International human rights

Right to freedom of religion or belief

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The non-derogable right to freedom of conscience, religion or belief (FoRB): Overview of this presentation

1. United nations instruments and treaties
   - The *Universal Declaration of Human Rights*
   - The *Genocide Convention*
   - The *International Covenant on Civil and Political Rights*
   - UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

1. *Narrow* limitations on the right to *manifestation* of freedom of religion or belief (FoRB): The Siracusa Principles

2. Regional human rights systems: Europe, the Americas, Africa.

3. The UN Special Rapporteur on Freedom of Religion and Belief

4. When rights claims collide: Principles to consider
Universal Declaration on Human Rights (UDHR) 1948

• Article 18: “Everyone has the right to freedom of thought, conscience and religion; this right includes...freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

• Elements:
  – Freedom of thought and conscience
  – Freedom to manifest religion (including teaching, practice, worship and observance)
Genocide Convention
1948 (in force 1951)

  - specified acts committed with intention of destroying a religious group in whole
    or in part

Article 2

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

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

- Customary international law (**jus cogens**)
International Covenant on Civil and Political Rights (ICCPR)

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

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

3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

4. The states Parties to the present Covenant undertake to have respect for the liberty of parents and, where applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”
Derogation and limitations

- All aspects of the rights articulated in Article 18 are non-derogable, including the right to manifest religion or belief (Article 4 of the ICCPR).
- But there may be narrow limitations on manifestation of religion or belief (Article 18.3). Limitations (Article 18.3) must be:
  - Prescribed by law, and
  - Necessary to protect
    - public safety, order, health or morals
    - fundamental rights and freedoms of others
- See the Siracusa Principles (slide 11)

- The difference between “derogation” and “limitation.”
  - Derogation refers to suppression of a right in a time of emergency that threatens the life of the nation.
  - The right to freedom to hold a religious or other belief or opinion is absolute and can never lawfully be subjected to limitation or derogation.
  - The right to freedom to manifest a belief is non-derogable but not absolute and may be subject to narrow limitations (see ICCPR Article 18.3 and Siracusa Principles).
  - In the case of manifestation of religion or belief, practical distinctions between derogation (temporary in time of emergency only) and limitation (usually permanent) may not be easily evident (see Criddle).
UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly 1981)

- right to freedom of thought, conscience and religion;
- no discrimination because of beliefs.

• Article 2 definition of "intolerance and discrimination based on religion or belief":
  - “any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis."

• Article 3:
  - discrimination on grounds of religion or belief is “an affront to human dignity and a disavowal of the principles of the Charter of the United Nations" and an "obstacle to friendly and peaceful relations between nations."

• Declaration reaffirmed in 1997; Declaration mentions ICCPR Article 18

• BUT: there is no Convention. The Declaration is not binding on States, except insofar as it codifies customary international law.
What are “fundamental rights & freedoms”? Is there a “hierarchy” of norms?

- National law does features hierarchies (e.g. constitutions that are superior to ordinary laws).
- Some commentators suggest an emerging hierarchy, but this is disputed.

- UN Charter, UDHR, ICCPR, CERD, CEDAW use the following terms interchangeably:
  - Indivisibility and interdependence of norms? (Koji 2001, 918)

- If there is a hierarchy, which are “fundamental” norms? (subjective; politically/culturally defined; no consensus).
  - _jus cogens_ norms (peremptory norms)?
  - Other norms of customary international law?
  - Non-derogable rights? (see Koji 2001)
  - What about non-derogable rights that are subject to limitations (e.g. ICCPR Art 18.3)
UN Human Rights Committee: General Comment 22

- HRC General Comment No. 22

- the rights to freedoms of conscience and religion are “far-reaching and profound” (para 1) and include “theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief” (para 2).

- “the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.” (para 4).

General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): 07/30/1993. CCPR/C/21/Rev.1/Add.4, General Comment No. 22. (General Comments), http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15
UN Human Rights Committee
General Comment 22

- No limitation on right to freedoms of thought, conscience and belief: “no one can be compelled to reveal his thoughts or adherence to a religion or belief.” para 3.

