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THE PROTECTION OF MIGRANTS' FREEDOM OF RELIGION IN THE UNITED NATIONS SYSTEM

Maria Irene Papa *

SUMMARY: 1. Introduction. – 2. The Evolution of the Concept of “Religious Rights” from the League of Nations to the United Nations Charter. – 3. The First Affirmations of Freedom of Religion in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. – 4. The Development of Specific Legal Instruments for the Protection of Freedom of Religion: The Failure to Conclude an International Convention and the General Assembly’s Adoption of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. – 5. The Implementation of Freedom of Religion in the Practice of the United Nations: The Role of the United Nations Human Rights Bodies. – 6. The Contribution of the Human Rights Committee to the Promotion and Protection of Freedom of Religion. – 7. Human Rights Council’s Resolutions on Freedom of Religion and the Debate on the Defamation of Religions. – 8. The Special Rapporteur on Freedom of Religion or Belief – 9. Concluding Assessment.

1. Introduction

Long recognised as a cornerstone of international human rights law, freedom of religion or belief continues to pose significant challenges to its effective implementation – particularly in the migration context, where such challenges are often most acute. They can be observed both in the countries of origin, where violations of this right may drive individuals to migrate, and in the countries of destination, where the enjoyment of this freedom may face new obstacles. This contribution focuses on the latter dimension – namely, the enjoyment and protection of

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that freedom by migrants once they have arrived in host States. In these States, migrants – whether regular or irregular, asylum seekers, refugees, or stateless persons – frequently encounter legal and practical obstacles to the full exercise of their religious rights. Such obstacles may arise from restrictive domestic legislation, burdensome administrative requirements, xenophobic or discriminatory attitudes within host societies, or inadequate institutional arrangements to accommodate religious diversity.

Against this background, this study aims to examine how the UN system addresses these issues, with particular reference to treaty provisions, soft law instruments, and the practice of UN human rights bodies. While the analysis is situated within the broader development of international human rights norms and standards, it seeks to identify both the normative foundations and the implementation deficits that particularly affect migrant populations. The importance of this issue is underscored by the 2025 call for input launched by the UN Special Rapporteur on Freedom of Religion or Belief, which addresses the enjoyment of this right by migrants, internally displaced persons, and refugees.¹ This initiative reflects the growing recognition within the UN system of the need to better understand and respond to the religious dimensions of human mobility.

The article is structured as follows. The first part traces the historical evolution of the concept of religious rights from the League of Nations to the adoption of the UN Charter. The second examines the foundational provisions of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The third considers the failure to adopt a binding treaty on religious intolerance and the subsequent adoption of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The fourth analyses the contribution of UN human rights bodies and mechanisms, including the Human Rights Committee (HR Committee), the Human Rights Council (HRC), and the Special Rapporteur on Freedom of Religion or Belief. The final part offers a critical assessment of the current state of protection of migrants' freedom of religion, highlighting key trends and emerging challenges.

2. The Evolution of the Concept of “Religious Rights” from the League of Nations to the United Nations Charter

Historically, freedom of religion was among the first causes to prompt demands for the international protection of human rights, emerging in the aftermath of the First World War. Following the unsuccessful attempt by US President Thomas Woodrow Wilson to secure the express inclusion of the “free exercise of religion” in the

¹ See www.ohchr.org/en/calls-for-input/2025/call-input-report-freedom-religion-or-belief-and-migrants-idps-and-refugees.

Covenant of the League of Nations,² these aspirations found partial accommodation in a series of minority-protection treaties concluded between 1919 and 1923 under the League's auspices.³ Within these instruments, however, freedom of religion was not conceived as an individual right vested in each believer, but rather as a guarantee accorded to certain minority groups in Central and Eastern Europe, identified on the basis of political considerations aimed at ensuring respect for the post-war territorial settlement and, ultimately, at preventing the outbreak of further conflict.⁴

It was only in the aftermath of the Second World War that a shift in approach began to take form – one centred on the human person as such and recognising the autonomy of the protection of religious rights from that of minorities. This reorientation was already apparent in President Franklin Delano Roosevelt's well-known address to the US Congress on 6 January 1941, in which he set out the ideals that would later inspire the Atlantic Charter and help shape the post-war international legal order. Significantly, freedom of religion – defined in radically new terms as “freedom of every person to worship God in his own way, everywhere in the world” – was placed alongside freedom of speech, freedom from want, and freedom from fear, as one of the four fundamental liberties to which all peoples everywhere should be entitled.⁵

This reconceptualisation of religious rights also found expression in the Peace Treaties concluded by the Allied Powers with Bulgaria, Finland, Hungary, Italy, and Romania. Each of these States, through identically worded provisions, undertook to adopt “all measures necessary to secure to *all persons* under [their] jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms including freedom of expression, press and publication, of religious worship, of political opinion and of public meeting”.⁶

² See B. DICKSON, *The United Nations and Freedom of Religion*, in *International and Comparative Law Quarterly*, 1995, p. 327 ff.; C. FOCARELLI, *Evoluzione storica e problemi attuali del diritto alla libertà religiosa*, in *Diritti umani e diritto internazionale*, 2008, p. 229 ff.; M. EVANS, *Religious Liberty and International Law in Europe*, Cambridge, 2010, p. 83 ff. The only provision of the Covenant of the League of Nations to contain an express reference to freedom of religion was Art. 22, which governed the mandates system. It provided that the Mandatory Powers entrusted with the administration of the territories of Central Africa were to exercise their authority in such a manner as to ensure respect for freedom of conscience and religion, “subject only to the maintenance of public order and morals”.

³ For a comprehensive analysis of these treaties, including further bibliographical references, see G. PASCALE, *L'evoluzione storica della tutela internazionale delle minoranze religiose*, in M.I. PAPA, G. PASCALE, M. GERVAZI (eds.), *La tutela internazionale della libertà religiosa: problemi e prospettive*, Naples, 2019, p. 343 ff. Notably, the League of Nations also played a role in promoting freedom of worship for missionaries. In this respect, specific provisions were included in the Treaty of Saint-Germain-en-Laye of 1 September 1919 (Art. 11), as well as in a number of mandate agreements concerning the administration of colonial territories previously under the control of the States defeated in the First World War (see L. BRESSAN, *Libertà religiosa nel diritto internazionale. Dichiarazioni e norme internazionali*, Padua, 1989, pp. 190-191).

⁴ C. FOCARELLI, *Evoluzione*, cit., p. 235.

⁵ President Franklin Delano Roosevelt's “Four Freedoms” speech is available at www.archives.gov/milestone-documents/president-franklin-roosevelts-annual-message-to-congress.

⁶ Emphasis added. The full texts of the peace treaties referred to in the text are reproduced in *American Journal of International Law*, 1948, *Supp. Official Documents*, p. 42 ff. and 179 ff.

Although the inclusion of these obligations was undoubtedly prompted by concerns over the particular vulnerability of religious minorities within the territories concerned, it nonetheless marked a significant broadening of the scope of protection against religious discrimination – extending it, albeit at this stage only within the defeated States, from religious minorities to individuals as such.

In this renewed normative configuration, freedom of religion emerged as a core humanitarian value underpinning the post-war international order. This is clearly reflected in its inclusion in the Preamble to the Declaration by United Nations of 1 January 1942, which affirmed that “complete victory over their enemies is essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands”.⁷ Moreover, freedom of religion featured prominently in many of the proposals advanced during the drafting of the UN Charter, which sought to enshrine a binding catalogue of human rights applicable to all Member States.⁸ As is well known, these proposals were ultimately rejected at the San Francisco Conference. The Charter did recognise the importance of promoting and encouraging respect for human rights, but only in programmatic terms, presenting such rights as instrumental to the overarching aim of maintaining international peace and security. The elaboration of a binding catalogue of human rights was accordingly deferred to a later stage.

To some extent, the religious dimension of human rights is also reflected in the relevant provisions of the UN Charter, albeit only with regard to the prohibition of discrimination on religious grounds rather than to freedom of religion as such. Art. 1(3) expressly includes among the purposes of the Organization the promotion and encouragement of respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language, or religion – a commitment reaffirmed in Art. 55(c). The principle of non-discrimination on the basis of religion is further embedded in Arts 13(1)(b) and 76(c), which list among the fundamental objectives of, respectively, the activities of the General Assembly and the Trusteeship System, the promotion and encouragement of respect for human rights. It is noteworthy also Art. 62(2), which – although it does not specify the grounds of prohibited discrimination as explicitly as the provisions mentioned above – entrusts the Economic and Social Council (ECOSOC) with the function of “mak[ing] recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all”. To give effect to this mandate, ECOSOC was empowered under Art. 68 of the Charter to establish dedicated commissions – a power it exercised at its very first session by creating the UN Commission on Human Rights.⁹ It is to this body that the elaboration of a catalogue of human rights of universal scope is owed.

As is well known, given the diverging views of States on the legal form which the catalogue of human rights should take, it was ultimately decided to proceed with the

⁷ Reproduced in E.H. LAWSON (ed.), *Encyclopedia of Human Rights*, II ed., Washington, 1996, p. 346.

⁸ For references to such proposals, see M. EVANS, *Religious Liberty*, cit., pp. 176-177.

⁹ ECOSOC Resolution 5 (I) of 16 February 1946, UN Doc. E/27, 22 February 1946.

drafting of two separate instruments. The first was a declaration of principles to be adopted by the General Assembly, which would not be legally binding. This declaration was intended to serve as the basis for the elaboration of a convention open to ratification by States, including those not members of the Organisation. The task was made particularly complex by the participation in the negotiations of States with markedly different political systems, levels of socio-economic development, and cultural and religious traditions. Unsurprisingly, these divergences became most pronounced in relation to the definition of freedom of religion.

It is worth noting from the outset, however, that the recognition of freedom of religion as a human right was never in question – a fact which demonstrates that, even before the drafting of the UDHR, there was already broad agreement on the central place of this right among the individual freedoms to be recognised universally. The real difficulties lay in defining the precise content of the right to freedom of religion (including the scope of permissible limitations) and in determining its relationship with other human rights. These proved to be the most contentious issues, soon revealing the depth of disagreement within the international community. It is therefore hardly surprising that, despite the ostensibly broad consensus surrounding the adoption of Art. 18 UDHR – which for the first time solemnly affirmed the right of every individual to freedom of religion¹⁰ – profound divergences of interpretation persisted, as is patent from the tenor of statements delivered by various State delegates immediately after the Declaration's adoption.¹¹ Indeed, it has rightly been observed that “what has proved to be one of the most influential statements of religious rights of mankind yet devised entered into the international arena with no further light shed upon its meaning”.¹²

The most contentious issues – over which debates would repeatedly reignite during the drafting of subsequent instruments promoted by the UN in this field – concerned, in particular: the recognition of the right to change one's religion (strongly opposed by Islamic States, as it was perceived to be in direct conflict with the precepts of Sharia law and as potentially encouraging Christian missionary activity within their territories);¹³ the protection of non-believers and secular convictions (a concern raised

¹⁰ Art. 18 was approved by the Human Rights Commission with thirty-eight votes in favour, three against and three abstentions (UN Doc. A/C.3/SR.128, 9 November 1948, p. 406), while in the General Assembly the provision was adopted with fifty-five votes in favour and four abstentions (UN Doc. A/PV.183, 10 December 1948, p. 933). All the governments of Islamic countries then members of the UN voted in favour, with the sole exception of Saudi Arabia, which abstained. On the *travaux préparatoires* of Art. 18 UDHR, see in particular M. SCHEININ, *Article 18*, in G. ALFREDSSON, A. EIDE (eds.), *The Universal Declaration of Human Rights: A Common Standard of Achievement*, The Hague, 1999, p. 379 ff.; M. EVANS, *Religious Liberty*, cit., pp. 191-192.

¹¹ See, for example, the statements by Greece, Mexico, Venezuela, and Afghanistan (UN Doc. A/C.3/SR.128, cit., pp. 406, 406-407, 407, and 408, respectively). The compromise formulation of Art. 18 was also emphasised in the statements made by the representatives of Greece, the Philippines, Peru, Bolivia, Guatemala, and Cuba before the Third Committee of the General Assembly (UN Doc. A/C.3/SR.127, 9 November 1948, pp. 393, 395, 398, 400, 402 and 404).

¹² M. EVANS, *Religious Liberty*, cit., p. 192.

¹³ See, in particular, the critical remarks made by the Saudi Arabian delegate during the debate in the Third Committee of the General Assembly (UN Doc. A/C.3/SR.127, pp. 391-392, 403-404). See also

especially by socialist countries);¹⁴ the question of proselytism (amid widespread fears that evangelisation efforts might conceal political interference or new forms of colonial influence);¹⁵ and the definition of possible limitations to the freedom to manifest one's religion.¹⁶ These issues became even more divisive as the membership of the Organisation expanded – driven by the process of decolonisation – and as ideological tensions between the two superpowers deepened in the context of the Cold War.

3. The First Affirmations of Freedom of Religion in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights

The UDHR marked the definitive abandonment of the earlier approach which regarded the protection of minorities as the sole and privileged framework for addressing freedom of religion in international relations. Art. 18 affirms the right of every individual to freedom of thought, conscience, and religion¹⁷ – “the sacred triad of the universal code of human rights”¹⁸ – specifically recognising, within freedom of religion, both its internal dimension (the so-called *forum internum*, including the right to have or to change one's religion or belief) and its external dimension (*forum externum*), encompassing teaching, practice, worship, and observance, whether alone or in community with others, in public or in private.¹⁹ Additional rights closely connected to the exercise of freedom of religion are enshrined in other provisions of the Declaration: Art. 2 prohibits discrimination based on religion; Art. 16(1) forbids restrictions on the right to marry grounded on religious reasons; and Art. 26, in affirming the right to education, highlights, in para. 2, the importance of fostering understanding, tolerance, and friendship among racial and religious groups.

the statements of the Pakistani and Egyptian representatives prior to the General Assembly's vote on the Declaration (UN Doc. A/PV.182, 10 December 1948, pp. 890-891; UN Doc. A/PV.183, pp. 912-913, respectively)

¹⁴ See the statement made by the delegate of the Soviet Union, UN Doc. A/C.3/SR.127, cit., p. 402.

¹⁵ See, for instance, the statements made by the delegates of Saudi Arabia (*ibid.*, pp. 391-392), Greece (p. 393), Belgium (p. 395), the Philippines (p. 396), and China (p. 398).

¹⁶ This issue was addressed, in particular, in statements by the representatives of the Soviet Union (*ibid.*, p. 391), the United States (pp. 392-393), Greece (pp. 393-394), France (p. 396), Brazil (p. 401) and Guatemala (p. 402).

