

To: The Tandem Project International List Serve
To: Geneva NGO Committee on Freedom of Religion or Belief
From: The Tandem Project

The Oslo Coalition on Freedom of Religion or Belief has released a draft “Code of Conduct for Missionary Activities.” Comments on the draft are due by 1 May 2008. This is an **opportunity** for you to review the draft paper by opening the link below and submitting your comments to the Oslo Coalition. The Issue Statement below was released by The Tandem Project on 11/14/2007. This and other statements in the attached Word Documents reflect the **importance** of including United Nations Human Rights Standards and Freedom of Religion or Belief in religious codes of conduct.

<http://www.oslocoalition.org/>

http://www.oslocoalition.org/mhr_cc_draft.php

THE TANDEM PROJECT

www.tandemproject.com.

UNITED NATIONS, HUMAN RIGHTS, FREEDOM OF RELIGION OR BELIEF

PROSELYTISM AND HUMAN RIGHTS: THE RIGHT TO TRY TO CONVINCE THE OTHER

Issue: Conflict resolution - missionary activity and propagation of religion or belief.

For: United Nations, Governments, Religions or Beliefs, Academia, NGOs, Media, Civil Society

Review: *The Oslo Coalition Project* on “Proselytism and Human Rights: The Right to try to Convince the Other” is among the best examples of how to use the Eight Articles of the 1981 UN Declaration to assess substantive human rights issues. The Background Statement for this Project is available under the 1981 UN Declaration and linked at the end of this Issue Statement. In 2007 the Project was re-named “Missionary Activities and Human Rights.” The Oslo Coalition Work Program for this Project in 2007 is linked at the end of this Issue Statement. The Oslo Coalition website for this Project reads, “The aim of this project is to contribute, on the basis of human rights, to the **resolution of conflicts** arising from missionary activities.”

International Standards for National and Local Applications

Objective: Build understanding and support for Article 18, International Covenant on Civil and Political Rights –Everyone shall have the right to freedom of thought, conscience and religion - and the 1981 UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. Encourage the United Nations, Governments, Religions or Beliefs, Academia, NGOs, Media and Civil Society to use international human rights standards as essential for *long-term solutions* to conflicts based on religion or belief.

Challenge: In 1968 the United Nations deferred work on an International Convention on the Elimination of all Forms of Religious Intolerance, because of its apparent complexity and sensitivity. In the twenty-first century, a dramatic increase of intolerance and discrimination on grounds of religion or belief is motivating a worldwide search to find solutions to these problems. This is a challenge calling for enhanced dialogue by States and others; including consideration of an International Convention on Freedom of Religion or Belief for protection of and accountability by all religions or beliefs. The tensions in today’s world inspire a question such as:

- Should the United Nations adopt an International Convention on Freedom of Religion or Belief?

Response: Is it the appropriate moment to reinstate the drafting of a legally binding international convention on freedom of religion or belief? Law making of this nature requires a minimum consensus and an environment that appeals to reason rather than emotions. At the same time we are on a learning curve as the various dimensions of the Declaration are being explored. Many academics have produced voluminous books on these questions but more ground has to be prepared before setting up of a UN working group on drafting a convention. In my opinion, we should not try to rush the elaboration of a Convention on Freedom of Religion or Belief, especially not in times of high tensions and unpreparedness. - *UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, Prague 25 Year Anniversary Commemoration of the 1981 UN Declaration, 25 November 2006.*

Option: After forty years this may be the time, however complex and sensitive, for the United Nations Human Rights Council to appoint an Open-ended Working Group to draft a United Nations Convention on Freedom of Religion or Belief. The mandate of an Open-ended Working Group ought to assure nothing in a draft Convention will be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights, the International Covenants on Human Rights, and the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. One writer has said; “Religion raises the stakes of human conflict much higher than tribalism, racism, or politics ever can...it casts the differences between people in terms of eternal rewards and punishments.”

Concept: *Separation of Religion or Belief and State – SOROBAS.* The starting point for this concept is the First Preamble to the 1948 United Nations Universal Declaration of Human Rights; “*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.* It suggests States recalling their history, culture and constitution adopt fair and equal human rights protection for all religions or beliefs as described in General Comment 22 on Article 18, International Covenant on Civil and Political Rights, UN Human Rights Committee, 20 July 1993 (CCPR/C/21/Rev.1/Add.4):

- **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. Article 18 is not limited in its application to traditional religions or to religions and beliefs with international characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern 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. **Article 18:** permits restrictions to manifest a religion or belief only if such limitations are prescribed by law and necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Dialogue & Education

Dialogue: United Nations Secretary General Ban Ki Moon, at a UN backed Alliance of Civilizations Forum in January 2008 addressed the importance of dialogue; “Never in our lifetime has there been a more desperate need for **constructive** and **committed** dialogue, among individuals, among communities, among cultures, among and between nations.” A writer in another setting said, “The warning signs are clear: unless we establish **genuine** dialogue within and among all kinds of belief, ranging from religious fundamentalism to secular dogmatism, the conflicts of the future will probably be even more deadly.” Solutions to conflicts over religious or philosophical ideology call for dialogue on the **purpose** of international law on freedom of religion or belief; and the **value** of these standards for regional, national and local applications.

