimination are sometimes perpetrated in the name of religion.

In February 2022, the non-governmental organization Christian Solidarity Worldwide noted in its written statement to the Human Rights Council that "[s]trengthening inter-agency frameworks, the creation of mandates such as the Special Advisor on Genocide Prevention, the role of UN experts and National Human Rights Institutions and maximizing initiatives such as Pathways for Peace and Faith for Rights, are important. However, greater emphasis

must be made on protecting minority rights in conflict prevention. The development of such practices and institutional frameworks must also accommodate diversity and ensure a gender perspective; all must be given an equal voice" (A/HRC/49/NGO/190, 12).

In May and August 2022, Jubilee Campaign's written statements to the Human Rights Council recommended new language for future resolutions on a moratorium on the use of the death penalty, notably to encourage "States to adopt the guidance provided by the Beirut Declaration on Faith for Rights and its 18 commitments to mobilize faith-based actors to promote the human rights framework and combat violence towards individuals on the grounds of their choice or expression of religion or belief" (A/HRC/50/NGO/38; A/HRC/51/NGO/100). While such an explicit reference to the Beirut Declaration was not included in the related General Assembly resolutions as adopted in December 2022, they voice deep concern about acts that can amount to extrajudicial, summary or arbitrary executions committed against persons exercising their right to freedom of religion or belief (A/RES/77/218), and call upon States to ensure that the death penalty is not applied on the basis of discriminatory laws, including laws which target individuals for exercising their human rights (A/RES/77/222).

Furthermore, for the International Day of Peace 2025, a network of faith-based organizations mobilized communities to stand up for children in war. The concept note of this global campaign for consciousness, hope and ethical responses explicitly quoted commitment XIII, stressing that religious leaders have a crucial role in engaging with children against violence in the name of religion and in promoting their active participation in decision-making. The Resource Kit for this campaign (Arigatou International 2025) also featured the #Faith4Rights toolkit and a related article on implementing the "Faith for Rights" framework in armed conflict, with case studies from Afghanistan, Cyprus and the Democratic Republic of the Congo. The Joint Statement

"Stand Up for Children in War" (ibid.; see also above chapter VIII), which has been endorsed by more than 180 faith-based organizations, four United Nations agencies and the Committee on the Rights of the Child, highlights that:

> "Long before humanitarian and human rights law were codified, faith and moral values called us to be compassionate, to protect the vulnerable, restore relationships, uphold human dignity, and promote the right to life. […]
>
> We cannot be silent. Change is possible, rooted in the moral teachings of our faiths and the universal legal principles meant to secure justice and peace. We believe that international organizations, local communities, and children themselves can be agents of healing and transformation. We believe in the power of hope, solidarity, awareness, and consciousness – acknowledging both the call to raise awareness in society and the call to speak and act from our own conscience – as guides for collective responsibility and action. Together, we can prevent violence, raise awareness about its devastating impact, and foster spaces for dialogue and mutual understanding that can help change the course of history. For the sake of our children, we must act."

### 3.7. Regional mechanisms

At the level of the Council of Europe, the Committee of Ministers' recommendation on combating hate speech (CM/Rec(2022)16) builds on the threshold test of the Rabat Plan of Action, and the Council of Europe's explanatory memorandum comments that the "Faith for Rights" framework and toolkit is a useful tool with its peer-to-peer learning methodology. Similarly, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in its publication on "Belief, Dialogue and Security" showcased as good

practice the "Faith for Rights" framework and methodology for joint action across religions and beliefs (OSCE 2024a, 24–25). The 18 Commitments and #Faith4Rights Toolkit also feature in its practical guide on hate crime prosecution at the intersection of hate crime and criminalized "hate speech" (OSCE 2024b, 20 and 88).

Furthermore, the EU Gender Action Plan III calls on the European Union to support mobilization of religious actors for gender equality in line with the "Faith for Rights" framework, and it should maintain regular dialogue with a broad range of actors, including religious and faith-based organizations (JOIN(2020) 17 final). In 2021, the European Commission Directorate-General for International Partnerships and OHCHR held peer-to-peer learning events on using the #Faith4Rights Toolkit in the context of the EU Gender Action Plan III (A/HRC/49/86, 36).

Lastly, the Inter-American Commission on Human Rights in its study on freedom of religion or belief refers to the "Faith for Rights" framework and toolkit, notably with regard to Commitment IV on religious or belief pluralism and Commitment XIII on children and youth (IACHR 2023, 16, 44 and 72).

## 4. Issues of interpretation

### 4.1. Human interpretations

The primordial role played by human interpretations of religious texts in line with international human rights law has been emphasized throughout the "Faith for Rights" framework. For example, its Commitment II stresses that "interpretations of religion or belief should add to the level of protection of human dignity that human-made laws provide for" (OHCHR 2024, 20). Commitment III adds that since "religions are necessarily subject to human interpretations, we commit to promote constructive engagement on the understanding of religious texts. Consequently, critical thinking and debate on religious matters should not only be tolerated but rather encouraged as a requirement for enlightened

religious interpretations in a globalized world composed of increasingly multi-cultural and multi-religious societies that are constantly facing evolving challenges" (OHCHR 2024, 23).

The "Faith for Rights" framework serves as a powerful reminder to religious leaders of the responsibility they bear – to guide, to unite and to stand for what they preach. Yet if so many claim to be messengers of good news, justice and peace, why then is there such hesitation to take a clear stand in the name of their faith? What can be done to spark a revival in favor of a more visible, more concrete commitment that goes beyond declarations of good intentions?

In many interreligious meetings, discussing human rights-related questions can become heated, for example when the right to change one's religion and the notion of proselytism enters the conversation. While freedom is a cherished value, it is often accepted only insofar as it does neither challenge traditions nor disrupt the status quo – a very human response, shared to varying degrees by many religious leaders.

The 18 Commitments on "Faith for Rights" invite faith-based actors to engage in self-reflection and joint action. As the Beirut Declaration stresses: "Introspectiveness is a virtue we cherish. We will all speak up and act first and foremost on our own weaknesses and challenges within our respective communities. We will address more global issues collectively and consistently, after internal and inclusive deliberation that preserves our most precious strength, i.e. integrity" (OHCHR 2025, 10).

Many people would agree on the importance of peace, justice and human dignity – values that lie at the heart of most religious teachings. But the conversation becomes more complex when freedom enters the picture. And yet, freedom – especially the freedom to choose – is one of the most essential conditions for achieving peace, justice and human dignity. The first "Faith for Rights" Commitment highlights that the "most fundamental responsibility is to stand up and act for everyone's right to free

choices and particularly for everyone's freedom of thought, conscience, religion or belief" (OHCHR 2025, 28). The Beirut Declaration reaffirms the ideal that we must strive for if we genuinely wish to contribute to the kind of world we all aspire to build.

### 4.2. #Faith4Rights Toolkit

The faith-based actors and United Nations mechanisms assembled in Beirut in 2017 were also acutely aware that adopting the Beirut Declaration was only the beginning, which needed to be followed by concrete implementation – an expectation also clearly expressed by successive United Nations High Commissioners for Human Rights. In his 2017 Beirut opening statement, Zeid Ra'ad Al Hussein looked to the participants "to help us establish a vision and a roadmap to improve the lives of people across the world" (OHCHR 2025, 6). In 2019, Michelle Bachelet stated that the Faith for Rights framework "aims at transforming messages of mercy, compassion and solidarity into inter-communal and faith-based projects towards social, developmental and environmental change" (OHCHR 2024, 10). In 2025, Volker Türk stressed that the "ethical and spiritual foundations of religions and beliefs have an essential role in addressing the polarization and conflicts that disfigure our world, and in contributing to reconciliation" (OHCHR 2025, 124).

This led to drafting the #Faith4Rights Toolkit in order to embody the philosophy of "Faith for Rights" and propose methods of action through peer-to-peer learning – a practical resource for anyone wishing to lead, facilitate or engage in this program. To that end, three expert workshops were planned at the Adventist Campus in Collonges-sous-Salève. It is located strategically close to the United Nations Office at Geneva, just a few kilometers on the French side of the border. The *Centre international pour la liberté religieuse et les affaires publiques* (CILRAP) is based on this campus, which offers meeting spaces, a cafeteria and on-site accommodation. The first two workshops were held in December 2018 and

December 2019, gathering faith-based and civil society actors, members of United Nations human rights treaty bodies, and the Special Rapporteurs on freedom of religion or belief and on minority issues. The third Collonges meeting, in October 2022, revised the Toolkit for its second edition, and also took stock of ten years since adopting the Rabat Plan of Action and five years since launching the Beirut Declaration on "Faith for Rights". Their goal was to help operationalize key intergovernmental initiatives, including UN Human Rights Council resolution 16/18 on combating religious intolerance (2011), the Sustainable Development Goals (2015), the Plan of Action to Prevent Violent Extremism (2016), the UN Strategy and Plan of Action on Hate Speech (2019) and the UN Plan of Action to Safeguard Religious Sites (2019).

One of the core objectives, as outlined in the Collonges Declaration of 19 December 2019, has been to bridge the gap between education, research and training in the fields of faith and human rights (OHCHR 2024, 4). The #Faith4Rights Toolkit has been envisioned as a flexible and practical resource for faith leaders, academic institutions and educators – not a prescriptive manual, but rather a framework for cross-cultural and contextual enrichment. Its use through social media and digital platforms (hence the hashtag in the title of the #Faith4Rights Toolkit) is strongly encouraged, with particular attention to the engagement and needs of young people.

Structured around 18 commitments, the Toolkit responds directly to the vision expressed in 2019 by the High Commissioner for Human Rights, Michelle Bachelet: "We look forward to seeing the 'Faith for Rights' framework translated into practical outreach tools and capacity-building programs" (OHCHR 2024, 5).

Each of the 18 modules opens with preliminary tips for facilitators, which outline the program's background, objectives and suggested methodology for peer-to-peer learning with participants. It is not a rigid, one-size-fits-all approach, but rather a flexible instrument

designed to empower facilitators to adapt and innovate within the framework of the 18 Commitments. Ultimately, the goal is for each group to shape its own program, inspired by the Beirut Declaration and grounded in the shared aspiration to uphold the dignity and equal worth of all human beings.

The Toolkit is, as it should be, a practical resource. It encourages creativity while providing essential material for facilitators. Each of the 18 Commitments is presented as a self-contained training module. For example, Module 1, entitled Freedom of Conscience, is structured into five parts, with the full text of the commitment, an explanation of the context, additional supporting documents, peer-to-peer learning exercises, and at the conclusion of the module its learning objectives.

### 4.3. Peer-to-peer learning

To ensure that peer-to-peer learning remains anchored in the Beirut Declaration, each module begins with a reading of the relevant commitment. This sets the tone and focus for the session. From there, the facilitator selects the most appropriate supporting materials. These may include official texts such as Article 18 of the International Covenant on Civil and Political Rights or the Vienna Declaration and Programme of Action. Facilitators are also encouraged to draw from a variety of complementary sources – films, novels, video clips or any other media that can make the sessions more engaging and dynamic.

The suggested interactive exercises are designed to foster experiential learning and sharing among the participants. These activities help them understand and internalize the value and relevance of each commitment in an accessible and enjoyable way. The Peer-to-Peer Learning Exercises section is thoroughly developed in the Toolkit. For Module 1, eleven possible activities are provided to enhance group dynamics and engagement through warming up, unpacking, tweeting, translating, critical thinking, storytelling, linking the dots, adding faith quotes, exploring,

simulating and inspiring with artistic expressions. Each group is free to choose which exercises to use and to allocate time according to their needs and context. The peer-to-peer learning options provided in the Toolkit can be compared to a menu in a restaurant: No one would be expected to eat every single item on the menu, but rather choose a starter, main course and dessert to their liking. This flexible structure encourages creativity while ensuring that the learning process remains interactive, collaborative and impactful.

A particularly important component of the #Faith4Rights Toolkit is its annex, which presents more than a dozen short case studies and hypothetical scenarios for group discussion, along with more detailed moot court-style cases to deepen reflection and critical engagement, for example on blasphemy charges, radicalization, economic and social rights, and environmental issues. These scenarios aim to foster deeper engagement with the 18 Commitments on "Faith for Rights", encouraging participants to apply them thoughtfully to real-world dilemmas across cultural, legal and ethical contexts.

One example of regular multi-faith action has been the annual Walk of "Faith for Rights", organized around Human Rights Day on December 10th, as alluded to in the Beirut Declaration (OHCHR 2025, 11). This symbolic event perfectly embodies the spirit of "Faith for Rights" as an expression of unity in diversity. The Walks usually begin at a church in Geneva, include stops at a mosque and synagogue, then cross the French border where participants are warmly welcomed by CILRAP and the Salève Adventist Campus. The events conclude with refreshments, followed by a reading of the 18 Commitments, accompanied by music (Faith for Rights 2024b) – a moment that powerfully reinforces the message of human dignity, freedom and peaceful coexistence. The "Faith for Rights" Walk on 10 December 2023 coincided with the 75th anniversary of the Universal Declaration of Human Rights, which was also portrayed in a film broadcast on the French public television channel France 2 (Gueritli 2024).

Furthermore, members of the Religious Track of the Cyprus Peace Process also joined this hybrid event remotely through video conference, thus virtually linking faith-based actors in Nicosia, Geneva and Collonges-sous-Salève (A/HRC/58/21, 55). The 2025 Walk included visits in Switzerland and France to a Vedanta Center, Lutheran Church, Islamic Cultural Center and Adventist Campus, while other participants in Cairo from the British University in Egypt and Al-Azhar Observatory for Combating Extremism simultaneously "walked the talk" across continents (PFIR 2025).

The annual meetings of the "Faith for Rights" commUNity of practices could become "an avenue of rights-based sustainable engagement with faith actors" (Salama/Wiener 2024, 232). Several civil society organizations and academic institutions are also part of the "Faith for Rights" movement, for example through in-person or online courses in Abuja, Beirut, Cairo, Coimbra, Paris, Ottawa, Oxford, San José and Washington, D.C. (OHCHR 2025, 123). In May 2025, the tetrarchy of the "Faith for Rights" commUNity of practices issued a call to dignity, justice and peace in the Middle East, as a multifaith statement grounded in the 18 Commitments (Faith for Rights 2025a).

The sixth annual meeting, held in Cambodia and Thailand, resulted in the *Bangkok Declaration on Dharmic Perspectives on Faith for Rights*, which recognized the diversity of spiritual, ethical and cultural traditions, including those of Dharmic and Indigenous communities, as a source of insight for promoting dignity, justice and compassion (Faith for Rights 2025b). The journey is only just beginning, with further joint projects and peer-learning meetings planned across the globe, including in Africa, the Americas, Asia, Europe and the Pacific region.

We must persevere because the values enshrined in the 18 Commitments are non-negotiable. While they may neither be embraced universally nor without resistance from some religious

leaders (Salama/Wiener 2025), the very existence of the 18 Commitments challenges us to reflect and inspires us to continue.

In today's complex world, the "Faith for Rights" framework stands as a small but indispensable beacon of light – a source of hope and resilience. It sends a powerful message of solidarity to those who suffer persecution and also facilitates jointly defending freedom of thought, conscience, religion or belief, as a cornerstone of universal human rights.

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# CHAPTER XV.

# DRAFT INTERNATIONAL COVENANT ON THE RIGHT TO DEVELOPMENT (2025)

**Ibrahim Salama[1] and Mihir Kanade[2]**

**Abstract:** The right to development is a triple missing link between political and economic rights, individual and collective rights, as well as the national and international levels of enforcing these rights for all individuals, communities and peoples. The mantra of the Sustainable Development Goals to "leave no one behind" is achievable only if these goals were seen through the lens of human rights. From one perspective, the Sustainable Development Goals can legally be considered a setback for economic, social and cultural rights. Hence the strategic importance of the current

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[2] **Dr. Mihir Kanade** is Academic Director of the United Nations-mandated University for Peace (UPEACE), the Head of its Department of International Law and the Director of the UPEACE Human Rights Centre. He is also the co-coordinator of the Master of Arts in International Law and Diplomacy, and of the Master of Arts in International Law and the Settlement of Disputes, offered jointly with the United Nations Institute for Training and Research. He is also a former chair and current member of the UN Expert Mechanism on the Right to Development. He also chaired the group of international experts constituted to elaborate the Draft International Covenant on the Right to Development.

conjuncture of the right to development. The draft International Covenant on the Right to Development, currently under consideration by the United Nations General Assembly, provides a historical opportunity to redress the artificial divide of the so-called two sets of rights (civil/political and economic/social/cultural), which is a permanent remnant of the Cold War, glued by commercial interests of dominant western economies. Realizing the right to development would also save a second mantra, that of the indivisibility, interdependence and mutual reinforcement of all human rights. The draft International Covenant on the Right to Development is an opportunity which is difficult to seize but disastrous to miss. The present chapter approaches this topic with comparative legal and faith perspectives, as faith traditions provide higher normative content and enforcement credibility for the right to development than positive law. Faith in human rights treaties can be immensely enhanced if anchored in faith traditions and supported by independent, empowered and well-equipped faith-based actors.

**Keywords:** Faith; development; right to development; economic rights; religion or belief.

## 1. Introduction: The right to development's trajectory, from rhetoric to opportunity

The Declaration on the Right to Development, adopted by the United Nations General Assembly on 4 December 1986 (A/RES/41/128, annex), cannot be understood in isolation from Article 28 of the Universal Declaration of Human Rights, which provides that "[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" (A/RES/217(III), A). The role of the right to development is to provide the normative parameters of achieving global economic justice through establishing a fair rules-based economic and trade relations system, including to ensure

extraterritorial accountability for States' actions or omissions if they lead to human rights violations anywhere. This is why it has met with resistance throughout its history, because "[t]he quest for global justice in international law is a search for legal obligations that are anchored in global institutional arrangements that are fair to impoverished nations and peoples" (Salomon 2007, 63). Despite paying lip service that the third pillar of the United Nations is human rights, along with peace and security as well as development, "[a]t present economic globalization is part of the global system, the priorities of which are relegating human rights to the sidelines" (ibid.). This is why the credibility of the whole human rights endeavour depends on the realization of the right to development.

The co-authors of this book chapter assumed direct responsibilities during the process of negotiation of the right to development, at different stages. They retained the same conclusion, that despite undeniable progress in defining the right to development, the history of its negotiations within the United Nations has predominantly been more political than normative. Its very interesting legal aspects were overshadowed by sharp north-south divides that dominated States' deliberations from the beginning. Narrow national interests seized its relative conceptual ambiguities and its declaratory nature to address obstacles on the road of many serious attempts to elucidate its normative content. In sharp contrast, while the right to development formally emerged as a human right in 1986, its underlying philosophy, foundational concepts and major applications are deeply anchored in millennia-old faith traditions. Equal human dignity, sanctity of life, primacy of justice, glory of nature, pursuing equity and solidarity have been sacred cornerstones of various faith traditions for many centuries.

As is often the case in multilateral diplomacy, the voice of civil society has not been as impactful as it should be. It is symbolically aired but rarely listened to with genuine due attention. This is particularly the case when States are deeply divided. Seen at the

distance, since its adoption as an international human right through the 1986 Declaration, the right to development has proven to be too important to ignore, too complex to unpack and too tempting a human rights game to play. Notwithstanding its surrounding politics, the right to development is ultimately the most holistic, structural, multidisciplinary and foundational human right. It qualifies both the process and outcome of development policies through which all other rights can be exercised. Hence the complexity of its conceptualization, definition and implementation. Despite the lengthy discussions on the right to development within the United Nations, under different formats and mandates, the result is a mixed bag between politicized controversies and fragments of substantive progress in articulating its normative content meaningfully and usefully.

The 1986 Declaration on the Right to Development defines it as an "inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources" (A/RES/41/128, annex, Article 1).

The main State obligation under the right to development is "[…] the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom" (ibid., Article 2 (3)).

In addition to this national primary responsibility, there is a corresponding international face to the same coin. The 1986

Declaration provides that "States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights" (ibid., Article 3 (3)).

The co-authors gained experiences with the right to development as a diplomat, chairperson of the Intergovernmental Working Group (IGWG) on the right to development, then senior manager at the United Nations, responsible for human rights treaties whose work directly contributes to and impacts on the right to development (Ibrahim Salama), as well as a Chair/member of the United Nations Expert Mechanism on the Right to Development and Chair of the Expert Drafting Group for the Draft International Covenant on the Right to Development leading the legal negotiations for four years at the IGWG (Mihir Kanade). This has offered us a three-dimensional regard on the troubled waters where the right to development has been navigating human rights politics, blocks' dynamics, ideological controversies, north-south divide, double standards, and the often short-sightedness of some diplomatic decisions, such as discontinuing the High-Level Task Force on the Right to Development. All of the above is compounded by the shortfalls of a human rights architecture that proliferates without enough substantive synergy and harmonized working methods. This has complicated mainstreaming the right to development, as its mechanisms and other related mandates resemble "ships passing in the night", even though they are headed for similar destinations (Alston 2005).

Three phases describe the right to development's trajectory leading to its current mixed bag: from rhetoric to clarity to the opportunity represented by the current draft International Covenant on the Right to Development.

Phase one started with adoption of the Declaration on the Right to Development in 1986. Except for a few substantive reports by a succession of independent experts on the right to development (Sengupta 2013), States' discussions were too general, politically motivated and constantly turning in circles. Is it an individual or a collective right? How to balance national versus international responsibilities? Who owes what to whom? How to establish violations? Who can decide on remedies?

Phase two started when the Intergovernmental Working Group accepted co-author Ibrahim Salama's proposal to create a built-in expert group, in the form of a High-Level Task Force, that worked for six years as a think tank within the Intergovernmental Working Group (OHCHR 2010).

When Ibrahim Salama chaired the fifth session of the Intergovernmental Working Group in February 2004, he realized that discussions could gain clarity and produce opportunities if one realizes that the right to development's analytical requirements, at both its national level and international environment, are contextual and multi-factorial. He was confident that introducing an expert component into the intergovernmental equation would be a paradigm shift. Indeed, there was agreement, already in 2004, on the *sui generis* nature of the right to development. Progressively defining its particular features and special requirements as it intersects with many – seemingly distinct but heavily interconnected – disciplines was indeed an important conceptual and political progress. Here is how States expressed it (E/CN.4/2004/23, 43):

> "There is an emerging consensus among the Member States, development agencies and the international development, financial and trade institutions on the need to strengthen the global partnership for development taking into account the principles of accountability, transparency, non-

> discrimination, equity participation, rule of law, good governance at all levels and international cooperation; (b) For the right to development to be mainstreamed, it has to be global in its reach and integrated coherently in the operational activities, policies and programs of all relevant development agencies and international financial and trade institutions and of Governments at the national level […]".

This clear vision and functional definition should have provided a solid ground for advancing the right to development on a far more fruitful implementation track than what was subsequently achieved.

To accelerate such momentum, realizing that shifting from rhetoric to substance was easier said than done, Ibrahim Salama had suggested to the Intergovernmental Working Group to create a High-Level Task Force, as a sub-body of experts within the working group's mandate and meeting time. This was an unprecedented institutional novelty, which he used to call "a treaty body before the treaty", a kind of "pre-natal" exploration of embryonic normative parameters in the making. As expected, this idea met with resistance. Many States were reluctant, by fear of "losing control" on "their" Intergovernmental Working Group. Ibrahim Salama's argument was that it does not add much to gain control but miss impact on the ground. Arguably, the complexity of the issues under consideration and their multidisciplinary nature do not offer diplomats a reasonable chance to conduct a meaningful discussion. The specificities of the right to development, particularly the multiple causalities involved at both national and international levels, necessitated expert consideration through a staggered approach, following sectional phases that are logically interconnected. The High-Level Task Force indeed rationalized the debate, compelling delegations to listen and think, rather than continuing political posturing through ready-made statements.

The agreed conclusions of the Working Group at its fifth session in 2004 stated that it "recommends to the Commission on Human Rights the establishment of a high-level task force on the implementation of the right to development, within the framework of the Working Group, the details of which are described in the following paragraphs" (E/CN.4/2004/23, 43). The High-Level Task Force was mandated to assist the Working Group on the Right to Development to fulfil its mandate (E/CN.4/RES/1998/72, 10(a)), while ensuring that there is no duplication of other working groups and work in other forums. This sub-body of the Working Group was constituted in a transparent, consultative and representative manner. Based on the Working Group discussions in January 2006 (E/CN.4/2006/26, 28–29):

> "the Chairperson prepared and circulated his draft text for the conclusions and recommendations of the seventh session of the Working Group. The draft text was subsequently discussed, negotiated and amended by delegations. At its final meeting, on 13 January 2006, the Working Group adopted, by consensus, its conclusions and recommendations. […] Several States expressed their appreciation for the able and wise guidance by the Chairperson, for the spirit of cooperation that had characterized the session, and for the high quality of support provided by the secretariat. The Chairperson concluded the session by underlining that the conclusions and recommendations adopted by the Working Group represented a historical turning point. The Working Group had translated the norms and principles stated in the Declaration on the Right to Development into concrete results-oriented criteria which gave guidance as to the practical implementation of the right to development. He thanked all actors who contributed to this achievement."

These positive results were a direct consequence of the work of the High-Level Task Force whose complementary expertise facilitated a collective approach to analyzing progress, disseminating best practices and considering possible means and methodologies for the implementation of the right to development on a continuing basis by various stakeholders, including international actors.

The High-Level Task Force thus served as "normative nursery" for the development of standards for implementing the right to development, both nationally and within its international context. These included the right to development criteria outlined by the task force in 2007 (A/HRC/4/WG.2/TF/2), for its conceptual adequacy and the ease of operational practice, with a view to promoting the implementation of the right. It also drew on parallel work undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in developing the framework to identify indicators for promoting and monitoring the implementation of human rights, in general. The criteria suggested by the task force were developed in the context of an analysis of Millennium Development Goal 8 on the global partnership for development from a right to development perspective. These were subsequently reviewed by the task force in 2008 (A/HRC/8/WG.2/TF/2) with a view to making them more comprehensive in reflecting the scope of the right as elaborated in the Declaration on the Right to Development. Countries of the Non-Aligned Movement were not convinced that this incremental criteria approach would advance the implementation of the right to development far, fast and "safely" enough. Some countries even feared that the more detailed these criteria further developed, the heavier monitoring would occur at the national level, rather than at the parallel international responsibility track.

Professor Steven Marks, chair of the High-Level Task Force, reached therefore the conclusion that the obstacles are more profoundly political than technical. As he put it (Marks 2013, 440):

> "These task force criteria constitute the culmination of efforts by experts to provide tools to policymakers to introduce the right to development into development practice, on the basis of a set of attributes, criteria and sub-criteria listed below. They should be seen in the context of the task force's proposals to have them tested in context-specific settings, consistent with its firm conviction that the right to development can be made concrete and applicable to development practice if and when there is the political will to do so."