¹⁷ “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”. For an analysis specifically devoted to this provision, see P. CONTRERAS, B. SAAVEDRA, *Article 18 – The Right to Freedom of Thought, Conscience and Religion*, in H. CANTU RIVERA (ed.), *The Universal Declaration of Human Rights*, Leiden, 2023, p. 423 ff.

¹⁸ See A. PAPISCA, *International Law of Human Rights as a “Sign of the Times” for Fostering Religious Freedom and Intercultural Dialogue in the Inclusive City. Reflections on Some Recent High-Level Positions in the Catholic Institutional Context*, in *Pace diritti umani*, 2011, p. 61 ff., p. 63.

¹⁹ See C. MORVIDUCCI, *Libertà di religione o di convinzioni – Dir. int.*, in *Enciclopedia giuridica*, vol. XIX, Rome, 1990, p. 1 ff., pp. 1-2, highlighting the difficulty of drawing a clear distinction between the rights pertaining to the *forum internum* and those relating to the *forum externum*.

As is well known, although the UDHR is not legally binding, its significance extends far beyond its formal status as a soft law instrument. It remains the foundational document of contemporary international human rights law and its influence on the development of human rights regimes at the universal, regional, and domestic levels – particularly within the constitutional sphere – together with its impact on the formation of general norms of international law, is universally acknowledged.

With regard to freedom of religion specifically, the language of Art. 18 has profoundly shaped subsequent international norms and standards, beginning with the corresponding provision of the ICCPR, which bears the same article number.²⁰ Unlike the Declaration, however, the ICCPR creates binding obligations for its parties,²¹ accompanied by specific mechanisms of supervision and enforcement entrusted to the HR Committee.²²

The Covenant recognises the fundamental character of freedom of religion or belief, as reflected in the fact that Art. 18 is listed in Art. 4(2) among the provisions from which no derogation is permitted in situations of officially proclaimed public emergency. At the same time, Art. 5(1) – stipulating that “nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised herein, or at their limitation to a greater extent than is provided for in the present Covenant” – is also relevant to Art. 18. This provision has rightly been described as both a limitation and an additional safeguard of freedom of religion, as it prohibits forms of religious advocacy or proselytism that would in fact undermine the freedom of religion of others.²³ Moreover, a joint reading of Arts 18 and 2 reveals the existence of a positive dimension in States’ obligations concerning the protection of freedom of religion. States parties to the ICCPR are therefore required not only to refrain from interfering with the enjoyment of this right, but also to ensure

²⁰ “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”. On the origins of this provision, see M.J. BOSSUYT, *Guide to the “Travaux Préparatoires” of the International Covenant on Civil and Political Rights*, Dordrecht, 1986, p. 351 ff.

²¹ The ICCPR was adopted by the UN General Assembly through Resolution 2200A (XXI) of 16 December 1966 and entered into force on 23 March 1976. As of 1 August 2025, 174 States had ratified the Covenant.

²² See below, Section 6.

²³ See C. MORVIDUCCI, *Libertà di religione*, cit., pp. 3-4.

the conditions under which it can be effectively exercised by all individuals within their jurisdiction.²⁴

The scope of Art. 18 must further be integrated and coordinated with that of other provisions of the ICCPR relevant to the protection of rights pertaining to the religious sphere. These include, in particular, Art. 26, which prohibits discrimination, including on religious grounds; Art. 27, which safeguards the rights of religious minorities;²⁵ Art. 20, which requires States to prohibit by law any advocacy of religious hatred that constitutes incitement to discrimination, hostility, or violence; and Art. 24, which guarantees the right of children to receive, without discrimination of any kind, the protection required by their status as minors. More generally, reference should also be made to Arts 21 and 22, protecting respectively the right to peaceful assembly and the freedom of association.²⁶

Turning now more specifically to the content of Art. 18, the provision first confirms the close interrelation between freedom of religion, freedom of thought, and freedom of conscience. Among these, however, it is freedom of religion or belief that receives the greatest emphasis. Art. 18(1) guarantees the right to have or to adopt a religion or belief of one's own choice and to manifest it, either individually or in community with others, in public or in private, through worship, observance, practice, and teaching. Art. 18(2) further protects the right not to be subjected to any form of coercion that would impair an individual's freedom to have or to adopt a religion or belief of their choice. Within the family sphere, Art. 18(4) recognises the right of

²⁴ Cf. F. POCAR, *La libertà di religione nel sistema normativo delle Nazioni Unite*, in S. FERRARI, T. SCOVAZZI (eds.), *La tutela della libertà di religione. Ordinamento internazionale e normative confessionali*, Padua, 1988, p. 27 ff., pp. 31-32, and B. DICKSON, *The United Nations*, cit., p. 341. The positive dimension of the States' obligation to respect freedom of religion is extensively highlighted in the reports of the Special Rapporteurs on Freedom of Religion or Belief. See, for instance, A. AMOR, *Civil and Political Rights, Including Religious Intolerance*, UN Doc. E/CN.4/2004/63, 16 January 2004, para. 148: "States have not met their human rights obligations as regards freedom of religion. These are not limited to the negative obligation to refrain from violating the right to freedom of religion or belief; they also include the positive obligation to protect persons under their jurisdiction from violations of their rights, including those committed by non-State actors or entities. These measures should not only consist in prosecuting the perpetrators of such facts and providing compensation to the victims, but also in specific preventive action to reduce such acts in future and destroy the evil at the root" (emphasis added); and H. BIELEFELDT, *Interim Report of the Special Rapporteur on Freedom of Religion or Belief*, UN Doc. A/67/303, 13 August 2012, para. 21: "States are obliged to protect the right to conversion against possible third-party infringements, such as violence or harassment against converts by their previous communities or their social environment. In addition, States should promote a societal climate in which converts can generally live without fear and free from discrimination".

²⁵ Cf. G. PASCALE, *L'evoluzione storica*, cit., for further analysis.

²⁶ With regard to those religious rights enshrined in the UDHR but not incorporated into the ICCPR – in particular, the recognition of the right to marry without restrictions linked to one's religion – the omission, which resulted from the opposition voiced by certain Islamic States, owing to the prohibition under Islamic law on marriage between Muslim women and non-Muslim men, may be regarded as being partially remedied by Art. 2 ICCPR. This provision requires States Parties to respect and to ensure to all individuals under their jurisdiction the rights set forth in the Covenant – among them the right to marry under Art. 23 – without distinction of any kind, religion included.

parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.²⁷

Although the ICCPR does not provide a precise definition of “religion” or “belief”,²⁸ it is well established that the provision extends its protection to a wide range

²⁷ The liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions evidently entails a limitation on minors' freedom to adopt a religion of their choice, thus constituting an exception to the general rule of the inviolability of the *forum internum* (see below, text corresponding to note 42). On this point, see M. NOWAK, T. VOSPERNIK, *Permissible Restrictions on Freedom of Religion or Belief*, in T. LINDHOLM, W.C. DURHAM JR., B.G. TAHZIB-LIE (eds.), *Facilitating Freedom of Religion or Belief: A Deskbook*, Dordrecht, 2004, p. 147 ff., p. 150; S. ANGELETTI, *Libertà religiosa e Patto sui diritti civili e politici*, Turin, 2008, p. 61 ff.; and more generally, on the issue of children's religious freedom, M. DISTEFANO, *Il diritto dei minori alla libertà di religione: una “protezione nella protezione”*, in M.I. PAPA, G. PASCALE, M. GERVAZI (eds.), *La tutela internazionale della libertà religiosa*, cit., p. 401 ff. It should also be noted that, during the *travaux préparatoires* of the Covenant, it was clarified that the recognition of parents' right to determine their children's religious education did not imply any obligation on the part of the State to provide instruction in the chosen religion: see R.S. CLARK, *The United Nations and Religious Freedom*, in *New York University Journal of International Law and Politics*, 1978, p. 197 ff., p. 205. Conversely, the exclusive teaching of a single religion in public schools is incompatible with Art. 18(4), unless exemptions or alternative courses are provided that are capable of meeting the parents' educational expectations (see HR Committee, *General Comment no. 22: Art. 18 (Freedom of Thought, Conscience or Religion)*, UN Doc. CCPR/C/21/Rev.1/Add.4, 30 July 1993, para. 6). A provision analogous to Art. 18(4) ICCPR is also contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR) – Art. 13(3) –, which provides that “[t]he States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions”. The rationale for this duplication is probably to be found in the concern, prevailing at the time of the negotiations on the two Covenants, that the ICESCR – which, given its subject matter, clearly represented the more appropriate framework for provisions concerning the field of education – might receive a limited number of ratifications or fail to enter into force, at least not within a reasonable timeframe.

²⁸ This was a deliberate choice aimed at avoiding philosophical and ideological disputes, yet it proves highly problematic with regard to the classification of so-called “new” religious movements and sects. On this point, the practice of the HR Committee appears somewhat inconsistent. In *General Comment no. 22*, the Committee emphasised the need for a broad interpretation of the terms “religion” and “belief”, clarifying that Art. 18 is not confined in its application to traditional religions, nor to religions and beliefs exhibiting institutional features analogous to those of traditional faiths (HR Committee, *General Comment no. 22*, cit., para. 2). Consistent with this inclusive approach, in *M.A. v. Italy* the Committee considered that the compatibility of the prohibition on reconstituting the dissolved Fascist Party with the Covenant could be assessed not only under Art. 19(3) ICCPR but also under Art. 18(3), thereby implicitly qualifying fascism as a belief for the purposes of that provision (Communication no. 117/1981, Views of 10 April 1984, para. 13.3). Subsequently, in *M.A.B., W.A.T. and J.-A.Y.T. v. Canada*, concerning an organisation called the “Assembly of the Church of the Universe”, the HR Committee adopted a more stringent position, holding that a belief based “primarily or exclusively” on the use and distribution of narcotic drugs could not fall within the scope of Art. 18 (Communication no. 570/1993, Views of 8 April 1994, para. 4.2). In its later practice, however, the HR Committee appears to have reverted to a more flexible approach. Thus, the fact that cannabis use was regarded as “inherent to the manifestation of the Rastafari religion” did not prevent it from recognising Rastafarianism as a religion (*Prince v. South Africa*, Communication no. 1474/2006, Views of 31 October 2007, para. 7.2). The Views of the HR Committee cited above, as well as those referred to later in this contribution, are available at juris.ohchr.org.

of convictions, including those of atheists, agnostics, and secular humanists.²⁹ As regards the right to change one's religion or belief, it is also widely accepted that the replacement, in Art. 18 ICCPR, of the more explicit wording "freedom to change his religion or belief" – as contained in Art. 18 UDHR – with the more neutral formula "freedom to have or to adopt a religion or belief of one's choice"³⁰ did not, in substance, narrow the scope of the right as previously recognised.³¹ This conclusion is supported by the *travaux préparatoires* of Art. 18,³² by the HR Committee's General Comment no. 22,³³ and, indirectly, by the interpretative declarations and reservations made by certain Islamic States precisely in relation to the extent of the obligations arising under Art. 18,³⁴ as well as by the objections raised in response to them by other States parties.³⁵ Furthermore, the prohibition of coercion under para. 2 must be

²⁹ See the interpretation provided by the HR Committee in *General Comment no. 22*, para. 2. Moreover, although the wording of Art. 18 leaves room for some ambiguity in this respect, both the *travaux préparatoires* of the Covenant and the subsequent practice of the HR Committee indicate that the scope of protection extends not only to the right to adopt an atheist or agnostic position, but also to practise and manifest it.

³⁰ This wording was the result of a compromise reached during the drafting of the Covenant, intended to accommodate the position of certain Islamic States, which had threatened to refuse ratification if the explicit reference to the right to change one's religion were retained. For a detailed analysis of the positions expressed by States on this issue during the negotiations, see M. TAYLOR, *Freedom of Religion. UN and European Human Rights Law and Practice*, Cambridge, 2005, p. 27 ff.

³¹ See, among others, K.J. PARTSCH, *Freedom of Conscience and Expression, and Political Freedoms*, in L. HENKIN (ed.), *The International Bill of Rights*, New York, 1981, p. 209 ff., p. 211; J.A. WALKATE, *The Right of Everyone to Change Its Religion or Belief*, in *Netherlands International Law Review*, 1983, p. 146 ff., p. 154; C. MORVIDUCCI, *Libertà di religione*, cit., p. 3; N. LERNER, *Religious Human Rights under the United Nations*, in J.D. VAN DER VYVER, J. WITTE (eds.), *Religious Human Rights in Global Perspective*, The Hague, 1996, p. 79 ff., p. 91; M. NOWAK, *U.N. Covenant on Civil and Political Rights. CCPR Commentary*, II ed., Kehl am Rhein, 2005, p. 414.

³² At the time, most State opposition to an explicit reference to the right to change religion did not, save in a few cases, amount to a categorical rejection of that right. Cf. M. TAYLOR, *Freedom of Religion*, cit., p. 27 ff., for a detailed analysis, including references to statements by State delegates.

³³ See HR Committee, *General Comment no. 22*, cit., para. 5: "the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom 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". Despite the persistent opposition expressed by a number of Islamic States, the HR Committee has consistently reaffirmed this interpretation, including in the context of its examination of periodic reports submitted by States parties: see, for particularly illustrative examples, M. TAYLOR, *Freedom of Religion*, cit., pp. 32-33.

³⁴ The formulation of reservations that, in essence, seek to exclude the right to conversion is meaningful only insofar as it is assumed that the right to change one's religion or belief is, as a matter of principle, encompassed within Art. 18 ICCPR. In this regard, reference may be made to the reservations entered by the Maldives, Mauritania, and Qatar upon their respective accessions to the Covenant, in 2006, 2004, and 2018, and to that submitted by Bahrain on 4 December 2006, following its accession earlier that year (on 20 September). According to the terms of these reservations, the obligations arising under Art. 18 were accepted by these States only to the extent that their implementation does not prejudice domestic constitutional norms (as in the case of the Maldives) or the principles of Sharia law (in the case of the other three States). A similar reservation had been entered by Pakistan in respect of Art. 18, but was subsequently withdrawn on 20 September 2011.