Education: Ambassador Piet de Klerk addressed the Prague twenty-five year anniversary commemoration of the 1981 UN Declaration; “Our educational systems need to provide children with a broad orientation: from the very beginning, children should be taught that their own religion is one out of many and that it is a personal choice for everyone to adhere to the religion or belief by which he or she feels most inspired, or to adhere to no religion or belief at all.” Parents are key to this application The 1981 UN Declaration states; “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, and shall not be compelled to receive teaching on religion or

belief against the wishes of his parents, the best interests of the child being the guiding principle.”

Extracts: Extracts are presented under the Eight Articles of the 1981 U.N. Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief. Examples of extracts are presented prior to an *Issues Statement* for each Tandem Project Review.

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, practices and teaching.*

The right to engage in faith persuasion is not explicitly mentioned in art. 18. However, this will normally be a part of the “manifestation” of a belief, cf. paragraph 1 of the article – as “teaching” or as “practice”, the latter covering all thinkable forms of manifestations that are not explicitly mentioned in the article.^[5] In some religions, the believers are urged by the religious doctrines to try to spread the faith. And for all beliefs, as long as the believer is strongly convinced, he or she will have a natural wish to try to convince others of the “truth” - if the “truth” is decisive for an afterlife as well, this wish may be strong. Even if not being an integral part of a religion's or belief's dogmas, such kind of faith persuasion is covered by the phrase “manifestation. – *The Oslo Coalition Project on Mission and Human Rights*

The right to engage in faith persuasion is not explicitly mentioned in art. 18. However, this will normally be a part of the “manifestation” of a belief, cf. para. 1 of the article – as “teaching” or as “practice”, the latter covering all thinkable forms of manifestations that are not explicitly mentioned in the article.^[5] In some religions, the believers are urged by the religious doctrines to try to spread the faith. And for all beliefs, as long as the believer is strongly convinced, he or she will have a natural wish to try to convince others of the “truth” - if the “truth” is decisive for an afterlife as well, this wish may be strong. Even if not being an integral part of a religion's or belief's dogmas, such kind of faith persuasion is covered by the phrase “manifestation”. – *The Oslo Coalition Project on Mission and Human Rights*

Falling within the ambit of art. 18 (1), the state may not interfere in proselytism activities without this being legitimate after para. 3 of the article (the “negative obligation”), cf. para. 6 below. Furthermore, the state has a “positive obligation”, to “ensure” the right: ^[6] The state is obliged to give its citizens protection against clear violations from other citizens who do not respect this right. Thus, the state may be obliged to protect an adherent of a minority belief, trying to convince a member of the majority religion, against harassment from the majority. – *The Oslo Coalition Project on Mission and Human Rights*

ISSUE STATEMENT: This Oslo Coalition project has been re-named Missionary Activities and Human Rights. The Project Group’s proposed activities for 2007 included; “a report on a seminar (in Norwegian) entitled ‘What is a Christian and Muslim Mission?’; publication of a report from last year’s August seminar...; an international working group strategy to evaluate results so far and map a course forward; and a delegation visit to the Vatican and the World Council of Churches.” This Work Program is available on the Oslo Coalition website linked here and at the end of this Issue Statement, <http://www.oslocoalition.org>.

Missionaries who try to convince the other are among the most solid holders of their beliefs. Education programs for missionaries on a shared **code of conduct** goes to the heart of religious ideology. Will these shared codes be available for all places of worship, religious schools and non-religious associations? The Ambassador-at-Large of the Netherlands for Human Rights, Piet de Klerk, at the 25 Year Anniversary Commemoration of the 1981 UN Declaration, 25 November 2006, Prague, Czech Republic stated – “Our educational systems need to provide children with a broad orientation: from the very beginning, children should be taught that their own religion is one out of many and that it is a personal choice for everyone to adhere to the religion or belief by which he or she feels most inspired, or to adhere to no religion or belief at all.” Can a variation on this recommendation be taught to **missionary children** as part of a shared code of conduct?

Michael M. Roan is a member of the Oslo Coalition International Advisory Council.

<http://www.oslocoalition.org/documents/mhrworkshop.doc>

<http://www.oslocoalition.org/mhr.php>

<http://www.oslocoalition.org>.

The 1948 Universal Declaration of Human Rights First Preamble affirms: “*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.* This principle suggests all States recalling their history, culture and constitution, provide equal protection by law for *theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.* This is recognized as international law by States parties to the United Nations Covenant on Civil and Political Rights. International Human Rights Standards on Freedom of Religion or Belief may be essential for *long term solutions* to conflicts based on religion or belief.

The Tandem Project: a non-profit, non-governmental organization established in 1986 to build understanding and respect for diversity of religion or belief, and prevent discrimination in matters relating to freedom of religion or belief. The Tandem Project has sponsored multiple conferences, curricula, reference materials and programs on Article 18 of the International Covenant on Civil and Political Rights – Everyone shall have the right to freedom of thought, conscience and religion - and the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

The Tandem Project initiative was launched in 1986 as the result of a co-founder representing the World Federation of United Nations Associations (WFUNA) at a 1984 United Nations Geneva Seminar, *Encouragement of Understanding, Tolerance and Respect in Matters Relating to Freedom of Religion or Belief*, called by the UN Secretariat on ways to implement the 1981 UN Declaration. In 1986, The Tandem Project organized the first NGO International Conference on the 1981 UN Declaration.