The political and ideological divides would have required concerted efforts of "diplocacy", i.e. constructive human rights engagement by and with State officials, UN independent experts, faith-based actors and other civil society representatives through quiet diplomacy, public advocacy and peer-learning, based on analysis of empirical evidence and pragmatic solutions (Salama/Wiener 2022, 297; Salama/Wiener 2023, 20). However, the discontinuation of the High-Level Task Force by States after this experience was a failure of human rights diplomacy. There is no magical way of oversimplifying the right to development in terms of direct relationship between a duty-bearer and a rights-holder, neither at the national level nor at the international level. A context-specific analysis is needed on a case-by-case basis, hence the inevitability of the intermediary stage of criteria for the implementation of the right to development in various situations, nationally and internationally.

Deblocking the politics of the right to development, resulting from powerful opposition to its transformative potential at the international economic and trade level, was not possible despite a broad consensus on the underlying principles of the right to development. These principles were in perfect convergence with inputs and expectations of faith-based actors all along the right to

development negotiations in its various manifestations. Yet, these voices were of marginal effect on the most intense political division between the global north and the global south. The Non-Aligned Movement, whose Heads of State and Government have called for the United Nations to draft a convention on the right to development, were in opposition with the European Union, the United States of America, Canada, Japan and others who strongly opposed this option.

Ibrahim Salama strived for a compromise within the Working Group on the Right to Development. It was possible to achieve consensus by keeping a legally binding instrument among the possible outcomes of the negotiating process, without implying that the process must automatically lead there. The key language which he had suggested and was retained by States in this regard was that the process of identifying criteria for the implementation of the right to development "could evolve into a basis for consideration of an international legal standard of a binding nature, through a collaborative process of engagement" (A/RES/64/172, 8). The protracted tension between slow technical progress on one hand as well as a heightened north-south ideological and political divide on the other hand summarize the earlier history of the Intergovernmental Working Group.

The adoption of the 2030 Agenda by the General Assembly in 2015 (A/RES/70/1) ultimately catapulted the right to development agenda to the center stage. The global south, represented mostly through the Non-Aligned Movement, was frustrated that despite their efforts since 1986, the global north had continued to stall any operationalization of the right to development. Thus, four things occurred at the behest of the Non-Aligned Movement in a very short time that broke this stalemate: (1) the establishment of a new Special Procedures mandate by the Human Rights Council in 2016, namely, a Special Rapporteur on the Right to Development; (2) the adoption of a resolution in 2018 mandating the Working Group to commence the discussion to

elaborate a draft legally binding instrument; (3) the establishment in 2019 of an Expert Mechanism on the Right to Development as another subsidiary body of the Council; and (4) a high-level biennial panel at the Human Rights Council to discuss the right to development. Pertinently, the developed countries voted against all these resolutions.

The current Chair-Rapporteur of the Working Group on the Right to Development, Ambassador Zamir Akram from Pakistan, was requested by the Council to submit a draft instrument to the Working Group for negotiations by member States, and in turn, he requested the High Commissioner for Human Rights to appoint an Expert Drafting Group of international lawyers to assist him with this process. Co-author Mihir Kanade was appointed as its Chair and Rapporteur. The Expert Drafting Group also comprised the late Koen de Feyter (Belgium), Diane Desierto (Philippines), Margarette May Macaulay (Jamaica) and Makane Moïse Mbengue (Senegal). Mihir Kanade's task was not only to prepare the zero draft but also to develop elaborate legal commentaries on each provision to be considered first by the other four members and then by the member States. Four rounds of transparent and intense negotiations took place at the Working Group. Before each round, a compilation of comments received by all member States and other stakeholders, including faith-based organizations, were compiled and published. Additionally, every revised version was accompanied by extensive legal commentaries as well as commentaries on the textual suggestions and recommendations made by stakeholders. These commentaries were drafted by Mihir Kanade on behalf of the Expert Drafting Group (A/HRC/54/50/Add.1, 1). Under the moderation of Ambassador Akram, Mihir Kanade led the legal negotiations for four years, before a final draft "International Covenant on the Right to Development" was ultimately submitted by Ambassador Akram to the Human Rights Council for its consideration (A/HRC/54/50).

In turn, the Council decided in October 2023 to forward the draft Covenant to the General Assembly "for its consideration, negotiation and subsequent adoption" (A/HRC/RES/54/18, 17). The Human Rights Council adopted this resolution with twenty-nine countries voting in favour (members of the Non-Aligned Movement and Group of 77), thirteen against (developed countries) and five abstaining. During the Working Group's session in May 2025, again "[m]any speakers had supported and called for the early adoption of the draft international covenant on the right to development, while some States had restated their view that they did not support the current draft and did not agree that a new human rights treaty should govern the implementation of the right to development" (A/HRC/60/37, 89). This succinctly summarizes the current third phase of the trajectory of the right to development under international law.

## 2. Religious influences during the travaux préparatoires

One of our key findings on the right to development, having also worked closely with faith-based actors on various aspects of human rights treaty law and practice, is that faith traditions are deeply grounded in and sincerely engaged with the constitutive elements of the right to development in all its pillars and dimensions at the implementation level, with or without using the corresponding legal narrative.

The right to development's landscape therefore moved fast into a sharply contrasted situation between a political deadlock among States and a much more advanced thinking and positive action by faith-based actors on the ground through their community services that translate their faith into deeds. Faith-based actors and organizations across the world conduct development projects, humanitarian interventions and environmental actions through their socio-economic services and cultural engagement among and beyond their respective communities, alleviating the suffering of millions of people. There is a lot to learn from their beliefs and practices.

### 2.1 Religious foundations of the right to development

Faith traditions are rich and clear in laying down the foundations of human development as a sacred right.

#### 2.1.1 Islam

The Qur'an consistently frames justice, equity and social responsibility as divine imperatives; principles that mirror the moral foundations of the right to development. Justice and equity are foundational principles in Islam (Surah An-Naḥl 16:90):

> "Indeed, Allah commands justice, grace, as well as generosity to close relatives. He forbids indecency, wickedness, and aggression. He instructs you so perhaps you will be mindful".

This verse underlines the duty of just governance, both at the private and public governance levels, and distributive fairness – key tenets of development ethics. The Qur'an is also clear on economic redistribution and shared wealth (Surah Al-Hashr 59:7):

> "As for gains granted by Allah to His Messenger from the people of 'other' lands, they are for Allah and the Messenger, his close relatives, orphans, the poor, and 'needy' travellers so that wealth may not merely circulate among your rich. Whatever the Messenger gives you, take it. And whatever he forbids you from, leave it. And fear Allah. Surely Allah is severe in punishment."

The notion of economic justice is directly tied to social sustainability, emphasizing that wealth must serve collective upliftment of all communities. The philosophical landscape of development in Islam is categorically different from modern legal translations of liberal economy. Human stewardship (*Khilafah*), not absolute ownership, is the starting point (Surah Al-Anʿām 6:165):

> "He is the One Who has placed you as successors on earth and elevated some of you in rank over others, so He may test you with what He has entrusted you. Surely your Lord is swift in punishment, but He is certainly All-Forgiving, Most Merciful."

This foundational expression of human stewardship over creation provides an ethical and responsible framework for sustainable development, that both human rights and environmental agreements are struggling to achieve.

The Prophet's practice also confirms, by deeds and acts, that compassion and solidarity are basic conditions of faith (Al-Adab al-Mufrad ḥadīth 112):

> "Ibn 'Abbas informed Ibn az-Zubayr: 'I heard the Prophet, may Allah bless him and grant him peace, say, 'He is not a believer whose stomach is filled while his neighbour goes hungry.'"'

There can hardly be more strikingly impactful teaching that aligns with the right to development's collective responsibility to eliminate poverty and ensure social well-being. At the conclusion of the 1998 seminar on Islamic perspectives on the Universal Declaration of Human Rights, then High Commissioner Mary Robinson stated that "the principles of Islam relating to human dignity and social solidarity are a rich resource from which to face the human rights challenges of today" (HR/IP/SEM/1999/1(PARTI), 162).

In 2025, Deputy High Commissioner Nada Al-Nashif also stressed during a side event of the Human Rights Council that "the Beirut Declaration on 'Faith for Rights' includes several quotes from the Qur'an, for example in Surah Al-Ma'idah (5:32) that saving a person's life is equal to saving all of humanity" (Al-Nashif 2025, 1).

### 2.1.2 Judaism and Christianity

The Bible's vision of justice, equality and stewardship also resonates perfectly with the right to development. Both the Old and New Testaments tie human dignity to communal flourishing and responsibility toward the poor (Genesis 1:26):

> "Then God said, 'Let us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock and all the wild animals, and over all the creatures that move along the ground.'"

This affirms that all human beings share equal dignity and are entrusted with the duty to care for creation, in perfect echoing of sustainable development ethics. Justice for the poor and oppressed is also central. Caring for the weak, needy and vulnerable is highlighted in the Bible (Isaiah 1:17):

> "Learn to do right; seek justice. Defend the oppressed. Take up the cause of the fatherless; plead the case of the widow."

Such religious foundations of binding solidarity elevate the rights to development's concern for inclusive development and equity to the most supreme level they deserve, to create a conducive environment for flourishing in equality and fairness to all. Economic justice is a divine commandment, unlike contemporary market-driven doctrine and practices, and the Biblical rule is (Exodus 22:25):

> "If you lend money to one of my people among you who is needy, do not be like a moneylender; charge him no interest."

Fairness in transactions and sustainability of development, rather than mere profit making, prohibits exploitation of vulnerability. At the individual level, social solidarity is equally a duty and even a

mindset meant to constantly redress inherent human greed (Philippians 2:3–4):

> "Do nothing out of selfish ambition or vain conceit. Rather, in humility value others above yourselves, not looking to your own interests but each of you to the interests of the others."

Ultimately, "whatever you did for one of the least of these brothers and sisters of mine, you did for me" (Matthew 25:40). Jesus Christ's identification with the marginalized thus transforms the moral foundation of equitable development into a permanent conditioning of believers.

The Jewish thought views justice (*tzedek*) and compassion (*chesed*) as the pillars of societal well-being; central to the right to development's ethical dimension (Deuteronomy 16:20): "Follow justice and justice alone, so that you may live and possess the land the Lord your God is giving you." This repetition emphasizes that the life of a nation depends on justice, not on power.

Protection of the vulnerable in Judaism is as essential as it is in Islam and Christianity (Leviticus 19:9–10):

> "When you reap the harvest of your land, you shall not reap all the way to the edges of your field, or gather the gleanings of your harvest. You shall not pick your vineyard bare, or gather the fallen fruit of your vineyard; you shall leave them for the poor and the stranger".

This early attention to social welfare ensures economic inclusion and aligns with the right to equitable and sustainable development for all without discrimination. Shared responsibility is essential (Leviticus 25:35):

> "If your kin, being in straits, come under your authority, and are held by you as though resident aliens, let them live by your side".

The command underscores communal responsibility for the marginalized. The Talmud states (Shevuot 39a:22): "All Israel are responsible for one another." This command resonates with the collective aspect of the right to development.

### 2.1.3 Hinduism and Buddhism

In Hinduism, or *Sanatana Dharma*, which is better articulated as an "eternal way of life" than a religion, numerous principles are symbiotic with the right to development. For instance, the ancient Vedas (*Rig Veda*, *Yajur Veda*, *Sama Veda* and *Atharva Veda*) and other texts such as the *Ramayana* and the *Mahabharata*, the latter including the *Bhagawata Geeta*, are essentially lessons on justice, equality, equity and humanism, stressing on the spiritual equality of all souls beyond material distinctions. The *Rig Veda* (5.60.5) specifically elaborates on the mutual brotherhood and equality in society under the divine protector. *Atharva Veda* stresses on the importance of participatory development.

Considering the vast number of sources, texts, paths of worship, philosophical traditions and practices in Hinduism, it is impossible to do complete, or even partial, justice to this discussion in the present chapter. Although there is significant diversity in how Hindus around the world practice their faith, there are key common features that bind them all and are directly relevant to the right to development. The three that can be outlined here, as mere illustrations, are *Karma* (consequences of actions), *Dharma* (duty or righteousness) and *Vasudhaiva Kutumbakam* (the whole world is one family). The right to development requires development to be considered as a right and not as mere charity or privilege, with corresponding obligations on States as well as non-State actors. *Karma* is essentially a faith-based imperative of what, in human rights terms, would be labelled as accountability for actions. *Dharma*, on the other hand, speaks to a person's or institution's duties, responsibilities and the righteous way of living, in relation to others, the society, and indeed, the international community,

based on ethical codes of conduct. In terms of the right to development, this informs the obligations of not just States to realize development as aspired by citizens, but also the obligation of all natural and legal persons to respect – do not harm to – the right to development of others. The duty to cooperate, based on the notion of solidarity, which is integral to the right to development, finds its faith-based roots in Hinduism in the principle of *Vasudhaiva Kutumbakam*, which requires treating the world as one family. This provides the philosophical foundation for the recognition of extraterritorial and collective obligations under the normative framework of the right to development.

Buddhism contains similar concepts of *Pratītyasamutpāda* (interdependence), *Sangha* (community) and *Dhamma* (duties).

### 2.1.4 Indigenous Peoples

Although not strictly faith-based as understood from the traditional lens of organized religions, the African concepts of *Ubuntu* and *Ferootuma*, also reflected in many indigenous communities around the world, provide the philosophical pedestal for many principles of the right to development. As Sylvia Bawa explains, *Ubuntu* reflects a philosophy of collective consciousness, interdependence and community care, summarized as "I am because we are, and we are because you are" (Bawa 2024, 313–314). *Ferootuma* denotes a sacred, obligatory duty to the collective, essential for societal continuity. *Ferootuma* is to be distinguished from *Sunbu* or charity, which is optional. For human rights to succeed, solidarity (grounded in *Ubuntu*) requires the mandatory commitment of *Ferootuma* (ibid.).

## 2.2 The role of religious and faith-based actors in achieving and protecting the right to development

Religious and faith-based actors and organizations have always been development agents and service providers in various areas. Even if their actions were qualified as "charitable", wrongly in our

view, the truth of the matter, by virtue of their preceding religiously binding norms, faith-based actors are automatically advancing the right to development, without using its vocabulary.

To place faith audience in proportion, according to the Pew Research Centre, approximately 75% of the world's population identified with a religious group as of 2020, which means that there are more than six billion believers globally (Pew 2025). Faith-based institutions are estimated to collectively own about 8% of the planet's habitable land surface (Alliance of Religions and Conservation 2017, 5). In terms of financial influence, faith organizations are likely holding up to 10% of global financial investments (ibid.), though precise data remains limited. In healthcare, faith-based organizations are reported to provide between 30% and 70% of health services in low- and middle-income countries, reflecting their substantial role in service delivery (Nicol/Iwu-Jaja/Hendricks/Nyasulu/Young 2022). Regarding education, various studies indicate that faith-based organizations operate a considerable proportion of schools in some developing regions, though exact figures vary in different contexts.

These statistics highlight the magnitude of tangible reach of faith-based actors and organizations in development at large and social service delivery. This is why reconciling religion and human rights is a practical necessity to combine the virtues of both value systems and empower faith-based actors to become human rights defenders in their own ways. Their contributions reflect the commitments articulated in Article 8 of the UN Declaration on the Right to Development, according to which States shall ensure "equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income".

Faith-based organizations also play a significant role in education in various regions. These faith-based educational efforts align with the participatory principle enshrined in Article 2 of the UN

Declaration on the Right to Development, fostering inclusion of marginalized groups in development processes.

Numerous faith-based Bahá'í, Buddhist, Hindu, Jain and Sikh organizations engage in healthcare, education, poverty alleviation and environmental protection. Faith-based networks play an increasingly vital role in promoting ecological justice, a core component of the right to development that links sustainability with human dignity. Foundational texts such as *Laudato Si'* (Pope Francis 2015) and the Islamic Declaration on Global Climate Change (IFEES 2015) have reframed environmental stewardship as a moral and rights-based obligation. This reinforces Article 10 of the UN Declaration on the Right to Development, which calls for formulating, adopting and implementing policy, legislative and other measures at the national and international levels.

Faith-based actors increasingly integrate gender-responsive development in their missions. These efforts resonate with Article 6 of the Declaration on the Right to Development, which emphasizes "universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion".

Since 2017, the "Faith for Rights" framework (OHCHR 2025) has recognized the multifaceted role of faith-based actors in transforming messages of mercy, compassion and solidarity into inter-communal and faith-based projects towards social, developmental and environmental change. Faith-based actors thus help translate international law into culturally legitimate practice, ensuring local resonance and accountability.

These initiatives signal a paradigm shift: faith-based engagement is moving from charity to rights-based partnership, where moral, legal and social responsibilities converge. In conclusion, regardless of their recognition as such, faith-based actors are amongst the most effective, legitimate and deeply rooted mechanisms for realizing the right to development in its different aspects and

manifestations. Their vast infrastructure, global networks, moral authority and spiritual weight bridge the divide between human rights, national laws and social ethics. Empirical data demonstrate that faith-based actors and organizations deliver substantial proportions of healthcare, education and humanitarian assistance worldwide, directly contributing to the fulfilment of obligations under the right to development.

In theological terms, they embody shared moral imperatives which converge with the right to development's core principles of equity, participation and dignity. Bridging religious ethics with international human rights law therefore transforms the right to development from a declarative norm into a living moral covenant, uniting spiritual purpose and legal responsibility in the collective pursuit of human flourishing. By embedding the right to development within faith narratives, religious actors make the concept culturally legitimate, widely acceptable and morally persuasive in communities where secular legal language may lack resonance.

As advocacy for the right to development must be people-oriented, faith actors are ideally placed to mobilize public consciousness and change social behaviour at the grassroots level because they operate through trust-based community networks. By demonstrating viable faith-aligned economic alternatives, religious actors advocate for a development paradigm rooted in justice and human dignity rather than mere growth. This democratizes advocacy, allowing religious actors from the global south to contribute equally to international debates on the right to development.

## 3. Right to development and faith-related jurisprudence

### 3.1 Human rights mechanisms

Because of the complexity of its legal analytical framework, there is little jurisprudence by human rights mechanisms around religion and development from a specific perspective of the right to development. Not many experts have so far embarked on

considering the nexus of religion and the right to development. The recently introduced draft International Covenant on the Right to Development offers an opportunity to redress this situation and connect the dots between religion and development, both seen from a human rights perspective. Only sustained progress towards its full legal expression can capture the missing protection elements of the right to development and finally address development as a human right.

In the landmark ruling *Endorois Welfare Council v. Kenya*, the African Commission on Human and Peoples' Rights held that forcibly removing the Endorois community, an Indigenous People, from their ancestral lands violated "the right to practice their religion and culture, as well as the overall process of development of the Endorois people" (Communication No. 276/2003, 144). The decision is notable as the African Commission elaborated for the first time on the meaning of the right to development in Article 22 of the African Charter on Human and Peoples' Rights. It also provides a strategic precedent where religion, resources and development are treated as interdependent components of the right to development.

In the case of *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* (Communication No. 155/1996), the African Commission on Human and Peoples' Rights linked large-scale oil extraction development to violations of economic, social and cultural rights. Although *SERAC* is not primarily a "religion" case, it is still a foundational jurisprudence to the effect that States must involve affected communities – often Indigenous Peoples or religious communities – in development decisions.

General Comment No. 22 of the United Nations Human Rights Committee on Article 18 of the International Covenant on Civil and Political Rights (CCPR/C/21/Rev.1/Add.4) illustrates the close links between freedom of religion or belief and the right to

development. It clarifies both the substantive scope of thought, conscience and religion as well as permissible limitations, and discusses the relationship between belief, its manifestations and corresponding State duties. It is essential and authoritative guidance when arguing how freedom of religion should be protected in development policies and that any restrictions must be strictly justified.

Furthermore, General Comment No. 21 of the United Nations Committee on Economic, Social and Cultural Rights (E/C.12/GC/21) interprets the right to take part in cultural life. It explicitly connects culture and thus many forms of religious expression with economic, social and cultural rights. This implies that cultural and religious manifestations should be respected through development processes.

This jurisprudence establishes a role and interest for faith-based actors in the right to development. This includes many dimensions such as free, prior, informed consent and that development cannot displace religious practice tied to land without genuine participation and remedies. The substantive protections for religious life in the two above-mentioned General Comments show that religion/culture are protected not only as private conscience but in their public, material manifestations. Thus, development policies that remove sacred sites or destroy livelihoods may violate freedom of religion or belief and economic, social and cultural rights.

The United Nations Special Rapporteur on freedom of religion or belief is another key mandate whose thematic reports have touched upon many aspects of development, even if they were not articulated explicitly in terms of the right to development. Their successive reports illustrate the developmental dimensions of the exercise of freedom of religion or belief. The 2020 report to the General Assembly flags that "[t]he people most likely to be left behind by development are often those who endure discrimination

and exclusion on the grounds of identity – often multiple identities – including religious or belief identity" (A/75/385, 2). The Special Rapporteur explicitly referred to the "Faith for Rights" framework and toolkit in this report (ibid., footnotes 17, 163, 173 and 177) as well as in the indicator framework that he proposed to assist in measuring the enjoyment of the right to freedom of thought, conscience and religion or belief by rights-holders (Shaheed 2020).

The title of the Special Rapporteur's mandate was also used in 2023 in the commentaries to the draft International Covenant on the Right to Development (A/HRC/54/50/Add.1, 53–55 and 75–76) to explain why its non-discrimination provisions in Articles 8 and 15 refer not only to "religion" but to the broader terms "religion or belief". In addition, this wording is also employed in Article 18 of the International Covenant on Civil and Political Rights (see above chapter IV) and in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55; Bielefeldt/Wiener 2021, 1).

### 3.2 Fraternity as a moral foundation of the right to development

As much as human rights mechanisms approach religions or beliefs more positively, faith actors also increasingly claim human rights as their own heritage. In *A Document on Human Fraternity for World Peace and Living Together*, Pope Francis and the Grand Imam of Al-Azhar Ahmad Al-Tayyeb in 2019 solemnly denounced human rights violations, by affirming (Holy See/Al-Azhar 2019):

> "[…] that major political crises, situations of injustice and lack of equitable distribution of natural resources – which only a rich minority benefit from, to the detriment of the majority of the peoples of the earth – have generated, and continue to generate, vast numbers of poor, infirm and deceased persons. This leads to catastrophic crises that various countries have fallen victim to despite their natural resources and the

> resourcefulness of young people which characterize these nations. In the face of such crises that result in the deaths of millions of children – wasted away from poverty and hunger – there is an unacceptable silence on the international level."

The problems and solutions presented in the Document on Human Fraternity cover a wide variety of complex legal, political and social issues from both faith and rights perspectives. It touches in particular upon the responsibilities and duties of faith actors towards security, development and human rights, be it formal religious institutions or religious civil society actors at national and international levels.

The transformative potential of the Document on Human Fraternity in relation to the right to development is grounded in the fact that it contains three innovative characteristics. It transcends the simplistic generalities of traditional interreligious dialogues. It opens unprecedented horizons to produce change through action on the ground, both at the individual or collective levels, as well as nationally and internationally. The content of the Document on Human Fraternity is not confined to moral and spiritual values. It adopts a rights-based approach, formulating human rights and corresponding responsibilities, not only among the followers of a given religious tradition, in accordance with the canon of that faith, but also among followers of different religions, "indeed among believers and non-believers, and among all people of good will" (ibid.).

The Document on Human Fraternity is also of a distinct critical nature. Its criticism of international developments and policies seems unprecedented at this highest level of religious leadership in an interreligious context, yet in proper human rights tone. This is an innovative dimension because it sets out a paradigm shift concerning the role of religions in societies towards more inter-activeness in the religious sphere.

Our human rights reading of the Document on Human Fraternity establishes five characteristics of this pioneering initiative, i.e. critical thinking, moral courage, participatory approach, universal vocation, as well as raising question marks whose answers require other stakeholders to get involved. Hence the transformative potential of this initiative. It constitutes a roadmap strongly recommended by the highest spiritual authorities in the Roman-Catholic and Sunni world for all relevant stakeholders to act together in synergy and sincerity to produce tangible needed results. The Document on Human Fraternity is not only an expression of intent, but also "invites all persons who have faith in God and faith in human fraternity to unite and work together so that it may serve as a guide for future generations" (Holy See/Al-Azhar 2019).

It serves, therefore, as a plan of action and calls upon all concerned parties to approach it on that basis, as an appeal "to every upright conscience that rejects deplorable violence and blind extremism" (ibid.). Again, this is reiterated in the closing paragraphs of the Document on Human Fraternity, requesting that the principles contained in it "be translated into policies, decisions, legislative texts, courses of study and materials to be circulated" (ibid.), at the regional and international levels.

This approach resonates with and enriches key related international human rights standards, namely the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (see above chapter XIII) and the Beirut Declaration and its 18 Commitments on Faith for Rights (see above chapter XIV). Both human rights soft law standards address the role and responsibilities of religious institutions and faith-based actors. In this context, interreligious dialogue "is a vehicle for positive speech, a healing tool of reconciliation and peacebuilding in the hearts and minds" (Salama 2020, 2).

The Document on Human Fraternity opens with invoking "faith", by stressing in the introduction that "Faith leads a believer to see in the other a brother or sister to be supported and loved" (Holy See/Al-Azhar 2019). The Document is proclaimed "in the name of justice and mercy, the foundations of prosperity and the cornerstone of faith", and it aspires to "be a witness to the greatness of faith in God that unites divided hearts and elevates the human soul" (ibid.). It also touches upon modern human rights issues, including the right to life, freedom of expression, freedom of religion or belief, women's rights, as well as social and economic rights and the rights of migrants. However, the Document on Human Fraternity sometimes uses different terminology to designate these rights, and it also criticizes certain established human rights terms, such as "the discriminatory use of the term *minorities* which engenders feelings of isolation and inferiority" (ibid., emphasis in original).

Another feature that derives from the previous observation is of paramount importance concerning the interaction between religions and human rights. The Document on Human Fraternity alludes to tension zones and areas of disagreement between some interpretations of religions and human rights. For example, it expresses the right to life as the "gift of life", stressing that (ibid.):

> "[…] this universe depends on a God who governs it. He is the Creator who has created us with His divine wisdom and has granted us the gift of life to protect it. It is a gift that no one has the right to take away, threaten or manipulate to suit oneself. Indeed, everyone must safeguard this gift of life from its beginning up to its natural end. We therefore condemn all those practices that are a threat to life such as genocide, acts of terrorism, forced displacement, human organ trafficking, abortion and euthanasia. We likewise condemn the policies that promote these practices."

The Document on Human Fraternity calls for action without identifying its modalities. Yet the Catholic Church and Al-Azhar pledge to convey their joint declaration (ibid.):

> "to authorities, influential leaders, persons of faith all over the world, appropriate regional and international organizations, organizations within civil society, religious institutions and leading thinkers. They further pledge to make known the principles contained in their declaration, at all regional and international levels, while requesting that these principles be translated into policies, decisions, legislative texts, courses of study and materials to be circulated."

Both religious institutions and religious civil society organizations are facing a heavy responsibility and a great opportunity in this respect. The Document on Human Fraternity is a call for engagement among the communities of faith and rights. The role of faith-based actors and organizations should never be limited to merely providing aid to the needy, though this is of course vital. Their role, within their respective areas of action, should always also extend to defending human dignity, freedom of conscience, and equal rights to all women, men and children in all parts of the world. Nobody should only defend his or her own freedom, but we should all stand for everybody's equal rights.