³⁵ Numerous objections have been raised in relation to such reservations – by Australia, Austria, Canada, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, the Netherlands, Poland, Portugal, Spain, Sweden, Switzerland, and the United Kingdom – on the ground that they are incompatible with the object and purpose of the ICCPR. Nevertheless, all objecting States

interpreted broadly, as encompassing not only acts of physical violence but also any measure intended to induce individuals – whether believers or non-believers – to renounce their faith or convictions, or to convert. This extends to laws or practices that restrict access to education, healthcare, employment, or participation in public and political life on the basis of religious adherence or non-adherence.³⁶

The ICCPR not only reaffirms but also refines the distinction, already drawn in the UDHR, between the internal and external dimensions of freedom of religion or belief. While the UDHR subjects freedom of religion as a whole to the general limitations set out in Arts 29 and 30, the Covenant allows restrictions only on its external manifestations.³⁷ Under Art. 18(3), such limitations must be prescribed by law and be necessary to protect public safety,³⁸ order,³⁹ health, or morals,⁴⁰ or the fundamental

have made it clear that they did not intend to oppose the entry into force of the Covenant in their relations with those States whose reservations they contested. The issue of the legal consequences of reservations to human rights treaties that are deemed incompatible with the object and purpose of such instruments remains, as is well known, highly controversial. See, in this regard, M. GERVASI, *The ILC's Guide to Practice on Reservations to Treaties Put to the Test in the Hossam Ezzat Case before the African Commission on Human and People's Rights*, in *Rivista di diritto internazionale*, 2019, p. 109 ff.

³⁶ See HR Committee, *General Comment no. 22*, cit., para. 5. The criminalisation of apostasy can certainly be regarded as a form of coercion prohibited under Art. 18(2), insofar as it effectively prevents the exercise of the right to change one's religion: see N. GHANEA, *Apostasy and Freedom to Change Religion or Belief*, in T. LINDHOLM, W.C. DURHAM JR., B.G. TAHZIB-LIE (eds.), *Facilitating*, cit., p. 669 ff., pp. 674-675; and more recently, M.G. FISCHER, *Anti-Conversion Laws and the International Response*, in *Penn State Journal of Law and International Affairs*, 2018, p. 1 ff., p. 7 ff. By contrast, proselytism does not fall within the notion of coercion prohibited under Art. 18(2), despite the attempts made by several States during the *travaux préparatoires* of the Covenant to include it therein. Rather, it should be construed as pertaining to the external manifestations of freedom of religion, as well as to the right to freedom of expression enshrined in Art. 19 ICCPR: see, in detail, M. TAYLOR, *Freedom of Religion*, cit., p. 43 ff. The existence of a State church or religion is likewise not in itself incompatible with freedom of religion, provided that the State allows other faiths to be practised and does not exert pressure on individuals belonging to other beliefs to induce adherence to the dominant religion, and that no discriminatory measures prohibited under Art. 26 are adopted. See again HR Committee, *General Comment no. 22*, cit., para. 9.

³⁷ In this connection, it has been argued that a proper interpretation of Art. 18 ICCPR – read in conjunction with Art. 17 (“[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”) – ought to preclude any restriction on religious practices carried out in private rather than in public. See M. NOWAK, *U.N. Covenant*, cit., p. 418.

³⁸ The “public safety” ground has at times been applied – erroneously, according to some scholars – by taking as the relevant parameter the safety of the alleged victim of a violation of the freedom of religion, rather than public safety in the strict sense (see B.G. TAHZIB, *Freedom of Religion or Belief: Ensuring Effective International Legal Protection*, The Hague/Boston/London, 1996, p. 151; M. NOWAK, T. VOSPERNIK, *Permissible Restrictions*, cit., pp. 151-152). A significant illustration can be found in the HR Committee's Views of 9 November 1989 in *Karnel Singh Bhinder v. Canada* (Communication no. 208/1986), where no violation of Art. 18 ICCPR was found in relation to the dismissal of a Sikh worker employed by the Canadian National Railway Company who had refused, for religious reasons, to comply with the legal requirement to wear a protective helmet at construction sites – or, alternatively, to accept redeployment to other duties.

³⁹ The HR Committee has adopted a broad interpretation of the notion of public order. In *Coeriel and Aurik v. The Netherlands*, a case concerning two Dutch nationals of Hindu faith who had requested to change their surnames to Hindu ones in order to meet the religious requirements for becoming priests, the Committee found that the restrictions imposed by Dutch legislation on surnames and name changes

rights and freedoms of others.⁴¹ By contrast, the internal dimension – namely, the right to hold or to change one’s religion or belief – is absolute and entirely immune from any form of State interference.⁴²

4. The Development of Specific Legal Instruments for the Protection of Freedom of Religion: The Failure to Conclude an International Convention and the General Assembly’s Adoption of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

In addition to its recognition in the UDHR and in the ICCPR, freedom of religion has found further affirmation in a number of treaties concluded under the auspices of the UN and in declarations of principles adopted by the UN and its specialised agencies. These instruments address either specific human rights – such as the prohibitions of genocide,⁴³ discrimination in education,⁴⁴ and racial discrimination⁴⁵ –

were justified. It observed that “the regulation of surnames and the change thereof was eminently a matter of public order and restrictions were therefore permissible under paragraph 3 of article 18” (Communication no. 453/1991, Views of 31 October 1994, para. 6.1).

⁴⁰ In this regard, the HR Committee has clarified that “limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition”: see HR Committee, *General Comment no. 22*, cit., para. 8.

⁴¹ As clarified by the HR Committee in *General Comment no. 22*, para. 8, any restrictions on the freedom to manifest religion or belief must be proportionate to the legitimate aim pursued and must not, in any case, be discriminatory in purpose or effect.

⁴² The rationale underlying this distinction had already been articulated in the *Study of Discrimination in the Matter of Religious Rights and Practices*, presented in 1960 by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Arcot Krishnaswami. This document served as an essential point of reference for subsequent UN standard-setting activities in this field, and in particular provided the basis for the drafting of the 1981 General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (see next Section). See UN Doc. E/CN.4/Sub.2/200/Rev.1, p. 16: “[f]reedom to maintain or to change religion or belief falls primarily within the domain of the inner faith and conscience of an individual. Viewed from this angle, one would assume that any intervention from outside is not only illegitimate but impossible”.

⁴³ Art. 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (adopted by the General Assembly on 9 December 1948, entered into force on 12 January 1951) defines as genocide any of the acts enumerated therein, when committed with intent to destroy, in whole or in part, a national, ethnical, racial or *religious* group.

⁴⁴ The UNESCO Convention against Discrimination in Education (adopted by the General Conference of the Organisation on 14 December 1960 and entered into force on 22 May 1962), while prohibiting discrimination on religious grounds (Art. 1(1)), also recognises, in Art. 5(1)(b), the right of parents to “ensure, in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions”, adding that “no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction”. Moreover, Art. 2(2) states that the establishment or maintenance, for religious reasons, of separate educational systems or institutions reflecting the wishes of the parents shall not be deemed discriminatory for the purposes of the Convention, provided that attendance at such institutions is optional and that the education delivered meets the standards approved by the competent authorities.

or the rights of particular categories of persons – including refugees,⁴⁶ stateless persons,⁴⁷ aliens,⁴⁸ indigenous and tribal peoples,⁴⁹ children,⁵⁰ migrant workers,⁵¹ and ethnic, religious, and linguistic minorities.⁵²

In contrast, efforts to draft a convention specifically devoted to religious rights have thus far proved unsuccessful, notwithstanding that, as early as 1962, the General Assembly had called for the elaboration of both a declaration of principles and a convention on the subject.⁵³ It should be noted, however, that the General Assembly

⁴⁵ See Art. 5(d)(vii) of the International Convention on the Elimination of All Forms of Racial Discrimination (adopted by the General Assembly on 21 December 1965 and entered into force on 4 January 1969), according to which States Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, including, inter alia, the enjoyment of the right to freedom of thought, conscience and religion.

⁴⁶ The Convention relating to the Status of Refugees of 28 July 1951 (entered into force on 22 April 1954), in addition to identifying the risk of persecution on religious grounds as one of the factors precluding the expulsion or refoulement of refugees (Art. 33(1)), provides in Art. 4 that States Parties shall accord to refugees within their territory treatment at least as favourable as that accorded to their nationals with respect to the freedom to practise their religion and the freedom relating to the religious education of their children. For a detailed discussion, see F. CHERUBINI, *Le persecuzioni religiose nel contesto della protezione internazionale*, M.I. PAPA, G. PASCALE, M. GERVASI (eds.), *La tutela internazionale della libertà religiosa*, cit., p. 375 ff.

⁴⁷ The Convention relating to the Status of Stateless Persons of 28 September 1954 (entered into force on 6 June 1960), in addition to prohibiting discrimination on grounds of religion under Art. 3, contains in Art. 4 a provision analogous in substance to the corresponding provision of the Refugee Convention (see *supra*, previous note).

⁴⁸ See Art. 5(1)(e) of the General Assembly Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live (Resolution 40/144 of 13 December 1985), according to which “[a]liens shall enjoy, in accordance with domestic law and subject to the relevant international obligations of the State in which they are present [...] [t]he right to freedom of thought, opinion, conscience and religion; the right to manifest their religion or beliefs, 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”.

⁴⁹ According to Art. 5(a) ILO Convention no. 169 concerning Indigenous and Tribal Peoples in Independent Countries (adopted on 27 June 1989 and entered into force on 5 September 1991), the Convention shall be applied in such a way that “the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals”.

⁵⁰ Art. 14 of the UN Convention on the Rights of the Child (adopted by the General Assembly on 20 November 1989 and entered into force on 2 September 1990) requires States Parties to respect both the child’s right to freedom of thought, conscience and religion (para. 1) and the rights and duties of parents or, where applicable, legal guardians to guide the child in the exercise of that right in a manner consistent with the evolving capacities of the child (para. 2). Under para. 3, the freedom to manifest one’s religion 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.

⁵¹ The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted by the UN General Assembly on 18 December 1990 and entered into force on 1 July 2003) reproduces, in its Art. 12, the substance of Art. 18 ICCPR, as applied to migrant workers and members of their families.

⁵² See the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN General Assembly Resolution 47/135 of 18 December 1992).

⁵³ The original plan of the General Assembly envisaged the preparation, respectively, of a declaration and a convention on the elimination of all forms of racial discrimination (Resolution 1780 of 7 December 1962), and a declaration and a convention on the elimination of all forms of religious intolerance (Resolution 1781, adopted on the same day). This initiative was prompted by the concerns

originally envisaged these instruments as addressing discrimination on grounds of religion or belief, rather than freedom of religion as such.

In any event, it was only in 1981 – following a long and arduous drafting process – that the General Assembly succeeded in adopting by consensus the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (Resolution 36/55 of 25 November 1981),⁵⁴ the implementation of which has since 1986 been supervised by the Special Rapporteur on Religious Intolerance, established by the General Assembly itself and later renamed – following the expansion of the mandate – Special Rapporteur on Freedom of Religion or Belief.⁵⁵ By contrast, the plan to adopt an international convention⁵⁶ was ultimately abandoned owing to the irreconcilable positions of States on a number of key issues that had

expressed by the General Assembly in response to the resurgence of antisemitism in Germany and other European countries in the late 1950s – the so-called “swastika epidemics”. In this regard, see in particular Resolution 1510 of 12 December 1960, which unequivocally condemned “all manifestations and practices of racial, religious and national hatred in the political, economic, social, educational and cultural spheres”, treating them as “violations of the Charter and the Universal Declaration of Human Rights”. Nevertheless, while the instruments relating to racial discrimination were swiftly adopted – in 1963 and 1965, respectively – negotiations on religious intolerance proved far more contentious and soon came to a standstill. They were only brought to a conclusion in 1981 with the adoption of a declaration of principles alone, the title of which was modified from that envisaged in the original draft to *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*. For an analysis of the reasons underlying this change, see S. LISKOFISKY, *The UN Declaration on the Elimination of Religious Intolerance and Discrimination: Historical and Legal Perspectives*, in J.E. WOOD (ed.), *Religion and the State. Essays in Honour of Leo Pfeffer*, Waco, 1985, p. 441 ff., p. 463. On the reasons behind the General Assembly’s markedly different approach to religious rights, as compared to other human rights, see in greater detail A. CASSESE, *The General Assembly: Historical Perspective 1945-1989*, in P. ALSTON (ed.), *The United Nations and Human Rights: A Critical Appraisal*, Oxford, 1992, p. 37.

⁵⁴ For further commentary, see N. LERNER, *The Final Text of the U.N. Declaration against Religious Intolerance and Discrimination Based on Religion or Belief*, in *Israel Yearbook on Human Rights*, 1982, p. 185 ff.; R.S. CLARK, *The United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, in *Chitty’s Law Journal*, 1983, p. 23 ff.; S. LISKOFISKY, *The UN Declaration*, cit.; D.J. SULLIVAN, *Advancing the Freedom of Religion or Belief through the UN Declaration on the Elimination of Religious Intolerance and Discrimination*, in *American Journal of International Law*, 1988, p. 487 ff.; N. GHANEA, *The 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief: Some Observations*, in ID. (ed.), *The Challenge of Religious Discrimination at the Dawn of the New Millennium*, Leiden/Boston, 2003, p. 9 ff.

⁵⁵ For a more detailed discussion of the role of the Special Rapporteur on Freedom of Religion or Belief, see below, Section 8.