The Tandem Project Executive Director: Michael M. Roan, mroan@tandemproject.com.

*The Tandem Project is a UN NGO in Special Consultative Status with the
Economic and Social Council of the United Nations*

WORD DOCUMENT ATTACHED

**THE 1981 U.N. DECLARATION ON THE ELIMINATION OF ALL
FORMS OF INTOLERANCE AND OF DISCRIMINATION
BASED ON RELIGION OR BELIEF**

Proclaimed by the General Assembly of the United Nations
25 November, 1981 (Resolution: 36/55)

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 non-discrimination and equality before the law and the right to freedom of thought, conscience, religion or belief,

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

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 grounds 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: LEGAL DEFINITION

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, practices and teaching.*

1. The sources of the international freedom of religion or belief

The most important international legislation on the freedom of religion or belief, is art. 18 in the United Nation's International Covenant on Civil and Political Rights (CCPR), from 1966. CCPR art. 18 is built upon art. 18 of the Universal Declaration of Human Rights (DHR), from 1948.[\[1\]](#)

Some important issues regarding discrimination are treated in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981).

Freedom of religion or belief is also protected by some regional instruments, like the European Convention on Human Rights (ECHR) art. 9 and the American Convention on Human Rights (ACHR) art. 12.

About 160 states have ratified CCPR, and the freedom of religion or belief has generally a wide recognition. Thus, there are good reasons for stating that the basic elements of the freedom of religion or belief as expressed in art. 18, are international customary law. This means that the states are legally obliged to respect this freedom, regardless of the ratification status of the different conventions.

Some parts of the text of CCPR art. 18 are vague. To be able to get a closer understanding of CCPR art. 18, the UN Human Rights Committee has delivered a General Comment on this freedom (General Comment no. 22, from 1993). In addition, the Human Rights Committee may, for those states that have accepted this opportunity, decide individual complaints.^[2] The Committee has not till this date decided cases on proselytism. Yet, a couple of cases on proselytism have been decided by the European Court of Human Rights. Because of the almost similar wording of ECHR art. 9 and CCPR art. 18, the jurisprudence of the European Court is of relevance regarding CCPR art. 18 as well.

The freedom of religion or belief is also considered by international institutions in a more political context. The UN Human Rights Commission has appointed a special rapporteur on freedom of religion or belief, who delivers annual reports to the Commission.”

“The wording of CCPR art. 18

CCPR art. 18 reads 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 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.
4. Which religions and beliefs are protected by art. 18?

Seen together with the General Comment, the phrase “religion” covers all faiths in supernatural powers, traditional and untraditional, while the phrase ”belief” primarily refers to non-religious and quasi-religious philosophies of life, such as atheism, agnosticism and humanism.[3] Furthermore, art. 18 also protects the right not to profess any religion or belief.[4] Also sincere convictions on more limited areas, which have a strong link to conscience, such as pacifism and veganism, are protected. Therefore, proselytism activities described in the following will also cover activities performed by or directed against persons with a non-religious belief.

The right to engage in faith persuasion

The right to engage in faith persuasion as a part of the right to manifest one's religion or belief

The right to engage in faith persuasion is not explicitly mentioned in art. 18. However, this will normally be a part of the “manifestation” of a belief, cf. para. 1 of the article – as “teaching” or as “practice”, the latter covering all thinkable forms of manifestations that are not explicitly mentioned in the article.[5] In some religions, the believers are urged by the religious doctrines to try to spread the faith. And for all beliefs, as long as the believer is strongly convinced, he or she will have a natural wish to try to convince others of the “truth” - if the “truth” is decisive for an afterlife as well, this wish may be strong. Even if not being an integral part of a religion's or belief's dogmas, such kind of faith persuasion is covered by the phrase “manifestation”.

Falling within the ambit of art. 18 (1), the state may not interfere in proselytism activities without this being legitimate after para. 3 of the article (the “negative obligation”), cf. para. 6 below. Furthermore, the state has a “positive obligation”, to “ensure” the right: [6] The state is obliged to give its citizens protection against clear violations from other citizens who do not respect this right. Thus, the state may be obliged to protect an adherent of a minority belief, trying to convince a member of the majority religion, against harassment from the majority.

1. 2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.

“The right to engage in faith persuasion is closely linked with the right to change religion or belief

The right to try to convince others will be of little worth if the target does not have a right to change religion or belief, and vice versa. In the words of the European Court of Human Rights, “[failing] the right to try to convince one's neighbor ... freedom to change ... religion or belief ... would be likely to remain a dead letter”. [7]

The wording “freedom to have or to adopt a religion or belief of his choice” in art. 18 implies a right to change religion or belief, [8] although this formula is more vague than the formula in DHR art 18, ECHR art. 9 and ACHR art. 12. [9]

According to para. 2 of art. 18, no one shall be coerced to maintain their religion or belief. Both the prescription as well as the prohibition of a certain religion will thus be inconsistent with art. 18. Also indirect measures, that would “impair” the right to change religion, are

prohibited, for instance governmental given privileges or obstacles directed against a certain religion. And, as pointed to above, the state also has an obligation to actively ensure the right to change religion or belief.

