Freedom of Religion or Belief and International Law: The Time for a Treaty is Now

Introduction

Across the globe, the practice of religion or belief “is one of the fundamental elements in [a person’s] conception of life.”¹ In some parts of the world, however, the practice of a religion by some conflicts with the freedoms and rights of others, including the right not to profess any religion or belief. Currently, no international, legally binding text explicitly addresses the right to freedom of religion or belief. Past attempts to address this void have largely failed, and as a result religious intolerance and extremism continue to dominate public discourse.

Following a brief outline of the relevant international law acknowledging and establishing a framework for freedom of religion or belief, this paper addresses the continued and urgent need for ratification of Article 18 of the International Covenant on Civil and Political Rights, as well as the need for an international treaty or convention on the elimination of all forms of intolerance or discrimination on the basis of religion or belief.

Foundations of Freedom of Religion or Belief in International Law

There are numerous sources of religious freedom in international law. “Virtually all modern human rights instruments,” in fact, “contain provisions protecting freedom of religion and prohibiting discrimination based on religion.”² Perhaps the most salient of these is Article 18 of the International Covenant on Civil and Political Rights (the Civil and Political Covenant), which reads:

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.³

The Civil and Political Covenant, which entered into force on March 23, 1976,⁴ is one of the key international human rights treaties, providing a range of protections

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³ International Convention on Civil and Political Rights art. 18, ¶¶ 1–3, Dec. 16, 1966, 999 U.N.T.S. 171 (hereinafter Civil and Political Covenant), available at http://www1.umn.edu/humanrts/instree/b3ccpr.htm. This article should not be read in isolation from Article 19, which guarantees the rights to hold opinions without interference and to freedom of expression.

⁴International Covenant on Civil and Political Rights (Treaty Status), United Nations Treaty Collection, available at
for both civil and political rights. As of January, 2016, there were 74 signatories and 168 State Parties to the Civil and Political Covenant.\(^5\) Under an optional protocol,\(^6\) 115 states recognize the authority of the Human Rights Committee to consider confidential communications from individuals claiming to be victims of violations of any right under the Civil and Political Covenant; the United States is not a party.\(^7\)

Despite the importance and recognition of the Civil and Political Covenant, however, no less than 67 States have made some form of reservation, understanding, or declaration (collectively, RUDs) upon ratification, accession or succession.\(^8\) Of those, at least five—Bahrain, Egypt, Iraq, the Maldives and Mauritania—have declined to extend Article 18.\(^9\)

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\(^{6}\) Id.


\(^{7}\) Also notably absent from the First Optional Protocol are the United Kingdom and any Middle Eastern country (with the exception of Turkey), and (with the exception of Nepal), much of Asia and Southeast Asia.

\(^{8}\) Id.

\(^{9}\) According to Bahrain and Mauritania, ratification of the Civil and Political Covenant does not affect and shall be without prejudice to the prescriptions of Islamic Shariah law. Egypt similarly declared that “[t]aking into consideration the provisions of the Islamic Sharia and the fact that they do not conflicts with the text annexed to the instrument, we accept, support and ratify it . . . .” The Maldives declared that “[t]he application of the principles set out in Article 18 of the Covenant shall be without prejudice to the Constitution of the Republic of Maldives.” Maldivian law prohibits citizens’ practice of any religion other than Sunni Islam and requires the government to exert control over all religious matters. Iraq specifically stated its unwillingness to enter into the Optional Protocol.
Together with the Universal Declaration of Human Rights (the Universal Declaration)\textsuperscript{10} and International Covenant on Economic Social and Cultural Rights (the Social and Cultural Covenant),\textsuperscript{11} the Civil and Political Covenant forms part of what is considered the International Bill of Human Rights. Other international and regional declarations, conventions and specialized human rights instruments contain similar provisions.\textsuperscript{12}

It has been suggested that, in light of the aforementioned documents—and despite their non-universal adoption—the freedom of religion or belief has achieved the status of customary international law.\textsuperscript{13} Scholars of religious freedom and international law have averred that this freedom “extends to both religious and non-religious forms of belief and is one of the core protections of the international human rights system.”\textsuperscript{14} While freedom of religion or belief is protected—at least on paper—“by a wide range of fundamental multilateral and regional human rights instruments,”\textsuperscript{15} in practice these rights are often disregarded. At present, there is a clear need for a treaty explicitly defining both the obligation to protect the right to freedom of religion or belief and the mechanisms by which to do so.

