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Series D: International Relations Activities. 1961-1992

Box 75, Folder 8, United Nations Educational, Scientific and Cultural Organization (UNESCO), 1983-1984.

Addendum

## THE AMERICAN JEWISH COMMITTEE

**date** September 21, 1984  
**to** IRC Steering Committee  
**from** Sidney Liskofsky  
**subject**

Several observations in the Report of the UN Secretary-General to this year's General Assembly have an indirect connection to the UNESCO question. The Report is written in the Secretary-General's usual (and necessarily) ambiguous formulations which have to maintain a balance among competing political claims and ideological orientations of the regional blocs. The style is: "A contends thus and so," B, the opposite; both are right; a way must be found to reconcile them. Occasionally, however, he takes a fairly definite stand. Though still couched in generalities, there is such a paragraph in this year's Report which has a clear bearing on the UNESCO issue as well as next year's Nairobi Women's Conference. It leans in the direction of our perspective on the issue of "politicization," without using that controversial term:

We should beware of blurring the separate and specific functions of the main organs and specialized agencies by treating them as interchangeable platforms for pursuing the same political aims. Issues must be dealt with primarily on their own merits and in their own context. Otherwise the fever of one or two issues can pervade the entire body politic of the United Nations...

This contrasts markedly from the following comment on the politicization issue in an official "question-answer" paper recently issued by UNESCO for the information of the press:

Is Unesco 'politicized'?

It was the will of its founders that UNESCO should be political. They felt that shortcomings in international co-operation in the realm of ideas had been partly responsible for the emergence of Fascism and brought about the Second World War. The Organization was thus established to build a peace 'founded... upon the intellectual and moral solidarity of mankind'.

It is political by virtue of its fields of competence: education, science, culture, information and communication are clearly not unrelated to the way societies are governed, i.e. to politics in the true sense of the word.

It is political by virtue of its Constitution, since the General Conference, UNESCO's supreme body, is made up of representatives of the governments of the Member States, who naturally use that forum to express their governments' views and concerns.

The political situation in the world is, therefore, inevitably reflected within UNESCO. Only if one considers that the problems confronting the international community have been 'politicized' since 1945 can it be said that the Organization is now more 'politicized' than when it was founded...

Lest the Secretary-General be credited with too great a leaning in our direction, another passage in his Report offers a defense of "politicization" in some instances:

Another matter frequently raised is the extent to which issues that are essentially economic and technical are politicized in the United Nations... In the present world few issues in human affairs can be regarded as completely unpolitical. Nevertheless, the extent to which economic issues are politicized in the United Nations should also be understood as a reflection of the frustrations which developing countries feel in their long attempt to reshape their economic destiny... many Governments feel that only when economic issues are politicized will they attract the attention of the highest level of decision makers...

Two thoughts: One group's human rights claim is another's politicization.

Words are meant to conceal as well as to reveal.



**THE AMERICAN JEWISH COMMITTEE**

**date** September 19, 1984  
**to** Steering Committee Members  
**from** Leo Nevas, Chair  
**subject** September 24, Meeting

Enclosed you will find background materials for our meeting on September 24. I look forward to seeing you there, and to your participation in what promises to be a most interesting discussion.



LN: RPR

Enclosures

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# The American Jewish Committee

European Office · 4, rue de la Bienfaisance, 75008 Paris · Tel. 522-9243 and 387-3839

NIVES E. FOX, European Representative

September 14, 1984

## MEMORANDUM

To: Marc Tanenbaum  
David Harris  
David Geller

From: Nives Fox

Subj: Unesco -- Followup memo September 12

Had a long session with Karel Vasak (Unesco's Legal Counsel and an old AJC friend) to see what he had to say about the situation there and compare his views with what Ambassador Shamir told me. I especially wanted to hear what he had to say on why France was being so supportive of M'Bow -- the only West European nation to do so at Unesco. I was particularly curious about this after David Harris shared with me this part of the meeting AJC had with Gregory Newell recently. As I told David, I had heard that French intellectual pro third world circles were taking this stance, but not that this was a clear and deliberate French government position.

Vasak amply confirmed Mr. Newell. As reasons he gave the obvious one of France identifying itself with Unesco because it is on its soil, gives it prestige and, last but not least, is a good source of income. But the stance is one way for France to show its sincerity about supporting the third world; and at the same time to show its independence of the US.

If one wants to go along with the conciliatory but set on improvement line the Israelis want, therefore, one must work with the other Western powers. More interesting is that, according to Vasak, it would be a serious error for Americans to try to sway France. It is Germany, he says, that is the key for direct pressure on France, because of Germany's economic power and influence and because of French dependence on it. He believes that the relations between France and Germany are much closer than it appears and stronger than those held during the previous regime.

Germany is one of the Western countries interested in redressing the situation at Unesco. Even if our friend is wrong, it certainly would be worth for AJC to consider taking this tack.

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JOHN H. STEINHART, San Francisco ■

Nobody has a sure sense here about the final US decision on Unesco. Rumors are plentiful, with so-called most reliable sources saying totally contrary things. Because of credibility as well as the rigid and contemptuous attitude taken by Mr. M'Bow, I would hope the US will not be persuaded into staying. Am convinced that only when its departure is a certainty will there really be an effort to make substantive changes; and though the forthcoming Executive Board meeting may bring some results, I'd wager that these will be more face-savers than anything else.

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More on Begun complaint: Vasak repeats that Mr. M'Bow (at his suggestion) wrote a letter to Pt. Chernenko about Begun; but received no reply. Vasak says he now has suggested that M'Bow ask the Russians to let a Unesco representative go to the Soviet Union to see about the case. Hard to say if Vasak is truthful on this or just speaking for gullible (he thinks) Jewish friends. At any rate, Vasak also claims he told the Russian member of the Committee on Conventions and Recommendations that the Soviet Union really should act to solve at least two long standing cases: that of a Mr. Maiman, an elderly man whose exit visa has been refused several times and whose case repeatedly submitted to the Committee; and Begun -- "I told him why don't you just put both onto a plane and get it over with..."

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Please read  
AMERICAN JEWISH  
ARCHIVES  
for Thursday  
Staff meeting

21  
DÉLÉGATION PERMANENTE  
D'ISRAËL  
AUPRÈS DE L'U.N.E.S.C.O.

STAFF 4  
Paris, 21 March 1984

Ref/846

Mr. Sidney Liskofsky  
Director, Division of  
International Organizations  
The American Jewish Committee

Dear Mr. Liskofsky,

It was a pleasure to meet you and I am grateful for your willingness to do something about the presence of Judaism in UNESCO.

I am sending you herewith some material which might give you some ideas in the cultural field:

- 1) A copy of the "Courier" monthly (March 1984), where you can always find a great variety of subjects concerning all of the world, except Jewish ones.
- 2) An invitation to a theatre performance here at Unesco Headquarters honouring the National Theatre of Vietnam. I don't recall any similar Jewish event.
- 3) An invitation to a concert honouring the National Choir of Bulgaria. I wonder whether Jewish music was ever enjoyed at Unesco.
- 4) An invitation to a conference about racial discrimination which generally means here apartheid. I have my doubts, if there was ever a conference on antisemitism.

These are just some off-hand examples of current events. We are always absent.

I am sure that Jewish organizations, institutes or other bodies are capable of sending articles to Unesco publications, about Jewish theatre, music, literature etc., which can contribute to the various activities of Unesco.



I have prepared a paper on the theme - Judaism and UNESCO in french. Mrs. Fox will try and find time to translate it into english. However, in the meantime, I think the above-mentioned examples may illustrate what I mean.

Sincerely yours,



AMERICAN JEWISH  
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Meir Shamir  
Minister Plenipotentiary  
Permanent Delegate of  
Israel to UNESCO

cc: Mr. N. Fox - American Jewish Committee, Paris.



# The American Jewish Committee

European Office · 4, rue de la Bienfaisance, 75008 Paris · Tel. 522-9243 and 387-3839

NIVES E. FOX, European Representative

November 4, 1983

Dear Sidney:

After a long "dry spell" all sorts of goodies arrived from AJC New York today, among them "The Right to Know....." Super!

How many can I have? I'd like to give copies to my Jewish NGOs and some non-Jewish ones, like Amnesty; to our few friends at Unesco Secretariat, members of US delegation there, why not DG M'Bow? Then of course, Daniel Mayer and his Federation people, Jewish organizations like Alliance, their Library, other communities in Europe and their documentation centers, etc.

Some of the above you may want to do directly; but whatever, I can well use 30-50 copies, also to keep some extras. Will be glad to send you full mailing list when I get the booklet, above is just a quick runoff that comes to mind as I type this, am sure to think of more as I go along.

Can you give me an idea of the kind of distribution you plan? Not a full list, but general approach, and especially in detail only those you want to send directly in Europe, so we don't double.

Let me hear, mostly get a little package out my way.

Congratulations, and warmest regards,

As ever,

cc: Marc Tanenbaum

Nives Fox

Mr. Sidney Liskofsky  
American Jewish Committee  
165 East 56 Street  
New York, N.Y. 10022



DEC 14 1983

# The American Jewish Committee

European Office · 4, rue de la Bienfaisance, 75008 Paris · Tel. 522-9243 and 387-3839

NIVES E. FOX, European Representative

December 8, 1983

## MEMORANDUM

To: Sidney Liskofsky  
 From: Nives Fox  
 Subj: Unesco and Related Miscellany

### 1. Begun Claim and Unesco Committee on Conventions and Recommendations.

The formal notification of action on the Begun complaint was sent out by Unesco this last November 19. Vasak's office very surprised about the query and would appreciate hearing whether it has, by now, reached proper destination. Please let me know.

The Committee on Conventions and Recommendations will be meeting again this coming May. Can I urge again that the additional material on Begun which you indicated is being worked on be mailed in good time -- namely way in advance of rule time -- so that Unesco cannot use lateness as an excuse for pushing off the discussion and so that I too have enough time for the usual round to ask support among the European Committee members.

The Committee membership is changing; was promised the new list and will send you a copy as soon as I have it. Meanwhile, am told that Zievs is not likely to return to Unesco. It seems that his "guardian-angel-surveillant" was one of the 47 Russians kicked out of France; that he also managed to get involved in some "womanizing" messup; and that he remains useful as vice-president of the Anti-Zionist Committee at home.

Repeating what he mentioned some time ago, our friend Vasak still firmly believes that the days of the Committee on Conventions and Recommendations are numbered. Too many member states -- and he says U.S. included -- are becoming annoyed with it. But he agrees that complaints should continue, precisely because they irritate.

### 2. Unesco General Conference.

Am sending you, under separate cover, background papers on the two major issues of Jerusalem and education in occupied territories, as well as

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a few additional reports for your delectation. Note that this is a very small selection from a pile of at least a yard and a half. Eventually, the fate of close to 400 resolutions submitted during the General Conference concerning the fat draft program and Budget 84-85 will be incorporated in another fat 'approved' edition. Suffice to say that, on the whole, Mr. M'Bow got pretty much everything he wanted: meaning that neither the communication, peoples' rights or budget offensives by the US and a number of West European states made any serious dent. The U.S. menaces but stays and pays, and continues to be outvoted or cajoled into consensus on almost everything. By now I suspect that the menaces frighten less, if not at all.

For the items of particular Jewish interest that I followed:

Interventions seemed shorter, calmer, generally less insulting. The new Israel Ambassador, Meir Shamir, kept to his plan for the maiden speech at the plenary -- conciliating, low profile: much we can do here, let us work together within a Unesco mandate for mutual worthwhile goals.

This time the Unesco mission report on education in occupied territories was less favorable than usual and, alas, on sound basis: closing of schools repeatedly and for prolonged period of time; signing of affidavits by teachers; arresting and wounding and killing Palestinian students. Israel's defense (made by the former Ambassador, Mrs. Vered) was received with considerable coolness even by the Western bloc, many of whose representatives abstained from voting the resolution with explanations that in fact supported most of the content but objected to harsh terms used in some paragraphs. In Commission, the vote was not too bad, all things considered, 55 for, 12 against 18 abstentions.

The discussion on Jerusalem was a rehash of past absurdities -- Israel keeps digging, destroys, judaizes, is guilty of cultural and historical assassination -- little of all this having to do with the Director General's summary of Prof. Lemaire's report to him. Many grateful references were made, by Arab states and East European ones, about the city's inclusion on the World Heritage in Danger list. The Jerusalem resolution was voted with 64 in favor, 14 against, 15 abstentions. Expectedly, Greece voted in favor both for this and the education resolution; the explanation of those against it or abstaining centered on the use of inflammatory language, politicization...but also included disapproval of annexation of Jerusalem.

Prof. Jean Halperin's speech for the WJC (enclosed herewith) was good: just the right length, good delivery, tone and content convincing. I heard that Jules Braunschvig's reaction to it was: Why didn't we think of it! (CCJO, WJC, B'nai B'rith can submit such projects. Can we as International League?)

A word in writing about Sussman. As I explained, we never managed to be at Unesco at the same time; repeated telephone efforts came to nought after virtually settling a meeting when he called to say he was leaving earlier than expected. I was as sorry as you

seemed to be over telephone, for had hoped for some behind the scenes bits from him now that I no longer have my friend Kriendler. Pass on anything you learn if you see him, please.

3. Lunch with Karel Vasak.

As always, interesting and fun to talk with him. I suspected and he confirmed that his days of grace at Unesco are well over and parting of the ways certain a year from now. (Among other things he is furious because his book, now in English as you know, was taken off Unesco sale shelves.) What with Steve Marks gone, sources other than Israeli at Unesco are rapidly drying up. For your information, Boisson also has left, and according to Karel there is nobody solid left for human rights work.

Cannot figure out if Karel is depressed over becoming very much persona non grata. He says he is tired of not being free to use his brain and do work he enjoys. When I told him his brainchild of peoples rights was contribution unsettling enough for him to be proud of he laughed, but came back with "at least it will make my third generation rights ideas look good."

He says he is out of the Hammer Foundation (for some time already). Not to worry, he has hatched another project: a Committee to be part of the planning of the 1989 celebrations (bicentenary of French Revolution) specifically to commemorate French Human Rights, declaration et al. He has chosen its members carefully -- impeccable professional credentials and persons that are not strongly identified with political parties. They are meeting with President Mitterrand shortly, to present their project. As you can see, Karel is still finding good tricks in his magic bag....though he also asked twice for us to keep an ear open about possibilities for him after January 1, 1985 in the field of human rights and related matters.

I told him I would inform and query my expert (you); but grabbed the chance to add that if he wanted to use his last year well he should help us introduce something decent in Unesco from the Jewish point of view: for example, anti-Semitism in the race and prejudice program, a word and concept that has not only totally disappeared, but also became taboo in the organization.

A good idea, he says, to sneak in a seminar or conference; but tough. He claims that anti-Semitism has become confused as an issue because for years now it has been considered a religious matter. (Says it is the Arab group that achieved this shunting over.) Therefore it will also be hard to take it out of the religious context, though of course he agrees that it definitely is the wrong one. Worth a try, he feels, in spite of the fact that in Unesco today nobody wants to hear, discuss or point up anti-Semitism. He faithfully promised to think about how one might make a re-entry, as it were. Perhaps a country like Holland or Denmark might be the vehicle for a plan.

As you know, it is hard to judge Karel's sincerity, but he could be very helpful if he ~~means~~ means it. So I kidded him about his always wanting to shake up and upset people; that this was sure to

do it; and that since he has never abandoned ship without making big waves, I dared him on this one. A strange, brilliant and charming man, whom one cannot help liking and yet never really trust.

Because of the last, we better try to figure out something ourselves. Enclosed are sections of the 1984-5 Program and Budget draft, the famous 22C/5 tome. Have selected for possible AJC/League action that could be considered. What do you think? I will talk it over with Meir Shamir shortly (there was no possibility to do this while the conference was on and subsequent 'recovery' time). Of course I will do it now, let you hear what he says and any other ideas he may have. The Israelis were very happy with Halperin's speech, and I am sure WJC is in touch with them as to what next. We should also expect and accept that Jewish culture and history are much more to Israeli liking than issues like anti-Semitism and racism. But can AJC/League deal with anything else?

All the very best.

cc: Marc Tanenbaum

Enclosures



Marie Tarnulbe

Déclaration du Professeur Jean Halpérin (Congrès juif mondial)  
à la Conférence générale de l'Unesco, le 8 novembre 1983

Monsieur le Président,

Si je lis bien les textes fondateurs de l'Unesco et les finalités majeures de vos programmes à moyen et à long terme, je constate qu'ils répondent à une double volonté: aider à bâtir un monde meilleur et plus juste, parce que mieux instruit et plus sage, en tirant le meilleur parti possible des apports culturels de toutes les civilisations et de leur dialogue dans ce qu'il peut avoir de plus stimulant et de constructif.

Aussi ne faut-il pas s'étonner que d'éminents penseurs juifs et le Congrès juif mondial, qui représente les communautés juives de près de 70 pays du monde répartis dans tous les continents, aient été, dès l'origine, très attentifs à l'action de l'Unesco. Je ne crois pas commettre une exagération en disant que l'éducation, la science et la culture n'ont cessé d'être les fondements mêmes de l'existence du peuple juif tout au long de son histoire. Elles se situent au coeur de la longue mémoire collective qui est la nôtre, comme aussi de notre expérience vécue, à travers toutes ses vicissitudes.

C'est dire toute l'importance que le judaïsme attache au maintien et au respect de son identité culturelle. C'est même par l'approfondissement et une conscience plus aiguë de cette identité qu'il peut le mieux contribuer à enrichir le patrimoine culturel de l'humanité.

Nous savons tous qu'à l'heure où nous sommes, malgré tant de sagesses reçues, la planète entière est en état d'immense désarroi. D'où l'urgence, non pas d'un simple retour nostalgique à des sources antiques, mais d'un effort audacieux pour repenser le monde à partir des richesses multiples et cachées qu'il recèle. Et d'abord, penser le monde comme un ensemble, une communauté de civilisations.

Le "Programme majeur de l'avenir" du deuxième Plan de l'Unesco à moyen terme (1984-1989) (Doc. 4 XC/4) insiste à juste titre sur les "rencontres des civilisations" et sur la "synthèse de l'échange incessant avec l'extérieur"

(para 11007). Il se trouve que le judaïsme n'a pas seulement apporté au monde des découvertes aussi fondamentales que celles de l'idée d'avenir, de progrès et de justice dans le respect catégorique d'autrui, mais aussi qu'il s'est trouvé en contact étroit avec les cultures, les formes de pensée et les civilisations parmi lesquelles le peuple juif a vécu. C'est dire que nous avons, sans en être parfois nous-mêmes pleinement conscients, une très longue et très riche expérience des dialogues interculturels, comme aussi des potentialités d'enrichissement mutuel qu'ils impliquent.

C'est dans le même sens que nous croyons pouvoir apporter une contribution importante à l'effort annoncé par la Déclaration de Mexico de la Conférence mondiale des politiques culturelles, dans le domaine de l'interaction des cultures et de leur fécondation mutuelle (4 XC/4, para. 11037).