Finally, "Al-Azhar and the Catholic Church ask that this Document become the object of research and reflection in all schools, universities and institutes of formation", and they aspire that it will become a "sign of the closeness between East and West, between North and South" (ibid.).

It is hard to establish how effectively such faith-based voices and positions can influence intergovernmental standard-setting processes and case law. Yet there have been a few but powerfully significant precedents. Their holistic nature and faith-based

dimensions project the right to development in fact as a catalyst to all human rights and as a natural area of convergence between faith and rights actors.

## 4. Lessons learned and a way forward

### 4.1 The Faith for Rights framework as an engagement space for the right to development

The sporadicity of engaging with faith-based actors, who get erratically solicited in times of crisis or for public relation purposes, is in our view one of the main impediments to their meaningful participation in enriching human rights debates and instruments, particularly in relation to the right to development. Used to an occasional exchange of generalities within traditional interreligious dialogues, faith-based actors hardly scratch the surface of their potential contribution to human rights action, including to shape and implement the right to development.

Interestingly, the Covid-19 pandemic was an eye-opener as it compelled the United Nations to dig deeper and move intentionally towards more substantive engagements. OHCHR, along with the Office of the Secretary-General's Special Adviser on the Prevention of Genocide and the United Nations Alliance of Civilizations, took in 2020 a joint initiative to convene faith actors in a series of online workshops to explore and enhance their role in mitigating human rights violations related to the pandemic and its aftermath (Global Pledge 2021). OHCHR also designed with the United States Institute of Peace, UPEACE and Religions for Peace an online course and exchanges on "Religions, Beliefs, and Human Rights: A 'Faith for Rights' Approach".

This framework has been precisely designed since 2017 to facilitate partnership between faith and rights advocates, which also led to the creation of a commUNity of practices (Faith for Rights 2024). One of its key objectives, as outlined by former High Commissioner Michelle Bachelet, is that (Bachelet 2019):

> "the Faith for Rights framework will also inspire interdisciplinary research on questions related to faith and rights. Deeper exploration of the ethical and spiritual foundations provided by religions and beliefs can help to debunk the myth that human rights are solely Western values. On the contrary: the human rights agenda is rooted in cultures across the world. Respect for human life, and human dignity, wellbeing and justice, are common to us all."

Genuine universality cannot be attained and assessed by merely looking at the ratification status of the core human rights treaties in each country. Instead, all faith traditions must be substantively included in the human rights discourse. As analyzed in the previous section, such convergence between faith and rights has the potential to liberate human rights from doctrinal secularism and to optimize complementarity between religions and human rights by rehabilitating sustainable human development as a powerful link between faith and rights, uniting human beings in sisterhood and fraternity with their fellows, successors and with their environment, in full harmony, respect and sustainability. Indeed, a shared "faith and rights" perspective on development provides a potential shift from consuming resources to cherishing gifts, from greed to solidarity, and from destructive conflict to blissful harmony. Faith-based initiatives therefore deserve an inter-disciplinary approach to their analysis and an enhanced attention to their follow-up.

### 4.2 Draft International Covenant on the Right to Development

At present, the draft International Covenant on the Right to Development provides an excellent opportunity for meaningfully operationalizing the right to development. This covenant is needed to enforce the right to development in a legally binding manner. States' practice will determine whether this last chance will constitute a positive turning point or be added to a long list of

missed opportunities on redressing the incomplete human rights architecture.

As noted previously, one co-author of this chapter (Mihir Kanade) chaired the Expert Drafting Group for the draft Covenant and led the legal negotiations for four years at the Intergovernmental Working Group on the Right to Development in Geneva. During these negotiations, there were significant contributions from faith-based organizations such as the Sikh Human Rights Group and Associazione Comunità Papa Giovanni XXIII (APG23), also acting on behalf of a group of Catholic Inspired NGOs (CINGO). In the final round of negotiations, the Holy See also participated actively and constructively in the negotiations. The most consequential contributions came from APG23 on behalf of CINGO, which was involved since the outset when it responded extensively to a questionnaire circulated among stakeholders even prior to the preparation of the zero draft. It was based on the suggestion of APG23 that the sixteenth preambular recital was included in the draft Covenant, which reads as follows (A/HRC/54/50, annex):

> "*Acknowledging* that development is understood not simply in terms of economic growth, but also as a means of widening people's choices to achieve a more satisfactory intellectual, emotional, moral and spiritual existence rooted in the cultural identity and the cultural diversity of peoples".

APG23 made this suggestion to reflect Article 3 of the UNESCO Universal Declaration on Cultural Diversity, adopted by the General Conference of UNESCO on 2 November 2001. The addition of the spiritual dimension certainly adds value to the norm of development as a human right. APG23 also was a leading voice supporting the labelling of the instrument as a "Covenant" rather than a "Convention". As the commentaries to the draft Covenant note (A/HRC/54/50/Add.1, 3):

> "It may be noted that the General Assembly also affirmed, in its resolution 52/136 of 12 December 1997, that the inclusion of the Declaration on the Right to Development in the International Bill of Human Rights would be an appropriate means of celebrating the fiftieth anniversary of the Universal Declaration of Human Rights. Although not entirely unanimous, this resolution records the position of an overwhelming majority of States that the DRTD has a place in the same league as the UDHR, the ICCPR and the ICESCR, and the same is even more applicable to this legally binding instrument. It may be noted that although, in international law, there is no difference between a 'convention' and a 'covenant', in the practice of States related to human rights treaties, the latter term has thus far been reserved only for the ICCPR and the ICESCR in recognition of their special importance as part of the International Bill of Human Rights, whereas the other core human rights treaties have been titled as 'conventions'."

APG23 also took a leadership role in mediating between contending States. For instance, Article 8 of the original draft titled "General obligations of States Parties" included the obligation of States Parties to respect, protect and fulfil the right to development for all, without discrimination of any kind on the basis of several discriminatory grounds. This had included not only sex, but also gender, which led to a serious debate with some States opposing the inclusion of gender, while others insisting on its retention. APG23 suggested that the word "gender" be removed to satisfy the former group and pointed out to the latter group that the words "other status" could be interpreted by them to include gender should they wish to do so nationally. This suggestion was accepted and helped move the discussion beyond this sticking point.

As such, draft Article 8 (1) now reads as follows (A/HRC/54/50, annex):

> "States Parties shall respect, protect and fulfil the right to development for all, without discrimination of any kind on the basis of race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, property, disability, birth, age or other status, in accordance with obligations set forth in the present Covenant."

APG23 has continued championing the draft Covenant since its transfer to the United Nations General Assembly for consideration and adoption. Indeed, on behalf of twenty-two non-governmental organizations, APG23 has issued a joint letter to the diplomatic community in New York to support the early adoption of this draft Covenant (APG23 2025).

The draft Covenant reflects several principles inherent in faiths around the world, as discussed above. For instance, it acknowledges the rights-holders as both individuals and peoples, and requires equal attention to civil, political, economic, social, cultural and environmental rights. It recognizes the extraterritorial and collective obligations of States to respect, protect and fulfill the right to development and stresses on the duty of States to cooperate with each other. But the draft Covenant does not limit duties to only States; it recognizes the obligation to respect the right to development (do no harm) on legal persons, including businesses and international organizations. Thus, the draft Covenant fills in gaping holes in the current international human rights architecture in an attempt to make it truly universal.

### 4.3 Conclusion

The expansion of civil society space and the enhancement of the role of faith-based actors in contributing to its fulfilment are a prerequisite for realizing the right to development. Community

service and development is central to faith traditions and has motivated numerous types of solidarity action by faith-based actors across centuries all over the world. Spiritual values and social engagement have always been inseparable in the practice of all faith traditions. Beyond socio-economic services, faith-based organizations have also spearheaded movements of civil rights, education, health care, training, advocacy for social justice and civil liberties in many parts of the world. Faith-based actors are therefore natural agents of the right to development.

Given this inherent inclination, the "Faith for Rights" framework constitutes an important empowerment toolbox to align faith-based actions with human rights law standards, processes and methodologies. Establishing this missing conversation between the narratives of faith and rights is at the heart of realizing the right to development.

Beyond charity and service delivery, leveraging the moral and spiritual weight of faith-based actors, according to Commitment XVI of the 18 "Faith for Rights" commitments, opens a strategic horizon for conflict prevention, social cohesion and equally prosperous development of various communities, including religious or belief minorities. The long-standing proximity and level of confidence that faith-based actors enjoy with their respective communities make them effective agents of change in both conflict situations and in relation to divisive social issues. If one adds to their moral and spiritual weight also adapted human rights knowledge, mediation skills and communication capacities, faith-based actors become a game changer in terms of fulfilling the right to development.

Enhancing this missing faith perspective to the right to development is essential – albeit not sufficient – to translate this fundamental and foundational human right into reality. There is a larger institutional issue, which will be further aggravated by both environmental degradation and technological advances, both infringing differently

but probably irreparably on the purpose and object of the right to development. Indeed, as Nico Schrijver flagged in his book *Development without Destruction* (Schrijver 2010, 221):

> "The international architecture for environmental conservation and global resources management needs to be strengthened substantially. Furthermore, current concepts and institutions are incomplete and are not sufficiently equipped to curb the current alarming rates of resource degradation and to provide functional rather than territorial regimes. More bold steps have to be taken to create an integrated ecosystem approach to sustainably using natural resources and healing the earth's fragile environment."

At the conceptual level, and even ideologically, a key stumbling block hindering progress towards realizing the right to development lies in the simplistic view that (Brown 2000, iii):

> "You cannot legislate good health and jobs. You need an economy strong enough to provide them – and for that you need people economically engaged. People will work because they enjoy the fruit of their labour, fair pay, education and health care for their families and so forth. They will build wealth that allows them to be compensated. But if the rewards of their labour are denied them again, they will lose their motivation. So economic and social rights are both the incentive for and the reward of a strong economy."

For the tenants of this view, all what should be done is to "promote practical action that puts a human rights-based approach to human development and poverty eradication firmly on the global agenda" (ibid., iv). Which means: the right to development is subsumed in the rights-based approach to development. This has been the case

during the Millennium Development Goals (2000–2015) and now for the Sustainable Development Goals (2015–2030). Their mantra to "leave no one behind" is achievable only if these goals were seen through the lens of human rights (A/HRC/48/63; Kanade 2021).

However, have we also learned the lessons of structural obstacles, unfair trade rules, as well as access to markets and resources being hindered by unilateral measures, indiscriminate sanctions, military action, political pressures and monopolies by transnational corporations? Already more than two decades ago – even when the multilateral trade system was building up its rule of law architecture in a seemingly convincing manner, before becoming totally paralyzed – Richard Falk was rightfully doubtful (Falk 2002, 73–74):

> "There are significant reasons to reconsider the presumed contradiction between market forces and human rights. But there are also grounds for skepticism about how far such reconciliation can go. This skepticism is intensified if human rights are understood from the perspective of the subaltern discourse, which combines a critique of hegemonistic structures with a commitment to a just world order enabling all peoples to achieve material, social and spiritual dignity. There exists a positive law foundation for extending the full sweep of the subaltern discourse to human rights in the 'sleeping provisions' of Articles 25(1) and 28 of the Universal Declaration on Human Rights."

The "sleeping provisions" seem to be currently in a state of "politically induced coma", which can only come to an end through the realization and operationalization of the right to development. To achieve this long overdue objective, we need to go back to the fundamental source, the preamble of the UN Charter of 1945, in which the peoples of the United Nations expressed their determination "to reaffirm faith in fundamental

human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom".

Faith in these foundational premises of international law is our present existential test and our only strategic forward to liberate human rights from hypocrisy dictated by the self-proclaimed "holy trinity" that dominates world economy. The global free-market limits the ability of States independently to decide their own economic and social policies (Salomon 2007, 196):

> "The 'holy trinity' made up of these three international institutions (the World Bank, IMF and WTO) is directed to a very considerable degree by the wealthy and powerful states, with repeated findings showing that the ideological priorities and policies pursued by the organizations favour those countries disproportionately."

The High-Level Task Force on the Right to Development, and its institutional successor to be created by the draft International Covenant on the Right to Development, is precisely a "new international body mandated to scrutinize the human rights performance of international organizations by evaluating, from the perspective of the right to development, the relationship between, inter alia, international organizations and developing countries" (ibid., 202).

This is the missing institutional accountability link between the national and international levels of States' human rights obligations. Coherence and fairness precondition the legitimacy of the current human rights architecture. The draft International Covenant on the Right to Development, once adopted, would provide this

missing link and thus continue the process of completing the unfinished human rights business.

In whichever institutional setting, there should be a space for faith-based actors, whose advocacy action for the right to development is most powerful because they bridge moral conviction and policy action at the grassroots level. They have been operationalizing many aspects of the right to development and there is much to learn from their experience and much to gain from expanding it.

Ultimately, advocacy by faith-based actors is effective because it humanizes international law by transforming abstract rights into lived realities, based on sincere moral obligations that inspire people to build just, compassionate and sustainable societies.

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# CHAPTER XVI.

# DICTATES OF THE PUBLIC CONSCIENCE IN THE HAGUE CONVENTIONS (1899 AND 1907) AND IN THE GENEVA CONVENTIONS (1949) AND THEIR ADDITIONAL PROTOCOLS (1977)

**Ritika Sharma[1] and Sahildeep Singh[2]**

**Abstract:** The idea of "public conscience" has served as an important tool when the codified law falls short, particularly in the domain of international humanitarian law. This chapter examines the origins, evolution, jurisprudence and contemporary relevance of "the dictates of the public conscience" as embodied in the Martens Clause. Beginning with the humanitarian vision of Henry

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Dunant and the 1864 Geneva Convention, it traces how the Clause was introduced in the Preamble of the 1899 Hague Convention, where F.F. Martens proposed the saving clause as a solution to a deadlock in the conference. By following its evolution through the Hague Conventions, the four Geneva Conventions of 1949 and their Additional Protocols of 1977, the chapter highlights how conscience has been recognized as a safeguard in case of the absence of codified law. It also analyses debates, judicial interpretations and critiques of the Clause as to how it has been both defended as a universal ethical principle and declared redundant as being ambiguous or politically motivated. The jurisprudence by the International Court of Justice and International Criminal Tribunal for the Former Yugoslavia reflects the importance and application of dictates of the public conscience and the Martens Clause, where the treaty law was non-existent. Furthermore, the chapter relates the dictates of public conscience with religions and beliefs, thereby emphasizing their origin based on faith. The chapter highlights the continued relevance of public conscience within international humanitarian law, which acts as a guide in protecting humanity against the future uncertainties of armed conflict.

**Keywords:** Public Conscience, Martens Clause, Geneva Conventions, Hague Conventions, religion, international humanitarian law (IHL), armed conflicts.

## 1. Introduction

> "... why could not advantage be taken of a time of relative calm and quiet to investigate and try to solve a question of such immense and world-wide importance, both from the humane and from the Christian standpoint?"
> (Dunant 1862, 116)

Having witnessed mass killing, destruction and being fearful of the prospects of future wars, Henry Dunant in his book *A Memory of Solferino* advocated for societies that could save the lives of the wounded during wartime, grounded in humane and religious perspectives (Dunant 1862).

A similar dichotomy was found when the gaps in the International Humanitarian Law (IHL) were answered with "dictates of the public conscience" through the evolution of the Martens Clause in the Geneva Conventions and their Additional Protocols and the jurisprudence around it. In a situation where IHL is silent or does not expressly prohibit a particular act, who shall guide the conduct of parties? This ultimately raises the question of accountability and violation of humanitarian principles. This question was answered after decades of evolution of IHL in 1899 with the "Martens Clause".

The codification of IHL started from the Geneva Convention of 22 August 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field, which was the result of an International Conference (attended by sixteen governments), whose initiative was taken by Henry Dunant and Gustave Moynier. This Convention gave way to the treaty law for IHL, and the Hague Conventions and Geneva Conventions were inspired by this (Boissier 1974, 409–410).

The present chapter firstly examines the evolution and development of "dictates of the public conscience" from 1868 until 1977 through examining the *travaux préparatoires* of the IHL conventions as well as their regulations and protocols. Secondly, it sheds light upon the related jurisprudence by looking into the observations and arguments in case laws. Finally, the chapter will delve into the issues of interpretation around its meaning and relevance, along with drawing inferences from several faiths.

## 2. Evolution of the Martens Clause in travaux préparatoires and conventions

> "Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience."

The above lines reflect the Martens Clause as originated from the 1899 Hague Conference, propounded by the Russian jurist and diplomat F.F. Martens, due to which he earned unofficial honorary titles such as "soul of the Hague Peace Conferences" and "judge of the Christian world" (Ivanenko 2022, 1724).

In his book *A Memory of Solferino*, Henry Dunant invoked the feelings amongst the masses that, in the midst of war, there must be humanity and that the suffering of soldiers cannot be ignored. F.F. Martens, during his studies at St. Petersburg University, was also influenced by these humanistic ideas of Red Cross Societies (ibid., 1710). His thesis, entitled "On the Law of Private Property in Time of War", was of great academic depth and was dedicated to international military and humanitarian law. Although in his thesis, Martens had rejected the idea that faith or religion was the sole source of international law (ibid., 1712–1713), his proposed provision during the Hague Conference provided for the guidance of "requirements of the public conscience" when the law is silent. His foresight and professional commitment led to the outstanding and spontaneous idea of including the Martens Clause in the 1899 Convention, which saved the conference in the Hague as well as the written law for the protection of belligerents and civilians.

Although the Martens Clause was formally incorporated in 1899, the groundwork was already laid down in the 1868 discussion, and seeds were sown for the intellectual growth of the laws of humanity into a full-fledged codification of a clause. In situations not regulated by the convention, the innocent civilians cannot be left to the deliberate actions and mercy of the adversaries. This argument was seen as the embryonic form of the Martens Clause, which gives an interpretation that even in the absence of a codified law, one cannot act arbitrarily.

Diplomat F.F. Martens believed that "in the area of international relations, too, the time will come when the great law of social life will finally prevail, and each nation will exist for the world and the world for each nation" (Pustogarov 1996, 304). He was behind the work of the programme of the First World Peace Conference in the Hague, held from 18 May to 29 July 1899, which was organized for the purpose of ensuring genuine peace. After his proposal on the Martens Clause was unanimously accepted, he was called "the life and soul of the Conference" (ibid., 309 and 311).

The Martens Clause is said to be a result of resolving a rift between "codificationists" and "customists". At the Hague Peace Conference 1899, Martens was elected Chairman of the Second Commission for the Convention of laws and customs of war. Differences arose at the conciliation process, with opposition from a small group of countries headed by Belgium, which pushed for the unrestricted right of population for resistance in occupied territories. There was an unexpected deadlock, and Martens had one night to save the Conference. The next day, he proposed to include the saving Clause that provided protection for cases not covered by the Regulations, and which will remain under the protection of the "usages established between civilized nations", "laws of humanity" and "requirements of the public conscience". Resultantly, the Preamble of the Hague Convention 1899 was amended, and the Martens Clause was added. At the Hague Conference, the French Delegate supported the Clause as it filled

the gap for the absence of a positive provision. The Swiss Delegate also defended the Clause by stating that it does not create new obligations, but rather recalls that existing obligations derive from custom, humanity and the conscience of nations, even when not codified.

It is also asserted that the French term *"constater"* used in the original texts implies that the delegates merely established the existence of the spirit of the Martens Clause, and it was not a new concept; rather, it had always been a transcendent reality (Ramírez Bañuelos 2022, 256).

The Convention of 1899 was revised at the Second International Peace Conference in 1907, resulting in the 1907 Hague Convention, and the Martens Clause was retained in its Preamble with slightly changed wording in the English translation, as now "the requirements of the public conscience" transformed into "the dictates of the public conscience" (whereas the authentic French text in both Hague Conventions refers to "*des exigences de la conscience publique*").

Furthermore, in the 1929 Geneva Conference for the Convention relative to the Treatment of Prisoners of War (27 July 1929), France recognized the application of the Martens Clause for the protection of prisoners of war, for they do not cease to belong to humanity and remain under the protection of the laws of humanity and public conscience. Paul Desmolders, Rapporteur of the 1929 Diplomatic Conference, stated that "all these observations aim at achieving a single goal: the extension of the principle of humanity which lies at the very foundation of the Convention, and above all, the development of charitable love of man towards his fellow who is struck down by suffering and deprived of defense", and while highlighting the significance of Martens Clause he underscored that the Clause transformed into an international legal obligation which before the 1864 Convention had existed as a moral duty. Furthermore, Georges Werner, the Rapporteur of the Second Commission, linked the law with conscience, accentuating the

humanitarian spirit by making the following moral appeal: "May this Convention, into which you have poured all the pity inspired by the sufferings of prisoners during the Great War, remain forever buried in the shadow of chancelleries and libraries! But if […] one day its protective provisions must be invoked, may it, like the Geneva Convention, find men of heart to ensure respect not only for its letter but especially for its spirit!" The Italian government also observed the direct relation between humanitarian principles and the public conscience. Moreover, throughout the debates and conferences, the Swiss delegation affirmed the gap-filling role of the Martens Clause.

Furthermore, the four Geneva Conventions of 1949 contain the Martens Clause in their denunciation provisions. Articles 63 (4), 62 (4), 142 (4) and 158 (4) of the four Geneva Conventions, respectively, read as follows:

> "The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience."

It is maintained that the inclusion of the "dictates of the public conscience" in the denunciation provision of the IHL conventions has created a *jus cogens* norm that must be followed, even when States disagree with their treaty obligations (Ramírez Bañuelos 2022, 258).

Furthermore, the language and position of the Martens Clause changed in the Additional Protocols of 1977 to the Geneva Conventions. Article 1 (2) of the First Additional Protocol to the Geneva Conventions contains a version of the Martens Clause. It was initially provided for in the Preamble of the Protocol, but after the discussion during the Conference, it was included in Article 1

(ICRC 1987, 53), which undoubtedly strengthened its status. It reads as follows:

> "In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience."

While in the Second Additional Protocol to the Geneva Conventions, the Clause shifted to its preambular paragraph 4, as was originally in the Hague Convention 1899, albeit with a different wording:

> "*Recalling* that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience".

This version substituted "civilians and combatants" with "human person" and omitted the terms "custom" and "international law"; some opine that it is due to the Protocol's restricted applicability, which covers only internal conflicts (Meron 2000, 81–82). Notably, "established custom" was not even proposed in the original draft of the Protocol, as "it was apparently felt that the regulation of non-international armed conflicts was too recent a matter for State practice to have sufficiently developed in this field" (ICRC 1987, 4435). The Final Act of the Diplomatic Conference 1977 emphasized that "the dissemination of rules inspired by the principles of humanity and public conscience is an essential task of States".

It is also worth noting some of the delegation statements of States around "conscience" during the plenary meetings and Committee records of the Diplomatic Conference (DC) in 1974–1977.

During the first, second and third sessions of the plenary meetings, Lebanon affirmed that the Red Cross must strive to humanize wars and "render it odious to the conscience of mankind". Cuba stated that following a certain conduct during armed conflicts is the "satisfaction of the demand of conscience" (DC Official Records, Vol. 5, 93). While asserting the humane treatment of victims of armed conflicts, Brazil highlighted the necessity of the provisions of Protocols to be in accordance with the universally accepted principles of conscience of the international community (ibid., 98). Belgium also emphasized the need for a universal conscience of the nations for the "optimum" employment of IHL and continuous usefulness of "conscience" in the future as well (ibid., 114). As the "public conscience" is always used as a medium for filling gaps for new situations, Algeria pointed out that it is the conscience of peoples and governments that has "recognized the urgent need to amend the existing principles of humanitarian law to cover all new situations" (ibid., 147).

During the fourth session of the plenary meetings, the ICRC asserted that abandoning the Protocols would be "an abdication of the conscience of mankind". In the context of provisions on protecting objects indispensable to the survival of the civilian population, it was considered contrary to "conscience" to delete such a safeguard, since it covers essential needs like food and water supplies for civilians during conflict (DC Official Records, Vol. 7, 136). The Yugoslav delegate pointed out that even after the adoption of the Protocols, success will be achieved when the provisions are absorbed in the conscience of mankind (ibid., 209). Furthermore, the Pakistani delegate, while highlighting the importance of religion that already contains humanitarian principles, asserted that "[t]he principles of humanitarian law had been enunciated some 1400 years ago and had consistently been practised as part of the divine law of the Koran. Those who followed that law needed no humanitarian principles established

by man in order to alleviate the sufferings of those affected by international or internal armed conflict […]" (ibid., 310).

According to the Summary Records of Committee I, while some delegates moved the motion to delete the term "dictates of the public conscience", contending that the phrase was "superfluous" and "relative", and others recommended to substitute the term "public conscience" with "universal conscience", the majority presented their support for the guidance of the dictates of the public conscience. Moreover, Belgium asserted that humanitarian law is a result of "increasing awareness of the demands of humanity and from the stirrings of the public conscience" (DC Official Records, Vol. 8, 208). The Democratic People's Republic of Korea affirmed that there must be an effective restraint against criminals who "violate man's virtue and conscience and humanitarianism" (DC Official Records, Vol. 9, 441), thereby reflecting that conscience and humanitarian principles must guide future wars.

These statements during the Diplomatic Conference highlight that the Draft Protocols were amended, not only taking into consideration the "conscience" of the people, but also one of the factors that resulted in the conference was to gather the "conscience" of the international community. The Holy See stated in this regard that the objective of the conference was "based on respect and should be a supreme moral goal for the conscience of mankind […]" (DC Official Records, Vol. 9, 90).

It is also significant to note that the term "chaplains" under Article 15 of the draft first Additional Protocol and Article 9 of the draft second Additional Protocol changed to "civilian religious personnel". These provisions provide protection to the religious personnel at par with the medical personnel to ensure that the last rites of those killed during armed conflicts are completed according to their conscience and beliefs, and their other religious needs are taken care of. The Australian delegate raised the point that the word "chaplain" applies to ministers of only certain

religions, and this opinion was supported by several States as well as the ICRC. The latter pointed out that "a chaplain was a Western, Christian concept and did not cover all religions and philosophies" (DC Official Records, Vol. 11, 139). The revised reference to "civilian religious personnel" was clearly to enhance the worldwide application of the Protocols, thereby extending protection to everyone, without distinction, and removing any scope of bias.

These discussions highlight that since 1899, the Martens Clause has become an indispensable part to reiterate that the common principles have to be respected all the time, given the evolving nature of international humanitarian law (Meron 2000, 81).

The Clause also forms part of the Preamble of the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects, which reads as follows:

> "*Confirming their determination* that in cases not covered by this Convention and its annexed Protocols or by other international agreements, the civilian population and the combatants shall at all times remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience".

The codification of "the dictates of [the] public conscience" has travelled a journey of more than a century through diplomatic debates and successive treaties. However, it has been largely shaped by the jurisprudence from cases and academic works, which will be discussed in the next section.

## 3. Jurisprudence of interpreting "the dictates of the public conscience"

Although the Martens Clause was introduced as a solution to the debate around the status of resistance fighters who fought against

occupation, various versions of the Clause have also been included in many international treaties, apart from the above-mentioned IHL treaties and protocols.