- Article 18(3) is to be “strictly interpreted” and that any limitations “must be directly related and proportionate to the specific need on which they are predicated”:

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

- **limitations are permissible if they are:**
  - permitted within the terms of the ICCPR itself: No limitation other than as stipulated in the treaty (i.e. ICCPR Art. 18.3 limitation on manifestation of religion);
  - prescribed by law (either common law or legislation);
  - compatible with the rule of law;
  - not arbitrary or discriminatory in scope,
  - sufficiently precise, and
  - accessible to those whose practices will be affected.

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

Article 5.

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

American Convention on Human Rights

Article 1

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.
ARTICLE 12. FREEDOM OF CONSCIENCE AND RELIGION

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Article 27 of the ACHR provides that Article 12 is non-derogable.
European Convention on Human Rights

Article 9 - Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, and to manifest his religion or belief, in worship, teaching, practice and observance.

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

Article 9 is not among the non-derogable articles.
European Convention on Human Rights

- Article 14 – Prohibition of discrimination.

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

- **Dahlab v. Switzerland (2001):** Headscarf worn by a teacher could have a proselytizing effect, and the ban was not unreasonable.

- **Sahin v. Turkey, ECtHR 2005:** Turkey’s refusal to allow Islamic headscarf was justified and proportional.

- **Dogru v. France (2005):** National policy banning headscarves in school phys-ed classes for reasons of health/safety was not unreasonable interference with freedom of religion.

- **Lautsi v. Italy (2011):** Grand chamber overruled Chamber’s decision and said passive display of crucifix in classroom was not incompatible with freedom of religion, saying Dahlab reasoning didn’t apply.
African Charter on Human and Peoples' Rights

ARTICLE 2

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

ARTICLE 8

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

There is no derogation clause in the Charter.
Concerns:

Persecution of particular religious groups (& their advocates)
- Minority religious groups in Pakistan, Vietnam, Iran, Belarus, China & other places

Limitations on manifestation of religion or belief in the public sphere
- Minaret ban (Switzerland)
- Bans on the veil in several countries in Europe
- Bans on religious symbols in Canada
- Ktunaxa Nation v. British Columbia (Supreme Court of Canada)

Violence between members of different religions/religious groups
- Muslims and Christians in Nigeria
- Sectarian violence in Iraq

Freedom of religion and ...
- Freedom of expression (Muhammad cartoons controversy)
- Women’s rights (conflict over Arbitration Act and Shari'a in Ontario, Canada)
- Sexual Orientation and Gender Identity (SOGI)
When Rights Claims Collide: Principles to Consider

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

- Mandate created by UN Human Rights Council in 1986

- Prof. Heiner Bielefeldt was the mandate holder from August 2010 to October 2016.

- Mr. Ahmed Shaheed was appointed as the mandate holder in November 2016.
Prof. Heiner Bielefeldt: former UN Special Rapporteur on Freedom of Religion and Belief

• [https://www.youtube.com/watch?v=nAX9ynl3Lt4](https://www.youtube.com/watch?v=nAX9ynl3Lt4) (17 minutes)
• [https://www.youtube.com/watch?v=KgoaqI9AMAE](https://www.youtube.com/watch?v=KgoaqI9AMAE) (49 minutes)
Mr. Ahmed Shaheed, current UN Special Rapporteur on Freedom of Religion and Belief

- 24 Oct 2017 - Remarks at the 29th meeting of the Third Committee.
References and readings


Some Journals

- **International Journal for Religious Freedom**

- **Journal of Church and State**

- **Journal of Law, Religion and State**
  - [http://booksandjournals.brillonline.com/content/journals/10.1163/221248112x639757](http://booksandjournals.brillonline.com/content/journals/10.1163/221248112x639757)

- **Oxford Journal of Law and Religion**

- **Religion & Human Rights**