⁵⁶ See General Assembly Resolution 1781 (XVII) of 7 December 1962 (*Preparation of a draft declaration and a draft convention on the elimination of all forms of religious intolerance*). For an overview of the debates surrounding the draft convention, see M. LALIGANT, *Le projet de convention des Nations Unies sur l’élimination de toutes les formes d’intolérance religieuse*, in *Revue belge de droit international*, 1969, p. 175 ff.; J. CLAYDON, *The Treaty Protection of Religious Rights: U.N. Draft Convention on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, in *Santa Clara Lawyer*, 1972, p. 403 ff.; S.C. NEFF, *An Evolving International Norm of Religious Freedom: Problems and Prospects*, in *California Western International Law Journal*, 1977, p. 543 ff., p. 565 ff.; N. LERNER, *Toward a Draft Declaration against Religious Intolerance and Discrimination*, in *Israel Yearbook on Human Rights*, 1981, p. 82 ff., pp. 84-89.

already proved contentious in earlier contexts⁵⁷ – including the definition of “religion” and “belief”, the right to change one’s religion, the protection of atheism, and the existence of State churches. As has been observed, this outcome may also be ascribed, at least in part, to the General Assembly’s singular decision to accord priority – in reversal of the approach normally followed in the elaboration of human rights instruments within the UN framework – to negotiations on the draft convention rather than to the preparation of a declaration.⁵⁸

Be that as it may, the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief remains, to this day, the only universal instrument specifically devoted to religious rights. As its very title indicates, however, the Declaration is primarily concerned with addressing religious intolerance and discrimination, rather than with guaranteeing freedom of religion as such. Nonetheless, it is freedom of religion that is addressed in the opening provision, whose content closely corresponds to that of Art. 18(1) ICCPR, with the important addition of the qualifier *whatever* attached to the term *belief*, thereby definitively clarifying that this freedom also extends to non-theistic convictions.⁵⁹ Also analogous to Art. 18 ICCPR is the wording of paras 2 and 3 of Art. 1 of the Declaration, which respectively set out the prohibition of coercion and the permissible grounds for restricting the freedom to manifest one’s religion or belief. Moreover, Art. 6 provides a detailed – though considerably less ambitious than initially proposed – illustrative list

⁵⁷ See General Assembly Resolution 3027 (XXVII) of 18 December 1972 (*Elimination of All Forms of Religious Intolerance*), whereby the Assembly decided “to accord priority to the completion of the Declaration on the Elimination of All Forms of Religious Intolerance before resuming consideration of the International Convention on this subject” (para. 1). Subsequent efforts to reopen negotiations – promoted in particular by the first Special Rapporteurs on Freedom of Religion or Belief (see E. ODIO BENITO, *Study of the Current Dimensions of the Problems of Intolerance and of Discrimination on Grounds of Religion or Belief*, UN Doc. E/CN.4/Sub.2/1987/26, 31 August 1986, paras 209-217; and A. VIDAL D’ALMEIDA RIBEIRO, *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, UN Doc. E/CN.4/1988/45, 6 January 1988, paras 55 ff., 66 ff.) – proved ultimately unsuccessful, and the idea of a convention was definitively abandoned. Although the possibility of reviving the project has occasionally been advocated (P. CUMPER, *Religion, Belief and International Human Rights in the Twenty-first Century*, in S. JOSEPH, A. MCBETH (eds.), *Research Handbook on International Human Rights Law*, Cheltenham, 2010, p. 467 ff., pp. 490-491), the prevailing view is that, in the present historical and political context, such an initiative would be destined to fail and would risk undermining the standards of protection already achieved: see, e.g., D.H. DAVIS, *The Evolution of Religious Freedom as a Universal Human Right: Examining the Role of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, in *Brigham Young University Law Review*, 2002, p. 217 ff., pp. 230-231; C. EVANS, *Time for a Treaty? The Legal Sufficiency of the Declaration on the Elimination of All Forms of Intolerance and Discrimination*, in *Brigham Young University Law Review*, 2007, p. 617 ff., p. 632 ff.

⁵⁸ R.S. CLARK, *The United Nations and Religious Freedom*, cit., p. 208.

⁵⁹ Cf. R.S. CLARK, *The United Nations Declaration*, cit., p. 23; D.H. DAVIS, *The Evolution*, cit., p. 228-229; M. NOWAK, *U.N. Covenant*, cit., p. 414; C. WALTER, *The Protection of Freedom of Religion within the Institutional System of the United Nations*, in M.A. GLENDON, H.F. ZACHER (eds.), *Universal Rights in a World of Diversity. The Case of Religious Freedom*, Vatican City, 2012, p. 588 ff., p. 591.

of various forms of religious expression,⁶⁰ some of which could already be inferred, through interpretation, from the general categories (worship, observance, practice, and teaching) enumerated in Art. 18 ICCPR.⁶¹ These include the freedom to: *a*) worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes; *b*) establish and maintain appropriate charitable or humanitarian institutions; *c*) 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*) write, issue and disseminate publications in these areas; *e*) teach a religion or belief in places suitable for these purposes; *f*) solicit and receive voluntary financial and other contributions from individuals and institutions; *g*) train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief; *h*) observe days of rest and celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; *i*) establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels. Art. 5 addresses the issue of religious education, while the remaining provisions – Arts 2, 3, and 4 – specify the prohibition of intolerance and discrimination on grounds of religion.⁶² Finally, Art. 7 calls upon Member States to ensure that their domestic legislation conforms to the rights and freedoms proclaimed in the Declaration.

Similarly to the ICCPR – but unlike the UDHR – the 1981 Declaration does not contain any explicit reference to the freedom to change one's religion. Rather, in a formulation that arguably represents a further retreat from the original wording of Art. 18 UDHR, it merely affirms the right “to have a religion or whatever belief of his choice”.⁶³ The ambiguity surrounding this point is compounded by the saving clause

⁶⁰ According to some scholars, this provision – by articulating for the first time in a UN instrument the specific content of freedom of religion – constitutes “the most crucial article of the Declaration” (N. GHANEA, *The 1981 UN Declaration*, cit., p. 23), as it provides “a particularly important contribution to the international protection of human rights” (B.G. TAHZIB, *Freedom of Religion*, cit., p. 180). For a similar assessment, see C. WALTER, *The Protection*, cit., p. 592. A partly critical view is advanced instead by C. EVANS, *Time for a Treaty*, cit., p. 626, who maintains that Art. 6 is “somewhat unbalanced in favour of institutional religious rights”, to the detriment of individual expressions of religious freedom”.

⁶¹ Under this provision, parents or, where appropriate, the legal guardians of a minor are entitled to organise family life in accordance with their religion or belief. Every minor has the right to receive education in matters of religion or belief consistent with the wishes of his or her parents or legal guardians, and to be protected from discrimination on grounds of religion or belief. Paragraph 5 further stipulates that religious or belief practices which inspire a child's education must in no case be such as to endanger his or her physical or mental health, or to impair full development.

⁶² Particularly significant in this respect is the formulation of Art. 2, which expressly extends the prohibition of religious discrimination to acts committed not only by States and public institutions but also by private individuals and groups.

⁶³ It should further be noted that, at the time of the Declaration's adoption, the delegate of Iraq – speaking on behalf of the States members of the Organisation of the Islamic Conference (which, since 2011, has been known as the Organisation of Islamic Cooperation) – expressed their concern “with regard to any provision or wording in the Declaration which might be contrary to Islamic law (Shari'a) or to any legislation or act based on Islamic law”: see UN Doc. A/C.3/36/SR.43, 9 November 1981, para. 51.

contained in Art. 8, which provides that “[n]othing in the [...] Declaration shall be construed as restricting or derogating from any right defined in the UDHR and the International Covenants on Human Rights”. While this clause might arguably be seen as allowing the right to change religion to re-enter through the back door, by way of reference to the UDHR and the ICCPR,⁶⁴ it remains an incontrovertible fact that “the development of the texts since 1948 shows a continuous weakening of [the freedom to change one’s religion]”.⁶⁵

As a *soft law* instrument, the Declaration has only exhortatory value for the UN Member States. Nevertheless, doctrinal attempts have been made to attribute binding legal effects to it. For instance, it has been argued that the Declaration, being drafted “in normative terms”, “has a certain legal effect ‘under the criteria deriving from international legal decisions’”.⁶⁶ Other interpretations have grounded its alleged binding force on Art. 3 of the Declaration – “[d]iscrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the UN Charter, 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” – which has been understood as equating a violation of the Declaration itself with a breach of legally binding instruments such as the UN Charter and the ICCPR.⁶⁷

⁶⁴ This view is shared, *inter alia*, by R.S. CLARK, *The United Nations Declaration*, cit., p. 28; J.A. WALKATE, *The Right of Everyone*, cit., p. 155; D.J. SULLIVAN, *Advancing*, cit., p. 495; N. GHANEA, *Apostasy*, cit., p. 677; M. TAYLOR, *Freedom of Religion*, cit., p. 27 ff.; C. EVANS, *Time for a Treaty*, cit., p. 627; C. WALTER, *The Protection*, cit., pp. 591-592. By contrast, M. EVANS, *Religious Liberty*, cit., p. 238, has expressed doubts in this regard. An even more radical position is taken by C. MORVIDUCCI, *Libertà di religione*, cit., p. 4, who argues that Art. 1 of the 1981 Declaration has had a detrimental impact on the interpretation of Art. 18 ICCPR: “l’aver circoscritto in modo univoco la libertà di coscienza al diritto di avere un credo può infatti costituire un criterio ermeneutico dell’art. 18 del Patto, che non risultava chiaro su questo punto” (see also, in broadly similar terms, L. ZAGATO, *Libertà di religione e identità culturali nel diritto internazionale*, in V. POSSENTI (ed.), *Diritti umani e libertà religiosa*, Soveria Mannelli, 2010, p. 259 ff., p. 271). Such an interpretation, however, overlooks the fact that Art. 8 of the 1981 Declaration makes reference not only to the 1966 Covenants but also to the UDHR, which – it will be recalled – expressly recognises the right to convert. The view that freedom of religion, as enshrined in the 1981 Declaration, encompasses the right to change one’s belief has been consistently endorsed by successive UN Special Rapporteurs on Freedom of Religion or Belief, who have, on numerous occasions, documented violations of this right (for examples, see M. TAYLOR, *Freedom of Religion*, cit., pp. 37-38). It is equally significant that all annual HRC resolutions on freedom of religion or belief adopted since 2011 (see *infra*, Section 7) have, in para. 1, consistently reaffirmed that “everyone has the right to freedom of thought, conscience and religion or belief, which includes the freedom to have or to adopt a religion or belief of one’s choice, and the freedom, either alone or in community with others and in public or private, to manifest one’s religion or belief in teaching, practice, worship and observance, *including the right to change one’s religion or belief*” (emphasis added).

⁶⁵ C. WALTER, *The Protection*, cit., p. 592.

⁶⁶ See D.J. SULLIVAN, *Advancing*, cit., p. 488; similarly B.G. TAHZIB, *Freedom of Religion*, cit., p. 186.

⁶⁷ See F. POCAR, *La libertà di religione*, cit., p. 35. This appears to be an application of the well-known thesis advanced by Benedetto Conforti, according to which declarations of principles containing a provision that equates their violation with a breach of the UN Charter or of international law would, for

These arguments, however, are not entirely convincing. As regards the first, the fact that certain provisions of the Declaration employ terminology that appears to evoke genuine obligations rather than mere exhortations may, at most, be of relevance – together with other factors – for the purpose of identifying possible customary rules in this field.⁶⁸ As for the second argument, Art. 3 of the Declaration refers *expressis verbis* only to the principle of non-discrimination on grounds of religion or belief, not to freedom of religion *per se*, and is therefore not capable of affecting the legal status or effects of the Declaration as a whole.

That being said, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, “[t]hough flawed in some respects by exceptions, generalities and omissions”,⁶⁹ can nonetheless perform an important interpretative function, in that it may be regarded, at least in part, as a specification of provisions contained in the ICCPR – in particular Arts 18, concerning freedom of religion or belief, and 26, relating to the prohibition of discrimination on religious grounds.⁷⁰ It thus constitutes a key instrument available to UN bodies, first and foremost the HR Committee, which is entrusted with monitoring the implementation of the Covenant. Furthermore, unlike that legally binding instrument, the Declaration has the advantage of being addressed to all UN Member States and may exert a significant exhortatory and promotional influence even upon those most reluctant to undertake binding commitments in the field of human rights – an effect which, as we shall see, has been further reinforced over time by the increasingly courageous and incisive monitoring activity of the Special Rapporteur on Freedom of Religion or Belief.

5. The Implementation of Freedom of Religion in the Practice of the United Nations: The Role of the United Nations Human Rights Bodies

The monitoring of compliance with the norms and standards set out in the instruments analysed in the previous Sections is entrusted – in accordance with a model recurrently applied within the UN human rights system – to a range of bodies differing in nature, composition and mandate. These include, in particular, the HR

those States that contributed to their adoption by a favourable vote, constitute simplified agreements: see B. CONFORTI, *La funzione dell'accordo nel sistema delle Nazioni Unite*, Padua, 1968, p. 153 ff.

⁶⁸ See B.G. TAHZIB, *Freedom of Religion*, cit., p. 187, noting that “States regard the 1981 Declaration, or at least some of its provisions, as [...] part of customary international law”.

⁶⁹ See S. LISKOFKY, *The UN Declaration*, cit., p. 442.

⁷⁰ A clear connection with the relevant provisions of the ICCPR emerges not only from Arts 3 and 8, already mentioned, but also from the preamble to the Declaration, which, in its second paragraph, recalls “the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief”, as proclaimed in the Covenant. It has been suggested that, in this respect, the Declaration may be relevant for the interpretation of the provisions of the ICCPR, as constituting subsequent practice within the meaning of Art. 31(3)(b) of the 1969 Vienna Convention on the Law of Treaties. Cf. F. POCAR, *Codification of Human Rights Law by the United Nations*, in N. JASENTULIYANA (ed.), *Perspectives on International Law*, London/The Hague/Boston, 1995, p. 139 ff., p. 153.

Committee, the HRC and the Special Rapporteur on Freedom of Religion or Belief. The means available to these bodies are, however, marked by a certain weakness, as none has the competence to adopt binding measures or to impose sanctions on States found responsible for violations of freedom of religion or belief. Despite this common shortcoming, the extent and impact of the contribution made by each of them to the implementation of the normative framework developed under the auspices of the UN in the field of freedom of religion or belief vary considerably.

As regards the HR Committee – the body composed of independent experts entrusted with monitoring compliance with the ICCPR – it is undeniable that its activity, notwithstanding its inherent limitations, has provided important clarification of the substantive content of the right to freedom of religion. By contrast, the contribution of the HRC in this area appears less incisive. Established in 2006 to replace the former Commission on Human Rights, the HRC, as a body composed of State representatives, tends to be strongly influenced by political considerations. More fundamentally, by its very nature, it is ill-suited to play a credible role in this field, given the presence among its members of States that systematically violate human rights – and, insofar as is relevant here, the right to freedom of religion. At the time of writing, fourteen of the current forty-seven members of the HRC have been included in the *2025 World Watch List*, which identifies the countries where Christians face the most severe forms of persecution.⁷¹ Three of these States are classified in the 2025 Annual Report of the United States Commission on International Religious Freedom (USCIRF) as “countries of particular concern” – a category reserved for the most serious and systematic violations of freedom of religion, including executions, torture, enforced disappearances, extrajudicial detention, and other forms of deprivation of liberty.⁷² A further three are placed in the immediately lower category, designated as “Special Watch List countries”.⁷³

From this perspective, the HRC – which, according to its constitutive framework, is intended to comprise States that “uphold the highest standards in the promotion and protection of human rights”⁷⁴ – nonetheless exhibits many of the shortcomings previously identified in relation to the former Commission on Human Rights, whose work was widely criticised for selectivity and politicisation.⁷⁵

⁷¹ These States include Algeria, Bangladesh, China, Colombia, Cuba, the Democratic Republic of the Congo, Ethiopia, Kyrgyzstan, the Maldives, Mexico, Morocco, Qatar, Sudan, and Viet Nam. The full list is available at: www.opendoors.org/en-US/persecution/countries.