The Preamble of the Universal Declaration of Human Rights (UDHR, see above chapter II) refers to "barbarous acts which have outraged the conscience of mankind". Furthermore, Article 1 of the UDHR reads:

> "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

The preamble of the Rome Statute of the International Criminal Court also directs the States Parties to be mindful of the acts that shock the conscience of humanity:

> "Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity".

The continuous inclusion of public conscience gives an impression of the intention of the drafters, who did not want to leave a stone unturned in invoking public conscience for the betterment of society. The International Court of Justice (ICJ) observed that the Clause should be considered a rule of customary international law (ICJ 1996, 84). It has also been affirmed that when a rule can be supported by the "principles of humanity" or the "dictates of the public conscience", it has the potential to become the customary rule of international law without recognized State practices (ICRC 2016, 3293). Most importantly, the Martens Clause has the capacity to contradict the *argumentum e contrario* that what is not explicitly prohibited by treaty law is necessarily permitted (ibid., 3297).

In *re Krupp and other*s, the US Military Tribunal called the Preamble "much more than a pious declaration" and, while affirming the

significance of the Martens Clause, referred to it as a "legal yardstick" for the specific cases not covered in the Conventions and their Regulations (US Military Tribunal 1948, 14–15; Meron 2000, 80). Judge Shahabuddeen, in his Dissenting Opinion on Nuclear Weapons, observed that the use of such weapons would be "repugnant to the conscience of the community" and reflected upon the practical nature of the public conscience in changing conditions (Shahabuddeen 1996, 403):

> "[...] it is nonetheless helpful in estimating the acceptability to the public conscience of the suffering that could be inflicted by the use of nuclear weapons on both combatants and civilians, on distant peoples, and on generations yet unborn."

Furthermore, Judge Weeramantry in his dissenting opinion very succinctly noted that the humanitarian law is the result of human conscience formed from the ancient civilizations, religions and philosophical ideals (Weeramantry 1996, 443):

> "Humanitarian law and custom have a very ancient lineage. They reach back thousands of years. They were worked out in many civilizations – Chinese, Indian, Greek, Roman, Japanese, Islamic, modern European, among others. Through the ages many religious and philosophical ideas have been poured into the mould in which modern humanitarian law has been formed. They represented the effort of the human conscience to mitigate in some measure the brutalities and dreadful sufferings of war."

Many opine that the public conscience can be derived from either public opinion or *opinio juris*, the latter being the opinion of the governments (Meron 2000, 83). However, in the "Second report on protection of the environment in relation to armed conflicts", the International Law Commission's Special Rapporteur Marja Lehto asserted the idea of additional protection to the environment

flowing from the Martens Clause, and observed that "the term 'public conscience' emphasizes the ethical basis of the Martens Clause and cannot be reduced to the prevailing public opinion" (Lehto 2019, 178).

Moreover, the Constitutional Court of Colombia also highlighted the violation of the "dictates of the public conscience" when acts such as arbitrary killings, torture, forced disappearances, hostage-taking, etc. are committed and it observed that the Second Additional Protocol has to be read with the entire body of humanitarian principles (Constitutional Court of the Republic of Colombia 1995, 10 and 22). In his report to the United Nations Human Rights Council, the Special Rapporteur on extrajudicial, summary or arbitrary executions has also asserted that the use of Lethal Autonomous Weapons is against the "dictates of the public conscience" owing to their indiscriminate effects, causing unnecessary harm to civilians (Heyns 2013, 19).

The International Criminal Tribunal for the Former Yugoslavia in *The Prosecutor v. Kupreškić et al.* observed that "this Clause enjoins, as a minimum, reference to those principles and dictates any time a rule of international humanitarian law is not sufficiently rigorous or precise: in those instances the scope and purport of the rule must be defined with reference to those principles and dictates" (ICTY 2000, 525), thereby declaring that it can act as the guideline for the interpretation of international humanitarian law (ICRC 2016, 3294).

## 4. Issues of interpretation

### 4.1. Perspectives from different commentators and judges

The International Court of Justice as well as other United Nations and international bodies and scholars have diverse views on the interpretation and usefulness of "public conscience" in international humanitarian law. Some opine that the Clause has just a mythological character (Giladi 2014, 862–863), while some

believe its existence to be of an extra-legal nature. They are called the "precepts that inspire the conscience that makes man feel present in the world" and have a philosophical foundation of international humanitarian law. It has been asserted that the "dictates of the public conscience" are legally binding for international humanitarian law, acting as "guarantors of the balance between the expression of power in conflicts and the preservation of civilization" (Ramírez Bañuelos 2022, 255, 259).

On the other hand, the usefulness of the Clause is being rejected on the basis that it is "loosely worded", has multiple conflicting interpretations (Cassese 2000, 188), and is redundant in nature (ibid., 192–193). To the arguments that either disregard the application of dictates of public conscience or make it dependent on the proof of separate existence of the rule of customary international law, Judge Shahabuddeen referred to the *travaux préparatoires* during the drafting of the 1899 Hague Convention. Highlighting its gap-filling significance, he observed that "[t]he principles would remain constant, but their practical effect would vary from time to time: they could justify a method of warfare in one age and prohibit it in another" (Shahabuddeen 1996, 405–406).

Judge Shahabuddeen examined the views of delegations during the 1899 Conference, pointing out that the Belgian delegate was primarily not satisfied with Articles 1 and 2 of the (new) draft and, despite this, voted for the provisions as they, along with other delegates, were confident that the Martens Clause had the normative force to provide additional protections (ibid., 408–409). He also made a distinction between customs and dictates of the public conscience (ibid., 406) and called it the task of the Court to determine the standard of the public conscience (ibid., 410):

> "The task of determining the effect of a standard may be difficult, but it is not impossible of performance; nor is it one which a court of justice may flinch from undertaking where necessary".

Additionally, Judge Weeramantry's observations can be a guiding light in this context. While deciding whether nuclear weapons are against the spirit of the "dictates of the public conscience" embodied in the Martens Clause, he engaged in an exercise of finding what the conventions, resolutions, treaties, leaders, priests and general public across regions state and opine. This was to determine inconsistencies and incompatibilities in the conscience of people with regard to the use of nuclear weapons. He noted (Weeramantry 1996, 487–488):

> "Across the world, presidents and prime ministers, priests and prelates, workers and students, and women and children have continued to express themselves strongly against the bomb and its dangers."

### 4.2. Perspectives from different beliefs

Generality and pervasiveness in the interpretation of the term "conscience" across all religions, beliefs and communities is the backbone of invoking it to fill the gaps. For this reason, a dive into the contents and understanding of the term "conscience" with respect to different beliefs is necessary.

In Hinduism, the Indian epic Mahābhārata is the greatest example where provisions such as "righteous war", *dharma* etc. can be located. The Bhagavad Gita was dictated by Krishna to Arjuna during the war to encourage him to follow *dharma* and fight righteously. The text has achieved the "global sensibility that is secular in nature" (Sugunan 2022). Conscience is deeply embedded in the idea of *dharma*, which is considered the moral and ethical order governing both individual conduct and the universe. In the Bhagavad Gita, Krishna counsels Arjuna to act according to his *svadharma* (one's own duty) rather than be swayed by attachments. This notion aligns with the concept of *antaratma* (the inner self), which constantly evaluates human actions. The *Dharmashastras* also highlight that when written codes of law are silent, an individual must act according to their conscience, reflecting the community's

moral standards. According to the Hindu religion, conscience is both a personal and collective responsibility, thereby directing individuals to walk on the path of righteousness.

The Guru Granth Sahib of Sikhs emphasizes that conscience is not an isolated voice but a spiritual awareness of divine wisdom and community values, which direct everyone to act truthfully and justly as well as without any discrimination (Alam 2018, 45). Conscience in Sikhism also requires courage to act in accordance with truth and equality, against oppression. The lives of the Sikh Gurus and martyrs, who defended the dignity of people, embody this moral courage as an expression of enlightened conscience. Sikhism guides that actions must be guided by justice, equality and compassion. These elements form the basic tenets of the Sikh conscience, which can be regarded as the public conscience.

In Buddhism, conscience is understood as an inner moral awareness cultivated through *dhamma* and the practice of compassion *(karuṇā)* and loving-kindness *(mettā)*. Buddhist conscience emerges as a guidance that directs individuals to act in ways that could alleviate suffering and promote harmony. Stories from the *Jātakas*, which recount the Buddha's past lives of self-sacrifice and non-retaliation, internalize this sense of conscience (Obeyesekere 1991, 233). When considered in the framework of international humanitarian law, this Buddhist conception of conscience aligns with the Martens Clause, which invokes the "dictates of public conscience" as a source of humanitarian restraint in armed conflict. The Buddhist moral vision suggests that the "public conscience" can be traced to religious traditions that advocate for non-violence, compassion and restraint. In Buddhism, the refusal to dehumanize the "other" and the insistence on compassion is the highest ethical duty.

In Jainism, conscience is inseparable from the principle of *ahimsa* (non-violence), expressed in the maxim *ahimsa paramo dharma*, i.e. non-violence is the highest law (Reading 2019, 6). The Jain moral universe recognizes every living being as possessing *jiva* (soul) and

thus equally deserving of respect and freedom from harm (ibid., 7). Conscience, therefore, is a disciplined awareness of one's responsibility toward all forms of life, cultivated through vows and practices like self-restraint, equanimity (*samyaktva*) and ethical introspection (*pratikramana*). Also, conscience in Jainism requires constant reflection on whether one's actions cause injury, and urging correction through forgiveness and restraint (ibid., 6–9). This aligns with the "dictates of public conscience". Just as Jainism restrains individuals from violence, exploitation and environmental harm, the public conscience appeals to a collective moral awareness that puts restrictions on States and combatants during armed conflict. The Anuvrat Movement, founded by Acharya Tulsi in 1949, provides an example of how the Jain conscience was modernized into a universal code of conduct to avoid aggression, discrimination and ecological destruction (ibid., 11).

In Christianity, conscience is understood as God's law inscribed on the human heart, guiding individuals to distinguish right from wrong. St. Paul (Romans 2:14–15) described conscience as a "witness" to God's law, emphasizing its universal and inward character (Giubilini 2024). Conscience thus functions as an "inner court", a moral judge that either acquits or criticizes actions before God. Alberto Giubilini highlights that "[a]s well as merely witnessing received opinions or divine laws, conscience can also be conceived as a moral sense giving us direct access to moral principles" (ibid.). Conscience in Christianity can be self-assessment and obedience to a higher moral order, reflecting the roots of "public conscience".

In Judaism, conscience finds its basis in the relationship between God and humanity, where moral responsibility flows from obedience to divine law (*Torah*) and ethical living. The Hebrew Bible presents the human heart (*lev*) as the seat of conscience, where a person feels the weight of moral responsibility (Rosenthal 2013, 4). Rabbinic thought deepened the understanding by identifying conscience with the *yeitzer tov* (the inclination to good),

which must constantly struggle against the *yeitzer ha-ra* (the inclination to evil) (ibid., 12). This interprets conscience as a moral struggle, in which human beings are called to choose life, justice and peace in obedience to God's command. Moreover, Jewish law (*halakha)* provides guidance for conscience, which ensures that personal moral reasoning is guided by communal and ethical obligations.

In Islam, conscience is linked to the concept of *fitra*, through which every human being recognizes the divine and is inclined toward truth and justice (Geoffroy 2012, 53). The Qur'an describes all creations, humans, animals, plants and mountains as God, declaring that the universe itself has a moral consciousness. This awareness gives rise to human responsibility, who are bound to act with justice and protect the balance (*mīzān)* of the universe (ibid., 55–56). Islamic thinkers such as Ibn 'Arabî emphasized that conscience arises from recognizing the divine signs within both scripture and nature (ibid., 54). Therefore, conscience in Islam requires self-restraint, respect for all living beings, and rejection of arrogance and cruelty, as expressed in the Prophet's sayings about caring for animals, conserving resources and standing against oppression (see also below chapter XVII).

It is noteworthy that Article 18 of the International Covenant on Civil and Political Rights protects atheism along with religious beliefs (Human Rights Committee 1993, 2). International human rights law not only recognizes religion but also protects atheistic, non-theistic and any other believers (OHCHR 2025, 9 and 29). "Conscience" is often understood in the context of religious beliefs; nevertheless, it is equally important to study conscience in the light of atheistic beliefs, as non-religious believers do not deny the acceptance of humanitarian principles and public conscience. Atheism has not been mentioned positively during the *travaux préparatoires* of the Additional Protocols, but the statements that insisted on formulating provisions according to the universal or public conscience can be taken as atheistic contributions.

Thus, conscience is not an isolated individual judgment but is motivated by spiritual wisdom and beliefs. The above discussion on faith emphasizes that morality and moral duties flow from a higher ethical order and inner voice that have guided the communities and cultures for centuries.

It is also worth noting that various religions were directly quoted in scholarly publications as the sources of dictates of the public conscience. For example, Michel Veuthey stated that public conscience "is found in Judaism (Deuteronomy), Christianity (Matthew 7:12, 22, 3640; Luke 6:31), Islam, as well as in the Analects of Confucius, in Hinduism (Mahabharata, Anusasana Parva), Buddhism (Udana-Varga, Sutta Nipata) and the philosophers of ancient Greece (Thaïes, Plato, Aristotle) and Rome (Seneca)" (Veuthey 2003, 197–198).

Whether it be a ban on nuclear weapons, protection of the environment, or prohibition of sexual violence during armed conflicts, "public conscience" can provide solutions by either supporting the existing provisions, making them stronger, or addressing the masses' need for absolute prohibitions or restraints against unnecessary suffering. While commenting upon Dunant's *A Memory of Solferino*, Judge Weeramantry beautifully highlighted the potential and progressive nature of conscience as following:

> "Such were the realities of war, to which humanitarian law was the response of the legal conscience of the time. The nuclear weapon has increased the savagery a thousandfold since Dunant wrote his famous words. The conscience of our time has accordingly responded in appropriate measure, as amply demonstrated by the global protests, the General Assembly resolutions, and the universal desire to eliminate nuclear weapons altogether. It does not sit back in a spirit of scholarly detachment, drawing its conclusions from refined exercises in legal logic" (Weeramantry, 446).

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# CHAPTER XVII.

# REFERENCES TO ISLAMIC LAW DURING THE DRAFTING OF THE 1977 ADDITIONAL PROTOCOLS TO THE GENEVA CONVENTIONS OF 1949

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**Abstract:** Embedding international humanitarian law into the values and identities of individuals and institutions is imperative to achieve lasting compliance. Recognizing the convergence between

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international humanitarian law and Islamic law on several rules and principles may also highlight that international humanitarian law is a common human heritage. In contrast to the drafting history of the Geneva Conventions of 1949, the participation in the negotiations of their Additional Protocols of 1977 was widespread, including 33 Muslim-majority states. The Muslim delegations who were involved in the drafting process of the Additional Protocols of 1977 made early contributions to recognizing the universal nature of international humanitarian law. During the *travaux préparatoires*, they referred to the principles of Islam and Islamic law, notably concerning the principle of distinction as well as the protection of the natural environment, cultural objects and places of worship. Such protection may be supported by reminding Muslim-majority states of their significant contributions and by highlighting the commonalities between international humanitarian law and Islamic law. This is particularly relevant in contexts where non-state parties to armed conflict are Islamic armed groups and may be more inclined to follow the principles of Islamic law. The present chapter also seeks to contribute to ensuring that international humanitarian law is no longer seen as a rule imposed from the outside, but rather as a shared value system among individuals, communities, institutions and states, underpinned by a universal respect for humanity.

**Keywords:** International humanitarian law; Islamic law; principle of distinction; protection of the natural environment; protection of cultural objects and places of worship.

## 1. Introduction

The 1977 Protocols Additional to the Geneva Conventions of 12 August 1949 were finalized and adopted during the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which took place over four sessions between 1974 and 1977

(Diplomatic Conference). The two Additional Protocols adopted on 8 June 1977 were meant to supplement the provisions of the four Geneva Conventions of 1949,[3] and to address gaps in the legal framework at the time. The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) applies to international armed conflicts, including situations of armed conflict in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination.[4] The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II) supplements the provisions of Article 3 common to the four Geneva Conventions of 1949, and applies to non-international armed conflicts.[5] The four Geneva Conventions of 1949 and their Additional Protocols constitute the fundamental basis of modern international humanitarian law (IHL), the body of international law that regulates armed conflict, by setting out rules to govern the conduct of hostilities and to protect persons not taking part in hostilities. The Geneva Conventions of 1949 have been universally ratified by all states, which means that all states have agreed to be bound by their provisions and by the principle of humanity underlying these conventions. However, at the time of writing the present chapter,

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3 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 (Geneva Convention I); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949 (Geneva Convention II); Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 (Geneva Convention III); and Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Geneva Convention IV).

4 See, Article 1: 'General Principles and Scope of Application', Additional Protocol I.

5 See, Article 1: 'Material Field of Application', Additional Protocol II.

175 states have ratified Additional Protocol I and 170 states have ratified Additional Protocol II.[6]

Certain key principles inspiring the humanitarian conventions have long been accepted and expressed in religious texts, principles and teachings, including the Qur'an.[7] From the drafting history of some of the earlier humanitarian conventions, we see instances of religious influences or beliefs shaping the discussions on various provisions. Only two Islamic delegations – one from the Ottoman Empire and the other from Persia – were present at the 1899 and 1907 Hague International Peace Conferences, which gave rise to the first set of multilateral treaties that addressed three broad areas of international law – the conduct of warfare, peaceful settlement of international disputes, and arms limitation.[8] The Hague Conferences of 1899 and 1907 were attended by representatives of 26 and 43 states respectively. The Persian and Ottoman delegations participated in all domains of the Hague Conferences. Although "as 'small powers' both were relatively unassertive", James Cockayne argued that their "comments were particularly important in continuing the discussion on the ability of international humanitarian law to accommodate differing religious heritages".[9] For instance, at the 1899 Conference, in the context of the discussion over the markings of hospital ships, the use of the red cross emblem gave rise to "heated debate between the world of Christianity and the representatives from the Muslim and Buddhist religions, who insisted either on a neutral emblem or one specified according to religion, in which case Turkey wished to hoist the Red

6 Notably, the Additional Protocols of 1977 have not been signed and/or ratified by USA, Israel, India, Pakistan and Iran, among others.

7 M. K. Ereksoussi, "The Koran and the Humanitarian Conventions", *International Review of the Red Cross*, no. 14, May 1962, pp. 273–278.

8 Betsy Baker, "Hague Peace Conferences (1899 and 1907)", *Max Planck Encyclopedia of Public International Law*, 1 November 2009.

9 James Cockayne, "Islam and International Humanitarian Law: From a Clash to a Conversation between Civilizations", *International Review of the Red Cross*, vol. 84, no. 847, September 2002, p. 608.

Crescent, Persia the Red Sun, and Siam the Red Flame".[10] At the same time, the Persian delegate ensured that the rule against the destruction of cultural and religious property did not make a distinction between mosques and other types of religious property.[11] In the next few sections of this chapter, we see that this rule has great significance in Islamic law and strongly influenced the positions taken by Muslim delegations during the drafting of the 1977 Additional Protocols.

The Geneva Conventions of 1949 were largely negotiated by European states, while several states in Asia and Africa were still under colonial rule. Out of the 63 governmental delegations represented during the Diplomatic Conference for the Establishment of International Conventions for the Protection of War Victims (21 April–12 August 1949, Geneva),[12] only 7 were from Muslim-majority states – Afghanistan, Egypt, Iran, Lebanon, Pakistan, Syria and Turkey. In contrast to the drafting history of the Geneva Conventions of 1949, the Additional Protocols of 1977 are unique in that the participation in their negotiations was widespread.[13] 124 states were represented at the first session of the Diplomatic Conference (20 February–29 March 1974), 120 at the second session (3 February–18 April 1975), 107 states at the third session (21 April–11 June 1976), and 109 states at the fourth

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10 Arthur Eyffinger, *The 1899 Hague Peace Conference: The Parliament of Man, the Federation of the World,* Kluwer Law International, The Hague, 1999, pp. 268, 277–278.

11 William I. Hull, *The Two Hague Conferences and their Contributions to International Law,* Ginn & Company, Boston, 1908; reprinted Kraus Reprint Co., New York, 1970, pp. 253–254.

12 59 states were officially represented by delegations with full powers to discuss the text, while 4 were represented by observers. See, Jean Pictet (ed.), *Commentary on Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949*, ICRC, Geneva, 1952, p. 13.

13 Jonathan Cuénoud, "40th Anniversary of the Additional Protocols of 1977 of the Geneva Conventions of 1949", *EJIL: Talk!*, 8 June 2017.

session (17 March–10 June 1977). Of the total number of states attending the Diplomatic Conference, 33 were Muslim-majority states.[14] Significantly, the *travaux préparatoires* of the 1977 Additional Protocols evince that several states made statements affirming that the Additional Protocols were in line with their religious and cultural beliefs and practices pertaining to the conduct of warfare, further emphasizing the universality of the rules of IHL.

Over the years, the International Committee of the Red Cross (ICRC) has acknowledged and stressed the importance of engaging with different legal systems, cultures, religions and traditions, and finding synergies between them and the core principles of IHL. The relevance of such engagement with Islamic law and principles in particular cannot be overstated. The ICRC's *Roots of Restraint* study found that "religious identification can be an alternative focus for combatants' loyalty, particularly for Muslim soldiers for whom IHL resonates much less strongly than principles of Islamic law"[15] and emphasized that IHL trainers must stress the correlation between IHL and Islamic principles on issues such as exercising restraint towards civilians in armed conflicts and the prohibition of certain means and methods of warfare. The relevance of this engagement becomes even clearer when we analyse the statistics. According to the ICRC's internal annual exercise to evaluate the

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14 Afghanistan, Algeria, Saudi Arabia, Bangladesh, Egypt, the United Arab Emirates, Gambia (first, second and fourth sessions only), Republic of Guinea (second session only), Republic of Guinea-Bissau (first and second sessions only), Republic of the Upper Volta/Burkina Faso (first, second and third sessions only), Indonesia, Iraq, Iran, Libya, Jordan, Kuwait, Lebanon, Malaysia (first, second and fourth sessions only), Mali (first, second and third sessions only), Morocco, Mauritania, Nigeria (first and second sessions only), Oman, Pakistan, Qatar, Syria, Senegal, Somalia (fourth session only), Sudan, Chad, Tunisia, Turkey, and Yemen (first and fourth sessions only). See, List of Participants, *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, 1974-1977* (hereinafter, Official Records of the Diplomatic Conference), vol. II.

15 ICRC, *The Roots of Restraint in War*, 2018, p. 36.

status of its relationships with armed groups, as of 2024, at least 38 million people are living in areas "fully controlled by armed groups that have Islam as a guiding framework for their operations and ideologies, with an additional 36 million residing in areas where these groups contest control".[16]

The ICRC's Challenges Report (2024) further elaborates on the importance of engaging with Islamic law from an operational perspective:

> "There are 29 Muslim-majority states that include compulsory implementation of Islamic law – family, civil, commercial, or criminal – in their legal systems. Given this, understanding the Islamic law of war is of particular importance, and falls within the ICRC's work to create and maintain a dialogue with weapon bearers from different cultural and legal frameworks or local traditions across the globe. Several large-scale ICRC operations are taking place in Muslim majority countries, such as Afghanistan, Syria, Yemen, Somalia, Iraq and Nigeria, in which Islamic law carries particular weight. Moreover, in these and other contexts, many non-state parties to armed conflict are Islamic groups, and some of them use only Islam or Islamic law as their source of reference".[17]

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16 Matthew Bamber-Zryd, "ICRC Engagement with Armed Groups in 2024", *Humanitarian Law and Policy Blog*, 31 October 2024.

17 See, ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Building a Culture of Compliance for IHL to Protect Humanity in Today's and Future Conflicts*, September 2024, p. 80. See also Peter Maurer, "Foreword", in Ahmed Al-Dawoody (ed.), *IHL and Islamic Law in Contemporary Armed Conflicts – Experts' Workshop Geneva, 29–30 October 2018*, Geneva: ICRC, November 2019, p. 8, available for download here in English, Arabic and French.

Given the evident synergies between several Islamic religious and legal traditions, on the one hand, and IHL rules and principles, on the other, it is not surprising that the Muslim delegations who were involved in the drafting process of the Additional Protocols of 1977 were cognizant of these synergies and made early contributions to the recognition of IHL's universal nature, both as a body of law and as a set of humanitarian principles.

This chapter highlights the influence of Islam, in general, and Islamic law in particular, on the preparatory works of the Additional Protocols of 1977. It draws on the references made by Muslim states to the principles of Islam/Islamic law during the negotiations on the drafting of the 1977 Additional Protocols to the Geneva Conventions of 1949 at the Diplomatic Conference held between 1974 and 1977. This chapter focusses on references made by Muslim delegations to three key issues: (1) the principle of distinction; (2) the protection of the natural environment; and (3) the protection of cultural heritage, particularly places of worship. This chapter analyzes the intersections between Islamic law and contemporary IHL on these issues and highlights potential interpretational challenges. As such, the authors hope that this book chapter will further the dialogue and collaboration envisaged by the "Faith for Rights" framework developed by the United Nations (UN) Office for the High Commissioner for Human Rights (OHCHR),[18] by providing the backing of Islamic principles and IHL rules underpinning humanitarian protection during armed conflicts.

## 2. Islamic influences in the *travaux préparatoires* of the Additional Protocols

The proceedings of the Diplomatic Conference were marked by instances of Muslim states grounding their commitment to IHL in

[18] See, "OHCHR and the 'Faith for Rights' Framework", Office of the United Nations High Commissioner for Human Rights, available at https://www.ohchr.org/en/faith-for-rights.

Islamic law principles and practice. Speaking at the eleventh plenary meeting of the Diplomatic Conference held on 5 March 1974, the representative of Pakistan noted that the Geneva Conventions of 1949, which at the time "constituted the most up-to-date and complete set of rules for ensuring the protection of victims of armed conflict, codified principles which had first been enunciated in the laws of Islam".[19] On 3 June 1977, the Saudi Arabian delegation, while explaining its decision to vote against the inclusion of Article 20 (basic rules) in draft Protocol II, affirmed that "in Islamic society, war is always defensive, merciful and humanitarian. Its sole aim is to repel aggressors without exposing either civilians, cultural objects or the environment to danger".[20] Similarly, on 5 March 1974, Mr. Sultan (Egypt), speaking during the general discussion at the tenth plenary meeting of the Conference, underscored the importance of adopting the two draft protocols simultaneously to "avoid differences in the treatment of victims depending on the nature of the conflict". He emphasized that:

> "The general principles of Islamic law applicable to armed conflicts included the following obligations: the obligation to distinguish clearly between combatants and non-combatants, the latter to be given general and complete protection; the obligation to establish a clear distinction between civilian property and military objectives and to give special protection to goods essential to the survival of the civil population and installations containing dangerous forces; the prohibition of mutilation, which was an affront to the dignity of the human

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19 Summary Record of the Eleventh Plenary Meeting, 5 March 1974, CDDH/SR.11, *Official Records of the Diplomatic Conference*, vol. V, pp. 105–106, para. 26.