Nous ne pouvons, pour notre part, que souscrire sans réserve au principe énoncé dans la Déclaration de Mexico, selon lequel "chaque peuple a le droit et le devoir de développer sa culture" et que "dans la richesse de leur variété et de leur diversité, ainsi que par les influences réciproques qu'elles exercent les unes sur les autres, toutes les civilisations font partie d'un patrimoine commun."

Dois-je insister sur notre volonté de promouvoir, nous aussi, un "renouveau de la vie culturelle basé sur l'affirmation créative d'identité et l'enrichissement mutuel des cultures?"

A dire vrai, les droits inaliénables à l'identité culturelle sont tellement essentiels que l'Unesco, moins que toute autre organisation, ne peut traiter cette question à la légère ni, en aucune manière, s'en désintéresser. Que dans un des grands Etats membres, un homme ait pu, comme cela a été le cas il y a quelques semaines seulement, être condamné à une très lourde peine de prison et d'exil, uniquement pour avoir tenté d'enseigner l'hébreu et de vivre avec les siens son souci d'identité culturelle, est, pour tous, une source grave d'inquiétude et d'interrogation.

En relisant l'admirable anthologie *Le droit d'être un homme* publiée en 1968 par l'Unesco sous la direction de Jeanne Hersch, j'ai été frappé, une fois de plus, de voir combien le souci de la dignité humaine et des droits de l'homme ~~sont~~ <sup>sont</sup> partagés, au moins dans les textes, par les civilisations



et les traditions les plus diverses. Mais j'ai constaté aussi que, parmi ces textes, la sagesse hébraïque occupe une place de choix, non seulement par son antériorité, mais aussi et surtout par sa vigueur et sa précision. Comme l'écrit un grand philosophe contemporain, Emmanuel Levinas, il y a là une "pensée précocement et inlassablement dénonçant le cruel, les excès de pouvoir et l'arbitraire." Il ajoute: "Démocratie et droits de l'homme peuvent-ils sans danger se détacher de leur profondeurs prophétiques et éthiques? La sérénité recherchée pour la paix n'est pas possible dans la simple indifférence. Elle est solidaire de cette reconnaissance de l'autre dans l'amour du prochain que les Ecritures enseignent." La pensée juive nous apprend aussi qu'il n'y a pas lieu de séparer, ni même de classer par ordre de priorité ou d'importance, ce qu'il est convenu d'appeler les droits civiques et politiques, d'une part, les droits économiques, sociaux et culturels, de l'autre. Il y a lieu à signaler à ce propos qu'un important ouvrage intitulé *Human Rights in Jewish Law*, du Juge Haïm Cohn, sera publié sous peu par le Congrès juif mondial.

Nous serions tout disposés à apporter notre concours actif à l'Unesco pour l'organisation d'un colloque sur tel ou tel aspect de la pensée juive, analogue à celui qui s'est tenu sur la vision morale et politique de l'islam au siège de l'Unesco en décembre 1982.

J'irai même plus loin: dans notre souci de promouvoir le dialogue interculturel, nous souhaitons vivement que l'Unesco prenne l'initiative de susciter un dialogue judéo-musulman ou judéo-arabe sur l'influence réciproque de ces deux civilisations à travers l'histoire. Comme dans tout dialogue authentique, chacune des deux civilisations a beaucoup apporté et beaucoup reçu. Dans la mesure où l'une des raisons d'être majeures de l'Unesco est, non pas d'accentuer les affrontements, mais bien au contraire, de tout mettre en oeuvre pour stimuler les rapprochements entre civilisations et une meilleure compréhension réciproque, il y aurait là, pour votre Organisation, une tâche exemplaire à accomplir.

Pourquoi l'Unesco ne prendrait-elle pas l'initiative de publier en langue arabe certaines oeuvres importantes de la pensée juive, classique et contemporaine?

Dans cette même perspective, le Congrès juif mondial m'a autorisé à vous soumettre une autre proposition concrète qui nous paraît répondre parfaitement à vos objectifs.

A l'occasion du 850e anniversaire de la naissance du grand philosophe et médecin, Maïmonide, qui s'est trouvé, de façon éclatante, au carrefour de la pensée juive, de la pensée grecque, de la pensée arabe et de la pensée chrétienne, à une époque qui est restée marquée dans l'histoire, à juste raison, comme un âge d'or des relations interculturelles, nous faisons appel à l'Unesco et aux gouvernements directement intéressés pour que soient organisés, au cours de l'année Maïmonide, une série de colloques, axés sur ce prototype de relations interculturelles, dans les pays où s'est déroulée la carrière de Maïmonide, à savoir: l'Espagne, le Maroc, l'Egypte et Israël.

Monsieur l'Ambassadeur d'Espagne, nous nous rappelons encore avec émotion les initiatives prises par le gouvernement républicain de votre pays qui avait su, en 1935, à l'occasion du 800e anniversaire, honorer Maïmonide et l'Espagne entière en organisant à Cordoue, à l'Hôtel de ville et dans la synagogue Maïmonide, alors rénovée, une impressionnante manifestation de caractère international, qui avait eu un vaste retentissement.

Monsieur l'Ambassadeur du Maroc, nous savons l'attachement des communautés sépharades au souvenir prestigieux de Fez et la gloire durable que l'enseignement de Maïmonide a fait rayonner sur l'ancienne capitale de votre royaume.

Monsieur l'Ambassadeur d'Egypte, nous n'oublions pas le respect avec lequel, aujourd'hui encore, dans les hauts lieux de la réflexion et de l'enseignement de votre pays, l'œuvre de Maïmonide est évoquée et étudiée.

Monsieur l'Ambassadeur d'Israël, je n'ai pas besoin de vous dire la place éminente que tout l'enseignement du Rambam, Maïmonide, n'a cessé d'occuper dans les académies, les universités et les écoles de votre pays, tant il reste l'un de nos maîtres les plus exemplaires, comme le rappelle sobrement sa sépulture à Tibériade.

La célébration internationale du 850e anniversaire de Maïmonide, en 1985, s'inscrirait admirablement dans votre programme et dans la tradition bien établie de l'Unesco de commémorer le souvenir et l'œuvre des personnalités qui ont marqué de leur empreinte l'histoire et le développement de

la culture universelle. En agissant ainsi, l'Unesco apporterait une réelle et importante contribution au dialogue des civilisations et s'acquitterait de façon significative de sa fonction conciliatrice qui fait partie de ses tâches les plus nobles.



JAN 9 1984



# The American Jewish Committee

European Office · 4, rue de la Bienfaisance, 75008 Paris · Tel. 522-9243 and 387-3839

NIVES E. FOX, European Representative

Mr. Sidney Eiskofsky  
American Jewish Committee  
165 East 56 Street, NYC

December 22, 1983

Dear Sidney:

As suspected, WJC is not likely to let the Maimonides idea out of their clutches....Am not sure I blame them, had it been ours we probably would do same.

The project has not been set out in any specific detail. It still consists of the Halperin speech and an oral proposition to hold a colloquy (or several) on the occasion of the 850th anniversary of Maimonides.

The procedure is to get the DG and top Secretariat staff to be in favor and a friendly land to propose it. So far WJC has contacted a couple of persons in the Secretariat and, among member states, Spain, France and Egypt. They hope Spain will agree to propose the colloquy, when the Executive Board meets this coming May. When that phase is reached, there may be need for a more specific proposition, though WJC is not sure that it need be in great detail, at least not until the idea is accepted in principle. The Egyptian Ambassador to Unesco was very sympathetic, but warned frankly that it would be very difficult to get any kind of consensus, for obvious reasons.

For the time being then, everything is still in approach and talk phase with those who are friendly, and countries which can claim Maimonides, as it were, like Spain, Egypt and Morocco.

When I suggested that AJC might be helpful in seeking US support the reply was as expected: we probably can do this ourselves (implication being don't you think our contacts are as good as yours?) though, one notch more polite, they used the classic will call you if we need you.

As said above, am not surprised: our relations with WJC are friendly, and always have been, but they always play their cards very close, giving away nothing unless inevitable or not worth much.

Warmest regards,

cc: Marc Tanenbaum ✓

Nives Fox

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Nancy A. Risser  
39 Jane Street 3 C  
New York, New York 10014

September 23, 1984

Dr Marc Tanenbaum  
45 E. 89th Street  
Apt 18F

Dear Marc:

Enclosed are some selected materials regarding UNESCO. The xerox places are closed today so I would appreciate having some of the items back before the end of the week. You are welcome to make copies of those materials if you wish--they are clipped together and include the Freedom House publication and the letter to Elliot Abrams.

In an earlier context, Len Sussman gave me permission to share his letter to Abrams, thus I am not giving you something sent to me for confidential use. However, I would rather you use it for your information only and not make it available to others. It does however give some additional insight into how the UNESCO matter has been handled.

Please give me a call if I can provide additional information or answer questions. I found our phone conversation yesterday and your comments helpful and am very happy to know of the AJC's concern; obviously I hope they will conclude that the idea of a postponement of the decision is something they can support.

Best regards,

*Nancy*

# COPY

# Freedom House

20 West 40th Street  
New York, New York 10018  
212/730-7744  
Telex: 429439 - Freedom

Freedom's Advocate the World Over

August 10, 1984

PERSONAL

Mr. Elliott Abrams  
Assistant Secretary for  
Human Rights and Humanitarian Affairs  
Department of State  
2201 C Street, N.W. - Room 7802  
Washington, D.C. 20520

Dear Elliott:

Your Op-Ed piece in today's Times on the myopic view of Turkey reflected by human rights organizations is excellent. I shall ask someone here to write the Times supporting your position. I'm sure you will be answered quite differently by several others.

This gives me another opportunity to add, personally, to my brief letter yesterday concerning the UNESCO question. I sent you the full text of the Commission's statement, but I did not spell out the reasons for my taking a hard swipe at Newell.

You should know that in the wake of his self-righteous demeanor for seven months he has left a trail of misstatements, innuendo and downright untruths that directly charge several of us and our organizations with venality, duplicity and other unpleasantness not at all related to the substance of the arguments.

Yet Newell, from the beginning of his term at IO, has acted deviously with regard to UNESCO policy and the U.S. National Commission for UNESCO. He avoided discussing the basic issues frontally. Instead, he participated in cutting off all funds to the Commission, dispersing its staff, undercutting efforts of the Commissioners to understand the U.S. position, and interdicted communications from UNESCO that normally go to national commissions. Is it any wonder that most of the delegates from the 60 national organizations, and others, reacted to Newell's highhanded treatment of the issue and their interest in it?

Newell repeatedly charges in public meetings that the 41-8 vote of the Commission against withdrawal (vote taken before the decision was announced) was completed "when half the members had left the room." There are 97 members, many of whom must come long distances. Since Commission funds had been cut off

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*Executive Director*

- \*Executive Committee

and the staff dispersed, interest in the Commission was difficult to maintain. Yet more than half the members attended and voted. A follow-up mail vote brought the tally to 57 to 17 against withdrawal. And, remember, half of the Commissioners are Reagan Administration appointees. Newell's implying that the Commission used the old communist tactic of calling a vote after the opposition leaves, is well below the level of discourse one expects from an Assistant Secretary of State.

You apparently expressed to Carl your annoyance that the debate had taken this turn: Yet we had simply responded to Newell's distortion of the issues, and the personal charges he made against us and our organizations.

The last straw came last week when Newell addressed the annual meeting of the American Bar Association in Chicago. He said I had testified in favor of UNESCO but that Freedom House had not taken that position. In organizational terms, that is a serious charge. My testimony is not only on the House record, I have published the full text in our own magazine, Freedom at Issue. I enclose a copy. My testimony lead off with the full texts of the official positions of Freedom House on the UNESCO question. Before the Administration's decision was made public our Executive Committee unanimously voted to urge the President not to withdraw. After the decision was announced, we urged Secretary Shultz to use the interim period to exert strong U.S. leadership at UNESCO in order to make possible the President's own commitment to reconsider withdrawal. I have never---nor has anyone else at Freedom House---moved from that position. In fact, the Commission itself has taken the same position. Neither has called for reversing the letter of withdrawal at this time.

My personal view is that the time will come when an alternative to the present position will be the wiser course. I believe there should---and will---be substantial reform set in motion at the September-October Board meeting of UNESCO. If that is not the case, there will be no ground for an alternative position. That alternative, in my personal view, should be to extend the withdrawal letter another year---not to rescind it. That's a reasonable approach, and the only one that will satisfy Western Europeans, not to mention the moderate Third World with whom we must have good relations. Can you imagine the response of the Allies and the Third World moderates if substantial reforms are made at UNESCO, and we still insist on pulling out this December?

Who would gain? Not the U.S. Only the USSR! I spent a week at UNESCO/Paris last month at the communications consultation. I sat beside the Soviet representative all that time and watched his carefully programmed reactions. It was clear that in his dealing with the other Bloc people, and with the Third World persons, he was playing a very clever game: He would oppose what I was saying as far as he could without antagonizing the others in the room, and then he would back down. Clearly, the Soviets want us out, but they do not want to be seen greasing our way out. I assume the Soviets have intelligence people at UNESCO as everywhere in the UN system and in 50% of their "journalist" corps. But what about our intelligence at UNESCO? I would hope we have at least the same initiative to be present in an open forum. Should we amputate our own capability?

To get back to Newell: he told the ABA those who do not support his position should be discounted because they are "users" of UNESCO. That carries a despicable implication. It suggests that we are paid off, venal, and therefore support a position for money's sake. The biggest "user" of UNESCO's programs is the U.S. government. The U.S. Navy is a major user. So are the science and education agencies. Interestingly, Freedom House has never been a user. For nearly a decade, we have been a critic of UNESCO. A very lone and persistent one. Before Newell guessed that opposing UNESCO would catapult him to celebrity status, Freedom House had taken on the organization single-handed. It was we who alerted the U.S. press to the communications issues; and we who stayed with it when no one else cared. And the communications issue paved the way for U.S. press acceptance of the present U.S. policy.

I have met the other agencies who are sharing the Commission's position: the League of Women Voters, the National Academy of Sciences, National Council of Negro Women, American Newspaper Publishers Association, and many others. Are they on the take from UNESCO, as Newell implies?

Equally participating in our New York press conference was Edmund P. Hennelly, general manager of Mobil Oil Corp., and President Reagan's ambassador to last year's General Conference at UNESCO. Hennelly went to Paris just about convinced we should pull out of UNESCO. He worked hard and effectively for seven weeks (I watched as a member of that U.S. delegation). He came back strongly advising Newell not to pull out; we had shown there could be significant movement in our direction. Newell discounted that, said it was a sham. He apparently felt we could not cry wolf again by continuing to threaten but not pull out.

But the other side of the coin is, once we pull out we lose most leverage. You can cry that wolf only once. The vacuum will be filled by others. The Soviets, for example, are itching for that. It would take years for a president---any president---to get us back in. (The ILO experience is not a valid precedent.) The alternative, therefore, is to keep the announcement hanging over the heads of UNESCO for another year. That is not crying wolf. That would be perceived as reasonable, and allowing time for real reform. In fact, it's our only step that would preserve most in the U.S. national interest. Anything else is shooting ourselves in the foot for purely ideological reasons. And I'm convinced Greg Newell is not above doing that.

Incidentally, we are about to break a story here that will be a strong attack on one aspect of the management of the UN proper. I'll send you a copy next week when we have completed the piece.

Meanwhile, excuse this long, unsolicited account. But I believe you should know that I did not speak here on a whim. Since I was challenging the method of pursuing the present policy---and that method has become an intrinsic factor in the pursuit of that policy, and casts doubt on the credibility of that policy---the method was fair game.

I would much prefer to have it otherwise, and see an honest, earnest debate on the assets and liabilities of UNESCO---for Americans.

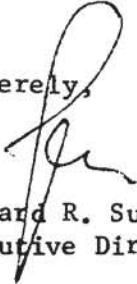


Mr. Elliott Abrams

4

With best wishes,

Sincerely,

  
Leonard R. Sussman  
Executive Director

P.S. I am sending a copy of this to Carl, and won't mind if you share it with others who may raise the same question you posed.

jm  
enclosure



ASSISTANT SECRETARY OF STATE  
WASHINGTON

November 21, 1984

Dear Mr. Nevas:

Thank you for bringing to my attention the resolution adopted by the American Jewish Committee calling on the United States to delay by one year the implementation of its decision to withdraw from UNESCO. We are looking carefully at what has happened this year, and will take into consideration everything that was done in the way of reform. Your observations in this regard are appreciated.

The recent UNESCO Executive Board dealt with reform in a number of areas, and we are still analyzing the results. As you have noted in your statement, the Board did take some positive actions, the most important of which was to recommend a zero growth budget. On the other hand, U.S. initiatives with regard to strengthening the consensus procedure and devising a new way to vote on the budget were not successful, nor were a number of more modest reform proposals which we submitted. Most importantly, it is clear that in the important areas of politicization, statist approaches, and protection of minority group interests, little reform was effected.

As you will appreciate, reform in UNESCO can be encouraged from the outside as well as from within. If we depart, UNESCO will want to encourage us to return. We assume, moreover, that our allies, should we withdraw, will continue and even step up their own pressure to encourage reform in UNESCO. We would support such efforts and would monitor their effect as we consider the possibility of a return to UNESCO should substantial and concrete reform be achieved.

Sincerely yours,



Gregory J. Newell  
International  
Organization Affairs

Mr. Leo Nevas  
Chairman  
International Relations Commission  
The American Jewish Committee  
165 East 56th Street  
New York, New York 10022

# NEWS

FROM THE

# COMMITTEE



**THE AMERICAN JEWISH COMMITTEE** Institute of Human Relations, 165 E. 56 St., New York, N.Y. 10022, (212) 751-4000

The American Jewish Committee, founded in 1906, is the pioneer human-relations agency in the United States. It protects the civil and religious rights of Jews here and abroad, and advances the cause of improved human relations for all people.

*MORTON YARMON, Director of Public Relations*

## FOR IMMEDIATE RELEASE

NEW YORK, Nov. 14...While supporting the U.S. Government's "decisive and firm position of withdrawing from UNESCO if appropriate reform is not accomplished," the American Jewish Committee has called upon President Reagan's Administration "to postpone by a year a decision to withdraw from UNESCO."

This AJC decision is based on the fact that "positive" developments took place at a recent UNESCO Executive Board meeting in Paris at which Western proposals to reverse the politicization of the body were considered. President Reagan is scheduled to review his decision to withdraw the United States from UNESCO as of January 1, 1985.

The AJC's National Executive Council made its views known in a resolution adopted recently in Chicago. It underscored that "if in another year real improvement is not apparent" in the depoliticization of UNESCO, America's "firm posture (regarding withdrawal) should be maintained and implemented."

The AJC resolution was formulated by the International Relations Commission, whose chairman is Leo Nevas of Westport, Conn., and whose director is Rabbi Marc H. Tanenbaum. The resolution was adopted unanimously by the National Executive Council, the largest policy-setting body of the American Jewish Committee.