⁷² They are China, Cuba, and Viet Nam. See USCIRF, 2025 Annual Report, available at: www.uscifr.gov/sites/default/files/2025-03/2025%20USCIRF%20Annual%20Report.pdf, p. 17.

⁷³ *Ibid.* These States are: Algeria, Indonesia, and Kyrgyzstan. The full list is available at: www.opendoors.org/en-US/persecution/countries.

⁷⁴ See General Assembly resolution 60/251 of 3 April 2006 establishing the HRC in replacement of the Commission on Human Rights, para. 9.

⁷⁵ See, among others, A. MARCHESI, G. PALMISANO, *Il sistema di garanzia dei diritti umani delle Nazioni Unite tra limiti intrinseci e tentativi di riforma*, in *Costituzionalismo.it*, 14 April 2006, available at: www.costituzionalismo.it.

This is particularly evident with regard to the monitoring procedures which – apart from certain modifications and the introduction of the so-called Universal Periodic Review – the HRC inherited from the former Commission on Human Rights. Given the limited attention paid to freedom of religion within the framework of these procedures,⁷⁶ the HRC’s monitoring activity will not be examined in detail here. Of greater relevance, rather, is its role in the promotion of human rights. The HRC’s resolutions are generally reproduced in subsequent resolutions of the General Assembly and may therefore provide useful indications for identifying current trends in the development of international law in this area.

By contrast, the work of the Special Rapporteur on Freedom of Religion or Belief merits a more positive assessment. Established in 1986, it is the longest-standing of the so-called thematic mechanisms created by the UN in the field of human rights. The Special Rapporteur, in fact, constitutes the only UN body endowed with a specific mandate concerning religious rights. Notably, unlike the HR Committee, whose competence is confined to States parties to the ICCPR, the Rapporteur’s mandate extends to the entire membership of the UN. Nevertheless, the mechanism shares with other thematic mandates a number of inherent weaknesses – including limited financial resources, the absence of adequate follow-up procedures, and insufficient cooperation by States. These shortcomings have long prompted scholars to call for corrective action by the UN, which, however, has yet to materialise.⁷⁷

6. The Contribution of the Human Rights Committee to the Promotion and Protection of Freedom of Religion

The ICCPR establishes distinct monitoring mechanisms under the mandate of the HR Committee:⁷⁸ the periodic review of reports submitted by States parties on the measures adopted at the domestic level to implement the Covenant (Art. 40); inter-State communications (Art. 41); and individual communications under the First Optional Protocol.⁷⁹ The latter two procedures are contingent upon the State’s

⁷⁶ In his 2017 thematic report to the HRC, the then Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed, observed that the right to freedom of religion or belief had been significantly underrepresented in the first two cycles of the Universal Periodic Review. Of more than 52,000 recommendations made during that period, fewer than 1,300 – fewer than 2.5 per cent – addressed this right. See UN Doc. A/HRC/34/50, para. 12. See also his interim report to the General Assembly of the same year (UN Doc. A/72/365, para. 66), which further highlighted the low prioritisation of freedom of religion or belief within the Universal Periodic Review and noted that the rate of acceptance of relevant recommendations by States was significantly lower than the average.

⁷⁷ See in detail on this point S.P. SUBEDI, *Protection of Human Rights through the Mechanism of UN Special Rapporteurs*, in *Human Rights Quarterly*, 2011, p. 201 ff., in particular p. 216 ff.

⁷⁸ For a comprehensive overview of the role and functioning of the HR Committee, see A. SEIBERT-FOHR, *The UN Human Rights Committee*, in G. OBERLEITNER (ed.), *International Human Rights Institutions, Tribunals, and Courts*, Singapore, 2018, pp. 93-130.

⁷⁹ The Optional Protocol was adopted by the General Assembly on 16 December 1966 (Resolution 2200A (XXI)) and entered into force on 23 March 1976.

acceptance of the HR Committee's competence: in the case of inter-State communications, through a unilateral declaration under Art. 41 ICCPR, and, in the case of individual communications, through ratification of the Optional Protocol.⁸⁰

While the inter-State procedure has remained entirely ineffective – reflecting the notorious reluctance of States to trigger such mechanisms against one another⁸¹ – the individual communications procedure has emerged as a significant, albeit still underutilised, instrument for the protection of human rights.⁸² Its practical impact, although limited in comparison to the regional human rights systems, has nevertheless been considerable. The HR Committee's views under this procedure, although lacking binding legal force and not amounting to *res judicata*, carry substantial authority. This is mainly attributable to the Committee's quasi-judicial *modus operandi*.⁸³ As the HR Committee itself has affirmed, “[v]iews issued by the Committee under the Optional Protocol [...] are arrived at in a judicial spirit, including the impartiality and independence of Committee members, the considered interpretation of the language of the Covenant, and the determinative character of the decisions”.⁸⁴ Accordingly, there exists a strong presumption in favour of the correctness of its assessment, which places a significant evidentiary and argumentative burden on States found to have breached the Covenant, should they seek to contest its conclusions.⁸⁵

The HR Committee's concluding observations on the periodic reports submitted by States parties also perform a non-negligible interpretative function with respect to

⁸⁰ As of August 2025, 116 States are parties to the First Optional Protocol.

⁸¹ Indeed, the inter-State communication procedure provided for in Art. 41 ICCPR has never been resorted to since the Covenant entered into force in 1976.

⁸² See, on this point, C. WALTER, *The Protection*, cit., pp. 594-595.

⁸³ More generally, on the interpretative authority and legal significance of treaty bodies' determinations, see D. AZARIA, *The Legal Significance of Expert Treaty Bodies' Pronouncements for the Purpose of the Interpretation of Treaties*, in *International Community Law Review*, 2020, p. 33 ff.

⁸⁴ See HR Committee, *General Comment no. 33: Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights*, UN Doc. CCPR/C/GC/33 of 25 June 2009, para. 11. See also para. 15: “[t]he character of the views of the Committee is further determined by the obligation of States parties to act in good faith, both in their participation in the procedures under the Optional Protocol and in relation to the Covenant itself. A duty to cooperate with the Committee arises from an application of the principle of good faith to the observance of all treaty obligations”.

⁸⁵ See, among others, D.L. SHELTON, *Individual Complaint Machinery under the United Nations 1503 Procedure and the Optional Protocol to the International Covenant on Civil and Political Rights*, in H. HANNUM (ed.), *Guide to International Human Rights Practice*, Philadelphia, 1984, p. 59 ff., p. 71; C. TOMUSCHAT, *Human Rights: Between Idealism and Realism*, Oxford, 2003, p. 183; M. SCHEININ, *The Human Rights Committee and Freedom of Religion or Belief*, in T. LINDHOLM, W.C. DURHAM JR., B.G. TAHZIB-LIE (eds.), *Facilitating*, cit., p. 189 ff., p. 192. In any event, that the “jurisprudence of the Human Rights Committee, established by the Covenant to ensure compliance with that instrument by the States parties,” should be accorded significant authority has also been acknowledged by the International Court of Justice (ICJ). While the Court denied that it is legally bound to follow the interpretation of the Covenant adopted by the Committee, it nevertheless affirmed that “it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty”. See ICJ, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Merits, Judgment*, in *I.C.J. Reports* 2010, p. 639 ff., pp. 663-664, para. 66.

the ICCPR, although in this context the Committee generally adopts a more cautious tone than in its views under the individual communications procedure.⁸⁶ Of particular importance for the interpretation of the Covenant are the Committee's General Comments, which serve to elucidate the normative scope and content of the rights enshrined therein.⁸⁷ For the purposes of the present analysis, *General Comment no. 22* is of particular significance, as it provides an authoritative interpretation of Article 18.⁸⁸

The HR Committee's practice concerning freedom of religion remains relatively limited. Under the periodic reporting procedure, its engagement with Art. 18 is often constrained by the inadequate attention devoted by States parties to religious issues in their reports.⁸⁹ With regard to individual communications, Art. 18 has been invoked in only a small number of cases, and most frequently in conjunction with other provisions of the Covenant.⁹⁰ Consequently, a number of crucial issues concerning the scope and content of freedom of religion under the Covenant remain unaddressed by the Committee.

That said, the HR Committee has nonetheless played a significant role in filling certain normative gaps in Art. 18 and in strengthening the protection of freedom of

⁸⁶ The HR Committee itself has clarified that the purpose of the periodic reporting procedure "is to assist State parties in fulfilling their obligations under the Covenant, to make available to them the experience the Committee has acquired in its examination of other reports and to discuss with them various issues relating to the enjoyment of the rights enshrined in the Covenant" (Annual report submitted by the HR Committee to the General Assembly in 1994, UN Doc. A/49/40, para. 37).

⁸⁷ The importance of the General Comments lies in the fact that they represent "the HRC's accumulated experience of years of consideration of a particular article". For this reason, they perform "a key function of giving some substantive content to the articles concerned" (D. MCGOLDRICK, *The Human Rights Committee. Its Role in the Development of the International Covenant on Civil and Political Rights*, Oxford, 1991, p. 471). Pursuant to the *Guidelines for State Reports under the ICCPR*, when preparing their periodic reports on the implementation of the Covenant, States are required to take into account "[t]he terms of the articles in Parts I, II and III of the Covenant [...] together with general comments issued by the Committee on any such article" (UN Doc. CCPR/C/66/GUI/Rev.2 of 26 February 2001, para. C.1, emphasis added).

⁸⁸ According to N. LERNER, *The Nature and Minimum Standards of Freedom of Religion or Belief*, in T. LINDHOLM, W.C. DURHAM JR., B.G. TAHZIB-LIE (eds.), *Facilitating*, cit., p. 63 ff., p. 72, "The General Comment on Article 18 should be viewed as an authoritative interpretation of the scope of Article 18 by the body in charge of implementation of the Covenant on Civil and Political Rights". The content of *General Comment no. 22* is analysed in detail by M. EVANS, *Religious Liberty*, cit., p. 208 ff.

⁸⁹ See M. TAYLOR, *Freedom of Religion*, cit., p. 13.

⁹⁰ On this point, Evans observes: "[f]rom the point of view of the State or individual concerned, this may not make any practical difference, since any particular situation is an amalgam of competing and interacting factors. Nevertheless, it [...] tends to switch attention away from the search for an autonomous understanding of the content of religious freedom" (M. EVANS, *Religious Liberty*, cit., p. 208). However, in a recent departure from its generally cautious stance in the context of the periodic reporting procedure, the HR Committee adopted a more assertive position with regard to the wearing of religious symbols in France. In its concluding observations on the sixth periodic report of France, adopted on 3 December 2024, the Committee expressed concern over the extension of restrictions on religious clothing to new areas, including sport, and noted that such measures "appear to be incompatible with the principles of necessity and proportionality and [...] are likely to have a discriminatory impact on members of religious minorities, especially Muslim women and girls". It recommended that the State party review its legislation in light of Arts 18 and 26 ICCPR and refrain from further expanding such restrictions. See HR Committee, *Concluding observations on the sixth periodic report of France*, adopted on 3 December 2024, UN Doc. CCPR/C/FRA/CO/6, paras. 6 and 37.

religion within the broader framework of the UN human rights system.⁹¹ A paradigmatic illustration is offered by the Committee's evolving position on the right to conscientious objection to military service. Initially met with resistance,⁹² this right has been progressively brought within the scope of Art. 18, on the basis that compulsory military service may seriously interfere with an individual's freedom of religion or belief.⁹³

A first step in this direction was taken in General Comment no. 22, where the HR Committee stated that the right to conscientious objection "can be derived from Art. 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief", and that "[w]hen this right is recognised by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs".⁹⁴ This, however, was still a cautious and partially ambiguous formulation: not only did the HR Committee adopt a tentative tone, but it also confined the applicability of Art. 18 to cases involving a *serious* conflict between freedom of religion and the use of *lethal* force.⁹⁵ Such uncertainties were soon dispelled – initially through an *obiter*

⁹¹ For a detailed examination of the HR Committee's activity in the field of freedom of religion, see N. LERNER, *Religious Human Rights*, cit.; B.G. TAHZIB, *Freedom of Religion*, cit., p. 249 ff.; M. EVANS, *The United Nations and Freedom of Religion: The Work of the Human Rights Committee*, in R.J. ADHAR (ed.), *Law and Religion*, Aldershot, 2000, p. 35 ff.; ID., *Religious Liberty*, cit., p. 207 ff.; M. SCHEININ, *The Human Rights Committee*, cit.; S. ANGELETTI, *Libertà religiosa*, cit.; L. HENNEBEL *Les organes de protection des droits de l'homme des Nations Unies face à la religion*, in R. UERPMANN-WITZACK, E. LAGRANGE, S. OETER (eds.), *Religion and International Law*, Leiden, 2018, p. 105 ff.; M.I. PAPA, *La tutela della libertà religiosa nel sistema delle Nazioni Unite: quadro normativo e meccanismi di controllo*, in M.I. PAPA, G. PASCALE, M. GERVAZI (eds.), *La tutela internazionale della libertà religiosa*, cit., p. 3 ff., p. 27 ff.; G. GUNATILLEKE, *Criteria and Constraints: the Human Rights Committee's Test on Limiting the Freedom of Religion or Belief*, in *Religion & Human Rights*, 2020, p. 20 ff.

⁹² Initially, the HR Committee excluded the possibility of deriving a right to conscientious objection from the provisions of the Covenant. On this basis, it declared inadmissible a communication submitted by a Finnish national who had been sentenced to nine months' imprisonment for refusing to perform military service, a refusal grounded in a series of moral considerations based on his ethical convictions. See HR Committee, *L.T.K. v. Finland*, Communication no. 185/1984, decision of 9 July 1985, para. 5.2: "[t]he Covenant does not provide for the right to conscientious objection; neither article 18 nor article 19 of the Covenant, especially taking into account paragraph 3(c)(ii) of article 8, can be construed as implying that right". Particularly questionable is the reference, in the cited passage, to Art. 8(3)(c)(ii) ICCPR. That provision, as the HR Committee itself would later acknowledge (*Yoon and Choi v. Republic of Korea*, Communications Nos. 1321/2004 and 1322/2004, Views adopted on 3 November 2006, para. 8.2), merely excludes from the definition of "forced or compulsory labour", prohibited under para. 1 of the same article, "any service of a military character and, in countries where conscientious objection is recognised, any national service required by law of conscientious objectors". On this point, see M. NOWAK, *U.N. Covenant*, cit., p. 422.