20 Explanations of Vote: Annex to the Summary Record of the Fifty-First Plenary Meeting, 3 June 1977, CDDH/SR.51, *Official Records of the Diplomatic Conference*, vol. VII, p. 123.

> person; the prohibition of methods and means of combat likely to cause unnecessary suffering, and the prohibition of perfidy and perfidious weapons. All those principles were set out in parts III and IV of draft Protocol I, and in parts IV and V of draft Protocol II. His delegation would support those texts and, if necessary, propose any improvements that it deemed necessary."[21]

In this chapter, we rely on the references to Islam/Islamic law made by delegates of Muslim-majority states during the Diplomatic Conference as a starting point to analyse the similarities and differences between the ways in which Islamic law and IHL address issues relating to armed conflicts, which may in turn further stimulate debate on potential points of divergence, and the operational and interpretational challenges in translating Islamic law and IHL into practice. It may be noted here that the analysis of Islamic law in the present book chapter is mostly drawn from the four Sunni schools of Islamic law, that is, the Hanafī, Mālikī, Shāfiʿī and Hanbalī schools. Moreover, like other bodies of law, in Islamic law, there are a plurality of legal interpretations and competing understandings on certain matters pertaining to *jus in bello*, based on the need to balance military necessity and humanitarian considerations during armed conflicts. It may also be noted here that the present chapter is not an exhaustive account of the complexities and varied interpretations of the IHL and Islamic law rules relating to the principle of distinction, the protection of the natural environment, and the protection of cultural objects and places of worship. Rather, the present chapter merely seeks to provide a broad overview of the applicable rules under both bodies of law, highlighting the convergences and the scope for engagement between the two.

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21 Summary Record of the Tenth Plenary Meeting, 5 March 1974, CDDH/SR.10, *Official Records of the Diplomatic Conference*, vol. V, p. 92, para. 9.

## 2.1 Principle of Distinction

### 2.1.1 The Position under Islamic Law

The Islamic law of war places great emphasis on the sanctity of human life and property. Islamic law makes it abundantly clear that all fighting on the battlefield must be directed solely against enemy combatants. Civilians must not be deliberately harmed during the course of hostilities. In the words of Roger C. Algase, the Islamic law of war "strikes a balance between military necessity and respect for human life in a manner which gives a higher priority to saving the lives of non-combatants than does modern international law".[22] Based on interpretations of Qur'anic verses and reports attributed to the Prophet Muhammad (d. 632), Islamic law protects civilians from military attack. For instance, this principle is clearly set out in the Qur'anic verse that states "And fight in the way of God those who fight against you and do not transgress, indeed God does not like transgressors".[23] According to Qur'anic interpreters, this verse means that non-combatant enemies should not be fought against and any attack on non-combatants such as women and children is considered as an act of aggression which angers God. Al- Razī (d. 1209) explains the meaning of combatants as gleaned from this verse: "They must be taking part in the fighting; anyone who is willing or prepared to fight cannot be described as a combatant, except in metaphor, until they enter into combat".[24]

Several hadiths attributed to Prophet Muhammad list examples of categories of enemy noncombatants that cannot be targeted during the conduct of hostilities, namely women, children, the aged, the

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22 Roger C. Algase, "Protection of Civilian Lives in Warfare: A Comparison between Islamic Law and Modern International Law Concerning the Conduct of Hostilities", *Military Law and Law of War Review*, 1997, p. 268.

23 Qur'an 2:190.

24 Muhammad ibn 'Umar al- Razī, *Tafsīr al-Fakhr al-Razi: Al-Mushtahar bi-al-Tafsir al-Kabir wa-Mafatih al-Ghayb*, Vol. 5, Dar al-Fikr, 1981, p. 138.

clergy, and *al-ʿasīf* (any hired man).[25] ʿ*Asīf* or its plural ʿ*usafā*ʾ in the context of war refers to anyone who works for, or is paid by, the enemy to perform services on the battlefield, such as minding belongings and animals, which was a common practice in the past. Importantly, these ʿ*usafā*ʾ did not take part in the conduct of hostilities, and therefore could not be classified as combatants. The same principle can be applied to extend protection against attack to medical personnel (civilian and military) accompanying enemy armies, to military reporters, or to any other persons providing services to the enemy armies, as long as they do not engage in hostilities. This is similar to the protection granted to certain categories of persons under modern IHL, such as religious[26] and medical personnel[27] and journalists,[28] who enjoy civilian status as long as they do not take direct part in the conduct of hostilities. Therefore, Islamic law espouses the principle of distinction

25 See hadiths numbers 17932, 17933, 17934, 17935, 17936, and 17937 in al-Bayhaqī, *Sunan al- Bayhaqī*, Vol. 9, pp. 90 f.; hadiths numbers 2613 and 2614 in Abū Dāwūd, *Sunan Abī Dāwūd*, Vol. 3, p. 37; hadiths numbers 2841 and 2842 in Ibn Mājah, *Sunan Ibn Mājah*, Vol. 2, pp. 947 f.; hadiths numbers 8625, 8626, and 8627 in al- Nasāʾī, *Sunan al- Nasāʾī al- Kubrā*, Vol. 5, pp. 186 f.; hadiths numbers 9379, 9382, and 9384 in al- Ṣanaʿānī, *Al- Muṣannaf*, Vol. 5, pp. 200–202.

26 See, Article 24 of the First Geneva Convention; Article 36 of the Second Geneva Convention; Article 15 of Additional Protocol (which extends protection to civilian religious personnel in addition to military religious personnel in all circumstances.

27 See, Articles 24-26 of Geneva Convention I; Article 36 of Geneva Convention II; Article 20 of Geneva Convention IV; Article 15 of Additional Protocol I (which extends protection to civilian as well as military medical personnel in all circumstances); and Rule 25, "Medical Personnel", ICRC Customary IHL Database.

28 See, Article 79 of Additional Protocol I, which provides that journalists shall be treated as civilians, "provided that they take no action adversely affecting their status as civilians". See also, Rule 34, ICRC Customary IHL Database: "civilian journalists engaged in professional missions in areas of armed conflict must be respected and protected as long as they are not taking a direct part in the hostilities".

between combatants and non-combatants, ensuring the protection of the latter from attacks during military operations, provided that they do not take part in hostilities. Similarly, under IHL, civilians are protected against direct attack "unless and for such time as they take a direct part in hostilities".[29]

The Companions of the Prophet Muhammad followed the Prophet's example when it came to the protection of combatants: for example, the first caliph Abū Bakr (d. 634) instructed his army commander: "Do not kill a child or a woman; or an aged person; do not cut down fruit-bearing trees or destroy buildings; do not slaughter a sheep or a camel except for food; do not burn or drown palm trees; do not loot; and do not be cowardly".[30] The second caliph 'Umar ibn al-Khattāb (d. 644) issued written instructions to his soldiers ordering them to fear God and to not kill farmers unless the farmers fought against them.[31] Based on the logic guiding the prohibition of targeting these categories, other examples prohibiting the targeting of civilians – such as the sick, people with disabilities, farmers, traders and craftspeople – are also found in classical Islamic law books.[32]

Finally, it must be pointed out that under the Islamic system of *amān*, which literally translates to protection or safety, if an enemy withdraws from combat or enters Muslim territory and requests protection, whether explicitly or implicitly, they must not be

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29 See, Article 51 (3) of Additional Protocol I (to which no reservation has been made). See also, Rule 6, "Civilians' Loss of Protection from Attack", ICRC Customary IHL Database; ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, 2009.

30 'Abdullah ibn Abī Shaybah, *Al-Kitāb al-Musannaf ftal-Ahādīth wa al-Āthār*, Vol. 6, Dār al-Kutub al-'Ilmiyyah, Beirut, 1995, p. 478.

31 Ahmedibnal-Husseinibn 'Ali al-Bayhaqī, *Al-Sunan al-Kubrā*, 2nd ed., Vol. 9, Dār al-Kutub al-'Ilmiyyah, Beirut, 2003, p. 155.

32 Ahmed Al-Dawoody, "Islamic Law and International Humanitarian Law: An Introduction to the Main Principles", *International Review of the Red Cross*, vol. 99, no. 3, 2017, p. 1003.

targeted. This is a type of *amān* known as quarter, which grants individual or collective protection to the person(s) and property of enemy combatants who have withdrawn from hostilities until they return to their country. Quarter is granted if an individual expresses in any way an intention to stop fighting and the desire to claim safety, regardless of the language it is made in; whether it is made in writing, verbally or in the form of gestures; or whether it is implicit or explicit.[33] The objective of *amān* is to prevent bloodshed and to protect life, which has led jurists to expand the application of *amān* to the point where expressing an intention to surrender is not even required.[34] For instance, jurists unanimously agree that if an enemy mistakenly assumes that a Muslim has granted him *amān*, then the *amān* is valid even if the Muslim had no intention of granting it.[35] Jurists disagree over whether *amān* can be granted after or only before the capture of enemy belligerents. However, Ibn Qudāmah (d. 1223) is of the view that the mere fact of an enemy belligerent's attempt to enter Muslim territory peacefully entitles him to *amān*.[36]

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33 See Muhammad al-Khatıb al-Shirbını, Mughnıal-Muhtaj ilaMa'rifah Ma'anıAlfaż al-Minhaj, Vol. 4, Dar al-Fikr, Beirut, p. 237; 'Abd al-'AzızSaqr, 'Al-'Alaqat al-Dawliyyah fı al-Islam Waqt al Harb: Dirasah lil-Qawa'id al-Munażżimah li-Sayr al-Qital, Mashru' al-'Alaqat al-Dawliyyah fı al Islam, No. 6, Al-Ma'had al-'Ālamı lil-Fikr al-Islamı, Cairo, 1996, p. 83; Yusufal-Qaradawı, Fiqh al-Jihad: Dirasah Muqaranah li-Ahkamih wa Falsafatih fıDaw' al-Qur'an wa al Sunnah, Vol. 2, Maktabah Wahbah, Cairo, 2009, p. 1178.

34 See Muhammad al-Khatıb al-Shirbını, Mughnıal-Muhtaj ilaMa'rifah Ma'anıAlfaż al-Minhaj, Vol. 4, Dar al-Fikr, Beirut, p. 237.

35 Muhammad al-Khatıb al-Shirbını, Mughnıal-Muhtaj ilaMa'rifah Ma'anıAlfaż al-Minhaj, Vol. 4, Dar al-Fikr, Beirut, p. 237; Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations*, Palgrave Macmillan, New York, 2011, pp. 11–41.

36 Muwaffaq al-Dın 'Abd Allah ibn Ahmad ibn Qudamah, Al-KafıfıFiqh al-Imam Ahmad Ibn Hanbal, ed. Muhammad Faris and Mus'ad 'Abdal-Hamıd al-Sa'danı, Vol. 4, Dar al-Kutub al-'Ilmiyyah, Beirut, 2004, p. 163. See also Ahmed Al-Dawoody, "Islamic Law and International

### 2.1.2 The Position under IHL

The principle of distinction between civilians and combatants is a cornerstone principle of IHL. The categories of civilians and combatants are mutually exclusive and complementary, which means that in a situation of armed conflict, every person is either a legitimate military target (who can be subject to attack) or a protected person.[37] Article 48 of Additional Protocol I entitled "Basic Rule" and falling under Part IV on Civilian Population imposes an obligation on parties to international armed conflicts to distinguish at all times between the civilian population and combatants, and between civilian objects and military objectives and to direct their military operations only against the latter.

The provision contained in Article 48 of Additional Protocol I was initially numbered Article 43 of the draft Protocol prepared and

Humanitarian Law: An Introduction to the Main Principles", *International Review of the Red Cross*, vol. 99, no. 906, 2017, pp. 1014–1015.

37 Nils Melzer, "The Principle of Distinction between Civilians and Combatants", in Andrew Clapham and Paola Gaeta (eds.), *The Oxford Handbook of International Law in Armed Conflict*, Oxford University Press, Oxford, 2014, pp. 296–297. The IHL relating to non-international armed conflicts does not explicitly refer to the concept of combatants, mostly because states do not want to confer on anyone the right to fight against government forces. However, even in non-international armed conflicts, a distinction exists between those who directly participate in hostilities and those who do not (civilians). Individuals become members of an armed group and therefore subject to direct attack only if they have a "continuous combat function". Civilians (understood in opposition to individuals who engage in acts of hostility) lose protection from attack if they directly participate in hostilities. It must be recalled here that this loss of protection only lasts for the duration of that participation. See, ICRC Customary IHL Database; ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, 2009; ICRC, "The Principle of Distinction", in *Online Casebook: How Does Law Protect in War?* (available here); Sabrina Henry, "Exploring the "Continuous Combat Function" Concept in Armed Conflicts: Time for an Extended Application?", *International Review of the Red Cross*, vol. 100, nos. 907–909, pp. 267–285.

presented by the ICRC before the Diplomatic Conference which read as follows: "In order to ensure respect for the civilian population, the Parties to the conflict shall confine their operations to the destruction or weakening of the military resources of the adversary and shall make a distinction between the civilian population and combatants, and between civilian objects and military objectives".[38] Two amendments were proposed to draft Article 43 at the second meeting of Committee III held on 12 March 1974.[39] The first was by Czechoslovakia, German Democratic Republic and Poland (CDDH/III/9),[40] and the second was by Romania (CDDH/III/10).[41] The proposal by Romania was withdrawn[42] in favour of a third amendment proposed by a group of primarily Muslim-majority states comprising Kuwait, Libyan Arab Republic, Madagascar, Mali, Mauritania, Morocco, Romania, Sudan, Syrian Arab Republic and the United Arab Emirates (CDDH/III/14 and Add. 1 and 2).[43] The text proposed by this group was a variation of the original text prepared by the ICRC and the amendments suggested in documents CDDH/III/9 and CDDH/III/10, and read as follows:

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38 Article 43, Draft Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, *Official Records of the Diplomatic Conference*, vol. I, p. 15.

39 Summary Records of the Second Meeting of Committee III, CDDH/III/SR.2, *Official Records of the Diplomatic Conference*, vol. XIV, pp. 15-16, paras. 17, 20.

40 Article 43 – Basic Rule, Amendments to Draft Additional Protocol I and Annex, *Official Records of the Diplomatic Conference*, vol. III, p. 193.

41 Article 43 – Basic Rule, Amendments to Draft Additional Protocol I and Annex, *Official Records of the Diplomatic Conference*, vol. III, p. 194.

42 Summary Record of the Twelfth Meeting of Committee III, 26 March 1974, CDDH/III/SR.12, *Official Records of the Diplomatic Conference*, vol. XIV, p. 89, para. 6.

43 Article 43 – Basic Rule, Amendments to Draft Additional Protocol I and Annex, *Official Records of the Diplomatic Conference*, vol. III, p. 194.

> "In order to ensure full protection and respect for the civilian population and civilian objects, the Parties to the conflict shall confine their operations only to military objectives of the adversary and shall always make a clear distinction between such objectives and objects of civilian nature as well as between civilian population and combatants."

As such, Muslim-majority states took an active interest in the drafting and wording of the provision on the principle of distinction in Additional Protocol I. Two further proposals were made by Ghana (CDDH/III/20) and by France and the German Democratic Republic (CDDH/III/26) respectively.[44] During the discussions on draft Article 43, some delegations were opposed to the inclusion of the phrase "to the destruction or weakening of the military resources" in the ICRC draft, as they believed that it was inappropriate for a conference drafting a convention on the protection of civilians during hostilities to comment on rules relating to the conduct of war.[45] In response to these concerns, a working party was drawn up to study the texts on draft Article 43. The text for Article 43 proposed by the Working Group (CDDH/III/29) made changes mostly of a drafting nature – it used the phrase "shall direct their operations against military objectives" and the Rapporteur of Committee III, Mr. Baxter (USA), suggested the insertion of the word "accordingly" before the words "shall direct" in document CDDH/III/29. Article 43 as drafted by the Working Group and amended by the Rapporteur

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44 Article 43 – Basic Rule, Amendments to Draft Additional Protocol I and Annex, *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts*, vol. III, p. 195.

45 Summary Record of the Fourth Meeting of Committee III held on 13 March 1974, CDDH/III/SR.4, *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts*, vol. XIV, pp. 32–34.

was adopted by consensus by Committee III[46] and by the Conference at the forty-first plenary meeting.[47]

In addition to the above-discussed general principle of distinction, like Islamic law, treaty and customary IHL also prohibit attacks against medical, religious and civil defence personnel of armed forces,[48] and persons recognized as *hors de combat*, based on the rationale that since these persons do not directly participate in hostilities, the "considerations of humanity" require that such persons are immune from attack, regardless of the potential military advantages that could be gained.[49] The concept of *hors de combat* is well-recognized under customary IHL,[50] and codified

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46 Summary Record of the Tenth Meeting of Committee III held on 21 March 1974, CDDH/III/SR. 10, *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts*, pp. 77–79.

47 Summary Record of the Forty-First Plenary Meeting held on 26 May 1977, CDDH/SR.41, p. 161.

48 See, Article 24, Geneva Convention I; Article 36 of Geneva Convention II; Rules 25 and 27, ICRC Customary Law Study; and Article 12 (1) of API. Article 8 (2) (b) (xxiv) of the Rome Statute of the International Criminal Court criminalizes, among other things, the act of intentionally directing attacks during an international armed conflict against personnel using the distinctive emblems of the Geneva Conventions in conformity with international law as a war crime. Medical and religious personnel are entitled to use the distinctive emblems. For a more detailed understanding of the meaning of "religious personnel", see, Nilendra Kumar, "Protection of Religious Personnel", in Dieter Fleck (ed.), *The Handbook of International Humanitarian Law*, 4th Edition, 25 February 2021, pp. 458–474.

49 Nils Melzer, "The Principle of Distinction between Civilians and Combatants", in Andrew Clapham and Paola Gaeta (eds.), *The Oxford Handbook of International Law in Armed Conflict*, Oxford University Press, Oxford, 2014, p. 299.

50 See, Article 13 (c) of the International Declaration concerning the Laws and Customs of War, Brussels, 27 August 1874 (Brussels Declaration); Article 9 of The Laws of War on Land, Oxford, 9 September 1880 (Oxford Manual); Article 71 of the Instructions for the Government of Armies of the United States in the Field, 24 April 1863 (Lieber Code); Rule 46, "Orders or Threats that No Quarter Will Be Given", ICRC Customary IHL

under Article 41 of Additional Protocol I. A person is said to be *hors de combat* if such person: (a) is in the power of an adverse party; (b) is defenceless because of unconsciousness, shipwreck, wounds or sickness; (c) clearly expresses an intention to surrender. The rationale underlying the concept of *hors de combat* is that considerations of humanity require that persons who do not directly participate in hostility should have immunity against direct attack, regardless of any potential military advantage that could be achieved. Thus, the concept of *hors de combat* (particularly, when an enemy combatant expresses an intention to surrender) may coincide with the type of *amān*, under Islamic law, in the sense of quarter described in the previous section of this chapter.

Thus, the principle of distinction is fundamental to both Islamic law and IHL, which one could argue that this came through in the active involvement of Muslim-majority states on this issue at the Diplomatic Conference.

## 2.2 Protection of the Natural Environment

### 2.2.1 The Position under Islamic Law

Armed conflicts can cause detrimental harm to the natural environment. In the Islamic law of war, the protection of the environment surfaces as a major concern, alongside the protection of civilians. In the Islamic worldview, everything in the universe has been created by God and human beings have been entrusted with the responsibility of protecting and preserving it and contributing to the development of human civilization.[51] There are several examples in Islamic law which indicate that the natural environment ought to be preserved and protected during armed conflicts, and that unnecessary damage to the natural environment

Study; and Rule 47, "Attacks against Persons Hors de Combat", ICRC Customary IHL Study.

51 Qur'an 2:30; 11:61. See also 'Abd Allah Shiḥātah, *Rū'yah al-Dīn al-Islāmī fī al-Ḥifāẓ 'alā al-Bī'ah* (Cairo: Dār al-Shurūq, 2001), pp. 13–14, 17–20.

is prohibited. However, it must be kept in mind that the rules on the protection of the natural environment in Islamic law are based on events that took place many centuries ago, which were reported in Islamic sources and have since evolved to give rise to contemporary Islamic reasoning.

Although the term "natural environment" is not used as such by classical Muslim jurists, the examples referred to by them help determine whether it is permissible or prohibited to cause damage to certain parts of the natural environment during armed conflicts, such as livestock, trees, drinking water and agricultural areas. Any damage to the natural environment – whether in peacetime or beyond what is lawfully permitted (in other words, required by military necessity) during armed conflict – is classified as *fasād fī al-arḍ* (literally, "destruction/mischief in the land"), a serious offense described in the Qur'an (e.g., 2:205; 5:32–33). Under Islamic law, this concept is one of the acts falling within the crime of terrorism, highlighting the severity of environmental destruction in the context of war. The concept of imperative military necessity under Islamic law means avoiding the defeat of the Muslim army.[52] Islamic law prohibits the commission of any sort of *takhrīb* (vandalism) or wanton destruction during the conduct of hostilities in enemy territories and any such act would be regarded as *fasād*.[53] Thus, any damage caused to the natural environment during armed conflict that is not justified by imperative military necessity would

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52 Ahmed Al-Dawoody and Kelisiana Thynne, "Of Date Palms and Dialogue: Enhancing the Protection of the Natural Environment under International Humanitarian Law", *International Review of the Red Cross*, vol. 106, no. 925, p. 259.

53 Muhammad ibn al-Hassan al-Shaybānī, SharhKitāb al-Siyar al-Kabīr, commentary by Muhammad ibn Ahmad al-Sarakhsī, ed. Abī Abdullah Muhammad Hassan Muhammad Hassan Ismā'il al-Shafi'ī, Vol. 4, Dār al-Kutub al-'Ilmiyyah, Beirut, 1997, pp. 32–33; Ahmed Al-Dawoody, "Islamic Law and International Humanitarian Law: An Introduction to the Main Principles", *International Review of the Red Cross*, vol. 99, no. 906, 2017, p. 1007.

constitute the crime of terrorism under Islamic law, provided that other elements of the crime under Islamic law are satisfied, such as the use of force, the lack of justification for criminal acts, and the helplessness and victimization of the targets.[54]

The protection of the natural environment is also one of the rationales behind the prohibition of weapons of mass destruction under Islamic law. Sohail H. Hashmi argues against the use and the proliferation of weapons of mass destruction, reasoning that: "they wreak lasting damage on the natural environment, a result that must be considered in Islamic moral evaluations because all life has worth as God's creation quite apart from any utility derived by humans. 'There is not an animal on earth, nor a bird that flies on its wings, but they are communities like you' (Qur'an 6:38). Destroying or damaging the natural habitat of species unable to defend themselves against human attack constitutes the height of what the Qur'an labels *fasad fi al-ard* (corruption in the land)".[55]

In Islamic law, there are examples of specific instructions given to commanders prohibiting damage to the natural environment such as Prophet Muhammad's instructions prohibiting the cutting down of trees except for those that block Muslims engaged in fighting.[56] Another example is the ten instructions, already mentioned earlier,

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54 Ahmed Al-Dawoody, "Terrorism, Religious Violence, and the Shari'ah", in Khaled Abou El Fadl (ed.), *Routledge Handbook of Islamic Law*, Routledge, New York, 2019, pp. 429–433.

55 Sohail H. Hashmi, "Islamic Ethics and Weapons of Mass Destruction: An Argument for Nonproliferation" in Sohail H. Hashmi and Steven P. Lee (eds.), *Ethics and Weapons of Mass Destruction: Religious and Secular Perspectives*, Cambridge University Press, Cambridge, United Kingdom, 2004, p. 323. See also, Sohail H. Hashmi, "Weapons of Mass Destruction and Islamic Law", in Ahmed Al-Dawoody (ed.), *IHL and Islamic Law in Contemporary Armed Conflicts – Experts' Workshop*, Geneva, 29–30 October 2018, ICRC, Geneva, November 2019, p. 33.

56 See Hadiths 18155 and 18156 in Ahmad ibn al-Husayn ibn 'Alī ibn Mūsā al-Bayhaqī, Sunan al-Bayhaqī al-Kubrā, ed. Muhammad 'Abd al-Qādir 'Atā,Dār al-Kutub al-'Ilmiyyah, Beirut, 3rd ed., Vol. 9, 2003, pp. 154–155.

given by the first caliph Abū Bakr (d. 634) to his army commander Yazīd ibn Abī Sufyān before his army was sent to fight in the Levant, which included the following instruction: "do not cut down fruit-bearing trees or destroy buildings; do not slaughter a sheep or a camel except for food; do not burn or drown palm trees; do not loot; and do not be cowardly".[57] Islamic sources contain reports that the Prophet Muhammad ordered the destruction of a small number of palm trees of the Banū al-Nadīr in 625CE and the palm trees and grapes of the adversary in the battle of al-Ta'if in 630 CE. The order to destroy the palm trees was given either to force the enemy to surrender and draw them out of their fortifications or due to the location of the palm trees (that is, their location made an effective contribution to military action). As one of the authors of the present book chapter has previously suggested, it is likely that the order was given due to a combination of these two reasons, considering the small number of palm trees that were reportedly damaged.[58]

Some rules of Islamic law also seek to protect animals as constituting a part of the natural environment. Prophet Muhammad forbade the torture and mutilation of animals. Hadith literature recounts an instance in which the Prophet once abhorred the action of people shooting arrows at a sheep, commanding them not to mutilate animals.[59] Several hadiths state that anyone who

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57 Ahmed Al-Dawoody, "Islamic Law and International Humanitarian Law: An Introduction to the Main Principles", *International Review of the Red Cross*, Vol. 99, No. 906, 2017, p. 1003; Rudolph Peters, *Islam and Colonialism: The Doctrine of Jihad in Modern History*, Mouton, The Hague, 1979, p. 24.

58 According to historian Muhammad ibn Ishāq (d. 767), two palm trees were destroyed whereas according to two Qur'an exegetes, al Dahhāk (d. 723) and Qatādah (d. 735), six trees were damaged. See, Muhammad ibn Ahmad al-Ansārī al-Qurtubī, Al-Jāmi' li-Ahkām al-Qur'ān, Vol. 8, Dār al-Fikr, Beirut, 2019, p. 7.

