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RELIGIOUS LIBERTY PACKET

This packet has been compiled under the auspices of the Religious Non-Governmental Organizations. It is offered by this group to any who wish to learn more about international protection of persons' liberty in the matter of religious belief.

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Additional copies of this packet may be obtained from the Religious NGOs through the World Conference on Religion and Peace, 777 United Nations Plaza, Concourse Level, New York, N.Y. 10017.

Item 2

RELIGIOUS LIBERTY--FROM A BUDDHIST PERSPECTIVE

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The best approach to understanding the Buddhist perspective on the question of religious liberty is to take a glimpse at the earliest phase of the Buddhist movement--because the Buddhist perspective stems from the events of that time and must retain something of their flavor for it to be authentic at all.

At the time that Buddhism arose [in the 5th century BCE], North India consisted of a string of tribal oligarchies or "republics." Modern historical studies suggest that these republics were in the grips of a deep crisis of spirit as the result of the threat to their accustomed way of life posed by a rising monarchical system in the two neighboring states of Magadha and Kosala.

It was also a period remarkable for its religious ferment as well. At one end of the scale were the orthodox Brahman priests immersed in a religion of sacrifices to gods and fervent study of the sacred texts of this religion, believing in the efficacy of ritual to sustain the cosmos and the devotees who observed the rites; at the other many types of hermits and ascetics, often designated as Wanderers, spreading a wide variety of newly emergent teachings at variance with the orthodox.

> Some of these ascetics dwelt in penance grounds on the outskirts of towns where...they would indulge in fantastic self-torture. Most of the new developments in thought however came from ascetics of less rigorous regimen whose chief practices were the mental and spiritual exercises of meditation. Some of these (ascetics) lived in groups of huts under the leadership of an elder. Others wandered...begging alms, proclaiming their doctrines to all who wished to listen, and disputing with their rivals. (Basham, 1959 p. 244)

> These wandering ascetics commanded such respect from the people that halls (were) put up for their accomodation (and) for the discussion...of their systems of belief. (They) are often represented as meeting one another at such places;...And they were in the habit of calling on other Wanderers, or on...Brahmans...in the neighborhood of the places where they stopped. (Rhys Davids 1903/1950, p. 86)

India was thus very much a tolerant and multi-religious society when Buddhism appeared on its horizon in mid-sixth century before Christ. The new movement too was very much in tune with the tolerant trends of the Indian civilization, though in many other respects it was radical departure.

Item 3

RELIGIOUS FREEDOM FOR ALL: A JEWISH PERSPECTIVE

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The seventeenth century French philosopher, Blaise Pascal, in his Pensées, spoke both from knowledge and personal experience when he said: "Men never do evil so completely and cheerfully as when they do it from religious conviction." Even today, we need not look very far for examples: India, Iran, Lebanon and Northern Ireland come swiftly to mind.

In fact, it is only within the past 20 years or so that the concept of religious liberty for all has gained widespread, though by no means universal, acceptance. In medieval Europe, where the interests of church and state were officially allied, the non-Christian had no comfortable place. To hold unorthodox religious views was dangerous. Heresy was forcefully repressed, and Jews, the major non-Christian group, were subjected to many kinds of repression, from civil restrictions to massacre. The official Roman Catholic church view of Jews was codified by the Fourth Lateran Council (convened in this city in 1215 by Pope Innocent III) which decreed, among other things, that Jews should be distinguishable by their dress, not appear in public on Good Friday or Easter, and not hold any public office where they might exercise authority over Christians.