In urging that the withdrawal decision be postponed for a year, the AJC resolution noted that President Reagan had originally announced his intention to withdraw if the "agency failed to reverse political tendencies inimical to democratic values as well as to reform its management and budgetary practices."

The resolution continued: "Currently the U.S. Government is assessing the results of the recently concluded UNESCO Executive Board meeting at which

more....

Howard I. Friedman, President; Theodore Ellenoff, Chair, Board of Governors; Alfred H. Moses, Chair, National Executive Council; Robert S. Jacobs, Chair, Board of Trustees;

David M. Gordis, Executive Vice-President

Washington Office, 2027 Massachusetts Ave., N.W., Washington, D.C. 20036 • Europe hq.: 4 Rue de la Bienfaisance, 75008 Paris, France • Israel hq.: 9 Ethiopia St., Jerusalem 95149, Israel  
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CSAE 1707

reform proposals submitted by the U.S. and several West European states were considered.

"These proposals, in addition to addressing questions of budget and management, were intended to reverse the politicization and anti-democratic direction of the agency, initiatives we wholeheartedly support. Reports of the Executive Board meeting indicate that positive developments occurred although unresolved issues remain. In light of the tentative but nonetheless generally positive results of that meeting and our traditional support for the ideals and purposes of UNESCO and for institutions of genuine international cooperation, the American Jewish Committee calls on our Government to postpone the decision on withdrawal for one year."

The text noted that during this period there will be opportunity to assess the willingness of the member states and of the Director-General to comply with the letter and spirit of UNESCO's constitution, and in particular to avoid political issues that are outside the agency's jurisdiction.

"There will also be several more occasions," the resolution stated, "to pursue proposals for reform at next year's Executive Board meeting and especially at the next biennial General Conference, UNESCO's highest policy-making body, in 1985. At that time, our Government will be in a better position to evaluate more definitively its future relationship with UNESCO."

The statement concluded: "Meanwhile we acknowledge and support our Government's decisive and firm position of withdrawing from UNESCO if appropriate reform is not accomplished. That posture should be maintained and implemented if in another year, real improvement is not apparent."

The National Executive Council, chaired by Alfred H. Moses, is composed of the AJC's Board of Governors, chapter presidents, as well as members-at-large. Some 300 NEC members took part in the UNESCO vote at the Chicago meeting.

The American Jewish Committee is this country's pioneer human relations organization. Founded in 1906, it combats bigotry, protects the civil and religious rights of people here and abroad, and advances the cause of improved human relations for all people everywhere.

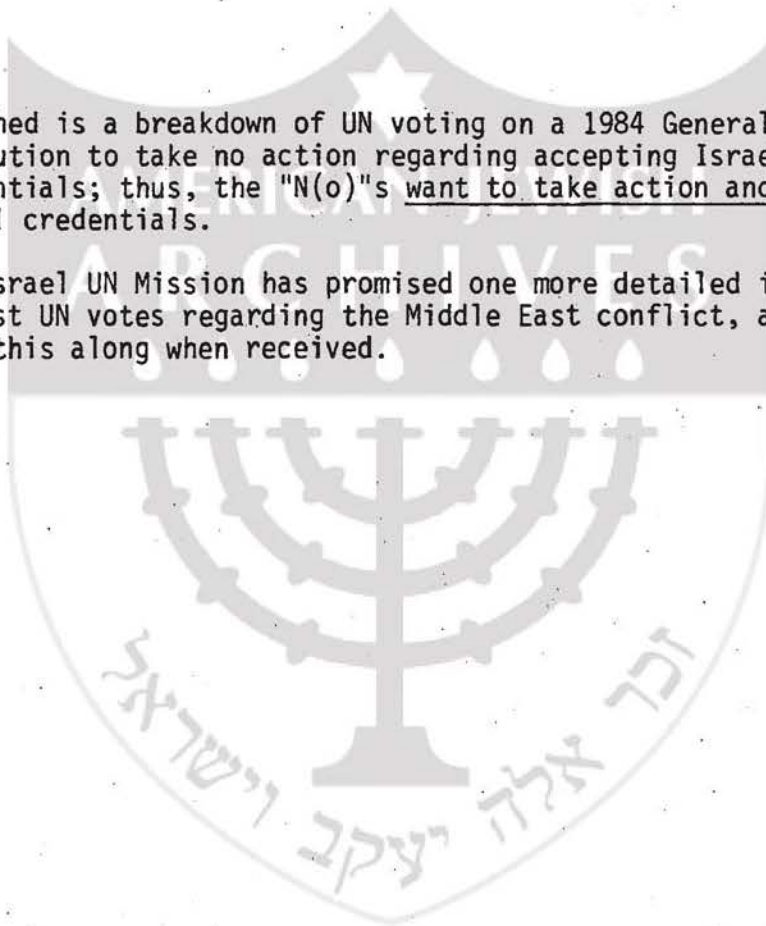
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**THE AMERICAN JEWISH COMMITTEE**

**date** November 13, 1984  
**to** International Relations Department  
**from** Allan L. Kagedan  
**subject** UN Voting on Israel

Attached is a breakdown of UN voting on a 1984 General Assembly resolution to take no action regarding accepting Israel's credentials; thus, the "N(o)"s want to take action and deny Israel credentials.

The Israel UN Mission has promised one more detailed information on past UN votes regarding the Middle East conflict, and I will pass this along when received.



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(1) (1) (1)  
 The Iranian proposal about  
 GENERAL ASSEMBLY  
 not receiving Israel's credentials  
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THIRTY-NINTH SESSION

PLENARY MEETING

MEETING NO. 32

VOTE NO. 1

ITEM NO. 3

SUBJECT: MOTION TO TAKE NO ACTION ON A/39/L.4

RECORDED VOTE  
 80 YES 41 NO 22 ABSTAIN



N	AFGHANISTAN	N	DEMOCRATIC YEMEN	N	KUWAIT	Y	SAINT VINCENT - GRENADINE
N	ALBANIA	Y	DENMARK	N	LAO P.D.R.	Y	SAMOA
N	ALGERIA	N	QATAR	N	LEBANON	Y	SAO TOME AND PRINCIPE
N	ANGOLA	Y	DOMINICA	Y	LESOTHO	A	SAUDI ARABIA
Y	ANTIGUA-BARBUDA	Y	DOMINICAN REPUBLIC	Y	LIBERIA - 10	Y	SENEGAL - 10
Y	ARGENTINA	Y	ECUADOR	N	LIBYAN ARAB JAMAHIRIYA	Y	SEYCHELLES
Y	AUSTRALIA	Y	EGYPT	Y	LUXEMBOURG	Y	SIERRA LEONE
Y	AUSTRIA	Y	EL SALVADOR	A	MADAGASCAR	Y	SINGAPORE
Y	BAHAMAS	A	EQUATORIAL GUINEA	Y	MALAWI	Y	SOLOMON ISLANDS
N	BAHRAIN	A	ETHIOPIA	Y	MALAYSIA	N	SOMALIA
N	BANGLADESH	Y	FILIPINES	N	MALDIVES	Y	SOUTH AFRICA
Y	BARBADOS	Y	FINLAND	N	MALI	Y	SPAIN
Y	BELGIUM	Y	FRANCE	N	MALTA	A	SRI LANKA
Y	BELIZE	Y	GABON	N	MAURITANIA	N	SUDAN
Y	BENIN	Y	GAMBIA	Y	MAURITIUS	Y	SURINAME
Y	BRITAIN	N	GERMAN DEMOCRATIC REP.	Y	MEXICO	Y	SWAZILAND
Y	BOLIVIA	Y	GERMANY, FEDERAL REP. OF	N	MONGOLIA	Y	SWEDEN
Y	BOTSWANA	A	GHANA	N	MOROCCO	N	SYRIAN ARAB REPUBLIC
Y	BRAZIL	Y	GREECE	A	MOZAMBIQUE	Y	THAILAND
Y	BRUNEI DARUSSALAM	Y	GRENADA	Y	NEPAL	Y	TOGO
N	BULGARIA	Y	GUATEMALA	Y	NETHERLANDS	A	TRINIDAD AND TOBAGO
N	BURKINA FASO	A	GUINEA	Y	NEW ZEALAND	N	TUNISIA
Y	BURMA	A	GUINEA-BISSAU	N	NICARAGUA	A	TURKEY
A	BURUNDI	A	GUYANA	Y	NIGER	A	UGANDA
N	BYELORUSSIAN S.S.R.	Y	HAITI	A	NIGERIA	N	UKRAINIAN S.S.R.
A	CAMEROON	Y	HONDURAS	Y	NORWAY	N	UNION OF SOVIET SOC. REP.
Y	CANADA	Y	HUNGARY	N	OMAN	N	UNITED ARAB EMIRATES
Y	CAPE VERDE	Y	ICELAND	N	PAKISTAN	Y	UNITED KINGDOM
Y	CENTRAL AFRICAN REPUBLIC	A	INDIA	Y	PANAMA	A	UNITED REPUBLIC OF TANZANIA
Y	CHAD	N	INDONESIA	Y	PAPUA NEW GUINEA	Y	UNITED STATES
Y	CHILE	N	IRAN (ISLAMIC REP. OF)	Y	PARAGUAY	Y	URUGUAY
A	CHINA	A	IRAQ	Y	PERU	Y	VANUATU
Y	COLOMBIA	Y	IRELAND	Y	PHILIPPINES	Y	VENEZUELA
N	CORUROS - 10	Y	ISRAEL	N	POLAND	N	VIET NAM
A	CONGO	Y	ITALY	Y	PORTUGAL	N	YEMEN
Y	COSTA RICA	Y	IVORY COAST	N	QATAR	Y	YUGOSLAVIA
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N	CZECHOSLOVAKIA	Y	JORDAN	Y	ST. CHRISTOPHER AND NEVIS	Y	ZIMBABWE - 10
	DEMOCRATIC KAMPUCHEA	Y	KENYA		SAINT LUCIA		

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מנ"כ א"א



המשלחת הקבועה  
של ישראל לאומות המאוחדות  
PERMANENT MISSION OF ISRAEL  
TO THE UNITED NATIONS

800 SECOND AVENUE  
NEW YORK, N.Y. 10017  
OXFORD 7-5500

18 December 1984

Mr. Robert A. Barzilai  
Letters' Editor  
The New York Times  
229 West 43rd Street  
New York, NY 10036

To the Editor:

In reference to Edmund P. Hennelly's letter appearing in the 14 December issue entitled "Let's Give UNESCO a Year to Continue Reform", I would like to note that the State of Israel is, indeed, a party to the criticism aimed at the unwarranted political nature of UNESCO's actions. UNESCO has constantly been used as a forum in which certain Arab and communist states have waged a campaign of political warfare against my country. More specifically, its political sanctions directed against Israel in 1974 were unprecedented in the international community.

Regarding Mr. Hennelly's assertion that "...Israel does not favor an American departure", I would like to clarify that the decision to withdraw from UNESCO by both the United States and Britian was an independent one. It was based on their own national considerations, which I might add, Israel fully appreciates and understands.

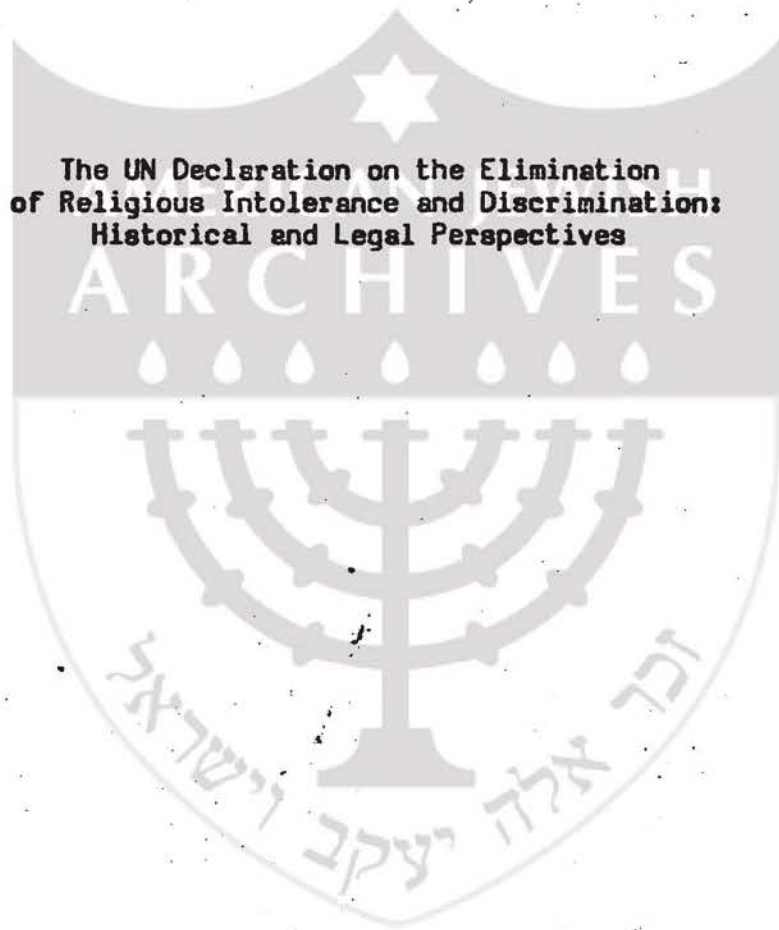
Israel welcomes every effort to stop the politicization that has unfortunately become a common feature in UNESCO's work.

I would appreciate your publishing this letter in one of your forthcoming issues.

Sincerely,

Judith Varnai-Dranger  
First Secretary (press)  
Permanent Mission of Israel  
to the United Nations

~~DRAFT~~



Sidney Liskofsky  
April, 1984

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## Introduction

On November 25, 1981, the UN General Assembly adopted a "Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief" (hereafter cited as the 1981 Declaration or simply as Declaration).<sup>1</sup> This event was the culmination of almost a quarter century of persistent efforts by a small, dedicated group of representatives of several governments, abetted and encouraged by a number nongovernmental organizations, religious and secular.

The idea of universal human rights, including freedom of religion, was assumed in the UN Charter in 1945. One of the principal purposes of the new world organization was to promote fundamental freedoms without discrimination on grounds of race, sex, language, or religion. Although the founding members could not agree to include an international bill of rights in the body of the Charter, they did begin to work on it shortly thereafter. Over the next 20 years, the UN completed a three-part international bill of rights, consisting of the Universal Declaration of Human Rights (hereafter, Universal Declaration), adopted in 1948, and two legally binding pacts: the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights, both adopted in 1966.

In 1959 the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (hereafter, Sub-Commission), with a mandate from its parent body, the Commission on Human Rights (hereafter, Commission), prepared a Study of Discrimination in Religious Rights and Practices, written by Arcot Krishnaswami, a member designated as Special Rapporteur for the project.<sup>2</sup> This study generated a proposal to formulate a special declaration and/or convention on the elimination of all forms of religious intolerance. After many postponements and decades of tortuous drafting, the declaration finally came into being.

Like most other UN pronouncements, the Declaration was the product of political compromise. Its eventual adoption by consensus is all the more remarkable in view of the diverse ideological outlooks and political difficulties that had to be reconciled or overcome. For example, the Soviet Union, opposed in principle to all forms of religion, contended that the issue of religious freedom had been raised as a cold-war maneuver. For Muslims, Islamic law held supremacy over any other religious or secular law. The Black African states, generally tolerant in religious matters, but deeply concerned with colonial, racial and economic issues, were not convinced that a special declaration on religion was of primary importance.

Its adoption resulted from a fortuitous convergence of favorable circumstances. The personal commitment of the Senegalese chairman of the Human Rights Commission's working group, and of several dedicated

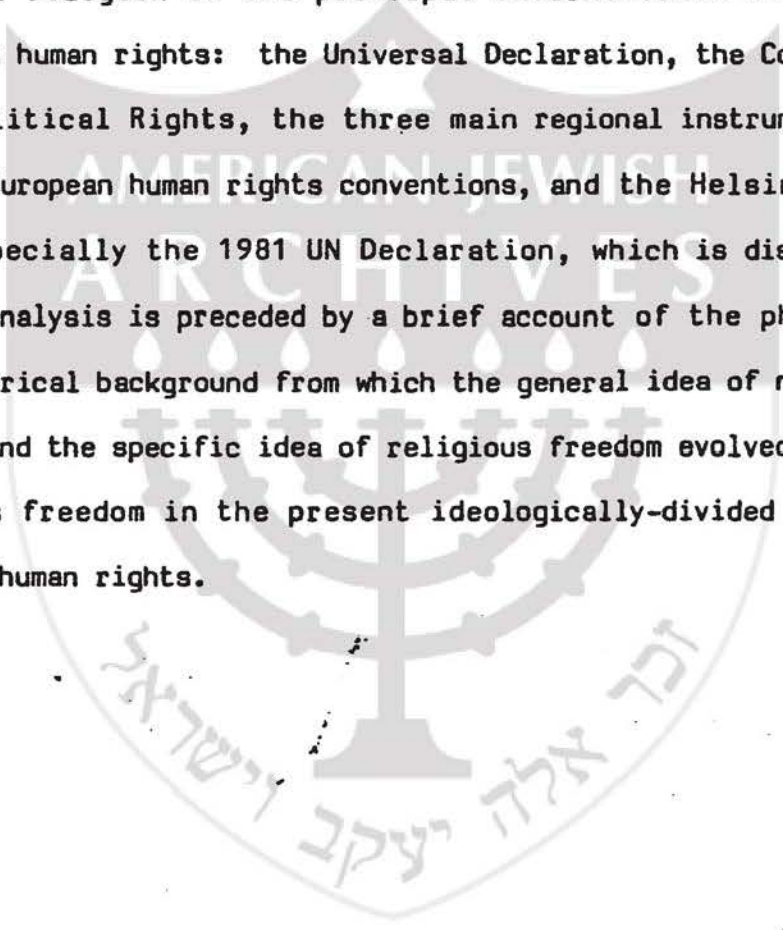
Western representatives, was an important factor as was the vigorous support by nongovernmental organizations. Inadequate coordination among the opponents, especially the Communist and Muslim blocs, which for separate and opposite reasons did not want the Declaration is probably part of the explanation.

The Declaration is a moral and political document rather than a legally binding instrument. Though flawed in some respects by exceptions, generalities and omissions, it helps clarify and reinforce principles in the binding instruments, particularly the Covenant on Civil and Political Rights. Like other UN human rights declarations it does not provide for implementation, although it can be cited in proceedings under the Covenant on Civil and Political Rights, as well as other international proceedings. Again, like other declarations, it required separate decisions to initiate follow-up activity. In focusing on the specific issue of religious freedom it made it easier to create special UN programs and to encourage citizen activities in this area.