Other human rights that support the right to engage in faith persuasion

The freedom of expression in CCPR art. 19 implies a right to disseminate information on one's belief, and to propagate religious convictions, “regardless of frontiers, either orally, in writing or in print”. The possibility for the state to limit such expressions, cf. art. 19 (3), is similar to the limitation clause of art. 18 (3), see para. 7 below [10] – and, as mentioned below, in some situations the state will be obliged to limit the freedom.

Included in the freedom of expression is also a right to seek and to receive information – the right of the target, cf. art 19 (2).

The freedom of assembly, CCPR art. 21, and the freedom of association, CCPR art. 22, may be important for missionary societies, and for the assembly and association of the proselytized. The limitation clauses are similar to art. 18 (3).

According to art. 18 (4), parents holding a minority belief may be entitled to take their children out of religious classes if only the majority belief is taught.[11] The article presumes that parents have the right to spread their faith to their children, as they may teach them their own religion. However, according to the Convention on the Rights of the Child art. 14, this right has to be consistent with the evolving capacities of the child.”

1.3 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, morals or the fundamental rights and freedoms of others.

“The possibility for the state to limit proselytism activities

According to art. 18 (3), the state may only interfere in the manifestations of a religion or belief, including different kinds of proselytism activities, if certain criteria are fulfilled:

- *Firstly*, the limitation must be prescribed by law. The law must be sufficiently clear, so that it is not open for abuse or arbitrary decisions.

- *Secondly*, the limitation must serve one of the listed purposes:

- - **Public safety:** For instance, this will cover the danger of violence between different religious groups. According to CCPR art. 20 (2), the state is obliged to prohibit “any advocacy of ... religious hatred that constitutes incitement to discrimination, hostility or violence”. It is worth noting, however, that CCPR art. 4, regarding the possibility to restrict different freedoms in times of public emergency, prohibits derogations from art. 18.

- - **(Public) order:** For instance, this will cover registration provisions.

- - **(Public) health:** For instance, the purpose to protect the mental health of the object.

- - (Public) moral: For instance, to protect from blasphemy. However, General Comment para. 8 states that such limitations "must be based on principles not deriving from a single tradition".

- - Fundamental rights and freedoms of others: See para. 6 above. In such situations, the state may even have an obligation to limit some acts of proselytism. However, the limitations still have to fulfill all the criteria of art. 18 (3).

The list is exhaustive. Limitation clauses regarding other rights mention national security – this is not mentioned as an accepted purpose in art. 18 (3). Neither is the purpose to protect the majority or state belief mentioned.

- *Thirdly*, the actual limitation must be "necessary". This is the most important provision. Different kinds of limitations may be prescribed by law and serve an accepted purpose, but they are not necessary in a strict sense to obtain the purpose. According to General Comment para. 8, limitations must be proportionate to the specific need. For instance, the state may fear hostility between different groups of the society, yet, according to the European Court of Human Rights, the role of the authorities in such circumstances is "not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other".^[15] In the lack of effective international enforcement organs, the vagueness of this part of art. 18 is open for abuse by the states.

- There is a *fourth* provision, not expressed in art. 18, but entailed in the general non-discrimination clauses of CCPR art. 2 (2) and 26, that the state cannot restrict (or favor) just one or some religions or beliefs. However, not every differentiation will constitute discrimination, if, in the words of the Human Rights Committee, "the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant".^[16] The aim of protecting the majority belief, the official religion or belief or only traditional religions, is not a legitimate one.^[17]

In general, the state shall be neutral in questions regarding the choice of religion or belief by its citizens. The state itself may not, by any means, engage in faith persuasion.

The limitation clause of art. 18 (3), as described above, only applies to the external manifestations of the religion or belief. The internal side of the freedom – the mind operation of maintaining or changing a religion or belief – may not, by any means, be interfered with by the state."

ARTICLE 2: CLASSIFYING DISCRIMINATION

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 beliefs.*

"The different parties of interest to a concrete proselytism issue may be classified in different ways. However, they will often contain these four:

A: The actor of the proselytism activity: This may be a single person, a congregation, a missionary society etc. It may be a foreigner or an inhabitant of the actual state.

B: The object of the proselytism activity: This may be a single person, or a group of persons.

C: The social group to which the object is affiliated: This may be his or her family, working place, neighborhood, congregation/organization, ethnic/religious society etc.

D: The governmental authorities of the state in which the act of proselytism is performed.

Human rights are rights and freedoms for private persons or groups (A-C), which the state (D) is obliged to respect and ensure. Different persons or groups may have colliding interests, and different rights and freedoms may have to be weighed against each other.”

2. 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: LINK TO OTHER RIGHTS

3. 1 Discrimination between human beings on 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.