One of the finest elucidations of the predominant attitude within Judaism toward religious liberty comes from Rabbi Robert Gordis, of the Jewish Theological Seminary in New York:

> Judaism accepts the existence of differences within the Jewish group and the right of dissidents to their own outlook and practice. It recognizes the existence of other religions and their inherent right to be observed.
>
> There inheres a measure of naiveté, as there is of oversimplification in Albert Einstein's utterance, "I thank God that I belong to a people which has been too weak to do much harm in the world." But more than mere incapacity inheres in the Jewish attitude toward religious liberty. The balance between the universal aspirations of Judaism and its strong attachment to the preservation of its group-character impelled it to create a theory that made room in God's plan--and in the world--for men of other convictions and practices.
>
> Moreover, the deeply ingrained individualism of the Jewish character, its penchant for questioning, its insistence upon rational conviction, have made dissent a universal feature of the Jewish spiritual physiognomy. As a result, all groups (within Judaism) have achieved freedom of expression and practice, though efforts to limit or suppress this liberty of conscience have not

> been totally lacking and undoubtedly will reoccur in the future.
>
> Finally the millennial experience of Jewish disability and exile in the ancient and medieval world has strengthened this attachment to freedom of conscience among Jews. In addition, the modern world has demonstrated that the position and progress of Jews, individually and collectively, is most effectively advanced in an atmosphere of religious liberty. Thus, all three elements, tradition, temperament and history, have united to make religious freedom, both for the Jewish community and the larger family of mankind, an enduring ideal and not merely a temporary prudential arrangement. Judaism, the oldest religion in the Western world, reminds mankind that liberty of conscience is not only the breath of life for religion, but the only sure foundation of an enduring free society.

Another trenchant exposition of the meaning of religious freedom for all appeared in an article by Orthodox Rabbi Eliezer Berkovits in the magazine Congress Weekly in 1955. Rabbi Berkovits declared:

> When I assert that I believe in Judaism, it means that I do not believe in Buddhism, Mohammedanism, or Christianity. I believe in Judaism because I am convinced that it is the only true religion. Of course, I understand that the Buddhist, the Moslem, or the Christian has the same kind of faith in his own religion as I have in mine....For how dare I claim for myself the right to life by my ultimate convictions without at the same time claiming the right for all mankind'...We consider the Church opposition to Copernicus and Galileo distasteful, not because it condemned what later proved to be valid astronomy, but because it opposed ideas with dungeons....Freedom, democracy, indeed mankind as a whole, are not in need of levellers; not of those who would level all men through the powers of intimidation or coercion they possess, nor of those who would level by cajoling us into the surrender of individuality and into the watering down of all faiths and convictions....The essence of tolerance is the appreciation of the fundamental truth that to live is to be different.

Noble words, but what about the actuality, what about Israel, the only Jewish state in the world? To state the obvious, Israel is by no means monolithic--there are numerous religious, ideological and cultural issues which inform the sensibilities of Israelis today. On May 14, 1948, when the State of Israel was created, the Israeli Declaration of Independence proclaimed:

> The State of Israel...will foster the development of the country for the benefit of all inhabitants; it will ensure complete equality of social and political rights

> to all its inhabitants irrespective of religion, race, or sex; it will guarantee freedom of religion, conscience, language, education and culture.

Has this promise been fulfilled? According to the United States State Department, essentially it has, even though in Israel religion and the state are not separate. (A good many Israeli Jews wish they were separate.) In any event, the State Department's annual reports on human rights practices in countries throughout the world confirm that Israelis of all faiths enjoy freedom of religion, expression and assembly. Yet it is also true that some Israelis, in the light of the Jewish historical experience, deeply resent and oppose efforts of Christian missionaries to convert Israeli Jews to Christianity. This resentment notwithstanding, however, the Israeli Ministry of Religious Affairs pays the salary of every Christian minister in Israel, as it does of every Orthodox rabbi and Muslim imam. What the government does not do, ironically, is pay the salary of rabbis of the conservative and Reform movements of Judaism, which are denied official recognition. Non-Orthodox rabbis, for example, are not authorized to perform marriages in Israel or serve as chaplains in the armed forces. It is important to note that many Israeli Jews, particularly those who emigrated from Asia and Africa where traditional Judaism held sway, are not well acquainted with alternate forms of Judaism.