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\textsuperscript{12} See Appendix B.

\textsuperscript{13} See Aff. of International Law Professors and Religious Freedom Experts Regarding the Right to Freedom of Religion or Belief, ¶ 2, Doe v. Liu Qi, N.D. Cal. No. C-02-0672 CW (July 3, 2002) (stating that “freedom of religion or belief is a well-established norm of customary international law . . .”).

\textsuperscript{14} Id.

\textsuperscript{15} Id. at para. 6.
As early as 1962 the United Nations had been asked to create a document—either a convention or a declaration—that would spell out the specific guarantees of freedom of religion or belief. Despite numerous attempts, no treaty or convention has yet been adopted. In November of 1981, however, the General Assembly unanimously adopted the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981 Declaration). To date, it is the only UN instrument exclusively focused on the freedom of religion or belief and the promotion of religious tolerance.

The 1981 Declaration attempted to address two major concerns at the time. First, it sought to address communist fears that protecting "religion" would "imply a discrimination of atheist or non-religious convictions." The declaration addressed this by adding the word "whatever" before the word "belief," implying that belief could be defined in the negative. Second, by limiting the freedom to change one's

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17 The Protection of Freedom of Religion Within the Institutional System of the United Nations, supra n. 2 at 590 (“The last draft for a convention dates back to 1973 and even the UN Special Rapporteurs on Freedom of Religion dropped the issue of a binding document in 1993”).
18 1981 Declaration, supra n. 1 (reproduced in Appendix A).
religion or belief (as found in Article 18 of the Universal Declaration of Human Rights (UDHR))\(^{21}\) to the freedom to have or manifest a religion or belief of one’s choice, the 1981 Declaration—like Article 18 of the Civil and Political Covenant\(^{22}\)—appeased Muslim countries, where apostasy is punishable by death under some interpretations of Islamic law. Though it did this for strategic reasons, the alteration weakened the provisions of the Universal Declaration.\(^{23}\)

Despite the lack of reference to the right to change one’s religion, the 1981 Declaration “serves, and will continue to serve as an important and helpful tool in interpreting the formally binding international guarantees of freedom of religion.”\(^{24}\)

Among other achievements, the 1981 Declaration extended the existing duties of states to protect freedom of religion or belief.

When Articles 2(1), 4 and 7 are read together, it is clear that national laws are to protect all persons against religious discrimination practiced by all other persons. This represents a bold attempt to require countries to outlaw private discrimination as well as discrimination at the hands of a body representing the State itself.\(^{25}\)

It is also important to note that the Human Rights Committee, in General Comment 22, stated that to “‘have or adopt’ a religion or belief necessarily entails the freedom

\(^{21}\) See Appendix B.

\(^{22}\) Civil and Political Covenant, supra n. 3 (reproduced in Appendix B).

\(^{23}\) Unfortunately, the ramifications of this alteration continue to be felt in predominantly Muslim countries. In November, 2015, a Palestinian poet and leading member of Saudi Arabia’s art community, was sentenced to death for renouncing Islam. David Batty, *Saudi Court Sentences Poet to Death for Renouncing Islam*, THE GUARDIAN (Nov. 20, 2015), http://www.theguardian.com/world/2015/nov/20/saudi-court-sentences-poet-to-death-for-renouncing-islam.


to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief.”

Moreover, by concluding that “nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights,” the argument can be made that the rights and duties set forth in those declarations and covenants are impliedly included in the 1981 Declaration.