59 See hadith number 4529 in al- Nasā'ī, *Sunan al- Nasā'ī al- Kubrā*, Vol. 3, p. 72; hadith number 4440 in al- Nasā'ī, *Al- Mujtabā*, Vol. 7, p. 238; hadith number 8418 in Ibn al- Athīr, *Mu'jam Jami' al- Uṣūl fī Ah. ādīth al- Rasūl*, Vol.

kills an animal, a bird, or certain insects unjustly will be held responsible for it on the day of judgment.[60] In another instance, the Prophet forbade mutilation even if it was a body of a rabid dog, thus affirming the absolute prohibition of mutilation.[61]

### 2.2.2 The Position under IHL

Armed conflicts threaten the natural environment and consequently the survival and well-being of those who depend on it for their livelihood and survival.[62] In 1996, the International Court of Justice (ICJ) recognized in its Advisory Opinion on Nuclear Weapons that "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings".[63] Writing in 2014, Jean-Marie Henckaerts and Dana Constantin[64] identified three phases in the international efforts to better protect the natural environment during armed

10, p. 751; al- Mizzī, *Tahdhīb al- Kamāl*, Vol. 28, p. 198; hadith number 25333 in al- Suyūṭī, *Jāmiʿ al- Aḥ. ādīth*, Vol. 8, p. 187; hadith number 13646 in al- Suyūṭī, *Al-Fath. al- Kabīr*, Vol. 3, p. 325; hadith number 91 in al- Baghawī, *Ḥadīth Muṣʿab*, p. 74; al- ʿAynī, *ʿUmdah al- Qārī*, Vol. 21, p. 125; hadith number 39972 in Ibn Ḥusām al- Dīn, *Kanz al- ʿUmmāl*, Vol. 15, p. 16; hadith number 6790 in Ibn al- Muthannā, *Musnad Abī Yaʿlā*, Vol. 12, p. 162; Ibn Ḥazm, *Al- Muḥ. allā*, Vol. 7, pp. 295 f.

60 See hadiths numbers 39968–39988 in Ibn Ḥusām al- Dīn, *Kanz al- ʿUmmāl*, Vol. 15, pp. 15– 17; hadith number 8419 in Ibn al-Athīr, *Muʿjam Jāmiʿ al-Uṣūl fī Aḥādīth al- Rasūl*, Vol. 10, pp. 751 f.

61 Al- Sarakhsī, *Kitāb al- Mabsūt*, Vol. 9, pp. 135, 196, Vol. 10, pp. 129, 131, Vol. 16, p. 145, Vol. 26, p. 175.

62 See, for example, ICRC, "Natural Environment: Neglected Victim of Armed Conflict", 5 June 2019 (available on ICRC's website).

63 ICJ, *Legality of the Use or Threat of Nuclear Weapons*, Advisory Opinion, 8 July 1996, ICJ Reports 1996, p. 226, para. 29.

64 Jean-Marie Henckaerts and Dana Constantin, "Protection of the Natural Environment", in Andrew Clapham and Paola Gaeta (eds.), *The Oxford Handbook of International Law in Armed Conflict*, Oxford Academic, 2014, p. 470. See also, Michael Bothe, "Protection of the Environment in Relation to Armed Conflicts", in Dieter Fleck (ed.), *The Handbook of International Humanitarian Law*, 4th Edition, 25 February 2021, pp. 338–350.

conflicts: *First*, during the Vietnam War (1954–1975), when destruction of the natural environment became a major concern and eventually gave rise to the adoption of the Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques of 1976 (ENMOD Convention)[65] and Articles 35 and 55 of Additional Protocol I during the Diplomatic Conference; *second*, during the Gulf War (1990–1991), where despite large-scale damage to the environment, the level of destruction appeared to "fall below the threshold established by Articles 35(3) and 55 of Additional Protocol I ('widespread, long-term and severe damage')" and thus attention was shifted to the applicability of the general principles of IHL to the natural environment; and *third*, in 1994, when the ICRC issued the first set of Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict (1994 Guidelines).[66]

As armed conflicts continue to wreak havoc and widespread damage to the natural environment, international efforts to tackle the issue are ongoing. For instance, in 2020, the ICRC published the updated Guidelines on the Protection of the Natural Environment,[67] which constitutes a collection of IHL rules and recommendations on the protection of the natural environment, reflecting developments in treaty and customary law since the issuance of the 1994 Guidelines. The updated 2020 Guidelines understand the natural environment to constitute "the natural

65 The ENMOD Convention is an international instrument which seeks to protect the environment in times of armed conflict by prohibiting its hostile use as a means of warfare (Article 1, ENMOD Convention).

66 ICRC, "Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict", Geneva, 1994.

67 ICRC, "Guidelines on the Protection of the Natural Environment in Armed Conflict: Rules and Recommendations relating to the Protection of the Natural Environment under International Humanitarian Law, with Commentary", Geneva, 2020 (hereinafter, ICRC 2020 Guidelines on the Natural Environment).

world together with the system of inextricable interrelations between living organisms and their inanimate environment, in the widest sense possible".[68] The Guidelines explain that the natural environment includes everything that exists or occurs naturally, such as the general hydrosphere, biosphere, geosphere and atmosphere (including fauna, flora, oceans, and other bodies of water, soil and rocks) and natural elements that are or may be the product of human intervention, such as foodstuffs, agricultural areas, drinking water and livestock. The Guidelines base this analysis on the ICRC's reading of the drafting history of the Additional Protocol I and the rules themselves.

The general principles of IHL – such as the principles of distinction, proportionality and precautions in attack – provide protection not only to human beings during armed conflict but also to the natural environment.[69] The natural environment is by default considered to be civilian in character for the purposes of IHL. This means that the natural environment is protected during armed conflicts by the same IHL rules that protect civilian objects, unless a part of the natural environment becomes a "military objective" as defined under IHL.[70] Parties to an armed conflict are under an obligation to follow the principles of distinction, proportionality and precautions in their conduct of hostilities to ensure that impacts on the natural environment are taken into consideration. For a part of the natural environment to become a military objective, it must by its nature, location, purpose or use, make an effective contribution to military action, and its total or partial destruction, capture or neutralization must offer a definite military advantage.

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68 ICRC 2020 Guidelines on the Natural Environment, p. 17, para. 16.

69 For a detailed analysis of the general protection rules of IHL applicable to the natural environment, see Rules 5–16 of the ICRC 2020 Guidelines on the Natural Environment, pp. 48–81.

70 See, Article 52 (2) of API and Rule 8, "Definition of Military Objectives", ICRC Customary Law Study.

Moreover, even if a part of the natural environment becomes a military objective, precautions must be taken to avoid and minimize incidental damage to the natural environment. The natural environment is also protected under IHL rules pertaining to the protection of objects indispensable to the survival of the civilian population,[71] the prohibition regarding works and installations containing dangerous forces,[72] and rules pertaining to the protection of cultural property,[73] insofar as certain parts of the natural environment qualify as cultural property. In addition to these general rules, IHL contains rules on specific weapons that afford protection to the natural environment, such as the prohibitions on the use of poisoned weapons, biological weapons, chemical weapons and incendiary weapons, to name a few.[74]

IHL also contains rules that envisage specific protection of the natural environment.[75] Additional Protocol I contains two provisions relevant to the protection of the natural environment during international armed conflicts: Article 35 (3) on basic rules addresses the issue from the point of view of methods of warfare which are intended or may be expected to cause widespread, long-term or severe damage to the natural environment; and Article 55 (1) on the protection of the natural environment, which concentrates on the health and survival of the population. The text

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71 See, Article 54 (2) of API; Article 14 of APII; and Rule 54, "Attacks Against Objects Indispensable to the Survival of the Civilian Population", ICRC Customary IHL Study.

72 See, Article 56 of API; Article 15 of APII; and Rule 42, "Works and Installations Concerning Dangerous Forces", ICRC Customary IHL Study.

73 See, Rule 12, ICRC 2020 Guidelines on the Natural Environment; The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict; Article 53 of API; Article 16 of APII; and Rule 38, "Attacks Against Cultural Property", ICRC Customary IHL Study.

74 See Rules 19–25, ICRC 2020 Guidelines on the Natural Environment, 2020, pp. 86–104, paras. 217–299.

75 For a detailed discussion, see Rules 1–4 and accompanying commentary, ICRC 2020 Guidelines on the Natural Environment, pp. 29–47.

of draft Protocol I prepared by the ICRC did not contain specific provisions aimed at safeguarding the environment, but several provisions on general protection implied respect for natural resources and objects indispensable for the survival of the civilian population.[76] However, some delegations (in particular, Australia, Czechoslovakia, Germany and Hungary) believed that the protection of the natural environment should be dealt with explicitly in a separate provision. Accordingly, two proposals were put forward by Australia (CDDH/III/60) and Czechoslovakia, German Democratic Republic and Hungary (CDDH/III/64) respectively.[77] These texts were referred to the Working Group of Committee III, which drew up a text that was adopted by consensus by Committee III and the plenary.[78]

As demonstrated above, and as pointed out elsewhere by one of the authors of this chapter, this baseline of protection for the natural environment during armed conflicts is also found in Islamic law.[79] In fact, the Islamic law principles on the protection of the

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76 Y. Sandoz, C. Swinarski and B. Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Geneva/Martinus Nijhoff, Leiden, 1987, pp. 662–663, paras. 2129–2130.

77 Article 48 bis – Protection of the Natural Environment, Amendments to Draft Additional Protocol I and Annex, *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts*, vol. III, pp. 220–221.

78 Summary Record of the Thirty-Eighth Meeting of Committee III at the Second Session of the Diplomatic Conference 1974-77 (CDDH/III/SR.38), *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts*, vol. XIV, p. 406, para. 17; Summary Record of the Forty-Second Plenary Meeting at the Fourth Session of the Diplomatic Conference, CDDH/SR.42, *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts*, vol. VI, p. 209, para. 28.

79 Ahmed Al-Dawoody and Sarah Gale, "Protecting the Environment during Armed Conflict: IHL and Islamic Law", *ICRC Humanitarian Law and Policy Blog*, 3 June 2021; Ahmed Al-Dawoody and Sarah Gale, "Protection of the

natural environment discussed in this chapter were developed in the seventh and eighth centuries, well before IHL rules on the subject. The discussion in this section indicates that the protection of the natural environment in armed conflicts remains a serious concern of both Islamic law and IHL. There ought to be more dynamic and sustained engagement and dialogue between these two legal frameworks to strengthen the protection of the natural environment.

## 2.3 Protection of Cultural Objects and Places of Worship

### 2.3.1 The *Travaux Preparatoires* of Additional Protocols I and II

Article 53 of Additional Protocol I and Article 16 of Additional Protocol II provide for the protection of cultural objects and of places of worship during international and non-international armed conflicts respectively. From the records of the proceedings of the Diplomatic Conference, we see that the protection of cultural objects, particularly places of worship, was an important issue among Muslim delegations. In the initial draft of Protocol I, prepared by the ICRC for consideration at the Diplomatic Conference, Article 47 provided for general protection of civilian objects,[80] and did not specifically refer to the protection of cultural objects. The reference to cultural objects was introduced by way of amendment CDDH/III/17 proposed by Greece, which suggested that a new article, Article 48 bis (entitled "Cultural Objects"), be inserted, which would read as follows: "It is forbidden to attack historic monuments and to destroy or endanger works of art which constitute the cultural heritage of a country. Such objects shall not

Environment and Non-State Armed Groups: IHL and Islamic Law Perspectives", *Armed Groups and International Law*, 6 November 2020.

80 Article 47, Draft Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, *Official Records of the Diplomatic Conference*, vol. I, p. 16.

be made the object of reprisals".[81] It was subsequently proposed by Greece, Jordan and Spain that the amendment proposed by Greece (CDDH/III/17) should become paragraph 3 of Article 47 on the general protection of civilian objects (CDDH/III/17/Rev.1).[82] The amendment was then redrafted by Working Group A (CDDH/III/17/Rev.2) as paragraph 3 of Article 47 (General Protection of Civilian, Cultural and Religious Objects), which read: "It is also forbidden to use historic monuments in support of the military effort or to attack them or to destroy or endanger works of art which constitute the cultural heritage of mankind, or places of worship. Such objects shall not be made the object of reprisals".[83] At the time amendments CDDH/III/17/Rev.1 and CDDH/III/17/Rev.2 were issued, Jordan, Spain, Uruguay, the Holy See and Venezuela became co-sponsors of the amendments, in addition to Greece.

A further amendment (CDDH/412) was made to the text of Article 47 bis, based on a proposal by a group of mainly Muslim states comprising Afghanistan, Algeria, Democratic Yemen, Egypt, Holy See, Iraq, Iran, Jordan, Kuwait, Oman, Pakistan, Qatar, Saudi Arabia, Socialist People's Libyan Arab Jamahiriya, Somalia, Syrian Arab Republic, United Arab Emirates and Yemen. The proposal suggested that sub-paragraph (a) of Article 47 bis be amended to read: "(a) To commit any acts of hostility directed against those historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of

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81 Amendments to Draft Additional Protocol I and Annex, *Official Records of the Diplomatic Conference*, vol. III, p. 213.

82 Amendment CDDH/III/17/Rev.1, Amendments to Draft Additional Protocol I and Annex, *Official Records of the Diplomatic Conference*, vol. III, p. 213.

83 Amendment CDDH/III/17/Rev.2, Amendments to Draft Additional Protocol I and Annex, *Official Records of the Diplomatic Conference*, vol. III, p. 214.

peoples".[84] At the forty-first plenary meeting of the fourth session of the Diplomatic Conference, held on 26 May 1977, Mr. Abdul Majid Nematallah (Saudi Arabia) introduced amendment CDDH/412/Rev.1 which sought to amend the title of Article 47 bis to "Protection of cultural objects and of places of worship" and to make a minor change to the text contained in CDDH/412. His statement gives some insight into the reasons why the provision on the protection of cultural property and places of worship was of great significance, particularly to many Muslim delegations:

> "158. Mr. NEMATALLAH (Saudi Arabia), introducing amendment CDDH/412/Rev.1, said that places of worship were of particular importance, being sacred to all the faithful. While fully appreciating all the various views that had been expressed on the subject in Committee III, the sponsors considered that greater emphasis should be placed on the need for protection of places of worship, since the greater the number of the faithful, the greater would be the desire to fulfil the humanitarian provisions with which the Conference was dealing, and thus to strive for world peace and security. The delegations of the Islamic countries and the delegation of the Holy See had recognized the importance of bringing places of worship under the protection afforded by Article 47 bis.
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> 159. Throughout history, Moslems had traditionally respected the places of worship of other faiths. Islam was based on principles of tolerance and religious freedom, and the Islamic countries therefore desired to give all places of worship the protection to which they were entitled.

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84 Amendment CDDH/412, Amendments to Draft Additional Protocol I and Annex, *Official Records of the Diplomatic Conference*, vol. III, p. 214.

> 160. He expressed his appreciation to the United States delegation for its assistance in drafting the text and particularly commended the representative of the Holy See, whose co-operation had made it possible to secure a full understanding of the humanitarian purpose of the text.
>
> 161. The amendment related to all places of worship in any national heritage, and not merely to those of Islam or Christianity.
>
> 162. Referring to sub-paragraph (b) of Article 47 bis, he said that it would be more appropriate to refer to historic objects as was done in sub-paragraph (c), than to historic monuments."[85]

After final revisions taking inro account comments made at the forty-first meeting (CDDH/412/Rev.2 and CDDH/412/Rev.3), Article 47 bis on the protection of cultural objects and of places of worship was adopted by consensus by the Diplomatic Conference at the forty-second plenary meeting held on 27 May 1977.[86] This provision is contained in Article 53 of the final version of Additional Protocol I, which reads:

> "Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited:

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85 Summary Record of the Forty-First Plenary Meeting at the Fourth Session of the Diplomatic Conference 1974-77 (CDDH/SR.41), *Official Records of the Diplomatic Conference*, vol. VI, p. 170.

86 Summary Record of the Forty-Second Plenary Meeting at the Fourth Session of the Diplomatic Conference 1974-77 (CDDH/SR.41), *Official Records of the Diplomatic Conference*, vol. VI, p. 206.

> (a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;
> (b) to use such objects in support of the military effort;
> (c) to make such objects the object of reprisals."

In its explanation of vote on Article 47 bis, Sudan further highlighted the significance of respecting and protecting places of worship in Islam:

> "My country views the Muslim religion as a beacon that guides us to its teachings and tolerant tenets. The Muslim religion is the religion of tolerance and freedom, it imposes on all Muslims belief in all messengers, prophets and divinely-inspired holy books. Those who do not believe in Abraham, Isaac, Jacob, Solomon, David, Moses and Jesus, peace be upon them, who preceded our noble Prophet Mohammed, Allah's blessings and peace be upon him, are not considered Moslems.
>
> My country's constitution stipulates obedience to the teachings of Islam, stipulates as well that the Christian religion is the religion of a large section of our countrymen and that the noble beliefs of others should be respected. Hence our places of worship, whether mosques for Moslems, churches for Christians of all sects, or synagogues for Jews, are all sacred to us and their respect an imperative for all; for each one's holy rites are observed in complete freedom within these holy places.
>
> Therefore, I express once more my delegation's satisfaction at the Conference's adoption, of the

> amendment, as well as of the article as a whole, after its amendment, by consensus."[87]

The affirmation by the representative of Sudan of the importance of the protection of cultural objects and places of worship in Islam is supported by ample evidence in Islamic law doctrine and practice. Moreover, highlighting the importance of the protection of cultural objects and places of worship is particularly relevant in Muslim contexts, at a time when many Muslim-majority states have witnessed destruction of cultural objects and heritage during armed conflicts.[88]

As for Article 16 of Additional Protocol II, a proposal was made in the Working Group that a new article be included in Part IV, to deal with the protection of cultural property along the lines of Article 47 bis of Additional Protocol I (which had been adopted by Committee III on 25 February 1975).[89] The Working Group recommended a text which was a modification of an amendment (CDDH/III/GT/95) proposed by Afghanistan, Egypt, Ghana, Greece, Holy See, Italy, Iran, Japan, Jordan, Spain and Yugoslavia which recommended the inclusion of a new article 20 bis which read as follows: "It is forbidden to commit any acts of hostility against historic monuments and places of worship which constitute the national heritage of a country, and to use them in

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87 Annex to the Summary Record of the Forty-Third Plenary Meeting held on 27 May 1977, Explanations of Vote, Sudan, *Official Records of the Diplomatic Conference*, vol. VI, pp. 273–274.

88 Victoria Arnal, "Destructive Trends in Contemporary Armed Conflicts and the Overlooked Aspect of Intangible Cultural Heritage: A Critical Comparison of the Protection of Cultural Heritage under IHL and the Islamic Law of Armed Conflict", in *International Review of the Red Cross*, vol. 102, no. 914, pp. 541–542.

89 Summary Record of the Twenty-Fourth Meeting of Committee III, 25 February 1975, CDDH/III/SR.24, *Official Records of the Diplomatic Conference*, vol. XV, p. 221, para. 25.

support of the military effort".[90] The text submitted by the Working Group conformed in general to the wording of Article 47 bis, but without reference to the term "reprisals". Committee III adopted the new Article 20 bis by consensus at its forty-ninth meeting held on 4 June 1976.[91] The text of the article adopted by Committee III read as follows:

> "Without prejudice to the provisions of The Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is forbidden to commit any acts of hostility directed against historic monuments, places of worship, or works of art which constitute the cultural heritage of peoples, and to use them in support of the military effort."[92]

The Rapporteur, in his report to Committee III on the work of the Working Group, noted that despite the article having been adopted by consensus, there was still some disagreement among delegations:

> "on the effect of the modifying clause 'which constitute the cultural heritage of peoples' on the term 'places of worship'. The views in the Working Group ranged from the position that any place of worship is a 'cultural heritage of peoples' to the assertion that a place of worship is protected if and only if it is identifiable as specifically forming part of

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90 Amendment CDDH/III/GT/95, Amendments to Draft Additional Protocol II, Annexes I – IV to the Table of Amendments and Information Documents, *Official Records of the Diplomatic Conference*, vol. IV, p. 65.

91 Summary Record of the Forty-Ninth Meeting of Committee III, 4 June 1976, CDDH/III/SR.49, *Official Records of the Diplomatic Conference*, vol. XV, p. 107, para. 3.

92 Annex I to the Report of Committee III, Third Session (Geneva, 21 April–11 June 1976), CDDH/236/Rev. 1, *Official Records of the Diplomatic Conference*, Vol. XV, p. 418.

> the 'cultural heritage of peoples'. Here cultural heterogeneity may be the key, for among some peoples any place of worship may be part of the cultural heritage, while among others only some places of worship may be so described. This difference of views is already implicit in article 47 bis, which has been adopted by Committee III, and the corresponding text in Protocol II cannot be expected to clarify the matter for both Protocols."[93]

Article 20 bis was discussed once again at the fifty-third plenary meeting of the Conference held on 6 June 1977, in light of further amendments that had been proposed.[94] The proposal to insert in Article 20 bis, after the words "historic monuments or works of art", the words "or places of worship which constitute the cultural and spiritual heritage of peoples" was adopted by consensus.[95] The proposal to delete the reference to the 1954 Convention for Protection of Cultural Property in the Event of Armed Conflict (1954 Hague Convention) in Article 20 bis was put to vote and was rejected, not having obtained the necessary two-thirds majority. Article 20 bis as a whole was adopted by 35 votes to 15, with 32 abstentions. Article 20 bis was renumbered as Article 16 in the final version of Protocol II, which reads:

> "Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is

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93 Rapporteur's Report to Committee III on the Work of the Working Group (Third Session), "Article 20 bis", CDDH/III/353, *Official Records of the Diplomatic Conference*, vol. XV, p. 437.

94 Amendments CDDH/436 and CDDH/436/Rev.1 and Corr.1, Amendments to Draft Additional Protocol II, Annexes I–IV to the Table of Amendments and Information Documents, *Official Records of the Diplomatic Conference*, vol. IV, pp. 65–66.

95 Summary Record of the Fifty-Third Plenary Meeting, CDDH/SR.53, 6 June 1977, *Official Records of the Diplomatic Conference*, vol. VII, p. 141, para. 1.

> prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort."[96]

### 2.3.2 The Position under IHL

The contemporary relevance of the protection of cultural objects and places of worship in armed conflicts cannot be understated. Noting several instances of destruction of cultural property and religious sites, during armed conflicts and in peacetime, the then UN Special Rapporteur in the Field of Cultural Rights, Karima Bennoune, recommended in her 2016 report that states, experts, international and non-governmental organizations recognize, among other things, the protection of cultural property and cultural heritage as a critical component of humanitarian action, including in conflicts, and consider ways in which existing international legal standards on the prohibition of intentional destruction of cultural heritage and the obligation to respect cultural rights can be made applicable to non-state actors.[97]

Under IHL, cultural property is protected in two ways: first, since cultural property is normally civilian in nature, the general IHL provisions protecting civilian objects would apply to cultural property; second, the 1954 Hague Convention, the 1977 Additional Protocols, and the relevant rules of customary international humanitarian law provide special protection for cultural property and the cultural heritage of people. The 1954 Hague Convention provides a broad definition of cultural property, which includes within its scope moveable or immoveable property of great importance to the cultural heritage of every people, buildings used to preserve or exhibit moveable cultural

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96 Article 16, Additional Protocol II.

97 UNGA, Report of the Special Rapporteur in the Field of Cultural Rights, UN Doc. A/71/317, p. 24, para. 79.

property, and centres containing a large amount of cultural property.[98] The 1954 Hague Convention places an obligation on states to take appropriate measures to safeguard "cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate".[99] Further, parties to non-international armed conflicts are also bound to apply, as a minimum, the provisions of the 1954 Hague Convention which relate to the protection of cultural property.[100] As of November 2025, the 1954 Hague Convention has been ratified by 138 states. In 1999, states elaborated and adopted the Second Protocol to the 1954 Hague Convention (1999 Second Protocol) which further enhanced the protection of cultural property during armed conflicts.

Apart from the protections under the 1954 Hague Convention, the Additional Protocols of 1977 also contain specific provisions for the protection of cultural property during international and non-international armed conflicts, as discussed in the previous section of this chapter. Reacting to instances of intentional destruction of cultural heritage, in 2003, the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted the Declaration Concerning the Intentional Destruction of Cultural Heritage, in which it reiterated the importance of the protection of cultural heritage as "an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights" and called upon states to, among other things, become parties to the 1954 Hague Convention and its two Protocols and Additional Protocols I and II to the 1949 Geneva Conventions.[101]

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98 For the full definition, see Article 1 of the 1954 Hague Convention.

99 Article 3, 1954 Hague Convention.

100 Article 19 (1), 1954 Hague Convention.

101 Declaration adopted by the thirty-second session of the UNESCO General Conference, Paris, 17 October 2003, available here.

### 2.3.3 The Position under Islamic Law

The strong support for the protection of cultural property and places of worship during the drafting of the Additional Protocols of 1977 can be seen to originate from the importance placed on safeguarding cultural heritage in Islamic law. While there is no standard definition of cultural heritage in the Qur'an or the Sunna, there are ample indicators of the importance of cultural heritage, especially sites of religious ritual. While there has been some divergence in opinions among Muslim jurists about the protection of certain articles of cultural heritage, such as idols and images, there is consensus that religious places of worship are to be protected from destruction both in times of peace and war. Dr. Alī Jumʿah, former Grand Mufti of Egypt (2003–2013) issued *fatwa* (non-binding legal opinion) number 559 dated 11 March 2011 prohibiting the demolition and explosion of churches (places of worship) and killing or intimidating worshippers inside them.[102] Additionally, the Al-Azhar Global Fatwa Centre for Electronic Fatwas issued a *fatwa* dated 25 November 2017 prohibiting attacks against places of worship or worshippers inside them and described such acts as *fasād fī al-arḍ*, one of the acts falling within the crime of terrorism.[103]

The Qur'an and the Sunna contain many references to the inviolability of religious sites. For instance, the following Qur'anic verse appears to support the principle of protection of religious sites: "had not God permitted people to defend themselves against [the aggression of] others, monasteries, churches, synagogues and mosques, wherein the name of God is oft-mentioned, would be

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102 "Assault of Churches and Places of Worship", Fatwa Number, 11 March 2011, Dar Al-Ifta Egypt, available in Arabic here.

103 "The Sanctity of Assaulting Places of Worship and Those Within Them", Al-Azhar Global Fatwa Centre for Electronic Fatwas, 25 November 2017, available in Arabic here.

pulled down".[104] According to Fatimah Alshehaby, the Qur'an seeks to protect the cultural objects of ancient civilizations:

> "The Qur'an connects cultural heritage with knowledge and urges Muslims to travel the earth, retain and disseminate their knowledge, and think of God's creation: 'Travel through the land and observe how He began creation. Then God will produce the final creation. Indeed God, over all things, is competent'."[105]

Alshehaby argues that the tradition of Prophet Muhammad exemplifies that the protection of places of worship and other buildings is obligatory, by giving the example of an exchange between the abbot of Saint Catherine Monastery in Sinai and the Prophet, in which the former asked the latter for a letter of protection (*Ahtiname*) for his church and its people, which the Prophet granted and authorized by placing his hand upon the document.[106] Al-Baghdâdi, the 12th century scholar and philosopher, said that "the rulers of Islamic communities continued to allow the preservation of these antiquities and forbade any interference with them, even if those who created them were enemies (of Muslims)".[107] These remnants of the past were preserved for many reasons, such as to preserve a historical

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104 Qur'an 22:39–40, cited in Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations*, Palgrave, New York, 2011, p. 126.

105 Fatimah Alshehaby, "Cultural Heritage Protection in Islamic Tradition", in *International Journal of Cultural Property*, vol. 27, 2020, pp. 297–298.

106 The Letter of Protection (in Arabic) can be found on the website of the Saint Catherine's Monastery (http://www.sinaimonastery.com/index.php/en/library/patent-of-mohammed). See also, Alshehaby, *ibid*, p. 298.