Whether the Declaration's potential will be realized depends largely on what the UN and other intergovernmental bodies do to promote it and, above all, on the zeal with which governments, and religious and other nongovernmental organizations, including academic institutions, advocate it and teach about it. In the UN, some steps have already been initiated: to translate it into all the official languages and dissemi-

nate it widely and to conduct a comprehensive worldwide study of current dimensions of religious intolerance and discrimination and a seminar under the UN's human rights advisory services.

This study provides an analytic overview of the provisions pertaining to religion in the principal international instruments concerned with human rights: the Universal Declaration, the Covenant on Civil and Political Rights, the three main regional instruments (the American and European human rights conventions, and the Helsinki Final Act), and especially the 1981 UN Declaration, which is discussed in detail. The analysis is preceded by a brief account of the philosophical and historical background from which the general idea of natural-or human-rights and the specific idea of religious freedom evolved, and the place of this freedom in the present ideologically-divided system of international human rights.



## PART I

### 1. The Idea of Universal Human Rights

#### Pre-20th-Century Precedents<sup>1</sup>

The idea that the individual has inherent or inalienable rights reaches back to Greek and other ancient mythologies, which held, in essence, that justice and moral values are part of the natural order. The Judeo-Christian religious tradition holds that moral law is divinely inspired. This belief, that nature, God, or both, are the source of morality and law, was central to the development of the doctrine of natural law in Thomas Aquinas and other medieval scholastics. In the early modern period, it was expressed in the idea of natural rights, which later became interchangeable with human rights.

During the 17th and 18th centuries, when philosophers of the Enlightenment in England and France explained natural rights, they stressed the individual's freedom from encroachment by the state. John Locke, for example, argued that before entering organized society the individual possessed natural rights, which he did not relinquish under the original "social contract." Grotius, Hobbes and other philosophers adhered to other versions of the social contract, but it was Locke's that exerted the greater influence on the American and French revolutions and declarations of rights 200 years ago, and through them on the later important national and international human rights documents.



Natural rights are most often discussed as "negative" rights, centering on the individual's right to be "left alone," to be protected against arbitrary acts by the state. These rights, such as the right to freedom of religion, are considered to be inherent in man's nature, regardless of differing cultures, and to be suitable for adoption as universal norms. By contrast, "positive" rights may not be so deemed because they entail a role for the state in serving the material and social needs of the citizenry; and therefore the rights of individual citizens will vary according to the structures and programs instituted by government to serve these needs. But some philosophers would also consider certain basic economic necessities requiring an activist government role as natural rights, such as the right to food and shelter.

The theory of natural rights has been challenged on both philosophical and historical/cultural grounds. Its critics argue that there is no necessary connection between the purported equal biological "nature" of all human beings and any claims to equal entitlements. Individuals are, in fact, born with unequal natural attributes, and to reduce the effects of these inequalities justice may demand favored treatment for the less endowed. Citing differing moral concepts in different times and cultures, some anthropologists say it is patronizing, and that it may do real harm to impose universal standards on viable societies that function very well under their own moral systems.

Pragmatist supporters of universal human rights assert they can produce empirical evidence that human beings are better off in societies that respect the purported universal human rights than in those that do not; they observe that "God has been enrolled under all banners," and see no need for religious or metaphysical justifications.

But the theory of natural rights also has its defenders. To the cultural relativists, they cite reliable evidence that dissimilar societies have many common moral values. Some defenders insist that without a transcendent belief, persons and nations have no solid basis for a human rights ethic; indeed, they attribute today's widespread decline in personal morality, as well as domestic -- even international -- lawlessness to a growing disbelief in a "higher" source or moral guidance.

Locke and other philosophers of the Enlightenment who subscribed to the idea of natural rights profoundly influenced the United States' founding fathers, many of whom described themselves as deists. The Declaration of Independence speaks of the "laws of nature and nature's God," "self-evident" truths, and "inalienable" rights. Although the Federal Constitution did not use this language, the assumption that persons have natural rights was implicit in the Bill of Rights, in the first ten amendments annexed to the Constitution. The Declaration of the Rights of Man and the Citizen adopted by France in 1789, and annexed to its constitutions of 1793 and 1795, is based on the same assumption.<sup>2</sup>

"In the nineteenth century it became part of the law of nearly all European states...the French Constitution of 1848 recognized 'rights and duties anterior and superior to positive laws'."<sup>3</sup>

The existence of natural rights is assumed in subsequent international human rights documents, notably the Universal Declaration, adopted exactly a century later, whose preamble opens with a reference to the "equal and inalienable rights of all members of the human family." (The idea of natural rights is stated explicitly in the preamble to the American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States the same year, 1948: "...the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his personality" (par. 2). This is explained in the official Organization of American States' Handbook of Existing Rules Pertaining to Human Rights: "...the American states recognize that when the state legislates in this field, it does not create or concede rights but rather recognizes rights that existed prior to the formation of the state, rights that have their origins in the very nature of the individual.")<sup>4</sup>

The League of Nations' Covenant, the United Nations Charter and the  
Universal Declaration of Human Rights

After World War I, the victorious powers did not want to incorporate into the League of Nations' Covenant either the general idea of universal human rights, or a detailed international bill of rights, or even only the concept of religious freedom and racial equality.<sup>5</sup> However, the League did serve as guarantor of human rights protections for national and religious minorities included in Minorities Treaties imposed by the Allied Powers on the newly independent successor states of the defeated Austro-Hungarian and Turkish empires.

During World War II, influential persons and religious and civic organizations, chiefly American, urged that one of the victors' main goals be the safeguarding of human rights everywhere, and that the safeguards take the form of an international bill of rights. This goal was articulated in several historic pronouncements, notably one by U.S. President Franklin D. Roosevelt in his Annual Message to Congress in January 1941, almost a year before the country officially entered the war. The "four essential freedoms" that must be made secure, he said, are freedom of speech and expression, freedom of every person to worship God in his own way everywhere in the world, freedom from want, and freedom from fear.<sup>6</sup>

In 1945 the UN Charter became the first international agreement to incorporate the idea of universal human rights. Among the new organization's principal purposes was the encouragement of "respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (Article 1). The Charter pledged all Member States, jointly and separately, to pursue this goal (Articles 55 and 56).

Although the Soviet Union participated in formulating the Charter, the human rights purpose of the UN, indeed the very idea of a world organization, derived mainly from Western internationalist idealism. Given the ideology of the USSR, it could participate in the human rights undertaking only with fundamental reservations; it could hardly cooperate wholeheartedly if it believed that under capitalism, freedom and democracy are a lie, and that they can truly exist only in a "classless" society.<sup>7</sup>

But neither was the participation of the Western countries, the U.S. included, unqualified; nor were they altogether clear about the long-term import of the human rights undertaking. Like the Soviet Union, they were reassured by the generalities in the Charter's human rights clauses, by their limitation to "promotion" rather than "protection" of human rights and, especially, by Article 2 (7), which barred UN intervention in "matters which are essentially within the domestic jurisdiction of any state."

Norm Setting and Implementation of Human Rights by the UN

When it was adopted, the UN Charter was faulted by many people for not including an international bill of rights which would spell out the rights and freedoms it would promote. However, the process of doing so began almost at once and has continued to the present day.<sup>8</sup> The Universal Declaration was adopted in December 1948 with only the Eastern bloc and Saudi Arabia (eight members in all) abstaining in the General Assembly vote. With the addition to this document of two legally binding covenants, on civil and political rights and on economic, social and cultural rights, the goal of an international bill of rights was finally achieved in 1966.

The Universal Declaration was followed over the next three decades by conventions, declarations and other norm setting statements focused on particular rights or issues: racial discrimination, refugees, stateless persons, slavery and slave-like practices, women's and children's rights, discrimination in education and occupation, torture, treatment of prisoner, medical ethics, and others.

More recently, norm setting efforts were begun on many other subjects: the rights of the mentally ill, enforced disappearances, arbitrary and summary executions, the rights of human rights "defenders," rights during states of emergency, the rights of indigenous

peoples, ethnic, religious and linguistic minorities, genetic engineering, data protection. There have also been proposals for new categories of rights, called "solidarity" or "third generation" rights, such as the right to development and the right to peace. (The civil and political rights were called "first generation" rights, and the economic and social rights, "second generation" rights.) Proposals have been advanced for new international economic, information, cultural and humanitarian "orders."

This proliferation of new and proposed norms has added to doubts of many, already skeptical, about the utility of the UN's human rights enterprise. Apart from the lack of a shared ideological basis and religious and cultural heritage to serve as a sound foundation for it, they cite basic flaws in the accumulated jurisprudence: among others, blurred distinctions between binding and non-binding rules, gaping loopholes created by permissible limitations attached to individual freedoms, and formulations susceptible to contradictory interpretations.

Underlying recent proposals for new rights and new "orders" are ideologically motivated desires of authoritarian regimes of both left and right for legitimation of enlarged state authority over economic, information and other segments of the private sectors in their countries as well as of claims to various forms of international distributive justice.

There is also skepticism about the feasibility of international implementations, particularly in the framework of the UN, which includes so many authoritarian members that violate human rights systematically. Aside from politicized Charter-based committees created dealing specifically with South Africa, the Israeli-occupied territories, Chile and certain other Latin American countries, the UN-related human rights procedures are rudimentary and also subject to political influences. They include the procedures of general applicability based on Charter authority as well as the procedures established under the major human rights conventions adopted within the UN system (e.g., the Covenant on Civil and Political Rights and the Convention on Racial Discrimination; UNESCO and ILO conventions). But their formal rules (e.g., secrecy) and their realities (e.g., nonindependence of many of their members) are remote from adequate standards of procedural fairness.

Others, though cognizant of the shortcomings, are more optimistic. They point, for example, to the universal acceptance of the civil and political rights, even if hypocritically on "paper" by the states that violate them. The world might be darker and the future even grimmer but for the latter's endorsement of the international documents affirming these rights. Though differences remain in regard to the "second generation" economic and social rights, and especially the vaguer "third generation" rights, trends in population growth, scientific discovery, communications and other technological innovations, economic relationships, weaponry and other major transformations in the world's material,



social and political environment mandate that they not be dismissed out of hand. The Western and other democracies cannot avoid taking part in international debates over issues and proposals in these areas. They should do so with minds open to the legitimate claims of others while repulsing cynical manipulation of human rights symbols and semantics for regressive ends. Whether and in what respects the division over these proposals may be bridged is hard to foresee.

Despite limited accomplishments in matters of implementation, optimists observe, the UN procedures have contributed to some degree to the promotion and protection of human rights. Without doubt, "selective morality" (manifested among other ways in overconcentration on some countries while overlooking more egregious human rights denials elsewhere) persists, but the UN has actually extended its coverage beyond the threesome of South Africa, Israel and Chile to include problems in parts of Africa, Asia, and even Eastern Europe. This has occurred in the standing committees with general mandates as well as in the efforts of special committees, working groups, rapporteurs and representatives designated to deal with special types of problems (slavery, disappeared persons, summary executions, and so on), or to investigate situations in particular countries.

In the UN's early period, when it was Western-dominated, the emphases in its norm setting efforts was on the civil and political rights. This pattern changed in the late sixties and early seventies

with the admission of a large number of African and Asian states, which joined the Soviet bloc in sidetracking projects in these areas in favor of activities centered on colonial, racial and economic issues, with particular attention to South Africa and the Israeli territories. Thus in the late fifties, the Subcommittee on Discrimination and Minorities commissioned a series of studies on the right to leave any country and to return, political rights, religious rights, and several others. The study on religious rights was intended to spell out the right to freedom of thought, conscience and religion which had been stated in broad terms in the Universal Declaration and the Covenant on Civil and Political Rights. Follow-up of the recommendations in these studies, especially adoption of norm setting declarations and/or conventions, was stalled by the Soviet Union abetted by various African and Asian states. Twenty years elapsed before advocates of a special instrument on religious rights, chiefly the Western democracies, were able to convince the General Assembly in November 1981, to adopt the Declaration on Religious Intolerance.

## 2. The Concept of Religious Freedom: Historical and Legal Development

Arcot Krishnaswami's introduction to his 1959 study reviewed the history of the concept of freedom of thought, conscience and religion. While noting that "not frequently, horrors and excesses have been committed in the name of religion," he found in all religions "voices in favor of tolerance and religious freedom" -- from King Asoka, patron of Buddhism 2300 years ago, the Biblical Book of Leviticus, and Mohammed, to such Catholic scholars as Thomas Aquinas in the 13th century and the Jesuit Francisco Suarez in the 16th century. Historians have cited other examples, among them the Jewish Khazar kings in the Crimea from the 6th to 10th centuries, and King William the Silent of Holland in the 16th century.<sup>1</sup>

These "voices," however, did not tolerate the same things. Aquinas, for example, was relatively easy on pagans but altogether intolerant of heretics.<sup>2</sup> But it has often been observed that the most advanced and difficult level of tolerance is a group's willingness to bear with its own dissenting members.

Martin Luther's appeal to conscience in the first half of the 15th century did encompass the notion of religious pluralism.<sup>3</sup> Nor did the Treaty of Augsburg in 1555 -- and the Treaty of Westphalia in 1648, marking the end of the 30 years of religious wars in Europe, which

incorporated the Augsburg principle -- include the idea. Their solution to the religious conflicts arising from the Reformation was, "He who rules the territory determines its religion." If the ruler opted for Lutheranism, the Catholic inhabitants were to have the choice of conversion or emigration, and vice-versa.<sup>4</sup>

#### Recognition in National Law

The principle of religious freedom and equality was only gradually recognized, at first with regard to a few religions, and later, with setbacks on the way, for all religious groups. In France, Calvinists and Jews were granted equal religious freedom with Catholics only through the Revolution of 1789. The Declaration of the Rights of Man and the Citizen provided: "No person shall be molested for his opinions, even such as are religious, provided that the manifestations of opinions do not disturb the public order established by the law" (Article 10).<sup>5</sup> The Constitution adopted in 1791 assured all citizens, regardless of religion, equality before the law.<sup>6</sup> Moreover, while the Constitutional Charter of 1814, under Napoleon Bonaparte, recognized Roman Catholicism as the state religion, it extended the principle of religious freedom from France to the rest of Europe, except for Russia.<sup>7</sup> That achievement survived, in law, the return of the ancient régime in France after Napoleon's defeat, and throughout Europe in the constitu-

tions adopted after the 1830 and 1848 revolutions. Despite the 20 years of reaction that followed, religious freedom became an integral part of virtually all Western legal systems.

In England, two concurrent events in 1698 -- John Locke's famous Letter of Toleration, and the Toleration Act -- gave important impetus to the idea of religious liberty. Locke argued that:

...if solemn assemblies, observations of festivals, public worship be permitted to any one sort of professors, all these things ought to be permitted to the Presbyterians, Independents, Anabaptists, Armenians, Quakers, and others with the same liberty. Nay, if we may openly speak the truth... neither pagan nor Mohametan nor Jew ought to be excluded from the civil rights of the commonwealth because of his religion...<sup>8</sup>

The Toleration Act exempted Protestant dissenters from certain legal penalties, while maintaining the privileged status of the Church of England; only its adherents could hold public or other offices. The rights granted Protestant dissenters were extended to Roman Catholics by the Catholic Emancipation Acts of 1829 and 1832, and to Jews by the Religious Disabilities Act of 1846, although in fact Catholics and Jews were not really free and equal under law until decades later. In 1959, Krishnaswami could report that although both England and Scotland have

established churches, "no one suffers in conscience or pocket from their few remaining privileges," and "religious freedom in modern Britain is complete and a general state of legal equality between the many religious bodies is well-nigh complete also."<sup>9</sup>

North America in the colonial period was fertile soil for the idea of religious freedom notwithstanding the established religions and the restricted freedom of religious minorities in England, France and Spain, the mother countries. It is true that most colonists did not themselves really believe in religious freedom, but discriminated against Jews, as they had in the Old World, and even persecuted Catholics, Quakers and Baptists. Nevertheless, the idea gathered momentum. The theological position of most religious groups was that since God is the Lord of all, humans are obliged to depend on Him alone, whatever the state's demands. Also the colonists came from many different lands and cultures, and settled in geographically scattered communities. These influences and the fact that wide sectors of the commercial class belonged to nonconformist groups created a climate conducive to both religious dissent and indifference. Interdenominational strife, too, made mutual tolerance imperative. These factors, as well as the liberal influence of such advocates of religious freedom as Roger Williams, William Penn and others, advanced a general movement toward religious freedom in all the American colonies.<sup>10</sup>

Though the mother countries' desire to populate their colonies was the main motivation, Jewish settlers in the New World were among the beneficiaries of the movement toward religious freedom. Jews who came to America from Holland and England were granted equal rights in the 17th and 18th centuries, long before they had such rights in Europe, and colonial precedents in turn contributed to the eventual removal of legal obstacles in the mother countries.<sup>11</sup>

The example of Surinam is noteworthy in this regard. In 1665, when the island was still an English colony, a decree provided that every Hebrew resident be "considered as Englishborn," enjoy the same liberties and privileges granted to citizens and inhabitants of the colony, and be permitted: "in the most ample manner possible...to practice and perform their religion, according to their usages..."<sup>12</sup> The Plantation Act of 1740, whose declared purpose was to increase the wealth and population of the English colonies, provided for the naturalization of "Foreign Protestants and Others" already settled ~~there~~ or expecting to settle <sup>there.</sup> It specifically exempted Jews from reciting the words "upon the full faith of a Christian" in the naturalization oath, a legal obstacle to equal status that was later gradually abolished in the mother country.<sup>13</sup>

The U.S. Constitution did not even mention religion, except to prohibit a religious qualification for election to Federal office. The principles of separation of church and state and of the free exercise of

religion were added in 1791 with the enactment of the Bill of Rights, whose First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."<sup>14</sup>

In Czarist Russia, as Krishnaswami noted, the dominant Russian Orthodox Church pressed the public authorities to oppose dissenters, and in turn the authorities used Church influence to stamp out minority cultures and "to foster religious and national antagonisms...to eliminate opposition to the established régime." Five months after the February 1917 Revolution, the provisional government enacted a law guaranteeing freedom of conscience in the former Russian Empire. In January 1918, following the Bolshevik Revolution the previous October, a new decree provided for "separation of the Church from the State and the School from the Church." However, committed ideologically to atheism and to the disappearance of religion, the Soviet authorities, despite constitutional guarantees and international treaty commitments, pursued a policy of discrimination and even persecution against religious groups.<sup>15</sup>

Although there were state religions in India, such as Buddhism in the third century B.C.E. under Emperor Asoka, and Islam from the 10th to the mid-18th centuries, religious exclusion and persecution (according to Krishnaswami) were rare. And when the British made Christianity the state religion in India, they did not interfere in the religious affairs



of the indigenous population. Queen Victoria's Proclamation of 1858 proscribed religious favoritism or discrimination, and freedom in religious matters was constitutionally guaranteed in 1950, three years after India became an independent state.<sup>16</sup>

#### International Recognition of the Principles of Religious Freedom

Protection of minority religious groups (mainly Christian) by special treaty agreements, antedates guarantees of religious freedom in national law, having appeared "long before the idea of systematic protection of civil and political rights was developed." A treaty between France and Turkey in 1536 granted religious freedom to French merchants in Turkey and became a model for similar agreements (known as the "capitulations" system) later on.<sup>17</sup> The treaty of Westphalia in 1648, provided for a degree of mutual toleration between Protestant and Catholic minorities, but did not guarantee religious freedom for all other groups.<sup>18</sup> In 1773, treaties concerning the partition of Poland assured religious freedom to Catholics; and a 1774 agreement between Russia and Turkey obliged Turkey to protect the Christian religion. In 1815, the Congress of Vienna agreed that Christian religious parties would enjoy civil and political rights, and even committed the Diet of the German Confederation to look into improving the civil status of Jews. It failed, however, to follow up on the situation in the individual German states.<sup>19</sup>

The aim of the 1878 Congress of Berlin following the Russo-Turkish War was called by the Austrian Empire with British encouragement to prevent Russian domination of the Balkans. The principal participants were the Big Powers, with representatives of the Balkan countries -- Rumania, Serbia, Montenegro and Bulgaria (created by the Congress) -- allowed to attend solely to present their countries' views concerning their respective interests. Also present, but unofficially, were representatives of Jewish organizations to urge inclusion in the peace treaty under consideration guarantees of equal civil and political rights for members of all religions. The ensuing treaty conditioned recognition of the independence of the four countries on their agreeing to such guarantees. Though all four agreed, Rumania took advantage of a constitutional loophole to evade this guarantee with respect to its Jewish population.<sup>20</sup>

#### League of Nations' Covenant and Minority Rights Treaties

The Covenant of the League of Nations was concerned primarily with the achievement of international peace and security. Although the victors in World War I proclaimed worldwide democracy as their goal, the idea of universal human rights was not incorporated in the Covenant.<sup>21</sup> Nor were the allies willing to recognize religious freedom as a goal, largely because it was linked to an even less acceptable request by the Japanese, that racial equality be recognized as well. Instead, in a series of separate Minority Protection Treaties, they imposed obliga-

tions concerning religious freedom and equality only on the newly-created multinational states in Central and Eastern Europe, the Middle East and Africa.

