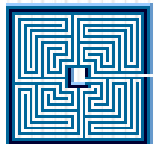


International human rights

Right to freedom of religion or belief

Prepared by
Catherine Morris, BA, JD, LL.M
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Peacemakers Trust

Overview of this presentation

1. United nations instruments and treaties
 - The *Universal Declaration of Human Rights*
 - The *Genocide Convention*
 - The *International Covenant on Civil and Political Rights*
 - *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*
2. Strict limitations on the right to freedom of conscience, religion or belief
 - The Siricusa Principles
3. Regional human rights systems
 - Europe, the Americas and Africa.
4. The UN Special Rapporteur on Freedom of Religion and Belief
5. When rights claims collide: Principles to consider

Universal Declaration on Human Rights (UDHR) 1948

- Article 18: “Everyone has the right to freedom of thought, conscience and religion; this right includes...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.”
- Elements:
 - Freedom of thought and conscience
 - Freedom to manifest religion (including teaching, practice, worship and observance)

Genocide Convention

1948 (in force 1951)

- The Convention on the Prevention and Punishment of the Crime of Genocide
 - specified acts committed with intention of destroying a religious group in whole or in part

Article 2

In the present Convention, genocide means any of the following acts committed with **intent to destroy, in whole or in part**, a national, ethnical, racial or **religious** group, **as such**:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

- Customary international law (*jus cogens*)

International Covenant on Civil and Political Rights (ICCPR)

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to **have or adopt a religion or belief of his choice**, and freedom, either individually or in community with others and in public or private, to **manifest his religion or belief in worship, observance, practice and teaching**.
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, where applicable, legal guardians to **ensure the religious and moral education of their children** in conformity with their own convictions.“

Derogation and limitations

- **All parts of the rights articulated in Article 18 are non-derogable**, including the right to *manifest* religion or belief (Article 4 of the ICCPR)
- **There may be limitations on *manifestation*** of religion or belief (Article 18.3)
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.
- **The difference between “derogation” and “limitation.”**
 - Derogation refers to suppression of a right in a time of emergency that threatens the life of the nation.
 - The right to freedom to **manifest** a belief is *non-derogable but not absolute* and may be subject to limitations.
 - The right to freedom to **hold** a religious or other belief or opinion is **absolute** and **cannot lawfully be subjected to limitation or derogation**.
 - In the case of manifestation of religion or belief, the practical distinction between derogation (temporary and only in time of emergency) and limitation (usually permanent but strictly limited) may not be easily evident (See Criddle).
- **Limitations** must be
 - Prescribed by law
 - Necessary to protect
 - public safety, order, health or morals
 - fundamental rights and freedoms of others
 - See the Siracusa Principles

UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly 1981)

- ❑ right to freedom of thought, conscience and religion,
- ❑ no discrimination because of beliefs.
- Article 2 definition of "intolerance and discrimination based on religion or belief":
 - “any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.”
- Article 3:
 - discrimination on grounds of religion or believe “an affront to human dignity and a disavowal of the principles of the Charter of the United Nations” and an "obstacle to friendly and peaceful relations between nations.”
- Declaration reaffirmed in 1997; declaration also mentions ICCPR Article 18
- **BUT:** there is no Convention. The Declaration is not binding on States.

What are “fundamental rights & freedoms”?

Is there a “hierarchy” of norms?

- National law does features hierarchies (e.g. constitutions that are superior to ordinary laws)
- Some commentators suggest an emerging hierarchy, but this is disputed
- UN Charter, UDHR, ICCPR, CERD, CEDAW use the following terms interchangeably:
 - "human rights," "freedoms," "fundamental human rights," "fundamental freedoms," "rights and freedoms," "human rights and fundamental freedoms" (Meron 1986, 5)
 - Indivisibility and interdependence of norms? (Koji 2001, 918))
- If there is a hierarchy, which are “fundamental” norms? (subjective; politically/culturally defined; no consensus).
 - *jus cogens* norms (peremptory norms)?
 - Other customary norms?
 - Non-derogable rights? (see Koji 2001)
 - What about non-derogable rights that are subject to limitations (e.g. ICCPR Art 18.3)

UN Human Rights Committee: General Comments and Jurisprudence

- HRC General Comment No. 22
 - the rights to freedoms of conscience and religion are “far-reaching and profound” (para 1) and include “theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief” (para 2).
 - “the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.” (para 4).

General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): 07/30/1993. CCPR/C/21/Rev.1/Add.4, General Comment No. 22. (General Comments),

<http://www.unhcr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15>

UN Human Rights Committee

General Comment 22

- No limitation on right to freedoms of thought, conscience and belief: “no one can be compelled to reveal his thoughts or adherence to a religion or belief.” para 3.
- Article 18(3) is to be “strictly interpreted” and that any limitations “must be directly related and proportionate to the specific need on which they are predicated”:

“Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.”

UN Economic and Social Council (ECOSOC)

Siracusa Principles

- **Article 18(3) limitations are permissible if they:**
 - Are permitted within the terms of the ICCPR itself. no limitation based on grounds other than stipulated (i.e..the “manifestation” of religion);
 - prescribed by law (either common law or legislation);
 - compatible with the rule of law;
 - not arbitrary or discriminatory in scope,
 - sufficiently precise, and
 - accessible to those whose practices will be affected.

- **Siracusa principles**

Article 36. When a conflict exists between a right protected in the Covenant and one which is not, recognition and consideration should be given to the fact that the Covenant seeks to protect the most fundamental rights and freedoms. In this context especial weight should be afforded to rights not subject to limitations in the Covenant.