Notwithstanding this interpretation, however, and in addition to the observation that no exception has been made to the Committee’s interpretations, the 1981 Declaration is neither a treaty nor a convention, and is therefore not in itself legally binding. Furthermore, lacking an effective enforcement mechanism, the 1981 Declaration—now nearly 35 years old—has not translated to the religious tolerance it was drafted to create.

Why do we Need a Treaty on Freedom of Religion or Belief?

The Special Rapporteur

It has been argued that, given the reference to freedom of religion or belief found in existing international law, the need for a separate reference to freedom of

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27 1981 Declaration, supra n. 1, Art. 8 (reproduced in Appendix A).

religion or belief is unnecessary. Though it is true that religious belief and practice are covered in part by other basic liberties—such as freedom of thought and inquiry, freedom of communication and expression, freedom of association, and freedom of peaceful assembly—and reference in various human rights treaties, the fact remains that violations of freedom of religion or belief continue unchecked.

To monitor the implementation of the 1981 Declaration, in 1986 the UN Commission on Human Rights appointed a Special Rapporteur (the Rapporteur), who examines incidents and governmental actions inconsistent with the 1981 Declaration. The Rapporteur is mandated to report annually to the Human Rights Committee (formerly the Human Rights Commission) on the status of freedom of religion or belief worldwide, discerned from individual complaints from member states and country visits. In 2007—“seriously concerned,” among other things, with “the overall rise in instances of intolerance and violence,” and the “persistence of institutionalized or social intolerance and discrimination practiced against many in the name of or due to their religion or belief”—the Human Rights Council expanded the mandate of the Rapporteur, and urged states to adopt measures to address the following:

(a) The rise of religious extremism affecting religions in all parts of the world;

29 See, e.g., James W. Nickel, Who Needs Freedom of Religion?, 76 U. COLO. L. REV. 941 (2005) (arguing that while separate enumeration of freedom of religion in national and international conventions, declarations and treaties may be useful, it is not indispensable).
32 Id. at para. 3.
(b) The situations of violence and discrimination that affect many women as well as individuals from other vulnerable groups in the name of religion or belief or due to cultural and traditional practices;
(c) The abuse of religion or belief for ends inconsistent with the Charter of the United Nations and other relevant instruments of the United Nations.33

In 2011 the Human Rights Council released the “Rapporteur’s Digest on Freedom of Religion or Belief,”34 (the Digest) which contained excerpts of the reports from 1986 to 2011, and showcased numerous examples of violations of the freedom of religion or belief from across the globe.

The Digest points to a number controversial issues in regards to the freedom of religion or belief, including registration requirements, state religions, sects, the prohibition on proselytism, and issues relating to religion in schools and parental authority.35 While the Digest contains over 100 pages of conclusions and recommendations, such recommendations are “‘soft’ in the sense that [they do] not have the possibility to render binding judgments on the question of whether in the individual case presented the right to freedom of religion or not to be discriminated against were violated.”36

33 Id. at para. 11(a) – (c).
35 For a more thorough discussion, see The Protection of Freedom of Religion Within the Institutional System of the United Nations, supra n. 2 at 599–602.
36 Id. at 598.
Today, nearly five years after the Digest’s release, the world continues to see an upswing in religious extremism.\(^\text{37}\) The most recent Annual Reports\(^\text{38}\) submitted by the Rapporteur again paint a dismal picture of religious intolerance and discrimination, including instances of school authorities alienating students from their religion or beliefs,\(^\text{39}\) acts of terrorism carried out in the name of religion,\(^\text{40}\) and policies of complete exclusion.\(^\text{41}\)

Though “the Special Rapporteurs have developed working methods which allow them to take concrete and substantive positions regarding more or less all essential and controversial issues relating to freedom of religion,”\(^\text{42}\) the very presence of such an extensive list of issues and concerns suggests that something is not working; instances of discrimination and intolerance based on religion or belief continue to dominate the public sphere, pointing to the ever-expanding and imminent need to address the topic through an international legal framework.