⁹³ For further discussion, see R. BRETT, L. TOWNHEAD, *Conscientious Objection to Military Service*, in G. GILBERT, F. HAMPSON, C. SANDOVAL (eds.), *Strategic Visions for Human Rights: Essays in Honour of Professor Kevin Boyle*, London/New York, 2010, p. 91 ff.

⁹⁴ HR Committee, *General Comment no. 22*, cit., para. 11 (emphasis added).

⁹⁵ *Ibid.* See B. SCHLÜTTER, *Human Rights Interpretation by the UN Treaty Bodies*, in H. KELLER, G. ULFSTEIN (eds.), *UN Human Rights Treaty Bodies: Law and Legitimacy*, Cambridge, 2012, p. 261 ff., pp. 313-314, and M. NOWAK, *U.N. Covenant*, cit., p. 424. The Human Rights Commission had, however, adopted a more forward-looking position a few years earlier, when, in para. 1 of its resolution

dictum in the Committee's Views in *J.P. v. Canada*, where it affirmed that "[a]rticle 18 of the Covenant certainly protects the right to hold, express and disseminate opinions and convictions, including conscientious objection to military [service]",⁹⁶ and subsequently, in more unequivocal terms, in *Yoon and Choi v. Republic of Korea*. In that case, the HR Committee found that the South Korea had violated Art. 18 by sentencing two Jehovah's Witnesses to eighteen months' imprisonment for their refusal to perform compulsory military service.⁹⁷

More generally, the HRC's approach to freedom of religion has, in many respects, proved more protective of this freedom than that adopted by regional human rights courts – most notably the European Court of Human Rights (ECtHR) – notwithstanding the fact that Art. 18 ICCPR and its corresponding provision in the European Convention on Human Rights – Art. 9 – both draw inspiration from Art. 18 UDHR.⁹⁸ This is well illustrated, once again in the context of conscientious objection to military service, by the Committee's decision to ground this right directly in freedom of conscience⁹⁹ rather than treating it merely as an external manifestation of

no. 1989/59 of 8 March 1989, it recognised the right to conscientious objection to military service "as a legitimate exercise of the right of freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights". Identical language was later reproduced in a series of subsequent resolutions.

⁹⁶ HR Committee, *J.P. v. Canada*, Communication no. 446/1991, Views adopted on 7 November 1991, para. 4.2 (emphasis added).

⁹⁷ HR Committee, *Yoon and Choi v. Republic of Korea*, cit., para. 8.3: "the present claim is to be assessed solely in the light of article 18 of the Covenant, the understanding of which evolves as that of any other guarantee of the Covenant over time in view of its text and purpose". The inclusion of conscientious objection to military service within the scope of Art. 18 ICCPR has been reaffirmed in a series of subsequent cases. See most recently *Uchetov v. Turkmenistan*, Communication no. 2226/2012, Views adopted on 15 July 2016, para. 7.7. A different approach has, however, been adopted by the HR Committee with regard to so-called "fiscal objection", which has been excluded from the scope of Art. 18 in its Views in *J.P. v. Canada*, cit., para. 4.2: "[a]lthough article 18 of the Covenant certainly protects the right to hold, express and disseminate opinions and convictions, including conscientious objection to military activities and expenditures, the refusal to pay taxes on grounds of conscientious objection clearly falls outside the scope of protection of this article". The communication in that case had been submitted by a Canadian citizen of Quaker faith, who had refused to pay the portion of her income tax allocated to military expenditure, on the grounds that military activities were contrary to her religious beliefs. See also, to the same effect, *J.v.K. and C.M.G.v.K.-S. v. The Netherlands*, Communication no. 483/1991, Views adopted on 31 July 1992, para. 4.2; and *K.V. and C.V. v. Germany*, Communication no. 568/1993, Views adopted on 8 April 1994, para. 4.3.

⁹⁸ On the generally more protective stance of the HR Committee in matters of freedom of religion, as compared to the ECtHR case law, see, *inter alia*, M.I. PAPA, *La tutela della libertà religiosa*, cit., p. 27 ff.; F. GRAZIANI, *Libertà di religione e margine di apprezzamento nelle pronunce della Corte europea dei diritti umani e del Comitato ONU dei diritti umani*, in *Diritto e religioni, Quaderno monografico n. 2, Supplemento Rivista*, n. 1-2020, *Libertà religiosa ed eguaglianza. Casi di discriminazione in Europa e nel contesto internazionale*, p. 181 ff.; S.H. CLEVELAND, *Banning the Full-Face Veil: Freedom of Religion and Non-Discrimination in the Human Rights Committee and the European Court of Human Rights*, in *Harvard Human Rights Journal*, 2021, p. 217 ff.

⁹⁹ See ECtHR, *Bayatyan v. Armenia* (Grand Chamber), Appl. no. 23459/03, judgment of 7 July 2011.

religion or belief, as the ECHR has done – thereby excluding any possibility of restricting the right.¹⁰⁰

A further illustration can be found in the differing approaches adopted by the two bodies to the interpretation of permissible limitations on the right to manifest one's religion or belief through the wearing of religious symbols and clothing.¹⁰¹ While the ECHR has generally accorded States a wide margin of appreciation – referring to the absence of a common European *consensus* on such matters¹⁰² – the HR Committee has tended to apply a more exacting standard in assessing the necessity and proportionality of the measures at issue, giving due consideration to the arguments advanced by the individuals concerned.¹⁰³ This divergence in approach helps to explain the contrasting outcomes reached in a number of cases, including those concerning the French bans on the display of religious symbols in public schools (*Loi n. 2004-228* of 15 March

¹⁰⁰ According to the HR Committee, conscientious objection is “inherent to the right to freedom of thought, conscience and religion”: see *Jeong et al. v. Republic of Korea*, cit., para. 7.3 (similar statements can also be found in later practice: see most recently *Uchetov v. Turkmenistan*, cit., para. 7.6). Previously, in *Yoon and Choi v. Republic of Korea*, the Committee had instead found that the punishment imposed on the authors for their refusal to perform military service amounted to a limitation on the right to manifest one's religion. As a result, the Committee assessed the compatibility of the measure in question with the Covenant on the basis of the criteria set out in Art. 18(3): see *Views*, cit., para. 8.4. On the differing approaches of the UN HR Committee and the ECtHR regarding conscientious objection to military service, see S. VAN DROOGHENBROECK, *À propos de “Le Projet de Convention des Nations Unies sur l'élimination de toutes les formes d'intolérance religieuse” de Marcel Laligant (1969-I) – 50 ans après: utilité et opportunité d'un nouvel instrument international de protection contre l'intolérance et la discrimination fondées sur la religion et les convictions*, in *Revue belge de droit international*, 2015, p. 497 ff., p. 507 ff.

¹⁰¹ On this issue, see, *inter alia*, F. TULKENS, S. VAN DROOGHENBROECK, *The Domestic Courts' Response to Divergent Views among International Human Rights Bodies Thoughts Prompted by the Singh v. France Cases*, in A. ALLEN, V. JOOSTEN, R. LEYSEN, W. VERRIJDT (eds.), *Liberæ Cogitationes. Liber Amicorum Marc Bossuyt*, Cambridge/Antwerp/Portland, 2013, p. 735 ff.; E. BRIBOSIA, G. CACERES, I. RORIVE, *Les signes religieux au cœur d'un bras de fer entre Genève et Paris: la saga Singh*, in *Revue trimestrielle des droits de l'homme*, 2014, p. 495 ff.; S. BERRY, *A “Good Faith” Interpretation of the Right to Manifest Religion? The Diverging Approaches of the European Court of Human Rights and the UN Human Rights Committee*, in *Legal Studies*, 2017, p. 672 ff.; S.H. CLEVELAND, *Banning the Full-Face Veil: Freedom of Religion and Non-Discrimination in the Human Rights Committee and the European Court of Human Rights*, in *Harvard Human Rights Journal*, 2021, p. 217 ff.

¹⁰² On this point, see extensively, also for further bibliographic references, R. NIGRO, *Il margine di apprezzamento e la giurisprudenza della Corte europea dei diritti umani sul velo islamico*, in *Diritti umani e diritto internazionale*, 2008, p. 71 ff.; G. ASTA, *Alcune riflessioni sulla libertà religiosa nei sistemi europeo e interamericano*, in M.I. PAPA, G. PASCALE, M. GERVAZI (eds.), *La tutela internazionale della libertà religiosa*, cit., p. 47 ff.; G. CILIBERTO, F.M. PALOMBINO, *L'esposizione dei simboli religiosi*, *ibid.*, p. 259 ff.; M. LUGATO, *Le “condizioni minime del vivere insieme” nelle limitazioni del diritto di manifestare la propria religione*, in *Diritti umani e diritto internazionale*, 2019, p. 457 ff.; G. CILIBERTO, *Migrants' Freedom of Religion under the European Convention on Human Rights: The Case of the Disposal of Religious Symbols*, in *Italian Review of International and Comparative Law*, 2024, p. 151 ff.

¹⁰³ The HR Committee has also acknowledged – although this view remains so far isolated in its practice – that, in certain circumstances, the imposition of a ban on wearing religious clothing in public or private settings may amount to a violation of the prohibition of coercion set forth in Art. 18(2) ICCPR. See HR Committee, *Hudoyberganova v. Uzbekistan*, Communication no. 931/2000, Views adopted on 5 November 2004, para. 6.2.

2004)¹⁰⁴ and on face coverings in public spaces (*Loi n. 2010-1192* of 11 October 2010),¹⁰⁵ as well as the claims brought by members of the Sikh community – again

¹⁰⁴ See extensively F. TULKENS, S. VAN DROOGHENBROECK, *The Domestic Courts' Response*, cit., p. 742 ff. Particularly relevant in this regard is the case of three Sikh students who were expelled in 2004 from a French public high school for refusing to remove their *keski* (a small, less conspicuous turban than the traditional one). One of them brought a complaint before the HR Committee, which, while recognising that the French legislation pursued a legitimate aim (namely, ensuring respect for neutrality in public education and the maintenance of order and peace in schools), found that France had failed to demonstrate that the *keski* posed any threat to the rights and freedoms of other students or to order within the school. The HR Committee therefore concluded that the student's expulsion "was not necessary under article 18, paragraph 3, infringed his right to manifest his religion and constituted a violation of article 18 of the Covenant" (HR Committee, *Bikramjit Singh v. France*, Communication no. 1852/2008, Views adopted on 1 November 2012, para. 8.7). The HR Committee had previously expressed strong criticism of the same legislation in its Concluding Observations on the fourth periodic report submitted by France (UN Doc. CCPR/C/FRA/CO/4, 31 July 2008, para. 23).

The ECtHR, which was seized of the applications lodged by the other two students, instead followed the reasoning of its previous case law on the same legislation, holding that the expulsion measure pursued the constitutionally enshrined principle of *laïcité* and therefore fell within the State's margin of appreciation. As a result, the applications were declared manifestly ill-founded and inadmissible: ECtHR, *Jasvir Singh v. France*, Appl. no. 25463/08, and *Ranjit Singh v. France*, Appl. no. 27561/08, decision of 30 June 2009.

The same legislative framework came under scrutiny before the HR Committee again in *Mezhoud v. France*, concerning a Muslim woman who was barred from attending a vocational training course while wearing a headscarf. The restriction was justified by the State party on grounds of *laïcité* and the neutrality of public services. The Committee rejected these arguments, holding that "however important they may be in general terms, [they] are not, in the present case, sufficient to justify the restriction of the author's right to manifest her religion or belief," and concluded that "the restriction imposed on the author, prohibiting her from participating in her vocational training course while wearing a headscarf, constitutes a restriction interfering with her freedom of religion in violation of article 18 of the Covenant" (HR Committee, *Mezhoud v. France*, Communication no. 3020/2017, Views adopted on 28 March 2022, paras. 8.9-8.10).

¹⁰⁵ See HR Committee, *Yaker v. France*, Communication no. 2747/2016, Views adopted on 17 July 2018, and *Hebbadj v. France*, Communication no. 2807/2016, Views adopted on the same date, concerning two Muslim women who were fined for wearing the *niqab* in public. The applicants had initially submitted their claims to the ECtHR, which, sitting in single-judge formation, declared both applications inadmissible without providing any reasoning in support of its decisions. Precisely due to the summary nature of those rulings, the prior submission to the ECtHR did not preclude the HR Committee from declaring the communications admissible, notwithstanding the French reservation to Art. 5(2)(a) of the First Optional Protocol to the ICCPR, which excludes its competence in relation to cases that have already been examined by, or are under examination before, another international body (see paras. 6.2 and 6.4, respectively). As to the merits, the HR Committee held that the restriction on the right to manifest one's religion resulting from the general ban on wearing the *niqab* or *burqa* under French legislation could not be justified under Art. 18(3) ICCPR. In this regard, France had invoked public safety and *ordre public* considerations, as well as the protection of the fundamental rights and freedoms of others, relying in this context on the concept of *vivre ensemble*, which features prominently in the ECtHR case law. Both arguments were rejected by the HR Committee. As regards public safety and *ordre public*, the Committee found that France had failed to provide sufficient evidence to support either the necessity (paras. 8.7 and 7.7, respectively) or the proportionality (paras. 8.8 and 7.8) of the general restriction imposed through the ban on Muslim women's ability to manifest their religious affiliation by wearing the full-face veil. With regard to the protection of the rights and freedoms of others, the Committee noted the vague and abstract nature of the notion of *vivre ensemble*, stressing that France had failed to identify which specific rights or freedoms protected under the Covenant would be threatened by the wearing of the full-face veil. According to the Committee, "[t]he right to interact with any person in a public space and the right not to be disturbed by the fact that someone is wearing the full-face veil are not protected by the Covenant, and cannot therefore constitute permissible restrictions

against France – challenging domestic legislation requiring individuals to appear bareheaded in photographs for official identity documents.¹⁰⁶

With specific regard to the freedom of religion of non-citizens, the HR Committee has consistently affirmed that the rights protected under Art. 18 ICCPR extend to all individuals within the jurisdiction of a State party, regardless of nationality, immigration status, or residence.¹⁰⁷ This principle is of particular relevance within the migratory context, where, as noted in the Introduction, foreign nationals – whether asylum seekers, undocumented migrants, or temporary residents – may be especially vulnerable to restrictions on the exercise of their religion.

