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## RELIGIOUS LIBERTY

Religious liberty has been a very old and contentious issue in the international protection of human rights - and this element of contention will remain.

The international protection of human rights has been one of the most successful aspects of the UN's work. The struggle to protect human rights is a consistent theme in national politics. For example, in England's case, there are significant human rights documents starting with the Magna Carta of 1215.

However, the "international" dimension is less than two centuries old. About two centuries ago, a campaign began to stop slavery in the UK. This led in the 19th Century to the stopping of slavery in the British Empire and the deployment of the Royal Navy (which had command of the seas after 1805) to stop the slave trade. About a century ago, Christians in western Europe campaigned to get protection for Christians in the Ottoman Empire. These are the two main examples before World War I.

The League of Nations was established after World War I. President Woodrow Wilson claimed that one of the causes of the war had been the violation of rights of minority populations in the German/ Austro-Hungarian Empire and so the new organization should protect minority populations. A second innovation was the protection of workers via the International Labour Office. The League member-nations were worried that the 1917 Russian Revolution could spill over in Western Europe and so they wanted to show that they, too, were concerned to look after the interests of workers; this was to be done through the standard-setting work of the ILO (which continues to this day).

The League went slowly in the international protection of human rights of minorities and workers. It was an unprecedented body and so governments were reluctant to let it do too much pioneering. Additionally, international law was clear that governments could not interfere in the internal affairs of other nations. Thus, Germany's treatment of the Jews from 1933 onwards was never criticized by the two super powers of the day (UK and France) since this was an internal matter.

The United Nations, which was established in 1945 to replace the League, was, by contrast, given an explicit human rights mandate. Indeed, there was an even a move to annex to the UN Charter (the UN's constitution) a Bill of Rights - this was only defeated by the realization that there was not enough time in which to write it. This newfound interest in the international

protection of human rights was partly a reaction to Hitler; it was argued that a country which violates human rights at home will eventually do so overseas and so all countries have an interest in protecting human rights worldwide.

The first era of the UN's work was standard-setting. That went so well that it is easy to take it for granted. The UN had to obtain agreement from a range of views from literally around on the world on what constitutes "human rights". Standard-setting is usually done in two stages. The first is work on a non-binding declaration to be adopted by the UN General Assembly. This is then converted, after work going on for some years, into a treaty, which contains both the rights listed in the declaration and some method of implementation. The treaty will bind all countries that agree to be bound by it; no government can be forced into accepting any treaty.

The "International Bill of Rights", first proposed in 1945, is an example of these two stages. The first stage took 18 months and resulted in the 1948 Universal Declaration of Human Rights. This is now a basic document for the UN and has even been incorporated into some national constitutions and quoted in some judicial decisions. After 18 years, the UN completed the second stage: the Civil and Political Covenant and the Economic, Social and Cultural Covenant ("covenant" is another word for "treaty").

Two treaties were created because of the different problems of implementation. Civil and political rights (such as free speech, free trial and privacy) are all easier for a government to protect since the government is the main violator of them. Economic, social and cultural rights by contrast (such as education and equal pay for equal work) are harder to implement because they depend on factors outside a government's control, such as the state of the economy. Therefore both treaties have an obligation on governments to submit periodic reports on their progress in protecting the rights; the Civil and Political Covenant has additional methods of implementation.

The second era, into which the UN has now evolved, is that of implementation. Thus, for example, individuals have a right (if their government has agreed to a protocol of the Civil and Political Covenant) to complain to the UN about alleged violations of the Covenant.

#### Religious Discrimination

The UN is not a religious organization. But it does recognize the importance of religion to all people. Article 55 of the UN Charter contains the provision that the UN is to work for, among other things: "Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion".

Religious belief is recognized by the UN as a "fundamental" human right and so there can be no derogation from it in times of crisis. Article 4 of the Civil and Political Covenant states that, no matter how serious the threat to public order, a government cannot overlook its obligations in regard to such rights as the inherent right to life, freedom from torture and slavery, and the rights to a fair trial and religious belief. This is an indication of the seriousness with which the UN regards religious liberty.

According to Article 18 of the Universal Declaration of Human Rights (UDHR): “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his/ her religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his/ her religion or belief in teaching, practice, worship and observance”.