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\(^{40}\) December 29, 2014 Report, *supra* n. 38 para. 3–5.

\(^{41}\) *Id.* at section II(C)(3).

\(^{42}\) *The Protection of Freedom of Religion Within the Institutional System of the United Nations*, *supra* n. 2 at 602.
Other Monitoring Agencies and Reports

In addition to the Special Rapporteur’s annual reports, numerous international, regional, and national agencies monitor and report on the status of freedom of religion or belief. These agencies include, among many others, the United States Commission on International Religious Freedom (U.S. Commission), which in 2015 released its Annual Report documenting the status of religious freedom worldwide.

The U.S. Commission, created by the International Religious Freedom Act of 1998, has been issuing reports and recommendations since 1999. Like the annual reports of the Special Rapporteur, the U.S. Commission’s reports detail specific examples of violations of religious freedom. The most recent report (2015) paints a bleak picture of religious extremism and intolerance. The report states, “[a] horrified world has watched the results of what some have aptly called violence masquerading as religious devotion.” Examples of such violence are drawn from “countries of particular concern”, and include Iraq and Syria—where “no religious group has been free of ISIL’s depredations in areas it has conquered”—as well as Nigeria, Central African Republic, and Burma. Examples of ongoing violence and discrimination mentioned in the report include the following:

44 Id. at 2.
45 Other designated countries of concern include China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, Turkmenistan, and Uzbekistan; the U.S. Commission as recommended that Egypt, Nigeria, Pakistan, Tajikistan and Vietnam be added to this list.
In predominantly Buddhist Burma, Rohingya Muslims continue to face persecution and violence, and anti-Muslim violence persists. Christians, as well, experience discriminatory practices; two Christian missionaries were raped and murdered in January of 2015.\textsuperscript{46}

In China, people of faith face arrests, fines, denials of justice, lengthy prison sentences, and closing or bulldozing of places of worship.\textsuperscript{47}

Violations in Eritrea include torture or ill-treatment of religious prisoners, arbitrary arrests and detentions, a prolonged ban on religious activities, and interference in the internal affairs of religious groups.\textsuperscript{48}

In Iran, the government “continues to engage in systematic, ongoing, and egregious violations of religious freedom, including prolonged detention, torture, and executions based primarily or entirely upon the religion of the accused.”\textsuperscript{49}

Religious freedom in North Korea, one of the most oppressive regimes in the world, remains tightly controlled by the government. It is estimated that tens of thousands of North Koreans are currently incarcerated for religious activity.\textsuperscript{50}

A new law in Saudi Arabia classifies blasphemy and advocating atheism as terrorism. These laws join similar archaic provisions that allow for prosecuting and imprisoning individuals for dissent, apostasy, and sorcery.\textsuperscript{51} Similar laws can be found in Sudan.\textsuperscript{52}

In Turkmenistan, police raids and harassment of registered and unregistered religious groups continue.\textsuperscript{53}

Violations by al-Assad, the “Islamic State” and other extremist and terrorist groups in Iraq and Syria continue to threaten the entire region.

Other agencies – including the International Coalition for Religious Freedom, Religious Freedom Watch, Freedom House, Human Rights Without...
Frontiers, International Association for Religious Freedom, and the International Religious Liberty Association—have issued similar reports, advisories, and recommendations, adding to the irrefutable notion that the need for a treaty guaranteeing religious freedom has never been greater.

Conclusion

The argument has been made that the “world is still too polarized for the United Nations to reach agreement on a worthwhile convention.” This assertion certainly has merit, and indeed there remain many questions to be answered, including (among many more):

- How do we make a universally binding document that also accounts for the cultural sensitivity and diversity inherent in religion or belief (and avoids the attachment of reservations, understandings and declarations)?
- How do we address conflict between the freedom or religion or belief and other fundamental rights (such as the freedom of expression)?
- “What can governments and leaders, or representatives of religions or beliefs, do to create a more tolerant, even enabling, environment for individuals to be free to follow the promptings of their own consciences in such matters?”
- How do we create effective enforcement measures, and ensure access to effective remedies when violations occur?