United Nations, Economic and Social Council, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, U.N. Doc. E/CN.4/1985/4, Annex (1985), available at <http://www1.umn.edu/humanrts/instree/siracusaprinciples.html> .

Vienna Declaration and Programme of Action

Article 5.

All human rights are **universal, indivisible and interdependent and interrelated**. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.

UN General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23, available at:

<http://www.refworld.org/docid/3ae6b39ec.html>

American Convention on Human Rights

Article 1

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, **religion, political or other opinion**, national or social origin, economic status, birth, or any other social condition.

American Convention on Human Rights

ARTICLE 12. FREEDOM OF CONSCIENCE AND RELIGION

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Article 27 provides that Article 12 is non-derogable.

European Convention on Human Rights

Article 9 - Freedom of thought, conscience and religion

1. 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, and to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 9 is not among the non-derogable articles.

European Convention on Human Rights

- *Article 14 – Prohibition of discrimination.*

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

European Court of Human Rights

- **Dahlab v. Switzerland (2001):** headscarf worn by a teacher could have a proselytizing effect, and the ban was not unreasonable.
- **Sahin v. Turkey, ECtHR 2005:** Turkey's refusal to allow Islamic headscarf was justified and proportional.
- **Dogru v. France (2005):** national policy banning headscarves in school phys-ed classes for reasons of health/safety was not unreasonable interference with freedom of religion.
- **Lautsi v. Italy (2011):** Grand chamber overruled Chamber's decision and said passive display of crucifix in classroom was not incompatible with freedom of religion, saying Dahlab reasoning didn't apply.

African Charter on Human and Peoples' Rights

ARTICLE 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, **religion**, political or any other opinion, national and social origin, fortune, birth or any status.

ARTICLE 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, **subject to law and order**, be submitted to measures restricting the exercise of these freedoms.

There is no derogation clause in the Charter.

Concerns:

Persecution of particular religious groups (& their advocates)

- Minority religious groups in Pakistan, Vietnam, Iran, Belarus, China & other places

Limitations on manifestation of religion or belief in the public sphere

- Minaret ban (Switzerland)
- Bans on the veil in several countries in Europe
- Bans on religious symbols in Canada
- Lack of recognition of Indigenous forms of spirituality

Violence between members of different religions/religious groups

- Muslims and Christians in Nigeria
- Sectarian violence in Iraq

Freedom of religion and ...

- Freedom of expression (Muhammad cartoons controversy)
- Women's rights (conflict over Shari'a in Ontario, Canada)
- Sexual Orientation and Gender Identity (SOGI)

When Rights Claims Collide: Principles to Consider

- All rights are indivisible
- Right to freedoms of conscience, religion and belief are:
 - non-derogable in UN system (ICCPR)
 - non-derogable in the Inter-American human rights system
 - derogable in times of emergency in the European regional human rights system
- Right to freedom of conscience is absolute
- Right to freedoms of religion and manifestation of religion are subject to very strict limitations (Siracusa principles)
- The starting point is human beings: the rights holders are human beings (not religions) (Heiner Bielefeldt)
- Freedom of religion and belief *requires* freedom of expression – and the freedom to engage in “peaceful provocation” (Heiner Bielefeldt)

Special Rapporteur on Freedom of Religion or Belief

- Mandate created by UN Human Rights Council in 1986
- Prof. Heiner Bielefeldt was the mandate holder from August 2010 to October 2016.
- Mr. Ahmed Shaheed was appointed as the mandate holder in November 2016.
- Prof. Nazila Ghanea was appointed as the mandate holder in August 2022.



Mr. Heiner Bielefeldt: UN Special Rapporteur on Freedom of Religion and Belief



- <https://www.youtube.com/watch?v=nAX9ynl3Lt4> (17 minutes)
- <https://www.youtube.com/watch?v=Kgoagl9AMAE> (49 minutes)
- <http://webtv.un.org/watch/heiner-bielefeldt-special-rapporteur-on-freedom-of-religion-or-belief-%E2%80%93-press-conference/2781753909001?page=5>

Mr. Ahmed Shaheed UN Special Rapporteur on Freedom of Religion and Belief (2022)



Featured report

- [A/77/514](#): Interim report of the Special Rapporteur on freedom of religion or belief: Indigenous peoples and the right to freedom of religion or belief

Prof. Prof. Nazila Ghanea
UN Special Rapporteur on
Freedom of Religion and Belief (2016-2022)



Featured report July 2024

- **[A/79/182](#): Peace and freedom of religion or belief –
Special Rapporteur on freedom of religion or belief**

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- Reservations, Limitations and Derogations, lecture notes 2006, [http://www.uio.no/studier/emner/jus/humanrights/HUMR5120/h06/undervisningsmateriale/Lecture notes Maria reservations limitations and derogations.doc](http://www.uio.no/studier/emner/jus/humanrights/HUMR5120/h06/undervisningsmateriale/Lecture%20notes%20Maria%20reservations%20limitations%20and%20derogations.doc).

Some Journals

- ***International Journal for Religious Freedom***
 - <http://www.iirf.eu/index.php?id=30&L=%>
- ***Journal of Church and State***
 - <http://jcs.oxfordjournals.org/>
- ***Journal of Law, Religion and State***
 - <http://booksandjournals.brillonline.com/content/journals/10.1163/221248112x639757>
- ***Oxford Journal of Law and Religion***
 - <http://ojlr.oxfordjournals.org/>
- ***Religion & Human Rights***
 - <http://www.brill.com/religion-human-rights>