It was not long before some of the new states protested that these obligations not only infringed on their sovereign equality (the Big Powers and other states did not assume comparable obligations), but encouraged their minorities to look to powerful neighbors for protection. This purported flaw in the minority protection system -- that is, the obligee states' injured pride over their unequal position, which gave them an excuse to evade the obligations -- later spurred American and other nongovernmental groups to work for a universally applicable system of human rights.<sup>22</sup>

With some variations, the Polish Minority Treaty of 1919 was typical of other treaties imposed on the new states. Among other things, it guaranteed to "All inhabitants of Poland...the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or morals" (Article 2 (2)); and to "All Polish nationals...the civil and political rights without distinction as to race, language or religion" (Article 7). It included specific guarantees concerning minorities' languages and religious and educational institutions (Articles 7, 8).<sup>23</sup> Treaties, or special declarations to the League of Nations, imposed comparable

commitments on Czechoslovakia, Greece, Rumania, Yugoslavia, Austria, Bulgaria, Hungary, Turkey, Estonia, Latvia, Lithuania, Finland (The Aaland Islands) and Iraq.

The only provision on religious liberty in the body of the League's Covenant concerned the Mandates system: The power responsible for administering the Central African territory, the Covenant specified, was to "guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals" (Article 22).



### 3. Nondiscrimination and Freedom in the Matter of Religion or Belief

#### The Universal Declaration of Human Rights and the Covenant on Civil and Political Rights

While the UN Charter was being drafted, Chile, Cuba, New Zealand, Norway and Panama suggested detailed provisions on the right to freedom of thought, conscience and religion. The suggestion was not adopted; but the Charter prohibited discrimination on the ground of religion, race, sex, and language (Article 1). Religious discrimination was also proscribed in subsequent human rights agreements. The Universal Declaration, adopted in December 1948, entitles everyone to all the rights specified in it, "without distinction of any kind, such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth or other status" (Article 2). The Genocide Convention, adopted in December 1948, defines this international crime as certain intentionally committed acts designed to destroy "in whole or in part, a national, ethnical, racial or religious group, as such" (Article 2) (emphasis added).

Almost identical wording as in the Universal Declaration may be found in the Covenant on Economic, Social and Cultural Rights (Part II, Article 2 (1)), and the Covenant on Civil and Political Rights (Part II, Article 2 (1)), both adopted in 1966. The UNESCO Convention Against

Discrimination in Education (Article 1), and the American and European regional human rights conventions (Articles 14 and 1, respectively), include religion among other prohibited grounds for discrimination.

The right to freedom of religion or belief was recognized in the Universal Declaration and the Covenant on Civil and Political Rights (emphasis added). In fact, the first article of the 1981 Declaration on Religious Intolerance is taken nearly unchanged from Article 18 of the Covenant, whose first paragraph corresponds, with minor differences, to Article 18 of the Universal Declaration. The latter reads:

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.

In the Covenant's Article 18 (first paragraph), however, the Universal Declaration's clause on "freedom to change religion or belief" was replaced, in deference to Muslim sensitivities, by "freedom to have or to adopt a religion or belief." This article (second paragraph) also proscribes "coercion which would impair" this freedom; subjects (third paragraph) freedom to "manifest" religion or belief "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"; and requires (last paragraph) that contracting states "have respect for the liberty of parents...to ensure the religious and moral education of their children in conformity with their own convictions." (The Universal Declaration's Article 26 (3) gives parents a "prior right to choose the kind of education that shall be given their children.")

Combining "thought" and "conscience" with "religion" in both the Universal Declaration and the Covenant, terms not defined nor even extensively discussed in the drafting, was a compromise intended, without saying so explicitly, to embrace atheists and other non-believers. According to one authority, the terms include "all possible attitudes of the individual to the world, toward society, and toward whatever determines his fate and destiny in the world, be it a divinity, a superior being, reason and rationalism, or chance." "Thought" encompasses "political and social thought," and "all morality" is included in "conscience."<sup>1</sup>

When the 1981 Declaration was being drafted, the right "to change" one's religion was one of the main divisive issues, as it had been in the past. Although the Universal Declaration had incorporated that term over Muslim opposition, a few years later the Covenant substituted "have or adopt" for "change" -- a reflection of increased Muslim state of influence. The 1981 Declaration went a step further by eliminating the word "adopt." But this modification was mainly symbolic, for it was generally agreed that the right to change is already implied in the work

"conscience," in the phrase "freedom from coercion," and in the provision (Article 8) implicitly reinstating the rights as previously defined in the Universal Declaration and Covenant.

The Covenant's Article 18 (3) permits states parties to limit such manifestations of religion or belief as "worship, observance, practice and teaching," in order to protect "public safety, order, health or morals of the fundamental rights and freedoms of others." In contrast, the Universal Declaration deals with limitations in Article 29, an omnibus provision applicable to all the freedoms it sets forth.

Both the Universal Declaration's Article 29 and the Covenant's Article 18 require that limitations be set forth in law and be "necessary." Article 29 permits limitations on individual freedom in order to protect "the rights and freedoms of others," whereas the Covenant's Article 18 requires that these "freedoms of others" be "fundamental." Article 29 permits limitations on manifestations of religion to meet the "just requirements of morality," whereas the Covenant's Article 18 stipulates that "morals" (not qualified by "just requirements") are sufficient grounds.

Article 29 permits limitations to protect "public order," whereas the Covenant's Article 18 speaks of "public safety" and "order." Neither document allows limitations of religion or belief on grounds of "national security." It is generally agreed that "public order" does



not refer to the broad, flexible notion of "national public policy" ("ordre public"), but to the prevention of "public disorder." Finally, the Universal Declaration, but not the Covenant, cites "the general welfare in a democratic society" as a permissible ground for limiting manifestations of religion or belief.<sup>2</sup>

The Covenant's Article 18 (4), which obliges states parties to respect the freedom of parents' to decide their children's religious and moral education, is weaker than Article 26 (3) in the Universal Declaration, but both, like the relevant provision in the 1981 Declaration, leave many specific applications uncertain.

Taken as a whole, Article 18 in the Covenant would give individual freedom to manifest religion or belief "great weight against the public interests asserted." This is evidenced by its inclusion (along with the right to life and the prohibitions against slavery and torture) in the Covenant's Article 4 (1, 2) on "derogations," as rights that may not be diminished even in times of public emergency.<sup>3</sup>

But although the Universal Declaration, the Covenant, and the 1981 Declaration all guarantee the right to manifest religion or belief, none requires that there be separation between church and state. As Soviet proposals to consider the establishment of religion as discriminatory in itself were rejected, all of these instruments permit the existence of state religions, provided they do not impinge on the rights of non-

established religious groups. Thus, these groups must accept the reality that established churches may enjoy certain practical advantages, but they know also that such advantages can be challenged if they significantly harm the rights of others.

### Regional Intergovernmental Arrangements

#### Organization of American States (OAS)

The 1948 Charter of the Organization of American States affirms the fundamental rights of the individual irrespective of creed, race, ✓nationality and sex. Also enacted in 1948 was the American Declaration of the Rights and Duties of Man, whose 38 articles define both the rights protected and the duties they entail.<sup>4</sup>

In 1959, the Consultation of Foreign Affairs Ministers of the OAS Member States established the Inter-American Commission on Human Rights and mandated it to prepare a draft convention on human rights and a draft statute for a regional human rights court. In 1965, the Commission was empowered to examine human rights communications and other information, from private as well as governmental sources, and to report and submit annual recommendations to the Inter-American Conference (or to the Consultation of Foreign Affairs Ministers), on steps needed to give effect to the rights in the American Declaration. The Convention was adopted a decade later, in November 1969, in San

Jose, Costa Rica, and entered into force in 1978. That year, the Commission was made a principal organ of the OAS. In 1979, the Inter-American Court formally came into being, as an "autonomous judicial institution whose purpose is the application and interpretation of the American Convention," with adjudicatory and advisory jurisdiction.

Article 3 of the American Declaration guarantees everyone "the right freely to profess a religious faith, and to manifest and practice it in public and in private." With minor differences, Article 12 of the American Convention, is patterned on the UN Covenant. Like the Universal Declaration, this Convention guarantees the right to change one's religion or belief. And the right to manifest religion or belief is subject to essentially the same permissible limitations as in the Covenant. Unlike the Universal Declaration and Covenant, "thought" is not combined with "conscience and religion" in the clause, "freedom of thought, conscience and religion." Parents "have the right to provide for the religious and moral education of their children or wards that is in accord with their convictions."

#### Council of Europe

The European Convention on Human Rights, which came into force in September 1953, three years after its adoption in Rome, is the most important of the conventions concluded under the auspices of the Council

of Europe.<sup>5</sup> Its implementing measures, including a Commission, Court and Committee of Ministers, are more advanced than under any other international human rights instrument.

The Commission is empowered to examine not only charges brought by one state against another but also complaints from individual victims of human rights violations, even against their own governments, providing the state complained against has agreed to submit to this procedure. Most Council members have so agreed.

The European Convention's antidiscrimination provision, in Article 14, includes religion among the proscribed grounds. These are identical with those in Article 2 of the Universal Declaration and the Covenant (except for adding "association with a national minority" to the prohibited grounds).

The European Convention reproduces in Article 9 (2) almost verbatim the Universal Declaration's Article 18, including the right to change religion or belief (which took over in 1950 from an early draft of the Covenant) and the freedom to manifest it "in worship, teaching, practice and observance." The freedom to manifest may be limited on grounds similar to those in the Covenant, namely, prescription by law, and necessity in a democratic society. (As noted above, the reference to a democratic society is included in the Universal Declaration but not in the Covenant.)

The right of children to education, and of parents to ensure their children's education in accordance with their religious and philosophical convictions, is not included in Article 9 of the European Convention, but it is guaranteed in Article 1 of the First Protocol to this Convention.

Helsinki Final Act (1975)

The 1975 Helsinki Final Act's Declaration on Principles Guiding Relations between the Participating States provides that these states "will respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his conscience."<sup>6</sup> In this Declaration, the section on "Human Contacts" (in the part on "Cooperation in Humanitarian and Other Fields") confirms "that religious faiths, institutions and organizations, practising within the constitutional framework of the participating states, and their representatives can, in the field of their activities, have contacts and meetings among themselves and exchange information."

Two conferences were held, one in Belgrade in 1977-1978, the second in Madrid, beginning in November 1980, to review compliance with the provisions elaborated in Helsinki. The Concluding Documents of the prolonged Madrid conference that ended in the summer of 1983 essentially

reaffirmed the principles and commitments of the Final Act, which the participating states agreed to pursue "by continuous implementation, unilaterally, bilaterally and multilaterally." Regarding religion, they reaffirmed the promise "to take the action necessary to ensure the freedom of the individual to profess and practice, alone or in community with others, religion or belief, acting within the dictates of his own conscience"; "to consult, whenever necessary, the religious faiths, institutions and organizations, which act within the constitutional framework of their respective countries"; to "favorably consider applications by religious communities of believers...to be granted the status provided for in their respective countries for religious faiths, institutions and organizations"; and to "further implement" the Final Act's relevant provisions "so that religious faiths, institutions, organizations and their representatives can, in the field of their activity, develop contacts and meetings among themselves and exchange information."

In addition to keeping alive the Helsinki process and airing specific cases and situations, the main accomplishment in human rights of the Madrid conference may have been the very decision to hold follow-up meetings, among them a meeting of experts in Ottawa, Canada, in May 1985, to discuss "respect, in their states, for human rights and fundamental freedoms, in all their aspects, as embodied in the Final Act." Questions concerning religious freedom will undoubtedly be raised

at that meeting. The Madrid conference also agreed to "consider favorably" the holding of voluntary "bilateral" round-table meetings on human rights issues.



## PART II

### 1. The UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief

As its full title indicates, the 1981 Declaration deals with both intolerance and discrimination on grounds of religion and belief.<sup>1</sup> Here the UN has followed the established practice of singling out rights previously recognized in general terms in the Universal Declaration and the Covenants on Human Rights, and dealing with them in detail and special instruments that set standards for governmental and private conduct. In the case of conventions (e.g., on racial discrimination), provision is frequently made for complaints and reporting mechanisms. With regard to declarations -- and also conventions -- UN bodies and agencies, regional, intergovernmental organizations, governments and nongovernmental organizations are encouraged to undertake supportive educational programs. Since UN declarations do not usually contain implementing provisions, such encouragement is essentially important.

#### How the Declaration Came to Be Adopted

Originally, the UN's efforts against racial and religious discrimination were linked. They were combined, for example, in the conventions on discrimination in employment and education adopted in 1958 by ILO and UNESCO, respectively. And in 1960, the Human Rights Commission, reacting to outbreaks of swastika smearing in Europe and the



U.S. the previous year adopted a resolution on "Manifestations of Anti-Semitism and Other Forms of Racial Prejudice and Religious Intolerance." Two years later, the General Assembly (Res. 1781 (17)) called on the Commission to draft separate declarations and conventions on the racial and religious issues.<sup>2</sup> The Soviet Union and other states that pressed for this move hoped thereby to delay and eventually prevent action on the religious issue altogether.

Action on the racial question was indeed swift. With the energetic support of the African states, the General Assembly adopted a declaration in November 1963, followed in December 1965 by a convention containing far-reaching substantive provisions and relatively strong implementation measures. In contrast, efforts to advance religious freedom and nondiscrimination moved exceedingly slow and all but petered out.

In 1960, the Commission's Sub-Commission on Discrimination and Minorities proposed a set of draft principles for possible incorporation into both a declaration and a legally binding convention. The drafts, based on Special Rapporteur Krishnaswami's seminal study on religious discrimination as well as on recommendations by governments and nongovernmental religious and other organizations, became a point of departure for subsequent work on this issue.

In 1962, the Assembly asked the Commission for such drafts; two years later, six articles of a declaration were ready. A draft convention, including a preamble and 13 articles, was submitted in 1965.<sup>3</sup>

The draft convention's definition of "religion or belief," which included "theistic, nontheistic and atheistic beliefs," evoked strong opposition from the Islamic states, the Catholic Church and other religious groups. The Commission worked on this draft from 1965 to 1967 and sent it to the General Assembly together with some possible implementing measures. By 1968, however, the Assembly could only -- and even then with many abstentions -- adopt a controversial preamble for the convention. No further work was done on either the convention or the declaration until 1972, when the Assembly set aside the convention to concentrate on the declaration.

As in many other areas of the UN's human rights work, international political issues, particularly in the Middle East, inevitably intruded. In 1968, for example, while the Commission was working on the draft convention, an article requiring that states institute educational and informational measures to combat prejudices, "as, for example, anti-Semitism and other manifestations which lead to religious intolerance...", became a bone of contention. The USSR and several Arab states, with Libya in the forefront, wanted an amendment referring to "nazism, Zionism and fascism" as additional examples of prejudice. This strategem was devised to block the reference to anti-Semitism by making

it conditional on the inclusion of an invidious reference to Zionism. The dispute was resolved by a compromise omitting specific examples of prejudice, including anti-Semitism. There never had been any doubt that anti-Semitism was covered by the general prohibitions in the proposed convention on religious intolerance, as in the 1965 convention on racial discrimination and in other UN instruments, but the debates were an ominous portent of things to come: In 1975, the General Assembly was to pass a resolution equating Zionism with racism.<sup>4</sup>

The Soviet Union resisted the very idea of a special instrument on religious intolerance, and many Third World members were disinclined to be involved in what they viewed as an East-West issue. So the Commission's efforts to carry out the Assembly's latest request were again stalled. By 1978 the preamble to a declaration, but not a single operative article, had been agreed on. During these bleak years, except for a few Western governments, only the nongovernmental organizations kept insisting on the need for action.

Finally, in 1979, the Commission's Western members reluctantly agreed to bypass the prevailing understanding that decisions to formulate human rights and other norm setting instruments be made only by consensus. In doing so, they prevented a filibuster that might have blocked the whole undertaking. Three operative articles put to a vote and approved were not innovative, for they were largely adaptations of earlier UN instruments. But the logjam was broken.<sup>5</sup>

Several public events provided additional impetus, among them a conference on the proposed UN Declaration, held in November 1979 under the auspices of the University of Santa Clara, a leading Catholic institution in California, and a UNESCO-sponsored consultation on religion and human rights, held the following month in Bangkok, Thailand.<sup>6</sup>

Finally, on March 10, 1981, the Human Rights Commission adopted a seven-article draft Declaration, by a vote of 33 in favor, none against and five abstentions.<sup>7</sup> That autumn, the General Assembly's Third Committee, after making a few revisions and adding an eighth article, approved the Declaration as a whole by consensus; it was adopted by the Assembly in plenary on November 25, 1981.<sup>8</sup>

#### Provisions of the Declaration

The new Declaration reaffirmed and spelled out Article 8 in both the Universal Declaration and the Covenant on Civil and Political Rights, which relates to freedom of religion and belief, including nonreligious belief. It was originally titled "Declaration on the Elimination of All Forms of Religious Intolerance," to parallel the title of the prior declaration and convention on the "Elimination of All Forms of Racial Discrimination." But, Communist delegates and several African and Asian representatives objected that this designation, by

linking the word "intolerance" only to religion and not to other beliefs, demonstrated a bias toward religion. Contending also that the term lacked juridical meaning, they wanted to limit the content of both the proposed declaration (and any parallel convention) to "discrimination." The compromise affirmed by the Assembly's Third Committee in 1968, became, "Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief."