Finally, as for asylum-related claims under Art. 18, the HR Committee has so far not comprehensively addressed whether violations of Covenant rights other than Arts 6 and 7 (the right to life and the prohibition of torture) may entail a real risk of irreparable harm for the purposes of *non-refoulement*. However, the possibility of invoking Art. 18 as a ground for *non-refoulement* cannot be regarded as excluded, precisely because the Committee has refrained from expressly endorsing arguments advanced by certain States to the effect that Art. 18 lacks extraterritorial application.¹⁰⁸

within the meaning of article 18(3) of the Covenant” (paras. 8.10 and 7.10). Moreover, even assuming that France had succeeded in demonstrating that the aim of promoting social coexistence falls within the legitimate objectives under Art. 18(3), the general ban on face coverings in public spaces would nonetheless have failed the proportionality test (paras. 8.11 and 7.11).

¹⁰⁶ On this point, see in particular F. TULKENS, S. VAN DROOGHENBROECK, *The Domestic Courts' Response*, cit., p. 741 ff., and E. BRIBOSIA, G. CACERES, I. RORIVE, *Les signes religieux*, cit. In *Ranjit Singh v. France*, concerning the requirement to appear bareheaded in the photograph for a residence permit, the HR Committee held that the resulting limitation on freedom of religion stemming from the prohibition on wearing a turban was not proportionate to the stated objective of ensuring public order, since France had failed to demonstrate how such a requirement could effectively facilitate the identification of the applicant (Communication no. 1876/2000, Views adopted on 22 July 2011, para. 8.4). A similar line of reasoning was adopted in the HR Committee's Views in *Shingara Mann Singh v. France*, where the same prohibition had been applied in the context of a passport renewal request (Communication no. 1928/2010, Views adopted on 26 September 2013). It is worth noting that the same applicant had previously unsuccessfully brought a claim before the ECtHR, in relation to the refusal by the French authorities to renew his driving licence due to his unwillingness to provide a photograph in which he appeared without a turban (*Mann Singh v. France*, Application no. 24479/07, decision of 13 November 2008; on this case, see E. DECAUX, *Chronique d'une jurisprudence annoncée: laïcité française et liberté religieuse devant la Cour européenne des droits de l'homme*, in *Revue trimestrielle des droits de l'homme*, 2010, p. 251 ff.). In that instance, the Court found that the restriction on freedom of religion was justified in light of the public security considerations invoked by France. More specifically, the Court referred once again to the State's margin of appreciation in this area, without undertaking any assessment of the necessity of the measure in question. For a critical commentary, see S.O. CHAIB, *Mann Singh Wins Turban Case in Geneva after Losing in Strasbourg*, in *Strasbourg Observers*, 19 November 2013, www.strasbourgobservers.com.

¹⁰⁷ See, most recently, HR Committee, *Mursalov et al. v. Azerbaijan*, Communication no. 3153/2018, Views of 1 November 2022, para. 9.6, where the HR Committee held that Art. 18 ICCPR “protects the right of all members of a religious congregation, not only nationals of a State party, to manifest their religion in community with others”. The communication involved several applicants, including Mr Kvaratskhelia, a Georgian national and member of the Jehovah's Witnesses, who had been fined and deported from Azerbaijan for participating in a religious meeting.

¹⁰⁸ See, e.g., HR Committee, *C.L. and Z.L. v. Denmark*, Communication no. 2753/2016, Views adopted on 26 March 2018, para. 7.4, where the Committee rejected a claim under Art. 18 relating to the risk of being unable to practise one's religion if returned to China, on the ground that the author had failed to

In several communications – particularly those concerning asylum seekers converted from Islam in Iran or Afghanistan – authors have relied on Art. 18 alongside Art. 7. Indeed, the Committee has treated such claims as admissible, without declaring them manifestly ill-founded or inadmissible under Art. 18, but has in practice examined them primarily under Art. 7, or in conjunction with Art. 18, without yet recognising Art. 18 as providing an autonomous ground for *non-refoulement* protection under the Covenant.

7. Human Rights Council’s Resolutions on Freedom of Religion and the Debate on the Defamation of Religions

Since its establishment, the HRC has regularly issued resolutions on freedom of religion or belief, which have served as a model for similarly worded resolutions of the UN General Assembly. At present, the Council adopts three recurrent resolutions in this field: one on freedom of religion or belief,¹⁰⁹ another on the rights of persons belonging to national or ethnic, religious and linguistic minorities,¹¹⁰ and a third one on combating intolerance, negative stereotyping, discrimination, and incitement to violence, as well as acts of violence, on religious grounds.¹¹¹ These resolutions are generally approved by *consensus* and, apart from being couched in broad and generic terms, their substantive content has remained largely unchanged over time. As will be seen, they reflect markedly different conceptions of religious rights – at least on certain matters of no small significance – which inevitably limit their potential contribution to advancing the protection of freedom of religion within the UN framework.

In its early years, and in continuity with the practice initiated by the former UN Commission on Human Rights in 1999,¹¹² the HRC’s focus was primarily directed towards the issue of defamation of religions,¹¹³ to which a dedicated annual resolution

substantiate how removal would expose him to irreparable harm comparable to that contemplated under Arts 6 and 7 ICCPR, and declared this part of the communication inadmissible. See also *Khan v. Canada*, Communication no. 1302/2004, para. 5.6; *Ch.H.O. v. Canada*, Communication no. 2195/2012, para. 9.5, *Contreras v. Canada*, Communication no. 2613/2015, para. 7.5.

¹⁰⁹ See, most recently, HRC resolution A/HRC/RES/58/5, *Freedom of religion or belief*, adopted on 2 April 2025.

¹¹⁰ While the other two resolutions are adopted annually, this resolution is ordinarily adopted biennially. See, most recently, HRC resolution A/HRC/RES/55/15, *Rights of persons belonging to national or ethnic, religious and linguistic minorities*, adopted on 4 April 2024.

¹¹¹ See, most recently, HRC resolution A/HRC/RES/58/29, *Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief*, adopted on 4 April 2025.

¹¹² See Commission on Human Rights, Resolutions 1999/82 of 30 April 1999; 2000/84 of 26 April 2000; 2001/4 of 18 April 2001; 2002/9 of 15 April 2002; 2003/4 of 14 April 2003; 2004/6 of 13 April 2004; and 2005/3 of 12 April 2005.

¹¹³ On the question of defamation of religions in international law, see in particular J.-F. FLAUS, *La diffamation religieuse*, in ID. (ed.), *La protection internationale de la liberté religieuse*, Brussels, 2002, p. 273 ff., p. 281 ff., and L. LANGER, *Religious Offence and Human Rights. The Implications of*

was devoted.¹¹⁴ Member States were urged to adopt domestic legal measures to combat coercion and discrimination arising from the defamation of religions, and to promote tolerance and respect for all faiths.¹¹⁵ Sponsors of this practice, under the former Commission on Human Rights, were the member States of the Organisation of the Islamic Conference (OIC),¹¹⁶ concerned with curbing phenomena of Islamophobia and intolerance towards Muslims. These phenomena were destined to worsen following the terrorist attacks of 11 September 2001, the renewed outbreak of the Intifada in the context of the Israeli-Palestinian conflict, and the military interventions in Afghanistan and Iraq, due to the widespread tendency to identify the Muslim religion with terrorism of an Islamist nature. In 2005, in the wake of tensions triggered by the controversy over cartoons of the Prophet Muhammad – published, following the July 2005 London terrorist attacks, by the Danish newspaper *Jyllands-Posten* and later republished in the French satirical weekly *Charlie Hebdo*¹¹⁷ – the issue of defamation of religions entered the agenda of the UN General Assembly, which in 2006 adopted its first resolution on the matter.¹¹⁸

Defamation of Religions, Cambridge, 2014. For a discussion focused specifically on the activity of the HRC in this field, see R. PISILLO MAZZESCHI, *Situazione della libertà religiosa nel Consiglio dei diritti umani dell'ONU*, in V. POSSENTI (ed.), *Diritti umani*, cit., p. 65 ff., p. 71 ff.

¹¹⁴ See HRC, Resolutions 4/9 of 30 March 2007; 7/19 of 27 March 2008; 10/22 of 26 March 2009; and 13/16 of 25 March 2010.

¹¹⁵ The resolutions on the “defamation of religions” – whether those adopted by the HRC, by the Commission on Human Rights, or, as will be seen, by the General Assembly – display a recurring pattern. States are called upon to prohibit the dissemination of ideas and materials inciting racial and religious hatred and violence; to put in place domestic measures providing effective protection against acts of hatred, discrimination, intimidation and coercion arising from the defamation of religions or the incitement to hatred; to adopt policies promoting tolerance and respect for all religions and beliefs; to ensure the protection of sacred places, sites and symbols, including through additional measures where risks of desecration or destruction are identified; to require that public officials – including members of law-enforcement agencies, the armed forces, civil servants and educators – respect all religions and beliefs in the exercise of their functions and refrain from religious discrimination, while also receiving appropriate training to that end; to guarantee access to education for all without discrimination of any kind; and to initiate a global dialogue aimed at fostering a culture of tolerance and peace grounded in respect for human rights and religious diversity. There are, however, certain – and not insignificant – differences. Most notably, beginning with Commission on Human Rights resolution 2001/4 of 18 April 2001, the exhortation to States “to provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from defamation of religions” no longer contained the qualifying phrase “in conformity with international human rights”, which had appeared in the first two resolutions on the subject adopted by the Commission (see, e.g., para. 4 of resolution 2000/84, cited above).

¹¹⁶ The draft resolution presented by Pakistan to the Commission on Human Rights (UN Doc. E/CN.4/1999/L.40, 20 April 1999) was primarily aimed at countering the spread of Islamophobia. Hence its title: *Defamation of Islam*. During the debate, however, the need emerged to broaden the focus of the resolution to encompass defamation directed against all religions (see in particular the interventions of the representatives of Germany and Japan, UN Doc. E/CN.4/1999/SR.61, 29 April 1999, paras 3 and 6 respectively). Consequently, a more general title was adopted: *Defamation of religions* (resolution 1999/82, cited above). In practice, however, the only religion expressly mentioned in the text was Islam.

¹¹⁷ On these developments, see, *inter alia*, A. SARI, *The Danish Cartoon Row: Re-drawing the Limits of the Right to Freedom of Expression?*, in *Finnish Yearbook of International Law*, 2005, p. 365 ff.

¹¹⁸ See also General Assembly resolution 60/150 of 20 January 2006. Similar resolutions were subsequently adopted by the Assembly on an annual basis until 2010: see resolutions 61/164 of 19

Over time, however, the resolutions on defamation of religions progressively lost the support of Western States¹¹⁹ and have attracted considerable criticism.¹²⁰ The criticisms focused primarily on the vagueness and lack of precision inherent in the notion, the concomitant risk of its abusive application for the exclusive benefit of State or dominant religions, and the resulting impairment of freedom of expression and of freedom of religion of minorities and non-believers – freedoms which, in certain States, are curtailed by blasphemy laws imposing extremely severe penalties, including, in some instances, the death penalty.¹²¹ The problem is compounded by the absence in these resolutions (as in earlier UN initiatives) of any clear definition of “religion” and by conceptual and legal confusion regarding the interrelationship between discrimination, racism, and religion.¹²² Accordingly, legislation ostensibly designed to safeguard the rights of the faithful may, in practice, expose them to

December 2006, 62/154 of 18 December 2007, 63/171 of 18 December 2008, 64/156 of 18 December 2009, and 65/224 of 21 December 2010.

¹¹⁹ From 2001 onwards, opposition from Western States – in particular the United States and the members of the European Union – made it impossible to maintain the consensus that had initially underpinned the adoption of the resolutions under consideration. As a result, resolutions on the “defamation of religions” began to be put to the vote and were adopted by majority. A marked decline in support was observed from 2008, when, for the first time in the HRC, the combined number of abstentions and negative votes exceeded that of votes in favour.

¹²⁰ See, among others, J. RIVERS, *The Question of Freedom of Religion or Belief and Defamation, in Religion and Human Rights*, 2007, p. 113 ff.; L.B. BENNET GRAHAM, *Defamation of Religions: The End of Pluralism?*, in *Emory International Law Review*, 2009, p. 69 ff.; R.J. DOBRAS, *Is the United Nations Endorsing Human Rights Violations?: An Analysis of the United Nations’s Combating Defamation of Religions Resolutions and Pakistan’s Blasphemy Laws*, in *Georgia Journal of International and Comparative Law*, 2009, p. 339 ff.; A.G. BELNAP, *Defamation of Religions: A Vague and Overbroad Theory that Threatens Basic Human Rights*, in *Brigham Young University Law Review*, 2010, p. 635 ff.; S. ANGELETTI, *Libertà di espressione e libertà religiosa nei documenti delle Nazioni Unite: il concetto di diffamazione delle religioni è superato?*, in *Revista general de derecho canónico y derecho eclesiástico del Estado*, 2011, p. 1 ff.; ID., *Freedom of Religion, Freedom of Expression and the United Nations: Recognizing Values and Rights in the “Defamation of Religions” Discourse*, in *Stato, Chiese e pluralismo confessionale*, 8 ottobre 2012, www.statoecheiese.it; L.A. LEO, F.D. GAER, E.K. CASSIDY, *Protecting Religions from “Defamation”: A Threat to Universal Human Rights Standards*, in *Harvard Journal of Law and Public Policy*, 2011, p. 769 ff.; C. HOLZAPFEL, *Can I Say That? How an International Blasphemy Law Pits the Freedom of Religion against the Freedom of Speech*, *ibid.*, 2014, p. 597 ff.

¹²¹ According to some scholars, the sponsoring States may have envisaged that the repeated adoption of such resolutions over time might be relied upon to support the emergence of a “new international anti-blasphemy norm”: see L.A. LEO, F.D. GAER, E.K. CASSIDY, *Protecting Religions from Defamation: A Threat to Universal Human Rights Standards*, in *Harvard Journal of Law and Public Policy*, 2011, p. 769 ff., p. 770.