How do we address growing concern that the freedom of religion or belief does not adequately protect the freedom not to adhere to a religion? How do we ensure the duty to protect individuals from violations of rights by both its own agents and acts committed by private persons?62

Though these questions are beyond the scope of this paper, they are important ones to address, and in the future will require workable solutions. The creation of a legally binding document protecting the freedom of intolerance and discrimination on the basis of religion or belief will not be easy. While few governments, organizations or individuals would deny the presence of the freedom of religion generally, “[s]pelling out the details of freedom of religion is much more painstaking than formulating the general principle.”63

Despite the uphill battle that lies ahead, however, the need for such a document has never been clearer. More importantly, the notion that the world simply “isn’t ready” for a universal, binding treaty on the freedom of religion or belief ignores the power that we as global citizens have to both persuade lawmakers to take the necessary steps to create such a document, and to promote tolerance as individuals. United for a common cause, individuals and organizations occupy a commanding space in local and international discourse. It is time we joined together to promote religious freedom or belief for all.

62 The Human Rights Committee has observed that the duty to protect “will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.” Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (March 29, 2004), para. 8.

Appendix A: 1981 Declaration


The General Assembly,

Considering that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the Organization to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights and the International Covenants on Human Rights proclaim the principles of nondiscrimination and equality before the law and the right to freedom of thought, conscience, religion and belief,

Considering that the disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other States and amount to kindling hatred between peoples and nations,

Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible,

Convinced that freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

64 1981 Declaration, supra n. 1.
Noting with satisfaction the adoption of several, and the coming into force of some, conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

Concerned by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

Resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the ground of religion or belief,

Proclaims this Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief:

Article 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever 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 a religion or belief of his 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.

Article 2

1. No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.

2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means 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 between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human
Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

**Article 4**

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

**Article 5**

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.

3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle. 5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.

**Article 6**

In accordance with article I of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:
(a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;

(b) To establish and maintain appropriate charitable or humanitarian institutions;

(c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;

(d) To write, issue and disseminate relevant publications in these areas;

(e) To teach a religion or belief in places suitable for these purposes;

(f) To solicit and receive voluntary financial and other contributions from individuals and institutions;

(g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;

(h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;

(i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

**Article 7**

The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

**Article 8**

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.
Appendix B: International Texts

The Universal Declaration of Human Rights[^65]

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.

European Convention on Human Rights[^66]

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, 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 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.

[^65]: UDHR, *supra* n. 5.
American Convention on Human Rights\textsuperscript{67}

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.

Article 12

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or is freedom to maintain or to change his religion 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.

African (Banjul) Charter on Human and Peoples’ Rights\textsuperscript{68}

Article 2

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


Specialized Human Rights Instruments

UN Convention on the Rights of the Child\(^{69}\)

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
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.

1951 Geneva Refugee Convention\(^{70}\)

Article 4

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.


Freedom of Religion or Belief

International Humanitarian Law

Geneva Convention (III) relative to the Treatment of Prisoners of War

Article 34

Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities. Adequate premises shall be provided where religious services may be held.

Article 35

Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practising the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71.

Article 36

Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work.

Article 37

When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners’ or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be appointed, at the request of the prisoners concerned, to fill this office. This appointment, subject to the approval of the Detaining Power, shall enjoy the same privileges as a retained or prisoner-of-war chaplain.

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Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the approval of the local religious authorities of the same faith. The person thus appointed shall comply with all regulations established by the Detaining Power in the interests of discipline and military security.

**Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War**

Article 27(1)

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Article 58

The Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities. The Occupying Power shall also accept consignments of books and articles required for religious needs and shall facilitate their distribution in occupied territory.

**Additional Protocol I**

Article 52(3)

In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

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