“Freedom of religion or belief is also protected by some regional instruments, like the European Convention on Human Rights (ECHR) art. 9 and the American Convention on Human Rights (ACHR) art. 12.

About 160 states have ratified CCPR, and the freedom of religion or belief has generally a wide recognition. Thus, there are good reasons for stating that the basic elements of the freedom of religion or belief as expressed in art. 18, are international customary law. This means that the states are legally obliged to respect this freedom, regardless of the ratification status of the different conventions.”

“The human rights protection of potentially colliding interests

The right to maintain one's religion or belief

When discussing the right to proselytism, it is essential to note that art. 18 also protects, to the same extent as the right to change religion or belief, the right to maintain a religion or belief (“freedom to have ...”), including the right to stay un-concerned.

According to art. 18 para. 2, no one shall be coerced to change his or her religion or belief. Impairment of this right, by indirectly coercive practice, is also prohibited, such as promises of education, medical care, employment etc.[\[12\]](#) In this regard, the state may be obliged to, according to its positive obligations, limit some kinds of proselytism activities, cf. para. 7-9 below.

Other human rights protecting potentially colliding interests

According to some decisions of the European Court of Human Rights,[\[13\]](#) freedom of religion also protects against the hurting of religious feelings. However, this does not have a clear basis in the wording of the article. Legal provisions against blasphemy are also often abused by leaders of the majority religion to hinder proper criticism, or to suppress minority beliefs. Thus, there are good reasons for stating that only gravely improper expressions against a belief may be forbidden.

CCPR art. 27 states that ethnic and religious minorities shall not be denied the right to profess and practice their own religion. In this regard, attention should also be paid to the protection of cultural rights in the International Covenant on Economic, Social and Cultural Rights art. 15, and in other international instruments.[\[14\]](#)

The right to privacy, CCPR art. 17, will, for instance, protect the home from forced invasion by missionaries.

The right to health, which includes mental health, cf. the International Covenant on Economic, Social and Cultural Rights art. 12, is also of relevance.”

ARTICLE 4: EFFECTIVE MEASURES

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.

4. 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: PARENTS, CHILDREN, STATE

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.

5. 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.

5. 3 The child shall be protected from any form of discrimination on the grounds of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for the 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.

5. 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. 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: NINE SPECIFIC RIGHTS

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

6. 1 To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;

6. 2 To establish and maintain appropriate charitable or humanitarian institutions;

6. 3 To make, acquire and use to an adequate extent the necessary articles and materials related to the rites and customs of a religion or belief;

6. 4 To write issue and disseminate relevant publications in these areas;

6. 5 To teach a religion or belief in places suitable for these purposes;

6. 6 To solicit and receive voluntary financial and other contributions from individuals and institutions;

6. 7 To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;

6. 8 To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;

6. 9 To establish and maintain communications with individuals and communities in matters of religion or belief at the national and international levels.

ARTICLE 7: NATIONAL LEGISLATION

7. 1 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.

“The balancing of rights: Two illustrations on how to draw the line

Regarding proselytism, the question will often be how to balance the right to engage in faith persuasion against the right to maintain one's religion or belief. The two cases of proselytism that have been decided by the European Court of Human Rights are of interest in this context:

- The Kokkinakis case:[\[18\]](#) Mr. Kokkinakis had, after becoming a Jehovah's Witness, been arrested more than 60 times for proselytism, and was once again convicted, this time for calling at the home of a family and staying there for 10-15 minutes discussing religious issues. The measure was prescribed by law and aimed at protecting the rights and freedoms of others, but the question was whether the measure was “necessary” to protect the rights of others. The European Court of Human Rights stated that such measures will only be consistent with the freedom of religion or belief as long as they do not hinder proper proselytism. In this case, there was no use of force or other improper methods by Mr. Kokkinakis, and Greece was judged to have violated the freedom of religion.[\[19\]](#)

- The Larissis case:[\[20\]](#) The applicants were military officers and followers of a Pentecostal church, and had been convicted for proselytism. The criteria of proper/improper proselytism was upheld by the European Court of Human Rights. The conviction of the applicants constituted partly a violation of the freedom of religion: On the one hand, the

conviction of the applicants for proselytism directed against subordinates did not constitute a violation of the freedom of religion, because of the hierarchical structure and other particular characteristics of military life. On the other hand, it was not necessary for protecting the rights of others to punish the proselytism directed against civilians, although one of the targets was in a state of distress because of the breakdown of her marriage.

Between activities that clearly will be proper and activities that clearly will be improper, there are activities that are hard to place. It follows from the judgments that in assessing such activities, it is not just the activity in general that has to be assessed, but all the concrete aspects of the situation, including the characteristics of the parties of interest that are involved. Some important factors are the strength (cultural, financial, mental etc.) of the proselytizer compared with the strength of the object, the way the message is delivered (choice of media, the words used etc.), the belonging of the parties to a majority or minority belief (incl. indigenous beliefs), and where the activity takes place (military, prison, hospital, school etc.).[\[21\]](#)”

ARTICLE 8: EXISTING PROTECTIONS

8. 1 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.