107 Abd al-Latif al-Baghdadi, *Kitāb al-Ifāda wa'l-iʿtibār fi'l-umūr al-mushāhada wa'l-ḥawadith al-muʿāyana bi-arḍ Miṣr*, cited in Abd-ur-Razzak Guessoum, Islam and World Heritage, in Doha Conference of 'Ulama on Islam and Cultural Heritage (30–31 December 2001), p. 60.

record of past eras and as a testimony to customs, lifestyles, scientific achievements and intellectual ideas of the past.[108]

In another instance, the first caliph Abū Bakr (d. 634) commanded Usamah Ibn Zaid's army: "You will soon pass by people who have devoted themselves to monasteries, so leave them to what they have devoted themselves to". It is recounted that when the second caliph 'Umar ibn al-Khattāb (d. 644) entered Jerusalem, he found himself inside a church at the time of prayer. He asked the bishop of the church for a place to pray, and the bishop suggested that 'Umar could pray inside the church. 'Umar refused and instead prayed at the entrance of the church, saying that: "If I pray inside the church, Muslims may one day make this an excuse for taking the church from you, saying: 'Umar prayed here"'.[109] The respect for the cultural heritage of different nations and peoples is grounded in principles of Islam which affirmed respect for religious and cultural diversity of people who lived within the Islamic civilization.[110]

The Doha Conference of 'Ulama on Islam and Cultural Heritage held in December 2001 brought together eminent Muslim experts to convey Islam's position on the preservation of cultural heritage. At the conference, UNESCO, the Islamic Educational, Scientific and Cultural Organization (ISESCO) and the Arab League Educational, Cultural and Scientific Organization (ALECSO) jointly issued a statement which recalled, among other things, that:

> "The *'ulamâ* participating in the Symposium affirmed that the position of Islam with regard to the

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108 Ibid., p. 61.

109 Muhammad Abu Zahra, *al-'Alaqat al-Dawliyah fi al-Islam*, p 32, cited in Al-Azhar Observatory for Combating Extremism, "Sanctity of Places of Worship under Islam", 25 July 2019 (available on the Al-Azhar website).

110 See, for example, Abdul Hamid Al-Ansari, *Islam and the Preservation of the Human Heritage,* in Doha Conference of 'Ulama on Islam and Cultural Heritage (30–31 December 2001), pp. 27–28.

> preservation of the human cultural heritage derives from its appreciation of innate human values and from respect for peoples' beliefs. They explained that the position of Islam regarding the preservation of the cultural heritage is a firm position of principle which expresses the very essence of the Islamic religion. Any individual or collective behaviour which is at variance with that position in no way reflects the Islamic position as expressed by the 'ulamâ and fuqahâ (Islamic jurists) of the umma (nation of Islam)."[111]

Thus, from the above discussion, it is clear that there is overwhelming consensus among scholars and legal experts that the respect for cultural heritage, regardless of the religious affiliation, is a core principle in Islamic law. This principle finds resonance in treaty and customary IHL, as discussed in the previous section of this chapter. This mutual respect for cultural heritage in Islamic law and IHL should be further harnessed to strengthen efforts to prevent the destruction of cultural heritage during armed conflict, which may be irreversible and could have a significant detrimental impact on the cultural rights of people.[112]

## 3. Conclusion

In its Annual Report 2024, the ICRC recorded about 130 armed conflicts around the world.[113] In recent times, IHL appears to be at a crossroads – we are witnessing an alarming disregard for the rules of IHL, which threatens the lives and dignity of people living in situations of armed conflicts. The problem lies not in the law

111 The Doha Statement of the International Symposium of 'Ulamâ on Islam and Cultural Heritage, in Doha Conference of 'Ulama on Islam and Cultural Heritage (30–31 December 2001), p. 8.

112 See generally, UNGA, Report of the Special Rapporteur in the Field of Cultural Rights, UN Doc. A/71/317.

113 ICRC, "Annual Report 2024: Overview", 9 July 2025, p. 4, available here.

itself, which is more than adequate to limit suffering and humanize war, but in the lack of political commitment to prevent violations of IHL. It is the responsibility of parties to armed conflicts to ensure compliance with IHL – not doing so could have serious consequences on peace and economic stability, and could jeopardize national, regional and global security. It was in response to these concerns that the ICRC, along with Brazil, China, France, Jordan, Kazakhstan and South Africa, launched the Global Initiative to Galvanize Political Commitment to International Humanitarian Law at the end of 2024,[114] in the hopes of bringing states together to make concrete recommendations on how to improve respect for IHL and to encourage them to take proactive steps to make respect for IHL a political priority.[115]

More concerted efforts need to be made by states and other stakeholders (such as non-state armed groups, faith leaders, religious authorities, educational institutions, academic circles, and international and non-governmental organizations) to emphasize the universal ownership of IHL. Indeed, the core principles of IHL transcend legal, religious, cultural, political and geographical divides. The rules of IHL are not a recent invention – they find resonance in the belief systems of ancient religions, traditions, cultures and civilizations. The socialization of IHL norms[116] – embedding them into the values and identities of individuals and institutions – is imperative to achieve lasting compliance and the universalization of IHL. Being cognizant of the convergence between IHL and Islamic law on several rules and principles is one way of highlighting that IHL is a common human heritage.

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114 For more information on the Global Initiative, see, ICRC, Explainer: Global Initiative to Galvanize Political Commitment to IHL, November 2024, available in Arabic, Chinese, English, French, German, Portuguese, Russian and Spanish.

115 Mirjana Spoljaric, "A Call to Make International Humanitarian Law a Political Priority", *ICRC Humanitarian Law and Policy Blog*, 6 February 2025.

116 ICRC, Roots of Restraint in War, 2018, available here.

It is the authors' sincere hope that the present chapter reminds Muslim-majority states of their significant contributions to the development of IHL during the drafting of the Additional Protocols of 1977, by actively ensuring the inclusion of humanitarian rules and principles which had long been recognized and embedded in Islam/Islamic law. Moreover, highlighting the commonalities between IHL and Islamic law may help achieve the protective objectives of IHL, especially in some contexts where non-state parties to armed conflict are Islamic groups and may be more inclined to follow the principles of their own religious and indigenous traditions.

The authors also hope that this chapter impresses upon the international community at large the value of reaffirming their commitment to IHL not only as a legal imperative but a moral one. By drawing on the synergies between IHL and Islamic law and principles, the authors hope that this chapter will contribute to ongoing efforts (including those involving other religions, traditions and cultures) to ensure that IHL is no longer seen as a rule imposed from the outside, but rather as a shared value system among individuals, communities, institutions and states, underpinned by a universal respect for humanity. Not respecting the rules of IHL is a regression of the progress made by age-old traditions, religions and cultures, and by states through their widespread adoption of the Geneva Conventions of 1949 and the 1977 Additional Protocols.

To conclude, paying heed to the words written by Karima Bennoune in 1994 may help universalize and promote adherence to IHL:

> "If the vitally important body of contemporary international humanitarian law is to find further acceptance and compliance, the contributions to its development made by multiple cultural traditions and the great debt which it owes to the Islamic legal

> tradition, among others, must be recognized. Furthermore, the perceived legitimacy of the law is hurt among peoples whose traditions and historical contributions are excluded from official genealogies of contemporary humanitarian law".[117]

[117] Karima Bennoune, "As-Salāmu 'Alaykum? Humanitarian Law in Islamic Jurisprudence", *Michigan Journal of International Law*, vol. 15, no. 2, 1994, p. 642.

# CHAPTER XVIII.

# CONCLUDING OBSERVATIONS: SYNTHESIS AND OUTLOOK

**Ibrahim Salama[1], Britta Nicolmann[2] and Michael Wiener[3]**

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## 1. Impact on faith actors

Our concluding observations as co-editors of the present book take up its title by asking the fundamental double question: why should faith-based actors have "faith in United Nations human rights treaties", and why should treaty bodies engage more broadly and meaningfully with faith-based actors?

To illustrate the mutually reinforcing engagement and impact, we will begin by briefly examining three emblematic issues and cases decided by United Nations treaty bodies which have triggered positive developments for faith-based communities and individuals.

These case studies demonstrate that value systems are neither exclusive nor hierarchical. Binding laws, secular ethics and religious beliefs can and must be interconnected through enlightened interpretation of legal texts and faith traditions. Both are evolutionary, in response to changing circumstances, advances in technologies and resulting new threats. Shared responses often combine insights from cumulative multidisciplinary wisdoms.

### 1.1 Conscientious objection to military service

The first exemplary issue is the right of conscientious objection to military service. For its legal recognition globally, the United Nations Human Rights Committee has played a key role through adopting thematic general comments, views on individual complaints and concluding observations to States.

After initial reluctance in some individual cases, the Human Rights Committee in 1993 authoritatively commented that the right to refuse to perform military service can be derived from Article 18 of the International Covenant on Civil and Political Rights (ICCPR, see also above chapter IV), "in as much as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief" (CCPR/C/21/Rev.1/Add.4, 11).

Since 2011, in its jurisprudence on individual cases brought by more than a hundred complainants, the Human Rights Committee has stressed that this right must not be impaired by coercion, such as repression of refusing to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibited the use of arms (Wiener/Clapham 2022, 183). The Committee has also consistently raised the right of conscientious objection to military service in its consideration of reports by States Parties to the ICCPR. For example, it acknowledged positive developments in Colombia and the Republic of Korea, albeit with some caveats as outlined below.

In a landmark ruling of 14 October 2009, the Constitutional Court of Colombia (C-728/09) adjusted its previous position on conscientious objection to military service, referring as a main argument for its jurisprudential change to the doctrine of the UN Human Rights Committee (Uprimny/Ruano/García 2024, 256). In 2010, the Committee noted with satisfaction this ruling of the Constitutional Court "exhorting Congress to regulate conscientious objection to military service, which represents progress in the implementation of the Committee's earlier recommendation of 2004" (CCPR/CO/80/COL, 17; CCPR/C/COL/CO/6, 22). Thirteen years later, faith and law were reconciled, and the Committee noted "with satisfaction the creation of the Social Service for Peace under Act No. 2272 of 4 November 2022 as an alternative to compulsory military service"; yet it also flagged concerning reports that this Service could be managed by the Ministry of Defence and that military officials may be involved in its administration (CCPR/C/COL/CO/8, 32).

With regard to the Republic of Korea, the Human Rights Committee called in 2015 for the immediate release of all conscientious objectors condemned to a prison sentence for exercising their right to be exempted from military service (CCPR/C/KOR/CO/4, 45). Eight years later, the Human Rights Committee welcomed that, further to a Constitutional Court

decision of 2018, conscientious objectors had been released from prison and had their criminal records expunged, and that an alternative service system had been introduced through adopting the 2019 Act on Assignment to and Performance of Alternative Service. Thus, both the generally applicable law and the individual expressions of freedom of conscience were both respected.

Faith and rights should not be conceived as contradictory or mutually exclusive approaches. The right response to possible tensions among value systems is to attempt reconciliation that optimizes both to the maximum. Everyone has a duty towards law and has a right to his or her beliefs. Hence the need for human rights mechanisms to engage more systematically and substantively with faith-based actors, as well as for States to promote and protect everyone's freedom of thought, conscience and religion. Despite the positive developments in the Republic of Korea, the Human Rights Committee in 2023 remained "concerned that the current alternative service system, which sets the service period at 36 months, seems discriminatory and punitive compared to active-duty service (18 to 21 months), and that alternative service is limited to service in correctional facilities" (CCPR/C/KOR/CO/5, 51).

At the regional level, the jurisprudence of the European Court of Human Rights on the right of conscientious objection to military service has also been influenced by the UN Human Rights Committee. In the case of *Bayatyan v. Armenia* (App No 23459/03), the Grand Chamber of the European Court of Human Rights in 2011 explicitly pointed to "important developments concerning recognition of the right to conscientious objection in various international fora", most notably by the United Nations Human Rights Committee in General Comment No. 22 and its views on individual complaints. Thus, United Nations treaty bodies have contributed to shaping regional and national jurisprudence, which ultimately led to adopting laws and regulations on alternative service as well as to releasing imprisoned conscientious objectors.

### 1.2 Exploitation of children in some religious schools

The second exemplary issue we would like to highlight at the outset is how to counter exploitation of children in some Qur'anic schools in Senegal.

In May 2017, OHCHR's Regional Office for West Africa organized together with the Senegalese Ministry of Foreign Affairs and the Ministry of Justice a symposium in Dakar for religious leaders, civil society representatives, UN treaty body members and special rapporteurs about the rights of women and children from the perspective of Islam and in the context of the Beirut Declaration and its 18 commitments on "Faith for Rights" (see above chapter XIV). The symposium resulted in a project proposal for an alternative to child forced begging in the name of Islam, explaining the rationale as follows: "Senegalese citizens, the majority of whom are Muslims, are very much attached to give alms, especially on Fridays. This system is exploited by some religious leaders (*Marabouts*) who force very young children into begging while they pretend giving them religious education in so-called *daaras* (religious schools) that the State is currently unable to supervise and control. The whole system is very lucrative and has so far not been addressed sufficiently and efficiently" (OHCHR 2025, 50). In her report on Senegal, the Special Rapporteur on the sale of children, child prostitution and child pornography also flagged that, pursuant to Article 245 of the Criminal Code, begging is tolerated "on the days, in the places and in the circumstances confirmed by religious traditions" (A/HRC/16/57/Add.3, 31).

The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see above chapter X) visited Senegal in May 2019, and it subsequently recommended that the National Observatory of Places of Deprivation of Liberty visit closed *daaras* and provide "targeted substantive recommendations aimed at preventing all ill-treatment, including forced begging" (CAT/OP/SEN/RONPM/1, 31).

In October 2019, the Committee on Economic, Social and Cultural Rights urged Senegal to send a strong signal of the political will to end the practice of forced child begging (E/C.12/SEN/CO/3, 27), reiterating the recommendations already made by the Committee on the Rights of the Child (CRC/C/SEN/CO/3-5, 68 and 70), the Committee against Torture (CAT/C/SEN/CO/4, 32) and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW/C/SEN/CO/2-3, 57). During the same month, the Human Rights Committee also called on Senegal to put an end to all forms of exploitation and abuse of children, including by teachers in the traditional Qur'anic schools (CCPR/C/SEN/CO/5, 41). The Government replied that more than a thousand children had been taken off the streets and reintegrated in their families since 2016 (CCPR/C/SR.3650, 22). While the Human Rights Committee noted these measures in its follow-up report of 2023, it requested additional information on measures taken "to end child abuse and exploitation by Qur'anic masters" (CCPR/C/138/2/Add.4, 5). In 2024, the Committee on the Rights of the Child welcomed the progress made by Senegal on the Daara Modernization Support Project and the increase in budgetary resources to implement children's rights, yet it recommended following up on children removed from street situations and ensuring the conviction of any perpetrators exploiting them (CRC/C/SEN/CO/6-7, 3 and 40). Research by Human Rights Watch found an increase in prosecutions for abuses against *talibé* children, i.e. from at least 5 convictions in 2015-2016 to 18 convictions in 2017-2018 (Human Rights Watch 2019, 48). While the authorities have started to indict and prosecute Qur'anic teachers, it has been criticized that "the number of cases brought before the courts seems to be very small compared to the magnitude of the problem" (Kane 2024, 1040).

Furthermore, the Committee on the Elimination of Discrimination against Women (CEDAW) referred to Article 98 of the Constitution of Senegal, which establishes the primacy of

international treaties over domestic legislation, recalling that the CEDAW Convention covers women's rights in both the private and public spheres and that discrimination against women cannot be justified on religious and/or cultural grounds (CEDAW/C/SEN/CO/8, 9). In its concluding observations, the Committee recommended that Senegal undertakes "inclusive consultations in particular with traditional and religious leaders, civil society organizations and young people, on the revision and implementation of relevant laws to prevent and eliminate all forms of de facto discrimination against women and girls" (ibid., 10).

These concluding observations demonstrate how the various United Nations treaty bodies cross-reference to their respective recommendations and cooperate also with Special Procedures mandate-holders, OHCHR and the government.

### 1.3 Abolition of anti-blasphemy laws

The third example illustrates the positive impact of joint efforts by treaty bodies and special rapporteurs in getting the discriminatory common law offences of blasphemy and blasphemous libel abolished in England and Wales. Blasphemy had initially been dealt with in Ecclesiastical Courts until the 17th century and since 1676 it was an offence at common law. More than three centuries later, the author Salman Rushdie published his novel "Satanic Verses" in 1988, which triggered complaints from some Muslims. Yet the Magistrates Court in London dismissed an application for a summons for criminal prosecution of blasphemy against Rushdie on the basis that this offence related only to Christianity.

The European Commission of Human Rights in Strasbourg also declared the application inadmissible, implying that freedom of religion or belief does not extend "to guarantee a right to bring any specific form of proceedings against those who, by authorship or publication, offend the sensitivities of an individual or of a group of individuals" (App No 17439/90). It also does not include the right to have a religion or a belief that is free from critical analysis,

as stressed by the Rabat Plan of Action (see above chapter XIII). The latter calls for repealing anti-blasphemy laws since they "may result in de facto censure of all inter-religious or belief and intra-religious or belief dialogue, debate and criticism, most of which could be constructive, healthy and needed" (Rabat Plan 2012, 19 and 25). There is also the real risk of discrimination against religious or belief minorities, dissenters and atheists as well as incitement to violence against people for alleged blasphemy. For example, the UN Special Rapporteur on religious intolerance, Angelo Vidal d'Almeida Ribeiro, criticized the reward for killing Salman Rushdie in pursuance of the religious ruling (*fatwa*) which had been issued against him in the Islamic Republic of Iran (E/CN.4/1993/62, 79).

When Special Rapporteur Asma Jahangir conducted an official country visit to the United Kingdom in 2007, she highlighted the mandate's concerns about anti-blasphemy laws (Special Rapporteur 2007). Instead of extending the scope of the then common law offence of blasphemy to all religious faiths and beliefs, the Special Rapporteur recommended decriminalizing "blasphemy as an insult to a religion", and she welcomed the entry into force of the Racial and Religious Hatred Act 2006, which protects individuals and groups against hatred while not unduly limiting "discussion, criticism or expressions of antipathy, dislike, ridicule or insult" (A/HRC/7/10/Add.3, 73–74). The Special Rapporteur's recommendations were explicitly quoted during subsequent debates in the Parliament (House of Lords 2008; House of Commons 2008). The UN Human Rights Committee also asked the Government to clarify the state of the law of blasphemy and explain how it was compatible with the International Covenant on Civil and Political Rights (CCPR/C/GBR/Q/6, 21). The Government responded that the common law offences of blasphemy and blasphemous libel were ultimately abolished in England and Wales as of July 2008 (CCPR/C/GBR/Q/6/Add.1, 165), merely a year after the Special Rapporteur's country visit.

The UN Human Rights Committee and Special Rapporteur welcomed this abolition through the Criminal Justice and Immigration Act 2008 (CCPR/C/GBR/CO/6, 4; A/65/207, 44). The decriminalization of blasphemy in England and Wales also conveys an "important message to those jurisdictions which have inherited their initial blasphemy laws from legislation introduced during the British colonial rule, for example India, Pakistan, and Bangladesh" (Bielefeldt/Ghanea/Wiener 2016, 501).

In conclusion, United Nations treaty bodies and special rapporteurs have been instrumental for getting conscientious objectors out of prison, abused *talibé* children off the street, and discriminatory common law offences repealed. These three case studies illustrate why faith-based actors indeed may have faith in United Nations human rights treaties, especially if monitoring through independent experts leads to positive impact on the ground for individuals and religious communities.

## 2. Impact on legal norms and standards

At the same time, faith-based actors also have played an important role in contributing to the formulation, understanding and implementation of universal norms and standards. Or to put it differently, "faith" has indeed shaped United Nations human rights treaties and international law, to various degrees depending on the *travaux préparatoires* and thematic area.

As explained in the present book, this applies both to hard law norms (see above chapters III to XII) and soft law standards on human rights (see above chapters II, XIII and XIV) as well as to international humanitarian law (see above chapters XVI and XVII). For example, Article 20 (3) of the Convention on the Rights of Child explicitly refers to *kafalah* of Islamic law as an option for States Parties to ensure alternative care for a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment (see above chapter VIII). Some treaty provisions

related to religion use almost identical wording; for example, Article 18 (4) of the International Covenant on Civil and Political Rights (see above chapter IV), Article 13 (3) of the International Covenant on Economic, Social and Cultural Rights (see above chapter V), and Article 12 (4) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (see above chapter IX) require their States parties "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". This illustrates an obvious overlap of several treaties beyond the historical separation between civil/political and economic/social/cultural rights, thus confirming "the unity of the aim in view" of both Covenants, as the General Assembly had phrased it already in 1952 during their *travaux préparatoires* (A/RES/543(VI), 1).

Some international human rights treaties do not refer at all to the terms "religion" or "belief" in the text of their conventions, yet the respective treaty body has been proactively and creatively reaching out to faith-based actors, both directly and through their concluding observations after a State Party review, for example through the CEDAW Knowledge Hub and the "Faith for Rights" framework (see above chapters VI and XIV). Vice versa, other human rights treaties include specific provisions on freedom of religion or belief, however the practice of the treaty body concerned does not feature this fundamental freedom prominently in its general comments or concluding observations. For example, the Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families (see above chapter IX) so far has made only passing reference to freedom of religion or belief in its concluding observations.

For the *travaux préparatoires* of United Nations human rights treaties it is crucial, who was sitting around the negotiating table – or not. From where did the diplomats come? Have they consulted faith

communities or not? Who was appointed as chairperson of an inter-governmental working group? Was the text drafted during the colonial era or after decolonization? The human rights treaties and declarations covered in this book span more than seven decades, during which the membership of the United Nations increased significantly and the profile of religion in the human rights sphere changed significantly, from an initial "firewall" mode to prudently progressive constructive engagement. This is an important trend to enhance and create safe spaces for vital multi-disciplinary discussions, connecting the triangular dots of law, ethics and faith.

When the Universal Declaration of Human Rights (see above chapter II) was adopted on 10 December 1948, the United Nations had only 58 member states. This number more than doubled to 117 member states in 1965, when the first legally-binding human rights treaty was adopted, the International Convention on the Elimination of All Forms of Racial Discrimination (see above chapter III). When the two existing International Covenants (see above chapters IV and V) entered into force in 1976, the United Nations already had 147 member states. Since 2011, the total number has been 193 member states, whose delegates may bring in faith-based perspectives into the deliberations, especially if their constitution recognizes a specific State religion.

In addition, some non-member states, intergovernmental organizations and other entities have also received a standing invitation to participate as observers in the sessions and the work of the General Assembly, including the Holy See, the Organization of Islamic Cooperation and the Sovereign Order of Malta. Their delegations have introduced Christian and Muslim precepts and principles into intergovernmental discussions. For example, the General Assembly proclaimed 4 February as the International Day of Human Fraternity (A/RES/75/200), taking note of the meeting between Pope Francis and the Grand Imam of Al-Azhar, Ahmad al-Tayyeb, on 4 February 2019 in Abu Dhabi, which resulted in the

signing of the document entitled *Human Fraternity for World Peace and Living Together* (Holy See/Al-Azhar 2019; see also above chapter XV). Furthermore, the Holy See participated actively in the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (see above chapter XI). In addition, the Organization of Islamic Cooperation co-organized with OHCHR in 1998 a seminar entitled *Enriching the Universality of Human Rights: Islamic Perspectives on the Universal Declaration of Human Rights* (Salama/Wiener 2022, 56–57). Another 25 years later, the Sovereign Order of Malta organized a panel discussion during the Munich Security Conference, during which the speakers encouraged "the inclusion of religious leaders in the sphere of international politics in order to increase peace and security everywhere in the world with full respect for human rights" (Sovereign Order of Malta 2023).

The next question relates to meaningful participation of faith-based actors – or lack thereof – during the drafting of international treaties and declarations. Were civil society representatives involved, either formally or informally? Could members of religious or belief communities, including religious minorities, participate genuinely in the *travaux préparatoires*? This has obviously been easier when elaborating soft law standards, such as the Universal Declaration of Human Rights, the Rabat Plan of Action and the Beirut Declaration (see above chapters II, XIII and XIV).

But hard law norms also have been shaped or even initiated by institutions, faith-based organizations and individuals. They were involved in sustained and innovative ways, for example by working closely with governments that negotiated over a decade the Convention on the Rights of the Child, thereby ensuring that the final text included the integral development of the child which also encompasses spiritual and psychosocial dimensions (see above chapter VIII).

Furthermore, the work of the International Committee of the Red Cross provided the inspiration for the 2002 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see above chapter X), which had been initially suggested by Jean-Jacques Gautier more than 25 years earlier in the faith-based journal *La Vie Protestante*.

The codification of international humanitarian law (see above chapters XVI and XVII) also saw a significant increase in terms of participation. While only sixteen – mainly European – States were represented in Geneva at the 1864 diplomatic conference for the purpose of adopting a convention for the amelioration of the condition of the wounded in war, the subsequent conferences in the Hague of 1899 and 1907 were attended by representatives of 26 and 43 States respectively, including two Islamic delegations from the Ottoman Empire and Persia. During the 1949 diplomatic conference for the establishment of international conventions for the protection of war victims, 63 governmental delegations participated in Geneva, including from seven Muslim-majority States. The total number of governmental delegations participating from 1974 to 1977 in the negotiations of the Additional Protocols almost doubled, and included even 33 Muslim-majority States (see above chapter XVII).

## 3. Outlook

Despite the current crisis of multilateralism, affecting each of its three pillars (peace and security, development and human rights), human rights treaties remain the largest hard-won universal bedrock for protecting equal human dignity, as an individual and a collective responsibility of States parties. The total number of ratifications of the human rights treaties, protocols and relevant declarations enabling communications and inquiries procedures has reached the threshold of 2,400 by the end of 2025. However, two years earlier, 143 out of the 197 States parties had overdue reports under the relevant international human rights treaties and

protocols, with a total of 373 reports pending review (A/79/336, 20 and 23). This backlog obviously hampers the work of treaty bodies to monitor implementation at the national levels.

The General Assembly has recognized "the important, valuable and unique role and contribution of each of the human rights treaty bodies in the promotion and protection of human rights and fundamental freedoms, including through their examination of the progress made by States parties to the respective human rights treaties in fulfilling their relevant obligations and their provision of recommendations to States parties on the implementation of such treaties" (A/RES/79/165).

In its 2014 resolution on strengthening and enhancing the effective functioning of the human rights treaty body system, the General Assembly also pointed to desirable diversity in the composition of the committees by encouraging "States parties, in the election of treaty body experts, to give due consideration, as stipulated in the relevant human rights instruments, to equitable geographical distribution, the representation of the different forms of civilization and the principal legal systems, balanced gender representation and the participation of experts with disabilities in the membership of the human rights treaty bodies" (A/RES/68/268, 13).

In a separate, yet related context, the General Assembly referred to philosophic and religious pluralism in the *Paris Principles Relating to the Status of National Institutions* by requiring for their composition and appointment of their members "a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of: […] (b) Trends in philosophical or religious thought […]" (A/RES/48/134, annex, p. 6).