¹²² Supporters of the “defamation of religions” resolutions have contended that religious defamation should be regarded as a new form of racism. The two concepts, however, are not equivalent. Racial identity is an immutable characteristic, whereas religious affiliation may evolve or change over the course of an individual’s life (see, in this regard, H. BIELEFELDT, *The Politics of International Religious Freedom: Remarks by the UN Special Rapporteur on Freedom of Religion or Belief*, in M. LUGATO (ed.), *La libertà religiosa secondo il diritto internazionale e il conflitto globale dei valori. Atti del convegno internazionale svoltosi a Roma il 20 e 21 giugno 2014*, Turin, 2015, p. 66 ff., p. 70). It must also be acknowledged that religious institutions have, at times, themselves propagated prejudices conducive to racist conduct and attitudes (see J.-F. FLAUSS, *La diffamation religieuse*, cit., pp. 280-281; S. ANGELETTI, *Libertà di espressione*, cit., p. 10 ff.).

heightened risk.¹²³ In effect, the UN's focus on combating the defamation of religions has had the adverse effect of diverting attention from abuses arising from the repression of acts or speech broadly understood to fall within that category.¹²⁴

Resolutions on the defamation of religions embody a conception of religious rights that sits uneasily with the human-centred approach which, as noted above, has underpinned the UN's understanding of freedom of religion since its inception. The defamation of religions paradigm seeks to protect religion as an abstract entity, whereas the beneficiaries of the human rights norms promoted by the Organisation are human beings as such.¹²⁵ In this regard, it has been observed that defamation of religion, far from constituting an autonomous violation of human rights, is better understood as "a form of speech about religion that justifies or supports human rights violations",¹²⁶ that is, a merely indirect and potential cause of conduct contrary to human rights. Such conduct, moreover, is arguably already covered by other norms elaborated under the auspices of the UN, including, in the ICCPR, Art. 20(2) ("[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law"),¹²⁷ as well as Art. 18 read together with Art. 2, which impose on States a duty to protect the enjoyment of freedom of religion from threats and attacks by private individuals or groups.¹²⁸

From 2011 onwards, pressure from several Western governments, coupled with mounting criticism from civil society, brought about a shift in the UN's approach to this matter. That change found expression in the adoption – pursuant to a proposal submitted by Pakistan on behalf of the Organisation of Islamic Cooperation – of HRC Resolution 16/18 of 12 April 2011 (*Combating intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence and violence against, persons based on religion or belief*). While this resolution, together with others subsequently adopted on the same subject, has continued to attract criticism, it nonetheless introduced certain improvements. In particular, the concept of defamation of religions was abandoned in favour of that of religious intolerance and discrimination, and the emphasis was refocused on protecting the individual rather than religion in itself.¹²⁹ The language employed, however, remains markedly ambiguous, and the resolutions fail to provide definitions for key terms such as

¹²³ See S. ANGELETTI, *Libertà di espressione*, cit., p. 13.

¹²⁴ J.-F. FLAUSS, *La diffamation religieuse*, cit., p. 282.

¹²⁵ See H. BIELEFELDT, *Misperceptions of Freedom of Religion or Belief*, in *Human Rights Quarterly*, 2013, p. 33 ff., p. 42. Cf. also *Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, and the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène, Further to Human Rights Council Decision 1/107 on Incitement to Racial and Religious Hatred and the Promotion of Tolerance*, UN Doc. A/HRC/2/3, 20 September 2006, para. 27.

¹²⁶ J. RIVERS, *The Question*, cit., p. 115.

¹²⁷ This is not to deny, however, that "defamation of religion" and "incitement to religious hatred" are distinct concepts: see, in this regard, J.-F. FLAUSS, *La diffamation religieuse*, cit., p. 280.

¹²⁸ See *supra*, text corresponding to note 24.

¹²⁹ See S. ANGELETTI, *Libertà di espressione*, cit., p. 14 ff.

intolerance, negative stereotyping, stigmatisation, or incitement to violence. Consequently, there remains a risk that they may be used to legitimise practices – such as the blasphemy laws in force in a number of Islamic States – that are fundamentally incompatible with human rights. Some commentators have gone so far as to argue that the support of OIC member States for these resolutions betrays “a cynical and strategic decision to continue the campaign to legitimate a ban on defamation of religion by other means”.¹³⁰

The ambiguity is accentuated by a number of contradictions that emerge when these resolutions are read alongside those on freedom of religion or belief, which, since 2011, have been adopted principally at the initiative of European Union member States. Notably, the negotiations leading to the adoption of the resolution on freedom of religion or belief and that on combating intolerance, negative stereotyping, discrimination and incitement to violence on religious grounds are conducted each year in the HRC as a single package, with the result that the adoption of one text is contingent upon the adoption of the other. This is so despite the fact that the two instruments take markedly different – indeed, in certain respects, directly conflicting – positions on a number of substantive issues.¹³¹ This lends further weight to the view that, beneath the veneer of *consensus* among UN Member States, significant divisions and disagreements persist as to the proper scope of religious rights and the means by which they should be protected.

8. The Special Rapporteur on Freedom of Religion or Belief

A Special Rapporteur on Religious Intolerance was initially created by the UN Commission on Human Rights for a one-year period.¹³² After successive renewals, in

¹³⁰ R.C. BLITT, *Defamation of Religion: Rumors of Its Death are Greatly Exaggerated*, in *Case Western Reserve Law Review*, 2011, p. 347 ff., p. 351. See also J. REHMAN, S. BERRY, *Is “Defamation of Religions” Passè? The United Nations, Organisation of Islamic Cooperation and Islamic State Practices: Lessons from Pakistan*, in *George Washington International Law Review*, 2012, p. 431 ff., noting at p. 450 that the Organisation of Islamic Cooperation “has continued to interpret resolution 16/18 and subsequent resolutions as an endorsement of the organization’s efforts to prohibit ‘defamation of religions’”.

¹³¹ See, most recently, Resolutions 58/5, cited above, on *Freedom of religion or belief*, and 58/29, cited above, on *Combating intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence and violence against, persons based on religion or belief*. It is telling that the two texts refer, respectively, to freedom of religion or belief and to freedom of expression in markedly different terms. As regards freedom of religion, only Resolution 58/5 makes explicit reference to the right to change one’s religion (see paras 1 and 9(a)), whereas Resolution 58/29 merely reproduces, in its preamble, the content of Art. 18 ICCPR. By contrast, with respect to freedom of expression, resolution 58/29 clearly seeks to downplay the weight of that right, noting again in its preamble that its exercise “carries with it special duties and responsibilities”; whereas resolution 58/5 emphasises that “freedom of religion or belief and freedom of expression are interdependent, interrelated and mutually reinforcing, and stresses the role that these rights can play in the fight against all forms of intolerance and discrimination based on religion or belief” (para. 2).

¹³² UN Commission on Human Rights, E/CN.4/RES/1986/20, 10 March 1986.

2000 the Commission, at the Rapporteur's request, changed the title of the mandate to "Special Rapporteur on Freedom of Religion or Belief", thereby extending its scope to encompass all matters relating to freedom of religion or belief.¹³³ The principal normative instruments on which the Rapporteur relies include not only the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, but also the relevant provisions on religious rights contained in other declarations and conventions adopted within the UN framework, such as Art. 18 UDHR and Art. 18 ICCPR.¹³⁴

The Special Rapporteur on Freedom of Religion or Belief is an independent expert – currently appointed by the HRC – entrusted with identifying and assessing obstacles to the enjoyment of freedom of religion, as well as formulating recommendations for their removal and for fostering dialogue between religious communities and the governments concerned. His or her activities have generated a substantial body of information on violations of freedom of religion worldwide. The Rapporteur receives communications and other information from a wide range of sources, including victims of violations, and may also conduct on-site investigations ("country visits"), although these necessarily depend on the consent or invitation of the relevant State authorities. The ability to engage in dialogue – whether remotely through allegations submitted to the mandate or directly during on-site visits – with the various social actors concerned (government representatives, victims, religious leaders, as well as civil society organisations active in the field) represents a clear advantage over the more rigid periodic reporting procedure within the HR Committee. That mechanism relies on a single channel of information, namely the reports submitted by the States parties under examination,¹³⁵ which, as already noted, tend to devote only limited attention to issues of freedom of religion.¹³⁶

Moreover, the Rapporteur's work is characterised by a significant degree of procedural informality. On the one hand, this serves as a strong incentive for victims of violations of freedom of religion or belief to resort to this monitoring mechanism. On the other, it enables the Rapporteur not to confine his or her assessment to individual cases, but also to take into account broader systemic issues underlying the alleged violations.¹³⁷ It should further be noted that, with a view to promoting an integrated and interdependent understanding of human rights, the Rapporteur undertakes a variety of joint initiatives – visits, studies, and communications – in close

¹³³ On the Special Rapporteur on Freedom of Religion or Belief, see in particular C. EVANS, *Strengthening the Role of the Special Rapporteur on Freedom of Religion or Belief*, in *Religion and Human Rights*, 2006, p. 75 ff.; and M. WIENER, *Interpretation of the 1981 Declaration through the Mandate Practice of the United Nations Special Rapporteur on Freedom of Religion or Belief*, in M. EVANS, P. PETKOFF, J. RIVERS (eds.), *The Changing Nature of Religious Rights under International Law*, Oxford, 2015, p. 51 ff.

¹³⁴ Cf. A. JAHANGIR, *Civil and Political Rights, Including the Question of Religious Intolerance. Report of the Special Rapporteur on Freedom of Religion or Belief*, E/CN.4/2006/5, 9 January 2006, para. 32.

¹³⁵ See C. EVANS, *Time for a Treaty*, cit., pp. 636-637.

¹³⁶ *Supra*, text corresponding to note 89.

¹³⁷ C. WALTER, *The Protection*, cit., p. 598.

cooperation with other UN thematic mechanisms. This form of cooperation is of particular significance in monitoring compliance with freedom of religion or belief, since religious persecution is frequently intertwined with violations of other human rights, such as torture, arbitrary detention, and restrictions on freedom of expression and association.¹³⁸

On the basis of the information collected, the Rapporteur submits annual reports to both the HRC and the General Assembly, while also transmitting communications to States deemed to be failing to comply with international norms and standards on freedom of religion. The methodology employed in the preparation of these reports and communications has changed several times over the years, partly as a result of the different professional backgrounds of successive mandate-holders.¹³⁹ Yet a clear trend has gradually emerged. The analysis conducted has become increasingly precise, so that the general observations contained in the earlier reports have, over time, been supplemented by more targeted criticisms and by recommendations often assertive in tone, addressed either to the international community as a whole or to specific States.

These reports and communications are, of course, non-binding. Nonetheless, the absence of political interference and the guarantees of impartiality afforded by the Rapporteur, together with the public nature of the acts issued, have greatly contributed to strengthening the political weight and authority of the mandate. While devoid of legal force, they may, depending on the circumstances, exercise substantial influence, functioning as a form of political persuasion and moral censure. At times, they can subject governments to intense pressure by eroding a State's standing in the eyes of domestic as well as international public opinion.¹⁴⁰

As previously noted, certain structural limitations of the thematic mechanism at issue remain unresolved. Foremost among these are the chronic scarcity of resources and the persistent lack of cooperation on the part of States – particularly those most reluctant to engage meaningfully in this domain.¹⁴¹ Under current conditions, the Special Rapporteur is able to undertake, on average, no more than two visits per year. Moreover, a number of States refuse to authorise visits to their territory,¹⁴² or fail to provide adequate and timely responses to communications addressed to them, thereby undermining the effectiveness of the mandate and diluting the preventive value that timely cooperation might otherwise secure.

¹³⁸ On the advantages of this form of cooperation, see A. JAHANGIR, *Report of the Special Rapporteur of the Commission on Human Rights on Freedom of Religion or Belief*, A/60/399, 30 September 2005, para. 10.

¹³⁹ For a detailed analysis, cf. C. EVANS, *Strengthening the Role*, cit., p. 78 ff.

¹⁴⁰ C. WALTER, *The Protection*, cit., p. 603.

¹⁴¹ This point is emphasised, among others, by C. EVANS, *Strengthening the Role*, cit., p. 79 ff.

¹⁴² As an illustration, the 2017 report of the Special Rapporteur records that, out of ten requests for country visits, only two were authorised (the Netherlands and Tunisia): see UN Doc. A/HRC/37/49, 28 February 2018, para. 3.

9. Concluding Assessment

In pursuing its purpose of promoting and encouraging respect for human rights and fundamental freedoms for all without distinction, as enshrined in Art. 1(3) of the UN Charter, the Organisation has from the very outset acknowledged the foundational character of freedom of religion. Yet, notwithstanding the apparently broad *consensus* reflected in the adoption of the instruments examined in this study, practice continues to reveal systematic violations of this right, frequently taking the form of torture, arbitrary detention, or other manifestations of serious violence. A particularly telling illustration of the gulf between the formal content of international norms on freedom of religion and their actual implementation is provided by the right to convert: while, as noted, UN instruments have been construed as encompassing the right to change one's faith within the scope of freedom of religion, in practice forced conversions and the repression of apostasy – still punished in certain States with severe penalties, including capital punishment – remain deeply entrenched across many parts of the world.

The weakness of the monitoring mechanisms established within the UN framework has undoubtedly contributed to the persistence of this state of affairs. To this must be added the practical difficulties surrounding the implementation of the relevant international instruments, difficulties often rooted in the excessive generality – or even the inherent ambiguity – of their provisions. As regards the UN system in particular, despite the considerable efforts made over the years, both the scope and the limits of freedom of religion, as well as the very definition of “religion”, remain highly contested. This is evidenced by the fact that, unlike in relation to other human rights, it has not yet been possible within the UN to reach the necessary agreement for the adoption of an international convention clearly defining the regime applicable to freedom of religion.

The prospects in this regard are far from encouraging. In the present historical context, marked by a renewed tendency to erect walls and barriers, ideological, political and religious divisions among States risk deepening still further, thereby rendering meaningful dialogue on these issues increasingly difficult. This is especially true in relation to migrants and refugees, whose religious identity often intersects with, and exacerbates, their vulnerability as non-nationals: here the shortcomings of existing monitoring mechanisms become even more apparent, as violations of freedom of religion compound broader patterns of exclusion, discrimination, and restrictions on access to fundamental rights.

ABSTRACT: This article examines how the UN has addressed freedom of religion or belief, both through the elaboration of norms and standards and by means of monitoring mechanisms. It first considers the principal legal instruments, focusing on Art. 18 UDHR, Art. 18 ICCPR and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Although the centrality of freedom of religion has long been acknowledged, no shared understanding has yet emerged as to its precise scope or the legitimate grounds for its restriction. The absence of a dedicated convention under UN auspices illustrates this lack of *consensus*. The article then turns to institutional practice, analysing the contribution of the HR Committee, the HRC and the Special Rapporteur on Freedom of Religion or Belief. It argues that, notwithstanding sustained efforts, the vagueness of existing norms and the structural weakness of monitoring procedures prevent the UN from playing a more effective role in ensuring full respect for this fundamental right.

KEYWORDS: freedom of religion or belief – United Nations – Human Rights Committee – Human Rights Council – Special Rapporteur on Freedom of Religion or Belief – migrants and freedom of religion.