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Project on Mission and Human Rights:
Background Document

The right to try to convince the other: Proselytism and human rights

1. The sources of the international freedom of religion or belief

The most important international legislation on the freedom of religion or belief, is art. 18 in the United Nation's International Covenant on Civil and Political Rights (CCPR), from 1966. CCPR art. 18 is built upon art. 18 of the Universal Declaration of Human Rights (DHR), from 1948.[\[1\]](#)

Some important issues regarding discrimination are treated in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981).

Freedom of religion or belief is also protected by some regional instruments, like the European Convention on Human Rights (ECHR) art. 9 and the American Convention on Human Rights (ACHR) art. 12.

About 160 states have ratified CCPR, and the freedom of religion or belief has generally a wide recognition. Thus, there are good reasons for stating that the basic elements of the freedom of religion or belief as expressed in art. 18, are international customary law. This means that the states are legally obliged to respect this freedom, regardless of the ratification status of the different conventions.

Some parts of the text of CCPR art. 18 are vague. To be able to get a closer understanding of CCPR art. 18, the UN Human Rights Committee has delivered a General Comment on this freedom (General Comment no. 22, from 1993). In addition, the Human Rights Committee may, for those states that have accepted this opportunity, decide individual complaints.^[2] The Committee has not till this date decided cases on proselytism. Yet, a couple of cases on proselytism have been decided by the European Court of Human Rights. Because of the almost similar wording of ECHR art. 9 and CCPR art. 18, the jurisprudence of the European Court is of relevance regarding CCPR art. 18 as well.

The freedom of religion or belief is also considered by international institutions in a more political context. The UN Human Rights Commission has appointed a special Rapporteur on freedom of religion or belief, who delivers annual reports to the Commission.

2. The different parties of interest

The different parties of interest to a concrete proselytism issue may be classified in different ways. However, they will often contain these four:

A: The actor of the proselytism activity: This may be a single person, a congregation, a missionary society etc. It may be a foreigner or an inhabitant of the actual state.

B: The object of the proselytism activity: This may be a single person, or a group of persons.

C: The social group to which the object is affiliated: This may be his or her family, working place, neighborhood, congregation/organization, ethnic/religious society etc.

D: The governmental authorities of the state in which the act of proselytism is performed.

Human rights are rights and freedoms for private persons or groups (A-C), which the state (D) is obliged to respect and ensure. Different persons or groups may have colliding interests, and different rights and freedoms may have to be weighed against each other.

3. The wording of CCPR art. 18

CCPR art. 18 reads 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 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.

4. Which religions and beliefs are protected by art. 18?

Seen together with the General Comment, the phrase "religion" covers all faiths in supernatural powers, traditional and untraditional, while the phrase "belief" primarily refers to non-religious and quasi-religious philosophies of life, such as atheism, agnosticism and humanism.^[3] Furthermore, art. 18 also protects the right not to profess any religion or belief.^[4] Also sincere convictions on more limited areas, which have a strong link to conscience, such as pacifism and veganism, are protected. Therefore, proselytism activities described in the following will also cover activities performed by or directed against persons with a non-religious belief.

5. The right to engage in faith persuasion

5.1. The right to engage in faith persuasion as a part of the right to manifest one's religion or belief

The right to engage in faith persuasion is not explicitly mentioned in art. 18. However, this will normally be a part of the “manifestation” of a belief, cf. para. 1 of the article – as “teaching” or as “practice”, the latter covering all thinkable forms of manifestations that are not explicitly mentioned in the article.^[5] In some religions, the believers are urged by the religious doctrines to try to spread the faith. And for all beliefs, as long as the believer is strongly convinced, he or she will have a natural wish to try to convince others of the “truth” - if the “truth” is decisive for an afterlife as well, this wish may be strong. Even if not being an integral part of a religion's or belief's dogmas, such kind of faith persuasion is covered by the phrase “manifestation”.

Falling within the ambit of art. 18 (1), the state may not interfere in proselytism activities without this being legitimate after para. 3 of the article (the “negative obligation”), cf. para. 6 below. Furthermore, the state has a “positive obligation”, to “ensure” the right: ^[6] The state is obliged to give its citizens protection against clear violations from other citizens who do not respect this right. Thus, the state may be obliged to protect an adherent of a minority belief, trying to convince a member of the majority religion, against harassment from the majority.

5.2. The right to engage in faith persuasion is closely linked with the right to change religion or belief

The right to try to convince others will be of little worth if the target does not have a right to change religion or belief, and vice versa. In the words of the European Court of Human Rights, “[failing] the right to try to convince one's neighbor ... freedom to change ... religion or belief ... would be likely to remain a dead letter”.^[7]

The wording “freedom to have or to adopt a religion or belief of his choice” in art. 18 implies a right to change religion or belief.^[8] although this formula is more vague than the formula in DHR art 18, ECHR art. 9 and ACHR art. 12.^[9]

According to para. 2 of art. 18, no one shall be coerced to maintain their religion or belief. Both the prescription as well as the prohibition of a certain religion will thus be inconsistent with art. 18. Also indirect measures, that would “impair” the right to change religion, are prohibited, for instance governmental given privileges or obstacles directed against a certain religion. And, as pointed to above, the state also has an obligation to actively ensure the right to change religion or belief.