One of the key axes of the various documents concerning the United Nations treaty body strengthening process is to enhance the widest possible engagement with civil society actors. For instance, the report on the 2011 inaugural informal technical consultation held in Sion, indicates that "[a] number of States suggested that when drafting concluding observations treaty bodies should take into account the cultural, religious or economic specificities of the country concerned" (OHCHR 2011, 14). This formulation obviously alludes to the 1993 Vienna Declaration, albeit only quoting the first part of the following key sentence in its paragraph 5: "While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms" (A/CONF.157/23, I 5). After all, the circular argument is not that circular, if one observes it at both ends. Indeed, the full quote makes sense and bears no contradiction. It was included by the Committee on Economic, Social and Cultural Rights in its General Comment No. 21 on the right of everyone to take part in cultural life (E/C.12/GC/21, 18), while also adding the clarification from UNESCO's 2001 Universal Declaration on Cultural Diversity that "[n]o one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope" (A/57/226, appendix, article 4). Since different religions or beliefs are also part of cultural diversity, they should not be used either directly or indirectly as "the door-opener for relativism" (Salama/Wiener 2022, 46).

At the same meeting in Sion, Costa Rica's Deputy Permanent Representative Christian Guillermet-Fernandez stressed in his presentation the importance of "wider involvement of civil society in the preparatory phase of States parties' reports, as well as during the implementation phase", and the crucial role of OHCHR's regional offices "to facilitate the implementation of treaty bodies' recommendations, as they are in contact with the national

authorities" (OHCHR 2011, 12). In a similar vein, the 2011 high-level seminar in Bristol on the implementation of United Nations treaty body concluding observations recommended that they "could be used to ensure a level of buy-in at the national level, where various national actors could refer to Concluding Observations as a way of engaging with government authorities on certain matters. This could help to generate a sense of ownership over the recommendations and therefore a greater interest in their content" (University of Bristol 2011, 4).

A pertinent example is the above-mentioned Dakar symposium that was co-organized in 2017 by OHCHR's Regional Office for West Africa and two Senegalese Ministries, focusing on the rights of women and children from the perspective of Islam and in the context of the "Faith for Rights" framework. Several religious leaders, lawyers, judges and parliamentarians from Senegal and experts from the wider region were invited to address in particular the rights of women and children, using as a basis the related concluding observations from CEDAW and the Committee on the Rights of the Child (OHCHR 2025, 49). Commitment V on "Faith for Rights" also quotes their joint general recommendation/general comment on eliminating harmful practices, in which both Committees call for engaging influential leaders, such as traditional and religious leaders (ibid., 29; CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1, 70). The ongoing "Faith for Rights" project of the Regional Office in Dakar, notably on the role of female religious guides (*Mourchidates*) for preventing violent extremism, is another entry point for following up on the recommendations by treaty bodies and for engaging with civil society, including faith-based actors.

Treaty bodies have already found innovative ways of using the first regional technical cooperation session in April 2025 for thematic discussions (*Talanoas*), bringing together civil society, youth, community leaders and government representatives from the Pacific region. In Suva, the CEDAW Committee held country exchanges with Fiji, Solomon Islands and Tuvalu as well as a

side event to discuss how culture, faith and gender intersect in the Pacific region. One of the panelists, Rev. Sereima Lomaloma from the Anglican Diocese of Polynesia, stressed that religious leaders are actively challenging traditional gender norms and advocating for women's empowerment within their communities. She noted that some people "believed that only males are created by God and women are not", however, a progressive reading of scripture could help dismantle harmful norms (Ganivatu 2025). Another panelist, Selai Rasaqiwa from the Fiji National Youth Council, highlighted a shift how gender norms are evolving among youth, as "young women are stepping into leadership roles, and more men are beginning to embrace the idea of equality" (ibid.).

Holistic engagement by human rights mechanisms with faith-based actors should also include representatives of Asian religions and Indigenous traditions. In the *Bangkok Declaration on Dharmic Perspectives on Faith for Rights*, the participants of the 2025 annual "Faith for Rights" meeting in Cambodia and Thailand resolved to strengthen interfaith dialogue, fostering inclusive spaces for Dharmic, Indigenous, minority, and other traditions to engage equitably in conversations about human rights. They also pledged to promote mindful communication and recognized the importance of continuous inquiry, reflection and peer-to-peer learning in advancing both human rights and spiritual understanding (Bangkok Declaration 2025). The annual meeting included exchanging insights at faith sites such as Angkor Wat, storytelling, films produced by young persons, music inspired by the "Faith for Rights" framework, and a meditation session at the Buddhist temple Wat Bowonniwet Vihara in Bangkok (Dharma Alliance 2025).

In this context, it is interesting to note that the United Nations General Assembly reaffirmed in 2024 its procedural rule on the invitation to silent prayer or meditation immediately after the opening of the first plenary meeting and before the closing of the final plenary meeting of each session (A/RES/362(IV)), and the General Assembly also acknowledged the universality of meditation,

which is practised in all regions of the world (A/RES/79/137). Furthermore, OHCHR organized in 2025 a panel discussion in Geneva with spiritual leaders from Buddhist, Christian, Hindu, Jewish, Muslim and Yungdrung Bon traditions as well as experiential practice sessions and music on the resolution that proclaimed 21 December as World Meditation Day (UNOG 2025). At the Palais des Nations, the High Commissioner for Human Rights and spiritual leaders also opened a meditation room as "an inclusive space […] for all traditions and none" (Arizaga 2025, 40).

The Beirut Declaration on "Faith for Rights" opens with the Rumi quote that "[t]here are as many paths to God as there are souls on Earth" (OHCHR 2025, 8). This also shows that connecting the dots between various value systems accelerates progress in an inclusive manner and enhances genuine human rights universality through the gained cultural legitimacy, obtained from local and Indigenous wisdoms.

As part of civil society in the wider sense, academics and students also have an important role to examine the impact of treaty bodies and learn from best practices. For example, in May 2025, six researchers from the University of Ottawa and its Observatory on Human Rights at the United Nations presented to the "Faith for Rights" commUNity of practices their study on the intersectionality between culture, faith and rights, in particular analyzing the impact of the "Faith for Rights" initiative on women's rights (Ait Hammou/Byk Giroux/Côté/Gagnon Pelletier/Lavallée/St Pierre 2025). The Chairperson of the Committee on the Elimination of Discrimination against Women and other participants of the hybrid meeting provided feedback on the study and also encouraged its translation from French into English, which was subsequently published online (ibid.).

National human rights institutions and parliamentarians can also be key allies. For example, OHCHR and the National Human Rights Council of Morocco organized in 2023 a regional workshop

in Rabat with faith-based actors, women's rights experts, academics and parliamentarians, following up on CEDAW's use of the "Faith for Rights" framework in dialogues with States parties and in its concluding observations. The workshop participants discussed their role in strengthening women's rights in national legislation and formulating recommendations for lifting the existing reservations to the Convention on the Elimination of All Forms of Discrimination against Women (A/79/284, 13).

There have been some ambiguities in the jurisprudence and concluding observations of different treaty bodies or divergence of opinions within a committee, as outlined in dissenting individual opinions by some committee members, for example concerning cases of women wearing a *niqab* (see above chapters IV and VI). Academic institutions can facilitate human rights conversations by bringing together relevant United Nations independent experts to discuss controversial topics such as religious symbols and women's rights (Geneva Academy 2023).

With regard to enforced disappearances, the related United Nations treaty body and thematic special procedures have so far applied different approaches for taking vulnerabilities and needs related to faith into account (see above chapter XII). The following quote from a relative of seven missing persons in Albania highlights the importance of returning the mortal remains of the disappeared and of being able to perform the ceremonies that one believes to be essential for their transition from life to death (Kazazi 2022, 300):

> "I am 80 years old and I do not want to end my life without burying my father and I do not want to leave him thrown away somewhere by criminals. I promised this to my mother, who left me the flag embroidered in silk by her as a girl, to bury him with that flag. My human rights have been totally violated and I have no way of feeling free. I believe you understand me. I turn to all organizers, participants

> and all who have the opportunity, to help and contribute with this, to help all of us who ask for our family members. I have faith and hope that this conference will yield results […]."

In addition, regional and international case law may also differ to a certain degree, as illustrated by judgements of the European Court of Human Rights and slightly diverging views of the United Nations Human Rights Committee (see above chapter IV) concerning religious symbols in public life, religious education and conscientious objection to military service (Bielefeldt/Wiener 2020, 156–165). Such variations reflect different cultural sensitivities and historical particularities. To some extent, even within the human rights sphere, one-size approaches may not fit everywhere. While some tensions have to be expected and accepted, they should be reduced through systematic exchanges of information, discussion among the various human rights mechanisms and ideally substantive coordination that prevents normative fragmentation and forum shopping. It is in the interest of a holistic ecosystem of human rights protection to clarify any grey zones, advance coherence as well as leverage synergies of the international and regional mechanisms (ibid., 165). A healthy level of particularities will remain, emanating from the richness of various cultures and demonstrating the beauty of diversity.

Moreover, new substantive issues did and will continue to arise due to technological advances, notably artificial intelligence. At the 2024 Nobel Prize banquet, the "godfather of deep-learning" Geoffrey Hinton highlighted the opportunities for all humanity if increased productivity could be shared equally, however, he also flagged the short-term risks of artificial intelligence and the longer-term existential threat if human beings lose control over digital beings (Hinton 2024). Furthermore, Peter G. Kirchschlaeger argued that "religious and worldview-based communities have a special responsibility to contribute to a scientific penetration within the framework of theology, and thus to the criticism and

co-shaping of research and science, as well as to social and economic transformation processes such as digital transformation and data-based systems" (Kirchschlaeger 2021, 401). In 2021, the Committee on the Rights of the Child commented that in the digital environment "[a]utomated systems may be used to make inferences about a child's inner state" and recommended that States parties "should ensure that automated systems or information filtering systems are not used to affect or influence children's behaviour or emotions or to limit their opportunities or development" (CRC/C/GC/25, 62). The #Faith4Rights toolkit also quotes the Committee's general comment in the context of Commitment XIII on engaging with children and youth against violence in the name of religion and promoting their active participation in decision-making (OHCHR 2024, 67). This guidance on freedom of thought, conscience and religion is helpful for protecting the rights of children in the digital environment and it is equally pertinent to adults.

Furthermore, the #Faith4Rights toolkit's cases to debate may trigger innovative discussions among students and scholars about the legal implications of new technologies and online applications. For instance, the 2020 Price Media Law Moot Court competition case featured a hypothetical company that had developed an upload filter called "first Artificially Intelligent test of hatred!" (fAIth!), which would automatically screen any broadcasts and block them if they contained content considered to be hate speech as per the company's standards (OHCHR 2024, 98). Furthermore, the 2021 Nelson Mandela World Moot Court competition case embedded into the scenario a tweet explicitly referring to the "18 commitments on #Faith4Rights" (ibid., 117). Feedback received from some participants at peer-to-peer learning events highlighted similarities between the hypothetical scenarios of the #Faith4Rights toolkit and real cases, which may facilitate constructive discussion on sensitive issues and ultimately even lead to reforming laws and practice (Salama/Wiener 2025).

This is the beauty of genuine peer-to-peer learning. Every participant has something to contribute, and something to learn from the others. With this book, we have endeavored to assemble legal and religious commentaries from current and former United Nations treaty body members or special rapporteurs, religious leaders, faith-based actors and academics. Each chapter explored the role of faith and faith-based actors in drafting and implementing the respective conventions and declarations. We witnessed throughout this journey of looking across human rights treaties with a faith lens how much greater good, deeper legitimacy and lasting impact could human rights work benefit from connecting the dots and strengthening the bonds of human rights mechanisms and activists with faith-based actors.

Finally, we hope that this book provides grounds that also inspire faith in the crucial role of treaty bodies and their capacity, as living entities, to rebound from their current conjunctural crisis. Getting out of the crisis requires reconciling all value systems, more comparative analysis within the triangle of rights/faith/ethics, less politics and ideology, more technology and common sense to avoid duplication and act as one integrated rational system, in full procedural and substantive synergy, rather than "ships passing in the night" (Alston 2005). This would allow the system of human rights treaties and their monitoring bodies, especially if the process of nomination and election of experts is improved, to engage larger segments of civil society, including faith-based actors, who are the natural allies and *de facto* co-custodians of justice, freedom and equality.

Many faith-based actors enjoy far wider and safer entry points at the local level, where human rights situations evolve on the ground. They can thus support practical implementation of the existing obligations under international human rights and humanitarian law through leveraging their moral and spiritual weight and credibility. They may also bring some new grains, which add another layer in the "growth of international law by sedimentation" (Abi-Saab 2023).

Theistic, non-theistic, atheistic and any other believers are entitled to the full protection of their individual and communal expressions of religions or beliefs. Nahla Haidar El Addal, the Chairperson of the Committee on the Elimination of Discrimination against Women (see above chapter VI), frequently stressed that nobody should be compelled to choose between his/her faith and his/her rights. "Such an artificial antagonism […] fails to do justice to women's multifaceted realities, experiences, challenges and wishes", as was noted also by Special Rapporteur Heiner Bielefeldt in his 2013 report to the General Assembly (A/68/290, 35). Yet the relationship between gender equality and religious freedom is not a zero-sum game (ibid., 32; Bielefeldt/Wiener 2020, 109).

Furthermore, "human rights can benefit from deeply rooted ethical and spiritual foundations provided by religions or beliefs" (A/HRC/40/58, annex I, 1). Engaging faith-based actors in human rights deliberations and co-creating normative standards enhances legitimacy, ownership and impact of the achieved outcomes. However, key obstacles on this two-ways road are doctrinal secularism as well as reciprocal illiteracy of religion in the rights field, and vice versa. These obstacles need to be surmounted by continuous research and peer-learning among faith-based actors and human rights practitioners.

Rather than competing, value systems should complement each other. Their respective custodians – human rights defenders and faith-based actors – must be sufficiently knowledgeable of each other's premises, dynamics and methodologies. This book is a step on that road of enhancing the impact of law through meaningful integration and participation of faith-based actors and traditions.

Lastly, the Beirut Declaration asserts that "faith and rights should be mutually reinforcing spheres" (ibid.). This can indeed be facilitated by having faith in all United Nations human rights treaties – and by acting jointly for their full implementation.

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# ANNEX

# SHORT BIOGRAPHIES OF CONTRIBUTORS

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**Dr. Thiago Alves Pinto** is Director of Studies in Religion and Theology and Departmental Lecturer in Legal Studies and Diplomatic Studies at the University of Oxford's Department for Continuing Education, an Associate Member of the Law Faculty, and a Fellow of Kellogg College. He served as a member of the 2022–2025 Panel of Experts on Freedom of Religion or Belief of the Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights. He has taught at universities across the United Kingdom, the United States, Norway, Brazil, Nigeria and Mozambique. His professional experience includes work at the International Organization for Migration and consultancies for the Office of the United Nations High Commissioner for Human Rights, UNESCO, Chatham House, and several non-governmental organizations.

**Dr. Nicole Ameline** is a member of the Advisory Committee to the United Nations Human Rights Council. She was a member (2008–2024) and Chairperson (2013–2015) of the Committee on the Elimination of Discrimination Against Women. A jurist by training, she served several terms as a member of the French National Assembly (1991–2017), holding Ministerial portfolios on gender and equality, maritime issues, and decentralization, as well as a member of several parliamentary committees. She also served as French representative to the International Labour Organization and as Ambassador at large on globalization and social issues (2005–2007). During her time as representative to the NATO Parliamentary Assembly, she chaired the Defence and Security Committee.

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**Esther Eghobamien-Mshelia** was a member of the Committee on the Elimination of Discrimination against Women from 2018 to 2020, including as Vice-Chair. Since 2023, she has been serving again on the Committee and is currently the Chair of the Working Group on Inquiries and Focal Point for Gender, Business and Human Rights. She received the NGO Committee on the Status of Women, NY Award on the Cities for CEDAW Coalition Initiative. She has extensive experience in working with Commonwealth Ministers to deliver women's rights across sectors, and has led the development of Nigeria's second and third National Action Plans on UN Security Council resolution 1325. She chaired the Federal Ministry of Women Affairs Ministerial Technical Committee on Private Sector initiatives and is currently leading the development of Nigeria's Affirmative Procurement Policy. She is a fellow of the Hubert Humphrey, Eisenhower and Aspen Institute on Open Societies and serves as the founding Executive Director of Women Arise Development and Humanitarian Initiative.

**Dr. Mona Elbahtimy** holds a PhD from the University of Cambridge and has experience in multilateral human rights diplomacy, regional human rights bodies and national human rights machineries. In 2021, she published with Cambridge University Press the book *The Right to Protection from Incitement to Hatred: An Unsettled Right*. She holds a Master of Arts in Political Science and Government from the American University in Cairo, where she is also an Adjunct Assistant Professor.

**Sir Malcolm Evans KCMG OBE FLSW** is Principal of Regent's Park College, Oxford, and formerly Professor of Public International Law at the University of Bristol, where he was also Dean of the Faculty of Social Sciences and Law. He holds a BA and DPhil in Jurisprudence from the University of Oxford. From 2009 to 2020 he was member, and between 2010 and 2020 Chair, of the United Nations Subcommittee on Prevention of Torture. From 2003 to 2012 he was a member of the OSCE Advisory Council on Freedom of Religion or Belief. He is an Associate Member of the *Institut du Droit International* and an Honorary Senior Fellow of the British Institute of International and Comparative Law.

**Dr. Hilary Gbedemah** was a member of the United Nations Committee on the Elimination of Discrimination Against Women between 2013 and 2024, including serving as the Committee's chairperson between 2019 and February 2021. She also chaired the Committee's working group on enquiries, was follow-up Rapporteur, and chaired the working group on education which produced General Recommendation No. 36. She was also the rector of the Law Institute in Accra, undertaking training of non-legal personnel in paralegal studies and legal personnel in Ghana. She holds a LLM in Law from Georgetown University, Washington D.C., and a LLB (Hons.) from the University of Ghana, Legon.

**Dr. Nazila Ghanea** assumed her mandate as United Nations Special Rapporteur on Freedom of Religion or Belief on 1 August 2022. She is Professor of International Human Rights Law and Director of the MSc in International Human Rights Law at the University of Oxford. Prior to that, she was Senior Lecturer and director of the MA in Understanding and Securing Human Rights at the University of London (2000–2006), and she also previously taught in the People's Republic of China (1993–1994). Together with former Special Rapporteur Heiner Bielefeldt and Michael

Wiener, she has co-authored the book *Freedom of Religion or Belief: An International Law Commentary* (Oxford University Press), which received the Premio Alberigo Senior Book Award.

**Rabbi Alex Goldberg** is the Rabbi of Guildford Synagogue and Dean of Religious Life and Belief at the University of Surrey in the United Kingdom. He has led faith-based delegations to the United Nations Human Rights Council for over a decade, helping to influence and shape international law on group rights and access to justice. He serves as the Faith Focal Point of the "Faith for Rights" commUNity of practices steering group. He is also the Convenor of the "Faith in the City" initiative for the City of London Corporation. He regularly contributes to BBC Radio 2's *Pause For Thought*, chaired the English Football Association's Faith Network, and founded the Jewish human rights group René Cassin.

**Dr. John Graz** obtained his Licentiate in Theology at the Adventist Faculty of Theology in 1971, then his Licentiate and Master's Degree in History at the Paul Valery University of Montpellier, and in 1986 his Doctorate at the Sorbonne University/Paris IV. He exercised pastoral ministry to students in Montpellier and then in Pau. Between 1995 and 2015 he was elected Director of the Department of Public Affairs and Religious Freedom at the World Headquarters of the Adventist Churches and Secretary General of the International Religious Liberty Association. From 2003 to 2014, he was also secretary general of the Conference of Secretaries of the Christian World Communions.

**Nahla Haidar El Addal** is a jurist with over thirty years of international service. Currently, she serves as Chairperson of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), and is also a Commissioner of the International Commission of Jurists. Prior to these appointments,

she served in various capacities in the United Nations system, both at headquarters and in the field, covering the areas of social development, humanitarian action, peace building and human rights. She acted as the Rapporteur for the elaboration and adoption of CEDAW General Recommendation No. 37 on the gender-related dimensions of disaster risk reduction in the context of climate change. She holds an LLM in Law from Panthéon-Sorbonne, Paris, France, and a Law degree in International Law from Saint-Joseph University in Beirut, Lebanon as well as a *licence* in Sociology.

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**Allie Kavalauskas** is a senior undergraduate student at Colgate University and joint MA/BA student at the Geneva Graduate Institute, specializing in Human Rights and Humanitarianism.

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**Dr. Bhumika Modh** is a human rights lawyer and researcher who currently works as head of policy and research at the Association of People with Disability, in Bangalore, India. She was awarded the Medal of Excellence for her diploma in international and comparative law of human rights at *Institut International des Droits de l'Homme – Fondation René Cassin* in Strasbourg. As part of her Lok Sabha Research Fellowship with the Parliament of India, she focused on the role of women parliamentarians in achieving the Sustainable Development Goals. She completed her LLM degree in economic, social and cultural rights from the University of Essex, and her doctoral degree is on the right to mental health in India. She is also member of the advisory board to the State Commissioner for Disabilities in Karnataka, India.

**Eleonora Mura** is a child rights advocate heading the partnerships division at Arigatou International. She has worked in the international development and humanitarian sector for the past seventeen years. She specializes in the role of religious actors in advancing children's rights and well-being, and in fostering interfaith collaboration for social justice.

**Britta Nicolmann** has been working for the Office of the United Nations High Commissioner for Human Rights in different functions since 2018, with a focus on the human rights treaty bodies. Previously, she supported peace processes, transitional justice initiatives and reconciliation in countries experiencing

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**Şafak Pavey** is a founding member of the United Nations interagency support group for the Convention on the Rights of Persons with Disabilities (CRPD). The train accident she had whilst studying art and film in Zurich left her with one arm and leg, introducing her further to the world of disabled people and reshaping her perspective. In 2010–2011, she was Secretary to the CRPD Secretariat at the Office of the United Nations High Commissioner for Human Rights, and was subsequently elected as a member of the Committee from 2013 to 2016.

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**Bandana Rana** has been a member of the United Nations Committee on the Elimination of Discrimination Against Women Committee since 2017. She is the recipient of the 2016 Woman of Distinction Award conferred by the NGO Committee on the Status of Women, New York, for her dedicated work and contribution to gender equality globally. She was a member of the United Nations Secretary-General's High-Level Advisory Group for the Global Study on the Implementation of United Nations Security Council Resolution 1325 and a member of UN-Women's Global Civil Society Advisory Group from 2012 to 2015. As a broadcast journalist for two decades, she has led communication and media programming for addressing gender stereotypes and changing mindsets.

**Nathan Reyes** is a doctoral candidate in Criminology and Sociolegal Studies at the University of Toronto, where he focuses his research on the sociolegal construction of notions of victimhood, marginalization in the justice system, and how these intersect with the agency of families of missing persons in the search for their loved ones. Previously, Nathan worked from 2012 to 2024 with the United Nations and International Committee of the Red Cross as a protection specialist in Latin America, Eurasia and sub-Saharan Africa – roles in which he engaged substantively with authorities, weapons-bearers and communities on complex humanitarian issues, visited persons deprived of liberty, provided accompaniment to victims/families, and strove to clarify the fate of countless missing persons. A sailor, explorer and life-long learner, fluent in four languages, he is as likely to be found on the field or at sea as in his Toronto home.

**Dr. Francisco Rojas Aravena** was elected as the eighth Rector of the University for Peace in 2013, and was re-elected in 2018 and 2022. He has a Ph.D. in Political Science from the University of Utrecht in the Netherlands, and a M.S. in Political Science from the Latin American Faculty of Social Sciences. He also served as

Professor at the School of International Relations of the National University of Costa Rica, Professor at Stanford University's campus in Chile, Visiting Professor at the Andres Bello Diplomatic Academy and a Fulbright Professor at the Latin American and Caribbean Centre at Florida International University. In 2012, he was honored by the governments of Costa Rica, Paraguay and the Dominican Republic for his contributions to the integration between Latin America and the Caribbean. He has subsequently been honored with other governmental and academic distinctions.

**Dr. Ibrahim Salama** is Dean of the Faculty of Law at the British University in Egypt and Director of its Human Rights Research and Training Centre since December 2024. Previously, he was the Chief of the Human Rights Treaties Branch at the Office of the United Nations High Commissioner for Human Rights (2007–2024), headed the UN Secretariat for the preparatory process of the 2009 UN World Conference Against Racism, and was also an independent expert of the Sub-Commission on the Promotion and Protection of Human Rights, and Chairperson of the Intergovernmental Working Group on the Right to Development (2004–2007). He also contributed to creating the "Faith for Rights" framework, and in 2024 he assumed the role as civil society coordinator of its commUNity of practices.

**Dr. Ahmed Shaheed** is Professor of International Human Rights Law at the Essex Law School and Human Rights Centre, University of Essex, United Kingdom. He served as United Nations Special Rapporteur on Freedom of Religion or Belief (2016–2022) as well as Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (2011–2016). A career diplomat, he held twice the office of Minister of Foreign Affairs of Maldives, leading the country's efforts to embrace international human rights standards between 2003 and 2011. In 2015, Mr. Shaheed won the UN Foundation Leo Nevas Human Rights (Global Leadership) Award.

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**Dr. Michael Wiener** has been working since 2006 at the Office of the United Nations High Commissioner for Human Rights. Furthermore, he has been a Visiting Fellow of Kellogg College at the University of Oxford since 2011. During his 2022 UN sabbatical leave, he was also a Senior Fellow in Residence at the Geneva Graduate Institute of International and Development Studies. He holds a Master of Laws from the University of London, and his doctoral thesis at the University of Trier focused on the mandate of the UN Special Rapporteur on freedom of religion or belief.

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# Faith in United Nations Human Rights Treaties

## Legal and Religious Commentaries for Research and Peer-learning

**Edited by Michael Wiener, Ibrahim Salama and Britta Nicolmann**

In 1945, the peoples of the United Nations reaffirmed "faith in fundamental human rights" and stressed the importance of respecting "the obligations arising from treaties and other sources of international law". Eighty years later, these quotes from the preamble of the UN Charter guide this book on "Faith in United Nations Human Rights Treaties".

All core treaties and relevant declarations – in chronological order of their adoption – are commented on by international experts, including current and former treaty body members or special rapporteurs, religious leaders, faith-based actors and academics. They provide legal and religious commentaries for peer-learning and research, exploring the role of faith and faith-based actors in drafting the respective conventions and declarations.

This book also seeks to inspire faith in the crucial role of treaty bodies and support practical implementation of the existing obligations under international human rights and humanitarian law. For example, United Nations treaty bodies and special rapporteurs have been instrumental for getting conscientious objectors out of prison, abused children off the street, and discriminatory common law offences repealed. These examples illustrate why faith-based actors may indeed have faith in United Nations human rights treaties.

Faith and human rights can be mutually reinforcing spheres. This should be facilitated by acting jointly for the full implementation of all human rights treaties.

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