The two Covenants took the UDHR's rights and reworked them into treaty form. The religious liberty provision is found at Article 18 of the Civil and Political Covenant:

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

The Covenant contains two methods of implementation. Under Article 40, all governments which that ratified the Covenant undertake to submit to the UN periodic reports on how they are making progress in protecting these rights. (This is similar to a provision in the Economic, Social and Cultural Covenant).

Under Article 41, a government may make a separate decision to take part in a system of nation-to-nation complaints. A country that has agreed to be part of that system is allowed to complain to the UN about another country that has also agreed to be part of that system. The nation can complain to the UN about alleged violations of the Civil and Political Covenant.

Governments may, under the 1966 Optional Protocol to the Civil and Political Covenant, agree that the UN can receive complaints from its citizens about alleged violations of that Covenant.

All these methods of implementation are tentative and governments are proceeding slowly. Australia, for example, which sees itself as a pioneer in the protection of human rights, did not ratify the 1966 Civil and Political Covenant until 1980 and did not accept the Optional Protocol until 1991.

However, when seen in the perspective of the lack of progress in the international protection of human rights prior to 1945, then the UN is moving quite quickly. Indeed, the UN has probably made so much progress that people are unaware of just how much more use could be made of the UN system - not just in regard to religious freedom but for human rights generally. Owing to reasons of space, this section has not examined other UN techniques for the protection of human rights, such as the appointment of special investigators ("rapporteurs") to check on alleged human rights violations, other ways in which individuals may make complaints to the UN about alleged human rights violations, and the use of the Secretary General's "good offices" to mediate privately on human rights disputes.

The issue, then, is not so much a lack of machinery for the protection of human rights - though more could always be done - but making greater use of the existing machinery. This will help both protect current victims of human rights violations and build up the momentum in favour of expanding still further the machinery for protecting human rights.

## ✓ **THE 1981 DECLARATION**

In 1981 the UN General Assembly adopted the non-binding Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief.

The International Bill of Rights contains the basic UN human rights documents. There have been initiatives flowing from these general provisions to focus in more detail upon some matters (such as the Rights of the Child). All UN human rights documents (declarations and treaties) have to be in conformity with the general provisions of the International Bill of Rights. The 1981 Declaration had a long and contentious history. It was seen by the US and its allies (including Australia) partly as a way of embarrassing the USSR, which had restricted religious belief and destroyed places of worship. The work began in 1956, when a study was commenced on discrimination in the matter of religious rights and practices. First World countries were able to use this issue as a way of reminding Third World countries (many of them not being atheistic or agnostic) that the USSR had a poor record on religious liberty and so was not a good political ally.

During the drafting of the Declaration, discord remained in the Commission on two issues: the Islamic states asserted that they could not accept the guarantee of an individual's right to change religion, while several socialist states complained of the lack of explicit recognition of atheistic rights equal to those of the religiously faithful. As a result when the draft Declaration was finalized in the General Assembly, the reference in the Commission's draft to the freedom to

adopt or to change religion was deleted and the freedom to have religion was inserted with a saving clause that nothing stated in the Universal Declaration of Human Rights was to be diminished by the new Declaration. In order to accommodate the views of the socialist states, the Declaration as finally adopted refers to freedom of religion or "whatever belief". It may be noted finally that the Declaration as adopted contains no definition or words such as "religion", "practice" or "observance".

The customary second stage is to convert a declaration into a treaty (or Convention). Only slow progress has been made. First, having regard to all the problems encountered in drafting the 1981 Declaration, is there any guarantee that these will be any easier when working on a treaty?

Second, assuming that a treaty were created, there would need to be an equivalent of the Civil and Political Covenant's Human Rights Committee to handle the implementation aspects. But could the international supervision of norms on religious liberty be entrusted to a political/diplomatic body made up of theists and atheists who in short would supervise the application of a future Convention?

Third, in regard to the implementation mechanisms, there would be the usual systems of reports, complaints, fact-finding, conciliation and education. However, there are also some interesting questions arising out of the subject matter of the rights. Should reporting be by governments alone or should churches and non-governmental organizations be allowed to submit reports? Bearing in mind the complexity of inter-faith relations would it be wise to provide for complaint procedures in a future Convention? Should governments have a role in conciliation and inter-faith dialogue or should this be left to the churches? Can governments be assigned a role in the educational sector?

To conclude, religion has bounced as an important subject of study. There are no easy answers for creating a more tolerant society, either locally or globally. As the pace of change continues to accelerate, so there will be additional "religious" tensions.

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