5.3. Other human rights that support the right to engage in faith persuasion

The freedom of expression in CCPR art. 19 implies a right to disseminate information on one's belief, and to propagate religious convictions, “regardless of frontiers, either orally, in writing or in print”. The possibility for the state to limit such expressions, cf. art. 19 (3), is similar to the limitation clause of art. 18 (3), see para. 7 below^[10] – and, as mentioned below, in some situations the state will be obliged to limit the freedom.

Included in the freedom of expression is also a right to seek and to receive information – the right of the target, cf. art 19 (2).

The freedom of assembly, CCPR art. 21, and the freedom of association, CCPR art. 22, may be important for missionary societies, and for the assembly and association of the proselytized. The limitation clauses are similar to art. 18 (3).

According to art. 18 (4), parents holding a minority belief may be entitled to take their children out of religious classes if only the majority belief is taught.^[11] The article presumes that parents have the right to spread their faith to their children, as they may teach them their own religion. However, according to the Convention on the Rights of the Child art. 14, this right has to be consistent with the evolving capacities of the child.

6. The human rights protection of potentially colliding interests

6.1. The right to maintain one's religion or belief

When discussing the right to proselytism, it is essential to note that art. 18 also protects, to the same extent as the right to change religion or belief, the right to maintain a religion or belief (“freedom to have ...”), including the right to stay un-concerned.

According to art. 18 para. 2, no one shall be coerced to change his or her religion or belief. Impairment of this right, by indirectly coercive practice, is also prohibited, such as promises of education, medical care, employment etc.^[12] In this regard, the state may be obliged to, according to its positive obligations, limit some kinds of proselytism activities, cf. para. 7-9 below.

6.2. Other human rights protecting potentially colliding interests

According to some decisions of the European Court of Human Rights,^[13] freedom of religion also protects against the hurting of religious feelings. However, this does not have a clear basis in the wording of the article. Legal provisions against blasphemy are also often abused by leaders of the majority religion to hinder proper criticism, or to suppress minority beliefs. Thus, there are good reasons for stating that only gravely improper expressions against a belief may be forbidden.

CCPR art. 27 states that ethnic and religious minorities shall not be denied the right to profess and practice their own religion. In this regard, attention should also be paid to the protection of cultural rights in the International Covenant on Economic, Social and Cultural Rights art. 15, and in other international instruments.^[14]

The right to privacy, CCPR art. 17, will, for instance, protect the home from forced invasion by missionaries.

The right to health, which includes mental health, cf. the International Covenant on Economic, Social and Cultural Rights art. 12, is also of relevance.

7. The possibility for the state to limit proselytism activities

According to art. 18 (3), the state may only interfere in the manifestations of a religion or belief, including different kinds of proselytism activities, if certain criteria are fulfilled:

- *Firstly*, the limitation must be prescribed by law. The law must be sufficiently clear, so that it is not open for abuse or arbitrary decisions.

- *Secondly*, the limitation must serve one of the listed purposes:

- - Public safety: For instance, this will cover the danger of violence between different religious groups. According to CCPR art. 20 (2), the state is obliged to prohibit “any advocacy of ... religious hatred that constitutes incitement to discrimination, hostility or violence”. It is worth noting, however, that CCPR art. 4, regarding the possibility to restrict different freedoms in times of public emergency, prohibits derogations from art. 18.

- - (Public) order: For instance, this will cover registration provisions.

- - (Public) health: For instance, the purpose to protect the mental health of the object.

- - (Public) moral: For instance, to protect from blasphemy. However, General Comment para. 8 states that such limitations “must be based on principles not deriving from a single tradition”.

- - Fundamental rights and freedoms of others: See para. 6 above. In such situations, the state may even have an obligation to limit some acts of proselytism. However, the limitations still have to fulfill all the criteria of art. 18 (3).

The list is exhaustive. Limitation clauses regarding other rights mention national security – this is not mentioned as an accepted purpose in art. 18 (3). Neither is the purpose to protect the majority or state belief mentioned.

- *Thirdly*, the actual limitation must be "necessary". This is the most important provision. Different kinds of limitations may be prescribed by law and serve an accepted purpose, but they are not necessary in a strict sense to obtain the purpose. According to General Comment para. 8, limitations must be proportionate to the specific need. For instance, the state may fear hostility between different groups of the society, yet, according to the European Court of Human Rights, the role of the authorities in such circumstances is "not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other".^[15] In the lack of effective international enforcement organs, the vagueness of this part of art. 18 is open for abuse by the states.

- There is a *fourth* provision, not expressed in art. 18, but entailed in the general non-discrimination clauses of CCPR art. 2 (2) and 26, that the state cannot restrict (or favor) just one or some religions or beliefs. However, not every differentiation will constitute discrimination, if, in the words of the Human Rights Committee, "the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant".^[16] The aim of protecting the majority belief, the official religion or belief or only traditional religions, is not a legitimate one.^[17]

In general, the state shall be neutral in questions regarding the choice of religion or belief by its citizens. The state itself may not, by any means, engage in faith persuasion.