As finally adopted, the Declaration comprises a ten-paragraph preamble and eight substantive articles on three main groups of issues: prohibition of both state-imposed and private discrimination based on religion or belief; freedom to manifest a religion or belief without unwarranted government interference, even if applied without such discrimination; and governments' commitment to adopt both legal and educational measures to eliminate intolerance and discrimination.

#### Preamble

The Preamble recalls the relevant principles in the Universal Declaration and the Covenant on Civil and Political Rights.<sup>9</sup> It "considers" that "infringement" of the right to freedom of "religion or whatever belief" has precipitated wars and great suffering, "especially where they serve as a means of foreign interference in the internal affairs of other States and amount to kindling hatred between people and nations" (emphasis added). This provision is a softened version of a

Soviet proposal, which had stated that religion "continues to serve in this manner." The modifier "whatever" was added by the Assembly to the term "belief" at the request of the Soviet Union to emphasize that belief includes atheism, which the Commission, in the face of strong Muslim and Catholic opposition, had declined to say explicitly.

The Preamble notes that for anyone professing religion or belief, it is "one of the fundamental elements in his conception of life", and should be fully respected and guaranteed. This, too, was language watered down to accommodate Soviet objections to "a fundamental element" in the original draft (emphasis added).

It is essential also, the Preamble asserts, to promote religious tolerance and ensure that religion or belief is not used for ends inconsistent with the UN Charter and the principles of the present Declaration. Finally, the Preamble expresses the conviction that religious freedom should contribute to peace, justice and friendship among peoples and to eliminating "ideologies or practices of colonialism and racial discrimination." Again the language is softened from more provocative wording advocated by the Soviet Union, which had alluded to the need to prevent exploitation of religion for political ends and to impede efforts to eliminate colonialism and racialism.

Article 1

Article 1 contains the essence of the Declaration.<sup>10</sup> After affirming the right of all persons to freedom of thought, conscience and religion, it specifies that this right includes not only the freedom "to have" a religion or belief of one's choice, but also "to manifest" it, i.e., to express it openly, "either individually or in community with others and in public or private," by means of "worship, observance, practice and teaching."

At the insistence of the Islamic states, the reference in the Universal Declaration to the right to "change," and in the Covenant the right to "adopt," a religion or belief was not carried over to this article. Article 8 (see below) was added as a compromise to placate those who opposed the deletions.

As in the Universal Declaration and Covenant, "religion or belief" is defined neither in Article 1 nor elsewhere in the Declaration (nor in the regional instruments, nor for that matter in national constitutions). The Soviet Union and other East European states repeatedly demanded that this term be defined, purportedly to protect atheists. But given the diversity of religions and beliefs, and the hornet's nest of theological, legal and political disputes any definition would open up, any attempt to define "religion or belief" would be fruitless at best. At the same time, the legislative history

of Article 18 in both the Universal Declaration and the Covenant, the prefacing of "belief" with the modifier "whatever" in the 1981 Declaration's Preamble and Article 1, and the express statement of understanding by the Commission's working group chairman (as well as the terms "thought" and "conscience") leave no doubt that "atheism" has been covered. In any case, since there was general agreement that it was covered, it seems clear that the Soviet demand for a definition was to frustrate the search for consensus on the entire Declaration.

In the main, the discussion over criteria for balancing the individual right to manifest religion or belief with the community's collective concern for "public safety, order, health or morals or the fundamental rights and freedoms of others" recapitulated arguments and understandings during debates over the Covenant's Article years earlier.

Proposals to add "national security" to these permissible limitations were not accepted. Even so, the grounds mentioned in Article 1 already offer governments the widest loopholes and have too often been cited in UN or other international forums in defense of denials of individual rights.

The article guarantees not only the absolute freedom to "have" a religion or belief, that is, to maintain it within the mind's privacy, but also the more limited freedom to "manifest" it. Yet, governments cannot limit manifestations arbitrarily; for the limits must be



"prescribed by law" and "necessary." Because the criterion of necessity is vague, only independent courts or administrative agencies operating by rules approximating due process, as well as an alert and assertive public, can be an effective counterforce to the arbitrary exercise of government authority.

Article 2

Proscribing discrimination "by any state, institution, group of persons or person on grounds of religion or other belief," covers both the public and the private spheres.<sup>11</sup> In language adapted from Article 5 of the Convention on Racial Discrimination, "intolerance and discrimination based on religion or belief" are defined to mean "any distinction, exclusion, restriction or preference based on religion or belief having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis." The article raised difficult questions of interpretation, for example, on the issues of reverse or "benign" quotas and other kinds of affirmative action.

Article 3

Essentially hortatory, Article 3 rejects religious discrimination as an affront to human dignity, a contradiction of the UN Charter, a violation of the Universal Declaration and Covenants, and an obstacle to peaceful inter-State relations.<sup>12</sup>

Article 4

Article 4 calls on states to "take effective measures to prevent and eliminate discrimination on the grounds of religion or belief...in all fields of civil, economic, political, social and cultural life."<sup>13</sup> The United Kingdom representative had proposed citing examples like those in the Convention on Racial Discrimination, pertaining to employment, the professions, citizenship, voting, public office, and so on. The proposal was rejected on Byelorussia's objection, but even so, there is no doubt that they are covered by the article.

States are required to "make all efforts to enact or rescind legislation where necessary to prohibit such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs..." Thus, they are mandated to take legislative steps ("where necessary") and educational means to counteract religious discrimination and bigotry.

Article 5

Article 5 ensures parents the right "to organize the life within the family in accordance with their religion or belief," including the child's "moral education" (Par. 1).<sup>14</sup> The child, in turn, has the right to have access to religious education in accordance with the wishes of its parents, and not to be "compelled to receive teaching against" their wishes. The "guiding principle" in this provision is the "best interests of the child" (Par. 2). But, who decides what are the "best interests" of the child -- the parents, the teacher, a psychiatrist, a state social agency? This troubling question is left unanswered.

If a child is not in the care of its parents, "due account shall be taken of their expressed wishes" (or other proof thereof) regarding religion or belief; again, "the best interests of child" is "the guiding principle."<sup>15</sup>

Article 5 stipulates also that the practices stemming from religion or belief in which the child is raised "must not be injurious to his physical or mental health or to his full development." Of these three requirements, injury to physical health would seem to be the least subjective, but in fact, the article's drafting history demonstrates that the supporters were thinking of such problems as the parents refusing to permit a medically recommended blood transfusion or other treatment for minors, in which case the parents' wishes would not

prevail. More problematic is the term "mental health" (which replaced "moral harm" in an earlier draft) and, even more, the term "full development."

The provision concerning the child's right "to have access to religious education" has been faulted because it does not say where and how; it does not mention, for example, the right to establish the religious schools that would make such instruction possible.

It is noteworthy that another international instrument, the legally binding UNESCO Convention Against Discrimination in Education (1960), does expressly recognize the right, for religious reasons, to establish "separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents." (Attendance must be optional and instruction must conform to state-approved standards for secular education [Article 2]. In addition, the Covenant on Economic, Social and Cultural Rights obliges states parties "to respect the liberty of parents...to choose for their children schools, other than those established by the public authorities" (again, with conformity to minimum state standards), and "to ensure the religious and moral education of their children in conformity with their own convictions" (Article 13 (2)).<sup>16</sup> Article 8 of the 1981 Declaration states that in case of conflict between any of its provisions and a right in the legally binding Covenants on Human Rights, the latter would prevail. Thus, the Economic and Social Covenant provision allowing

parents to send their children to be educated in a separate non-state religious school system would prevail over a contrary ruling based on any provision or omission in the Declaration.

Article 6

Article 6 enumerates nine specific freedoms, included in the right to "freedom of thought, conscience, religion or belief," which may be manifested "individually or in community with others and in public or private," subject only to the limitations already mentioned.<sup>17</sup>

The list is clearly not meant to be exhaustive and implies other freedoms, left unspecified. Although it fails to include some rights recommended by the Sub-Commission on Discrimination and by nongovernmental organizations over the past 20 years, the provision is more far-reaching than even "realists" had expected. To avoid polarization that might have jeopardized the entire undertaking, some proposals had been rejected by the Commission outright or withdrawn by their advocates.

The Soviet Union and its allies had wished to delete the list of particulars altogether, and made its customary try for language stating that the freedoms set forth in the Declaration would be exercised "in

accordance with national legislation." They were not successful. (The USSR and other East Europeans almost always propose such a "clawback" clause when human rights instruments are being drafted.)

Credit for Article 6, probably the most significant in the Declaration, belongs to Canada, the Netherlands, the United Kingdom and, to be sure, the United States which offered the initial text. These nations stood firm when other Western members of the Commission, worn down by Soviet tactics, would have accepted a truncated document.<sup>18</sup> Some of the disputed issues are indicated in the article's nine subparagraphs, which include:

-- Freedom to "worship or assemble" in connection with a religion or belief, and to establish and maintain "places" for such purposes. The original wording was the right to "places of worship or assembly," but the Soviet representative insisted that these be defined. In Communist countries, the state owns "places" outside private homes; thus the ambiguous compromise wording is less than reassuring to religion groups.

-- Freedom to "establish and maintain appropriate charitable or humanitarian institutions." The reference to "educational institutions," contained in the initial U.S. draft, is gone. The Soviet Union objected that in the USSR "only the state provided for education." Also omitted is the right to send students abroad for religious training.

-- Freedom to "make, acquire and use to an adequate extent" necessary articles and materials related to religious rites or customs. A conspicuous omission here, as a compromise with the Soviets, is the right to import such materials if they are not available locally. Such a phrase was part of the U.S. draft and had been approved by the Commission's working group. "Acquire" was substituted for "distribute and import." All the same, it is possible to argue that "acquire" implies the right to import a needed article if it is not available.

-- Freedom to write and disseminate "relevant" religious publications. There is no mention of acquiring, much less importing, such publications as Hebrew Bibles or other religious works. The modifier "relevant" was suggested by Argentina to replace "appropriate," which Byelorussia had proposed, presumably because the latter is more susceptible to arbitrary interpretation.

-- Freedom to teach a religion or belief, in "places suitable for these purposes." The right to establish private religious schools, in addition or as <sup>an</sup> alternative to state schools, is omitted, although (as indicated) it is recognized in the UNESCO Convention Against Discrimination in Education and in the Covenant on Economic, Social and Cultural Rights.

The limiting term "suitable" was inserted after Byelorussia pointed out that in some countries "public education was secular and there was no provision for religious education."

-- Freedom "to solicit and receive voluntary financial and other contributions from individuals and institutions." The term "voluntary" was inserted to meet the objections of the Soviet Union, which vigorously fought the entire provision. But its suggestion to add the qualification, "not motivated by political considerations," was turned down.

-- Freedom "to train, appoint, elect or designate by succession appropriate leaders called for by the requirements" of one's religion or belief. The clause "in adequate numbers," was deleted on Nigeria's motion from the Commission's working group draft. And the Soviet Union's proposal to add the phrase, "including leaders of atheist organizations," was rejected.

-- Freedom to observe religious days of rest, holidays and ceremonies "in accordance with the precepts of one's religion or belief." This provision is in the interest both of religious believers in antireligious countries with no religious but only secular days of rest and of adherents of minority religions in countries where only the majority religion's day of rest (Sunday or Friday) is recognized.



-- Freedom to communicate in religious matters "with individuals and communities at the national and international levels." For years, nongovernmental groups urged that the right to form and participate in the activities of local, regional and international associations or federations be recognized; but given the Soviet Union's resistance even to the present weaker provision, there was no chance to win anything more far-reaching.

With the exception of the freedoms relating to financial and other contributions, training and choosing religious leaders, and communicating on the national and international levels, to which the Soviet Union objected in principle, the others listed in Article 6 were approved in the working group by consensus.

Of several others suggested but not included in the list, some had actually appeared in the Sub-Commission's draft principles or in the Commission's draft convention, or both. Among these were the freedom to make pilgrimages to holy sites inside or outside the country; to be married or divorced according to the prescriptions of one's religion; to be buried according to religious prescriptions, and for burial sites to be protected; to be free from compulsion to participate, against one's convictions, in a religious ceremony or to take a religious oath; and to be protected against discrimination in regard to subsidies, taxation and exemptions.

Another freedom recommended, unsuccessfully, for listing in Article 6 was the right "to express the implications of one's religion or belief in public life" a principle repeatedly affirmed by the World Council of Churches and the Vatican, and by other religious bodies as well.<sup>19</sup> Although this principle was not incorporated as such in Article 6 or elsewhere in the Declaration, it is implicit. The question of religious groups' involvement, on the basis of the right to freedom of thought, conscience and religion, in the political issues of the day is likely to loom large in future polemics over the Declaration. Disapproving governments will tend to charge that this is politics disguised as religion.<sup>20</sup> Even as the General Assembly's Third Committee was about to conclude the drafting of the Declaration, the Soviet Union wanted a new article, to say: "The state shall not interfere in the internal (devotional, canonical) affairs of the church, and the church shall not interfere in the affairs of the state." The USSR also proposed that both the school and the state be separated from the church, to legitimize the prohibition of church-related schools; and it requested a provision specifying the right to criticize religion. All of these proposals were rejected.

Article 7

Article 7 calls for the enactment of national legislation to enable the individual "to avail himself...in practice" of the Declaration's freedoms.<sup>21</sup> This U.S.-sponsored article, underscoring the intent to prevent the Declaration's provisions ending up as paper promises, was also approved over Soviet objections.

Article 8

Article 8 states: "Nothing in this Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights."<sup>22</sup>

The intent of this article, proposed by the Netherlands, was to declare, through incorporation by reference, the continuing validity of the right to "change" one's religion or belief as provided in the Universal Declaration (which, according to some experts, has quasi-legal standing as customary law), and the right to adopt a religion as provided in the Covenant (which all agree is legally binding). As noted earlier, the Muslim members conditioned their agreement on the Declaration on the exclusion of these references. This concession disturbed Sweden and several other Western members. To retain their support, Article 8 was added to confirm by implication the continuing validity of

the right to "change" or "adopt" a religion, as well as relevant provisions in other international instruments that may be more liberal than those in the Declaration. The device of covering over irreconcilable differences by including provisions geared to both sides of an issue is a common practice in international documents.

Among the other proposals that were not accepted, was one by some Western nongovernmental groups for a prohibition of incitement to hatred against adherents of a religion or belief. Such a provision, prohibiting incitement to violence, discrimination and hatred, had been included in the Convention on Racial Discrimination (Article 4). But civil libertarians in the U.S. would be concerned lest governments be motivated to stifle mere critical comment concerning religious groups' practices or pronouncements on the pretext of preventing incitement to hatred.

A proposal for an article on enforcement mechanisms, such as national tribunals to adjudicate complaints of violations of religious freedom, analogous to Article 6 in the Convention on Racial Discrimination, was not approved. This provision obligated contracting states "to assure everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other state institutions against any acts of racial discrimination..."

Post-Vote "Understandings" in the General Assembly

A number of states, particularly the hostile Soviet bloc and the reluctant Islamic group, issued statements of understanding, or reservations, regarding the Declaration after it was voted in the Assembly's Third Committee.<sup>23</sup> The Soviet delegate said the document gave a "one-sided" version of freedom of conscience, but that he had not voted against it on the understanding that it protected the right not only to profess a religion, but also "to conduct atheist propaganda." (Official Soviet policy is to propagate atheism vigorously, whereas religion may only be "professed," at least in theory.) More important was the Soviet objection to the whole of Article 6, which spells out the rights embraced by the freedom to manifest religion or belief.

Other Communist representatives echoed the Soviet position. The Polish and Vietnamese delegates repeated the charge that the Declaration disregarded the rights of nonreligious persons; the East German representative asserted that the right to profess and practice one's religion "must not be used to keep citizens from fulfilling their civic duties." The Czechoslovak said the Declaration must "not be a pretext for interference in the internal affairs of countries." The Rumanian objected that Article 5, giving parents the right to determine their children's education, was inconsistent with Rumanian law.

Speaking for the Islamic group, Iraq objected to any provision inconsistent with the principles of, or legislation based on, the shariya, the Islamic law. And Syria took exception to Article 7, which requires states to reflect the Declaration's rights and freedoms "in national legislation."

In a different vein, the Swedish member emphasized that the Declaration must not lower the level of protection established by prior norm setting agreements. He had joined the consensus on the understanding that the Declaration "in no way restricted already recognized rights, including the right to change one's belief."

The fact that the African states did not actively come out in favor of the Declaration during the years of its tortuous drafting was not based, in the case of most, on principled opposition. "A key aspect of African society is the widespread religious tolerance. Virtually all African countries are characterized by religious pluralism."<sup>24</sup> The Africans remained passive because they felt the UN should concentrate its attention on racial and economic issues, and because they viewed the issue of religious freedom as but another facet of the East-West conflict. But in the final stages of the Assembly's deliberations several Black African states expressed support for the Declaration; in endorsing it, the delegates of Madagascar, Sierra Leone, Ghana, Liberia, Malawi and Uganda referred to their nations' constitutions and positive traditions in this area.

Implications for National Legal Norms and Processes

The 1981 Declaration is likely to be cited by international bodies in connection with a variety of issues. These may range from clear-cut cases of deliberate murder with the intent to destroy a religious group in whole or in part (constituting the crime of genocide), to arbitrary imprisonment, torture and other physical abuses, to interference with freedom to manifest religion or belief (in worship, observance, practice and teaching), to discrimination intended to nullify or impair the civil, political, economic and cultural rights of members of a religious group.

To come under the protection of the U.S. Constitution's First Amendment, American courts require that activities or practices motivated by conscience or nonreligious beliefs be connected by some rationale to the notion of "religion." Since the 1981 Declaration, as indicated above, clearly covers nonreligious beliefs, its protection should be applicable to individuals or groups acting from conscientiously held beliefs not connected to a deity or organized religion.

Like the Universal Declaration and the Covenant on Civil and Political Rights, the 1981 Declaration accepts the reality of a world in which many countries of diverse political and social orientations, including democracies like the United Kingdom, Ireland and Norway, as

well as Israel and most Islamic countries, maintain state religions. In contrast, separation of church and state in the United States is mandated by the First Amendment, which prohibits both "an establishment of religion" and "interference with the free exercise thereof." Since the Declaration prohibits the latter but not the former, it could not be invoked to proscribe policies simply on the ground that the "wall of separation" has been breached. Such policies include subsidizing religious schools through money grants or tax-exemptions, authorizing the recitation in state schools of prayer connected with religion, giving religious authorities exclusive jurisdiction over matrimonial matters, or enforcing Sabbath closing laws. On the other hand, if these policies were to adversely affect minority religious groups or non-believers, they could be challenged on the basis of the Declaration's antidiscrimination provisions.<sup>25</sup>

In the more extreme cases, involving the balance between the individual's religious freedoms and the state's right to limit them on the basis of the society's collective interest or moral system (e.g., rejection of human sacrifice, suttee, mutilation for acts of adultery or apostasy, and so on), the international consensus would uphold proscription. In regard to cases on which national mores diverge, consensus will be correspondingly more difficult to achieve. Such cases would be debated in terms of a reasonable balance between the individual's right to manifest and the state's authority to restrict in the collective interest of health, morals, order, and so on.

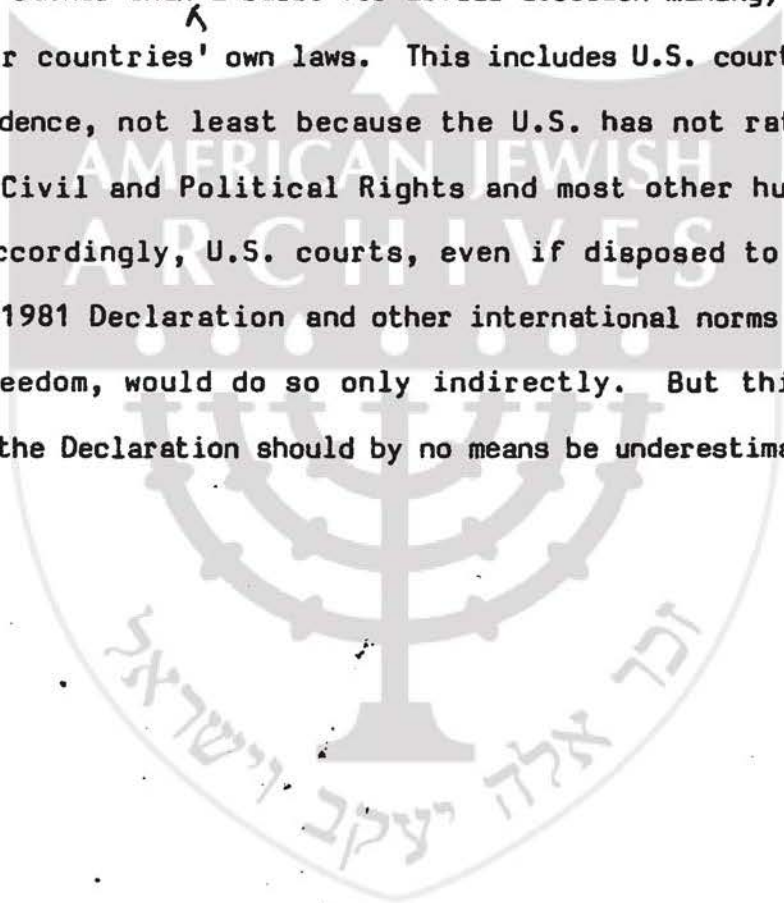


Very likely to loom high on the international agenda are disputes over a government's policy that restricts the activities of all religious groups (often some more than others). The Declaration's Article 6 identifies some of the activities they tend to restrict presently: religious groups' efforts to establish philanthropic institutions; to write and disseminate publications related to religion; to teach a religion or belief; or to communicate with coreligionists within or outside the country.

Perhaps most contentious will be the activities of religious groups intended to influence social or human rights conditions or political situations inside countries. The boundary between affairs of state and church will always be disputed, within churches as well as between church and state. Since most religions involve world views with implications for the larger national and even international society, it is all but impossible to draw the line between the religious, and the secular and political domains. That is why the proposed Soviet provision that state and church shall not interfere in each other's affairs was rejected.

In theory, the two primary sources of international law are ratified conventions and "custom, as evidence of a general practice accepted as law" (Article 38, Statute of International Court of Justice), and ratified conventions when self-executions and customs are

binding on domestic courts. Since, however, few national courts are truly independent, and even fewer take international human rights "law" seriously, whether based on convention or custom, they would hardly be disposed to base decisions on nonbinding UN declarations. Even genuinely independent national courts treat such law only as an aid in understanding rather than <sup>as</sup> a basis for actual decision-making, which they seek in their countries' own laws. This includes U.S. courts, despite their independence, not least because the U.S. has not ratified the Covenant on Civil and Political Rights and most other human rights treaties. Accordingly, U.S. courts, even if disposed to take into account the 1981 Declaration and other international norms bearing on religious freedom, would do so only indirectly. But this limited influence of the Declaration should by no means be underestimated.



## 2. UN Follow-up: Decisions and Proposals

With the adoption of the Declaration, its supporters in governments and nongovernmental organizations turned their attention to educational and promotional activities that could make it into a living document, both within and outside the UN. In fall 1982, the General Assembly asked the Secretary-General to issue the text in the UN's six official languages and "disseminate it widely as a matter of priority in as many other languages as possible." To date it has been printed in English, French and Spanish, but not in Arabic, Chinese and Russian, an omission not unrelated to resistance on the part of the countries involved. The Assembly also "invited" governments to publicize the Declaration and asked the Human Rights Commission to consider measures needed to "implement" it, a term on which the East European and certain Muslim states looked with disfavor.<sup>1</sup>

In spring 1983, the Commission, endorsing a recommendation of its Sub-Commission on Discrimination, requested a "comprehensive and thorough study of the current dimensions" of intolerance and discrimination based on religion or belief, that would use the Declaration "as terms of reference." The Secretary-General was asked to convene a seminar in 1984-1985 on "the encouragement of understanding, tolerance and respect" in matters of religion and belief. It would focus on educational programs to foster religious tolerance, taking into account

how the universal spiritual and human rights principles underlying all the major world religions have been expressed in social teachings, now and in the past, as well as the root causes of existing intolerance and discrimination.<sup>2</sup> The Commission also approved the Sub-Commission's appointment of its Costa Rican member as Special Rapporteur to produce a study of the "manifestations of intolerance and discrimination on the grounds of religion or belief in the world and on the specific rights violated, using the Declaration as a standard." Basing her study on information from governments and regional intergovernmental organizations as well as from nongovernmental organizations, she was also to identify the "root causes" of the manifestations and recommend specific remedial measures, especially in education.<sup>3</sup>

Given the complexity and sensitivity of the theological and philosophical issues involved, and the normal politics of the UN, how both the study and the seminar will tackle the issues doubtless will depend to a large extent on the participation of the nongovernmental organizations.

Nongovernmental organizations and some Western governments have offered suggestions for additional UN activities.<sup>4</sup> Among them is the idea that the General Assembly proclaim November 25, the date of the adoption of the Declaration, as annual Religious Freedom Day, to be observed throughout the world with appropriate ceremonies and programs by UN bodies and agencies, national governments, nongovernmental

organizations, churches and other institutions. Another suggestion is that the Commission or Sub-Commission set up working groups (analogous to those that monitor cases of disappeared persons or slavery) to review annually official and nongovernmental information on denials of religious freedom, and to intercede with offending governments.

Even now, notwithstanding the limitations of politicized forums, existing Commission and Sub-Commission procedures provide some opportunities to call attention to such denials as do the procedures under the Covenant on Civil and Political Rights, in UNESCO's human rights committee, and under certain other UN conventions and programs.

One suggestion is to request those states that have ratified the Covenant on Civil and Political Rights to include information on their laws and practices bearing on the questions of religious intolerance and discrimination in the compliance reports they periodically submit to the Covenant's Human Rights Committee.

Finally, it has been suggested that the Declaration be developed into a legally binding convention following the precedents set in connection with other human rights declarations. Some believe this effort should be initiated at once because of the greater force of legal over moral commitments, but others advocate that it be postponed. The latter contend that some states might try to attach many more exceptions and other escapes to a legally binding instrument than they have to the

Declaration, thus diminishing the value of both. They also fear that the long drafting process of a convention would permit elements hostile to the Declaration to argue against discussing reported denials of religious freedom until there is no agreement on the terms of the convention.



## CONCLUSION

Already more than two decades ago the General Assembly had called for both an international declaration and a legally binding convention to protect religion and belief. The convention has yet to be achieved.

Some have questioned the need for special instruments on religion on the ground that the elements of the right to protection from discrimination and to freedom in matters of religion or belief are covered, expressly or by implication, in the Universal Declaration, the Covenant and other international instruments. For example, apart from Article 18 in both the Universal Declaration and the Covenant, freedom to assemble for religious purposes is implied in the Covenant's provision on freedom of assembly, and freedom to establish charitable institutions in the provision on freedom of association. Freedom to write and disseminate religious publications and to communicate about religious matters with individuals and communities all over the world is encompassed within freedom of opinion and expression. The Covenant's Article 19 guarantees the freedom "to receive and impart information and ideas through any media regardless of frontiers." Freedom to teach a religion or belief is embraced by the right of ethnic, religious, ethnic or linguistic minorities "to enjoy their own culture, to profess and practice their own religion, or to use their own language."

However, the availability of a special declaration on religious freedom offers important benefits by the fact of its very focus on this issue; by sharpening some general principles previously agreed upon and by formulating a context for special educational and promotional programs under UN, governmental and nongovernmental auspices.

One authority has enumerated specific avenues for exercising the influence of the Covenant's Article 18. The 1981 Declaration can enhance that influence. Referring to Article 18, he explained:

"Like all rights recognized in the Covenant, the guarantees of freedom of thought, conscience and religion are interpreted by various bodies, both national and international; by governments considering adherence to the Covenant and possible reservations; in national parliaments comparing the national legal order with the requirements of the Covenant; by officials required to give effect to the Covenant; and by national courts in those states where the provisions of the Covenant are directly applicable. Increasingly they are, and will be interpreted also by states parties reporting on their compliance to the Human Rights Committee established under the Covenant, by states complaining to the Committee of violations by other states (pursuant to Art. 41), and by individuals transmitting communications to the Committee



under the Protocol to the Covenant; the Human Rights Committee will interpret the Covenant in its deliberations and reports."<sup>1</sup>

Some UN declarations as well, of course, as historic human rights documents have become standards for measuring law and practice, and have had a momentous impact on public values and events. One need only mention, among others, the Declaration of the Rights of Man and the Citizen, the U.S. Bill of Rights, Franklin Delano Roosevelt's Four Freedoms and the Universal Declaration of Human Rights.

Only time will tell the efficacy of the Declaration, and the convention if it ever materializes, in preventing religious discrimination and overcoming religious intolerance. Jeremy Bentham and more recent political theorists have been skeptical of highminded moral and political declarations. "A great abundance of words only seems to hide the poverty and falsity of ideas," Bentham observed almost two hundred years ago.<sup>2</sup> Michael Novak, a former U.S. representative to the Human Rights Commission, has observed that "if human rights consisted of words on paper, all would be well... Self-deception arises, first, from believing, naively, that mere words make human rights real. It arises, second, from believing, naively, that all countries understand the concept in similar ways" (The New York Times, October 20, 1981).

Whatever the ultimate significance of the Declaration on the Elimination of Religious Intolerance and Discrimination, it will have little impact unless religious and other national and international groups promote it energetically through innovative education and advocacy programs. If it is allowed to gather dust on library shelves, it will be nothing more than a footnote for scholars and students of history. But if it is used thoughtfully and effectively, it can be made to advance the cause of those who still must struggle to achieve their basic right to freedom of religion and conscience. By expressing the solemn aims and sentiments of the world community, the Declaration, instead of remaining a collection of "mere" words, can dramatize the contrast between the real and the ideal, expose violations of this freedom, give hope to victims, shame their oppressors -- and indeed inspire remedial action. All this can come true even if the Declaration is not soon followed by a convention, despite the reservations and the "understandings," even the hypocrisy, of some of the states that joined in adopting it.

FOOTNOTES

INTRODUCTION

1. GA Res. 55, November 25, 1981, General Assembly Official Record (hereafter GAOR), Supp. 48, A/36/48/1981.
2. Arcot Krishnaswami, Study of Discrimination in the Matter of Religious Rights and Practices, UN Doc. E/CN.4/Sub.2/200/Rev.1 (1960), UN Pub. No. 60 XIV 2; reprinted in 11 New York Journal of International Law Politics 227 (1978).

AMERICAN JEWISH  
ARCHIVES

PART I

1. THE IDEA OF UNIVERSAL HUMAN RIGHTS

1. Hersh Lauterpacht, An International Bill of the Rights of Man (New York: Columbia University Press, 1945), 16-25, 104-107; David Sidorsky, "Contemporary Reinterpretations of the Concepts of Human Rights," in Essays on Human Rights: Contemporary Issues and Jewish Perspectives, David Sidorsky et al. (Philadelphia: The Jewish Publication Society of America, 1979), pp. 88-109; Yoshikazu Sakamoto, "Human Rights Are Universal," UNESCO Courier (August-September 1982); Jack Donnelly, "Human Rights as Natural Rights,"

Human Rights Quarterly 4 (3), pp. 391-405; Adamanta Pollis, "Liberal, Socialist and Third World Perspectives of Human Rights," in Peter Schwab and Adamanta Pollis, Towards a Human Rights Framework (New York: Praeger, 1982), pp. 1-26; American Anthropological Association, "Statement on Human Rights," American Anthropologist 47 (October-December 1947): 539-43; Cornelius F. Murphy, Jr., "Objections to Western Conceptions of Human Rights," Hofstra Law Review 9, No. 2 (Winter 1981): 433-47; Henry Shue, "In the American Tradition, Rights Remain Unalienable," The Center Magazine (Publication of the Center for the Study of Democratic Institutions, 1984), pp. 6-17.

2. Walter Laqueur and Barry Rubin, eds., The Human Rights Reader (New York: New American Library (Meridan), 1979), pp. 106-109, 118-20.
3. Lauterpacht, p. 24.
4. Organization of American States, Handbook of Existing Rules Pertaining to Human Rights in the Inner-American System (updated to July 1983), General Secretariat, OAS; OEA/ser. L/V/11.60. doc. 28, rev. 1, Sept. 1, 1980, p. 8.
5. The Covenant of the League of Nations (with amendments in force, February 1, 1935), published by World Peace Foundation, New York.

6. Lauterpacht, p. 6.
7. Laqueur and Rubin, "The Marxist Critique," pp. 179-92.
8. Egon Schwelb, Human Rights and the International Community: The Roots and Growth of the Universal Declaration of Human Rights (Chicago: Quadrangle Books, 1964); Human Rights Documents, Compilation (U.S. Laws on Human Rights, Basic UN Human Rights Instruments, UN Instruments in Selected Human Rights Areas, Regional Human Rights Instruments, War Crimes and International Humanitarian Laws, Human Rights Bodies Established by U.S. Law or Multilateral Instruments), U.S. House of Representatives, Committee on Foreign Affairs, Subcommittee on Human Rights and International Organizations, September 1983; Jean-Bernard Marie, International Instruments Relating to Human Rights: Classification and Chart Showing Ratifications as of January 1, 1983, Human Rights Journal, (Strasbourg: N.P. Engel, Publisher, 1983), pp. 433-55; L. Sohn and T. Buergenthal, International Protection of Human Rights, 2 Vols. (Indianapolis: Bobbs-Merrill), 1973; H. Hannum, Guide to International Human Rights Practice (edited for the International Human Rights Law Group) (Philadelphia: University of Pennsylvania Press, 1984).

In Sidorsky, Essays on Human Rights, see the following essays: W. Laqueur, "The Issue of Human Rights"; R. Hauser, "International Human Rights Protection: The Dream and the Deception"; L. Garment, "Majoritarianism at the United Nations and Human Rights"; D.P. Moynihan, "The Significance of the Zionism-as-Racism Resolution for International Human Rights"; S. Liskofsky, "The United Nations and Human Rights: Alternative Approaches"; L. Henkin, "Human Rights: Reappraisal and Readjustment"; D. Sidorsky, "Contemporary Reinterpretations of the Concept of Human Rights."

See also: Moses Moskowitz, The Political and Dynamics of Human Rights (Dobbs Ferry, N.Y.: Oceana Publications, 1968); idem, The Roots and Decisions of United Nations Actions (Netherlands: Sijthoff and Noordoff, 1980); Julian R. Friedman, "Human Rights Internationalism: A Tentative Critique" in J.L. Nelson and V.M. Green, International Human Rights: Contemporary Issues (Standfordville, N.Y.: Human Rights Publishing Group, 1980), pp. 29-42; Rosemary Righter, "The Political Challenge to the Western Press: Another New Order?" The World Today (London: Chatham House, Royal Institute of International Affairs) 35, No. 4 (April 1979): 167-75; H. Tolley, Jr., "Decision Making at the United Nations Commission on Human Rights, 1979-1982," Human Rights Quarterly 5, No. 1 (Winter 1983): 27-57; and Sidney Liskofsky, "Coping with the Question of the Violation of Human Rights and Fundamental Freedoms:

Highlights of the 31st Session of the United Nations Commission on Human Rights, Geneva, February 3 - March 7, 1975," Revue des Droits de l'Homme 8 (1975): 883-914.

2. THE CONCEPT OF RELIGIOUS FREEDOM: HISTORICAL AND LEGAL DEVELOPMENT

1. Krishnaswami, pp. 1-12. See also Salo W. Baron, A Social and Religious History of the Jews, second edition, Vol. III.
2. Robert Gordis, "Judaism and Religious Liberty," p. 29, in Franklin H. Littell, ed., Religious Liberty in the Crossfire of Creeds (Philadelphia: Ecumenical Press, 1978).
3. Luther was not thinking of "a society of religious pluralism, within which many varieties of belief, and even of disbelief, would live side by side in comparative harmony." Jaroslav Pelikan, "The Enduring Relevance of Martin Luther -- 500 Years After His Birth," The New York Times Magazine, September 18, 1983, p. 103.
4. John A. Garraty and Peter Gay, eds., The Columbia History of the World (New York: Harper and Row, 1972), pp. 536-38, 590.

5. Raphael Mahler, Jewish Emancipation: A Selection of Documents, Pamphlet Series on Jews and the Post-War World, No. 1 (1942), published by the Research Institute on Peace and Post-War Problems of the American Jewish Committee, New York City, p. 25.
6. Ibid.
7. Ibid., p. 37.
8. Krishnaswami, p. 3.
9. Ibid., p. 5.
10. Robert T. Handy, "The American Tradition of Religious Freedom: A Historical Analysis," Journal of Public Law, Vol. 13, No. 2 (reproduced by the National Conference of Christians and Jews, 1964); F.H. Littell, "Foundations and Traditions of Religious Liberty," in Littell. pp. 4-7.
11. Mahler, p. 9.
12. Ibid., pp. 11-13.
13. Ibid., pp. 13-14.