The limitation clause of art. 18 (3), as described above, only applies to the external manifestations of the religion or belief. The internal side of the freedom – the mind operation of maintaining or changing a religion or belief – may not, by any means, be interfered with by the state.

8. The balancing of rights: Two illustrations on how to draw the line

Regarding proselytism, the question will often be how to balance the right to engage in faith persuasion against the right to maintain one's religion or belief. The two cases of proselytism that have been decided by the European Court of Human Rights, are of interest in this context:

- The Kokkinakis case:^[18] Mr. Kokkinakis had, after becoming a Jehovah's Witness, been arrested more than 60 times for proselytism, and was once again convicted, this time for calling at the home of a family and staying there for 10-15 minutes discussing religious issues. The measure was prescribed by law and aimed at protecting the rights and freedoms of others, but the question was whether the measure was "necessary" to protect the rights of others. The European Court of Human Rights stated that such measures will only be consistent with the freedom of religion or belief as long as they do not hinder proper proselytism. In this case, there was no use of force or other improper methods by Mr. Kokkinakis, and Greece was judged to have violated the freedom of religion.^[19]

- The Larissis case:^[20] The applicants were military officers and followers of a Pentecostal church, and had been convicted for proselytism. The criteria of proper/improper proselytism was upheld by the European Court of Human Rights. The conviction of the applicants constituted partly a violation of the freedom of religion: On the one hand, the conviction of the applicants for proselytism directed against subordinates did not constitute a violation of the freedom of religion, because of the hierarchical structure and other particular characteristics of military life. On the other hand, it was not necessary for protecting the rights of others to punish the proselytism directed against civilians, although one of the targets was in a state of distress because of the breakdown of her marriage.

Between activities that clearly will be proper and activities that clearly will be improper, there are activities that are hard to place. It follows from the judgments that in assessing such activities, it is not just the activity in general that has to be assessed, but all the concrete aspects of the situation, including the characteristics of the parties of interest that are involved. Some important factors are the strength (cultural, financial, mental etc.) of the proselytizer compared with the strength of the object, the way the message is delivered (choice of media, the words used etc.), the belonging of the parties to a majority or minority belief (incl. indigenous beliefs), and where the activity takes place (military, prison, hospital, school etc.).^[21]

9. Conclusion: A right to proper acts of proselytism

It follows from the jurisprudence of the European Court of Human Rights that only proper proselytism is protected by the international human rights instruments, and that in deciding the properness of the act of proselytism, one has to take into consideration the rights and freedoms of others, and how the state may ensure diversity without coercive measures.

Notes:

[1] Being a declaration, the text does not have the same legal status as a convention, such as CCPR.

[2] Furthermore, the Committee gives comments on state reports.

[3] When assessing convictions that do not clearly fall within the phrases “religion” or “belief”, a lot of weight must be put on the self-understanding of the believers, and the conviction should be given the benefit of the doubt.

[4] General Comment para. 2 states that “Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief”.

[5] ACHR art. 12 explicitly mentions “freedom to ... disseminate one's religion or beliefs”.

[6] CCPR art. 2 (1): The states undertake “to respect and to ensure ... the rights ... in the present Covenant”.

[7] Kokkinakis v. Greece , judgment of 05/25/1993, A 260-A, para. 31.

[8] General Comment para. 5.

[9] The gradual weakening of the expression of the right to change religion or belief, from the DHR art. 18, through CCPR art. 18 to the Declaration on religious discrimination art. 1, is caused by the fear of some Islamic states that a clear expression of this right would encourage zealous missionary activities.

[10] In the case Murphy v. Ireland, judgment 12/03/2003 of the European Court of Human Rights, the Irish ban on religious advertising in audiovisual media was accepted, for the protection of the rights and freedoms of others.

[11] See for instance the case 1155/2003 before the Human Rights Committee, against Norway .

[12] General Comment para. 5.

[13] See Otto-Preminger-Institute v. Austria , A 295-A (1994) and Wingrove v. UK , RJD 1996 p. 1937.

[14] For instance the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989.

[15] Serif v. Greece , judgment of 12/14/1999, regarding tensions between Muslims and Christians and between Greece and Turkey , para. 53.

[16] General Comment no. 18 para. 13, on art. 26.

[17] General Comment para. 9.

[18] Kokkinakis v. Greece , judgment of 05/25/1993, A 260-A.

[\[19\]](#) The Court stated the following: “First of all, a distinction has to be made between bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church. The latter represents a corruption or deformation of it. It may, according to the same report, take the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others. Scrutiny of section 4 of Law no. 1363/1938 shows that the relevant criteria adopted by the Greek legislature are reconcilable with the foregoing if and so far as they are designed only to punish improper proselytism, which the court does not have to define in the abstract in the present case” (para. 48).

[\[20\]](#) Larissis and others v. Greece , judgment of 02/24/1998, RJD 1998 p. 362.

[\[21\]](#) Religious[clothing may have a proselytizing aspect, and two cases regarding students' right to wear hijab have received different outcomes: A ban on hijab was accepted by the European Court of Human Rights in the case Sahin v. Turkey (judgment of 06/29/2004, not final), while this was not accepted by the UN Human Rights Committee in the case Hudoyberganova v. Uzbekistan (931/2000)