14. Laqueur and Rubin, p. 115.
15. Krishnaswami, p. 6. See also European Parliament, Political Affairs Committee, Report on Human Rights in the Soviet Union, May 16, 1983. It describes the situation of religious groups in the Soviet Union as follows:

The Soviet Union is an atheist state, committed to the eventual disappearance of all religions. Its Constitution guarantees freedom of worship, as well as freedom of antireligious propaganda, but not freedom of religious propaganda. On the contrary, the publication of religious works, including the bible, the teaching of religion, especially to children, and the conduct of religious gatherings are all severely restricted by law...

The Orthodox Church suffers less persecution than other religious denominations...Religious belief, being inconsistent with communist ideology, is a barrier to employment or promotion in the ranks of government service...

All religious congregations must be registered with the Council for Religious Affairs, a state body, and applications are frequently refused, especially those from minority denominations...

Registered congregations are assigned a building to worship in, but they are not allowed to organize Sunday schools, religious study or literature meetings, libraries, excursions or any other non-worship functions, nor may they provide one another with medical or financial help. Special permission...must be obtained before conducting a religious ceremony in the open air or in a private house...

The restrictions placed on Christian worship apply equally to the observance of the Jewish religion and in practice are more rigorously enforced. Unlike other religions, the Jews are not allowed to form a national or regional religious body, nor may they join any international Jewish organization or maintain organized links with Jews outside the Soviet Union...

[Human Rights Journal 4/Part 1 (July 1983): 110-23]

16. Krishnaswami, p. 7.

17. Krishnaswami, p. 11.
18. Ibid.
19. Mahler, pp. 37-38.
20. Ibid., p. 61; Laqueur, p. 140; Encyclopedia Judaica, Vol. 4, pp. 655-56.
21. Covenant of the League of Nations (see Part 1. (1) note 5).
22. Sohn and Buergenthal, pp. 213-335; Jacob Robinson, et al., Were the Minorities Treaties a Failure? (New York: American Jewish Congress, Institute of Jewish Affairs [Antin Press], 1943).
23. See text of Minorities Treaty with Poland in Robinson, pp. 313-17; Mahler, pp.67-70; Laqueur and Rubin, pp. 151-56.

3. NONDISCRIMINATION AND FREEDOM IN THE MATTER OF RELIGION <sup>OF</sup> AND BELIEF

1. Karl Josef Partsch, "Freedom of Conscience and Expression, and Political Freedom," in L. Henkin, ed., The International Bill of Rights: The Covenant on Civil and Political Rights (New York: Columbia University Press, 1981), pp. 213-14.
2. Alexandre Kiss, "Possible Limitations on Rights," in Henkin, pp. 290-310.
3. Partsch, pp. 212, 214.
4. T. Buergenthal and R. Norris, Human Rights -- The International System (Basic Documents and Legislative History -- 2 binder volumes) (Dobbs Ferry, N.Y.: Oceana Publications, 1982); Organization of American States, Annual Report of Inter-American Commission on Human Rights, 1982-1983; OEA/Ser. L/V/11.61, Doc. 22 rev. 1, September 27, 1983; OAS Handbook.
5. What is the Council of Europe Doing to Protect Human Rights? (Strasbourg: Council of Europe, 1977), pp. 15-28; Report of Council of Europe to the International Conference of Human Rights, 1968 (Strasbourg, 1967). Text of First Protocol, pp. 102-104; discussion of Article 9, pp. 25-26. See also Sir Humphrey Waldock,

"The Effectiveness of the System Set Up by the European Convention on Human Rights," Human Rights Law Journal 1 (1980): 1-12; Jochen A.F. Bielefeld, "The European and American Convention on Human Rights -- A Comparison," ibid., pp. 44-65.

A Council of Europe information paper on its work against intolerance (submitted to a conference on religious intolerance in Europe, in December 1980, under the auspices of the European Youth Centre) recalled the Council's Parliamentary Assembly Recommendation 453 (1966) inviting member governments to adopt and enforce legislation against incitement to religious (and racial and national) hatred. It cited the Parliamentary Assembly's Res. 743, adopted in September 1980, urging members states' governments and parliaments, among other actions, to adopt legislation to combat xenophobia. It also cited a Committee of Ministers reaffirmation on October 16, 1980, of the determination "to combat racism, anti-Semitism, fascism, and terrorism," and noted that the Council of Europe had done a great deal of work on the teaching of history in the schools and on texts aimed at presenting a fair picture of other cultures and religion. Council of Europe (Strasbourg), CEJ/CI(80), 2. rev. 3.

6. Helsinki Final Act, 1975. U.S. Department of State Bulletin, September 1, 1975 (reprint, Dept. of State Bureau of Public Affairs, Office of Media Services, Washington, D.C.); Buergenthal,

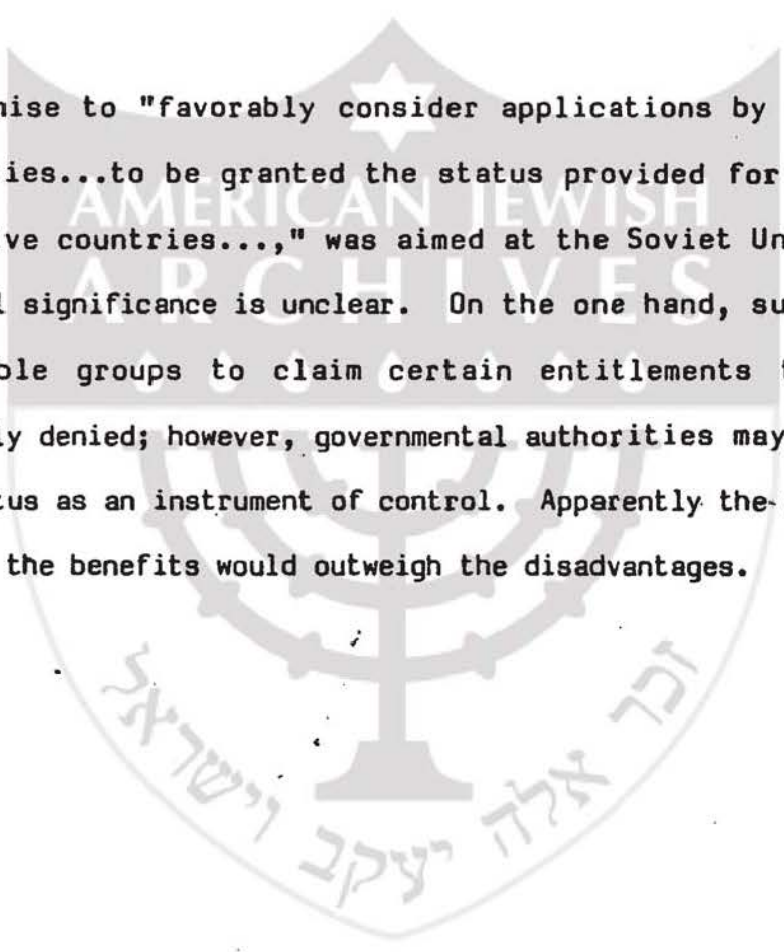
ed., Human Rights International Law and the Helsinki Accord, published under the auspices of the American Society of International Law (Montclair, N.J.: Universe Books, 1977), p. 203. For the text of the Final Act including the Declaration on Principles Guiding Relations Between Participating States, see Appendix, pp. 161-99. See also Sidney Liskofsky, "The Belgrade Conference," American Jewish Year Book, 1979 (New York and Philadelphia: The American Jewish Committee and the Jewish Publication Society of America, 1978), pp. 152-59.

For the position of Soviet Jewry, 1977-1980, see Report on Implementation of the Helsinki Final Act Since the Belgrade Follow-up Conference, prepared on behalf of the Ongoing Presidium and Steering Committee of the World Conference on Soviet Jewry in Cooperation with the Jewish Communities Concerned, 1980 ("The State of the Jewish Religion in the U.S.S.R.," pp. 15-21).

See Concluding Document of the 1983 Madrid Conference; and the Special Edition of the CSCE Digest (Commission on Security and Cooperation in Europe), U.S. Congress, Washington, D.C., October 12, 1983. At this meeting, the U.S and other Western delegates raised questions concerning the repression of advocates of religious, cultural and linguistic freedom. Many of them were members of monitoring groups in the U.S.S.R. and other Eastern-bloc countries, including Andrei Sakharov.

The clause in the Declaration on Principles, "within the constitutional framework," is a variant of an "escape" clause the Soviet Union routinely seeks for most of its human rights undertakings, to make sure its domestic law retains priority over its international commitments.

The promise to "favorably consider applications by religious communities...to be granted the status provided for in their respective countries....," was aimed at the Soviet Union. Its practical significance is unclear. On the one hand, such status may enable groups to claim certain entitlements they were previously denied; however, governmental authorities may also use this status as an instrument of control. Apparently the proponents believed the benefits would outweigh the disadvantages.



PART II

1. THE UN DECLARATION ON RELIGIOUS INTOLERANCE

1. Sidney Liskofsky, "Eliminating Intolerance and Discrimination Based on Religion or Belief: The UN Role, Reports on the Foreign Scene, no. 8 (New York: American Jewish Committee, 1968), gives an account of early UN efforts in this field, including text of draft convention in the version formulated by the Commission on Human Rights as of 1967.

See also "Elimination of All Forms of Religious Intolerance," Note by Secretary-General prepared in accordance with Sub-Commission Res. 1982/28, E/CN.4/Sub.2/1982/29, May 17, 1983; Jack Homer, "The UN Declaration for Religious Freedom: The Results of Two Decades of Drafting" and "How the UN Religious Declaration Was Unanimously Adopted" both mimeographed (New York: World Conference on Religion and Peace, 1981 and 1982); Natan Lerner, "Toward a Draft Declaration Against Religious Intolerance and Discrimination," Israel Yearbook on Human Rights 11, (1981): 82-105, published under the auspices of the Faculty of Law, Tel Aviv University; Roger S. Clark, "The United Nations and Religious Freedom," New York University Journal of International Law and



Politics 11, (1978): 197 and "The UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief," Chitty's Law Journal (Downsview, Ontario, Canada, forthcoming).

2. GA Res. 1781, 17 GAOR, Supp. 17, UN Doc. A/4217 (1962).
3. Liskofsky, Eliminating Intolerance and Discrimination
4. Daniel P. Moynihan, "The Significance of the Zionism-as-Racism Resolution for International Human Rights," in Sidorsky, pp. 37-45; S. Liskofsky, "UN Resolution on Zionism," American Jewish Year Book, 1977, pp. 97-125.
5. Commission on Human Rights (CHR), Report on 35th Session, 1979 ESCOR, Supp. 6, E/1979/36; E/CN.4/1347, pp. 69-76.
6. See UNESCO, Meeting of Experts on the Place of Human Rights in Cultural and Religious Traditions, Bangkok, (Thailand), December 3-7, 1979; Final Report, SS-79/Conf. 607/10, Paris, February 6, 1980.

Participants in the Santa Clara Conference included the director of the UN Division of Human Rights, the chairman of the Human Rights Commission (and Canada's Ambassador to the Vatican) and the

Commission's Senegalese member, a highly regarded Muslim jurist who later chaired the Commission's working group on the Declaration. These three men, together with the Irish chairman of the Third Committee at the 1981 General Assembly and the Netherlands representative, contributed significantly to its adoption.

7. CHR, Report on 37th Session, 1981 ESCOR, Supp. 6 E/1981/25; E/CN.4/1475.
8. GA Res. 55, 36 GAOR, Supp. 48, A/36/48 (1981), Press Release GA/6546, pp. 332-35.
9. CHR, Report on 32nd Session, 1976 ESCOR, Supp. 3, E/5 768, E/CN.4/1213, pp. 37-41; Report on 33rd Session, 1977 ESCOR, Supp. 6, E/5927, E/CN.4/1256, pp. 43-48.
10. CHR, Report on 34th Session, 1978 ESCOR, Supp. 4, E/1978/34, E/CN.4/1292, pp. 56-65.
11. CHR, Report on 34th Session, Ibid., CHR, Report on 35th Session, 1979 ESCOR, Supp. 6, E/1979/36, E/CN.4/1347, pp. 69-76.
12. Ibid.

13. CHR, Report on 36th Session, 1980 ESCOR, Supp. 3, E/1980/13; E/CN.4/1408, pp. 108-118.
14. Ibid.
15. Circumstances during World War II and the Holocaust created the sensitive postwar issue of Jewish orphans who had been hidden by non-Jews and raised as Christians. At the time that the Universal Declaration and Covenants were being drafted, Jewish nongovernmental organizations recommended including a provision to deal with their cases. One such proposal was: "Children whose parents were killed in a war or other catastrophe shall be brought up in the religion of their parents," implying unqualified recognition of the presumption that the murdered parents would have wanted their children brought up as Jews. These nongovernmental organizations objected to weaker terms like giving priority to the "objectively ascertained wishes of the child," or providing that the parents' wishes be merely "taken into account," or making the guiding principle "the best interests of the child," which in practice would most likely be decided by a state agency. But now, with the passage of time, the issue of orphan children of the Holocaust is moot. Isaac Lewin, Toward International Guarantees for Religious Liberty: Addresses Before the United Nations (New York: Shengold Publishers, Inc., 1981), Chs. VII and XIX.

16. Human Rights: A Compilation of International Instruments, ST/HR/1 Rev. 1, UN, N.Y. 1978: UNESCO Convention Against Discrimination in Education (1960), p. 35; Covenant on Economic and Social Rights (1966), p. 6.
17. CHR, Report on 37th Session, 1981 ESCOR, Supp. 5, E/1981/25, E/CN.4/1475, pp. 138-54.
18. Committee on Foreign Affairs and its Subcommittee on Human Rights and International Organizations, House of Representatives, 97th Cong., 2nd Session, Hearings, Religious Persecution as a Violation of Human Rights, prepared statement of Thomas A. Johnson, Office of the Legal Adviser, Department of State, p. 844.
19. The WCC's Declaration on Religious Liberty, adopted in Amsterdam in 1948, provided that: "Every person has the right, in addition to expressing his religious beliefs in worship, teaching and practice," to proclaim "the implications of his beliefs for relationships in a social or political community." The WCC's 1975 Statement on Human Rights and Religious Liberty stated: "Religious freedom should also include the right and duty of religious bodies to criticize the ruling powers when necessary, on the basis of their religious convictions."

Pursuant to this policy, Dr. Philip B. Potter, the WCC's General-Secretary, addressing the Bicentennial Conference on Religious Liberty in Philadelphia in 1976, commented on economic, political and human rights violations in Korea, Latin America, South Africa, the Middle East, Northern Ireland, Mozambique, Ethiopia and the socialist states.

At its Sixth Assembly, held in Vancouver, Canada, in July-August 1983, the WCC adopted statements criticizing Israel and blaming the U.S. for the turmoil in Central America, praising Nicaragua and commenting mildly on the Soviet role in Afghanistan (Littell, pp. 130-33).

The Roman Catholic Church, too, has rejected in principle the idea of a division between religious and secular or political matters. The Declaration on Religious Freedom adopted by Vatican Council II in 1965, states: "...it comes within the meaning of religious freedom that religious bodies should not be prohibited from freely undertaking to show the special value of their doctrine in what concerns the organization of society and the inspiration of the whole of human activity." Walter M. Abbott, The Documents of Vatican II, (New York: Guild Press, 1966), pp. 675-87.

At Hearings on Religious Persecution in December 1982 before the U.S. House of Representatives' Committee on Foreign Affairs (Subcommittee on Human Rights and International Organization), the representative of the U.S. Catholic Conference, responding to a question on whether Catholics enjoy religious freedom today in Latin America, observed: "...Catholic teaching, religion...and thus religious freedom...is not confined to merely cultic expression. Catholicism is not purely personal faith and its expression is to be found in the totality of their lives, including their social, political and economic lives. Thus, the question of religious freedom for the Church in Latin America has less to do with whether the faithful are prevented from gathering together in worship than whether they are free to express religious convictions about the dignity and rights of each person and of the whole people." The question of the implementation of the Vatican II documents in Latin America, he added, had been examined by the region's Bishops in Medellin, Columbia, in 1968 and in Puebla, Mexico in 1979. At these "watershed" events in the Church's modern history in Latin America, he went on, "the bishops had identified the structural nature of the poverty, misery and oppression that characterize much of Latin American society and placed the Church squarely on the side of those struggling to be liberated from these 'situations of sin'." House of Representatives, Committee of Foreign Affairs, Hearings, p. 703.

20. For example, Pravda, the Slovak Communist newspaper, accused Pope John Paul II of using religion as a political tool for subverting the Communist governments of the Soviet bloc (New York Times, October 7, 1983). And the Khomeini regime has claimed that its anti-Bahai measures were directed at a political group masquerading as a religion.
21. CHR, Report on 37th Session.
22. Ibid.
23. A/36/864, Report of the Third Committee, November 19, 1981, Elimination of All Forms of Religious Intolerance; Summary Records, Third Committee, October 27-30, 1981.
24. Edward Kannyo, Black Africa and the UN Declaration on the Elimination of Religious Intolerance and Discrimination, Brochure prepared for the Jacob Blaustein Institute for the Advancement of Human Rights (New York: The American Jewish Committee, January 1982).
25. Leo Pfeffer, God, Caesar and the Constitution: The Court as Referee of Church-State Confrontation, (Boston: Beacon Press, 1975); Milton R. Konvitz, Religious Liberty and Conscience: A Constitutional Inquiry, (New York: Viking Press, 1968).

2. UN FOLLOW-UP: DECISIONS AND PROPOSALS

1. GA Res. 187, 37 GAOR, Supp. 51; A/37/51 (1982), Press Release GA/6787 (January 4, 1983), p. 402.
2. CHR, Report on 39th Session, 1979 ESCOR, Supp. 3, E/1983/13; E/CN .4/1983/60, pp. 101-102; Res. 40, p. 173. As of the time of writing, the date for the seminar had not been set as yet.
3. E/CN .4/Sub. 2/1984/3; E/CN .4/Sub. 2/1983/43, pp. 46-47, 98-99. As of the time of writing, the study was in its initial stages.
4. Committee on Foreign Affairs and its Subcommittee on Human Rights and International Organizations, House of Representatives, 97th Cong., 2nd Session, Hearings, Religious Persecution as a Violation of Human Rights, February 10, March 23, May 25, July 27 and 29, August 5 and 10, September 23, December 1 and 14, 1982.

See the following presentations: Rev. J. Bryan Hehir, Director, Office of International Justice and Peace, U.S. Catholic Conference, December 1, 1982, pp. 698-722; Jerome J. Shestack, former U.S. Ambassador to UN Commission of Human Rights, December 14, 1982, pp. 795-823; T. Johnson, U.S. Mission to the UN. December 14,



1983, pp. 824-864; and S. Liskofsky, Director, Division of International Organizations, American Jewish Committee, December 14, 1982, pp. 684-74.

CONCLUSION

1. Partsch, in Henkin, p. 214.
2. Jeremy Bentham, "The Principles of Legislation" (1802), in Laqueur and Rubin, p. 86.

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