While Orthodox and non-Orthodox Jews have co-existed in Israel since its inception, tensions have risen over how religious Israel ought to be as a society. Ultra-Orthodox Jews (referred to by one Israeli journalist as the Moral Minority) are steadfast in their determination to remodel Israel into what would amount to a theocratic state based on ancient Jewish law, or Halakha. They are angered by what they believe to be widespread desecration of the Sabbath and other impious behavior by Israeli Jews. Their views on such issues as abortion, birth control, autopsies, the status of women and use of motor vehicles on the Sabbath are not generally shared by most Israelis--who may observe many religious traditions, but not nearly as strictly as the ultra-Orthodox, although only a small fraction of the population, have often been able to use their political leverage to impose their will. And regrettably, religious fanaticism has been on the rise.

A woman Member of Parliament in the Labor Party, Tamar Eshel, complained,

> Only too often we find that Orthodox Jews, according to their very deep beliefs, feel responsible for my sins. And they feel obliged to stop me from sinning and to force on me a style of life that, according to them, is the right one. That is definitely against basic freedoms.

In an article in the Journal of Reform Judaism entitled "Liberal Judaism in Israel: Problems and Prospects," Rabbi David H. Ellenson of Hebrew Union College observed:

> In short, the Orthodox establishment is unyieldingly antagonistic to non-Orthodox varieties of Judaism in Israel and, in light of the political power it wields,

it will certainly be able to prevent Knesset recognition of the legitimacy of Reform and Conservative Judaism for the foreseeable future.

I will conclude this presentation, which I purposely entitled "A Jewish Perspective," rather than "The Jewish Perspective," with two quotations. Perhaps more than any other, they encapsulate my own personal convictions. One is from Thomas Jefferson: "It behooves every man who values liberty of conscience for himself to resist invasions of it in the case of others, or their cases may, by change of circumstances, become his own." The other is from a distinguished American jurist, Judge Learned Hand: "The spirit of liberty is the spirit which is not too sure that it is right."

Item 4

RELIGIOUS LIBERTY: A MUSLIM PERSPECTIVE

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[article abridged by Dr. Jean C. Lambert]

From Old Relations to a New Context

Not until the nineteenth century do we see the right to free-thinking claimed. Political liberalism and the philosophical studies were then in vogue, and in fact what was claimed was not the right to think freely, but the right not to believe. So religious liberty became a synonym of secularism, agnosticism and atheism. Consequently, a stubborn fight has been waged against religious liberty because of misidentification. To deal with the subject honestly and dispassionately, we must free ourselves from this false conception.

Man's privileged position inside the order of Creation is illustrated in the Koran in the scene where we see the angels receiving the order to prostrate themselves before Adam (Koran, XV, 29: XXXVIII, 72) the heavenly prototype of man. In a way, and provided we keep man in his place as creature, we may say as Muslims--in harmony with the other members of Abraham's spiritual descendants, Jews and Christians--that God created man in His image. A hadith, saying of the Prophet, although questioned, authorizes this statement. So we can say that on the level of the Spirit, all persons, whatsoever may be their physical or intellectual abilities and aptitudes, are really equal. They have the same "breath" of God in them, and by virtue of this "breath" they have the ability to ascend to Him and to respond freely to His call. Consequently, they have the same dignity and sacredness, and because of this dignity and sacredness they are equally and fully entitled to enjoy the right to self-determination on earth and for the hereafter. So from a Koranic perspective we may say that human rights are rooted in what every man is by nature, and this is by virtue of God's plan and creation. Thus the cornerstone of all human rights is religious liberty.

From a Muslim perspective man is not the mere fruit of "hazard and necessity." His creation obeys a plan and a purpose. Through the "breath" he has received the faculty to be at one with God; and his response, to have meaning, must be free. The teachings of the Koran are clear, Man is a privileged being with "spiritual favours" (Koran, XVII, 70); he had not been "created in jest" (Koran, XXIII, 115); he has a mission and he is God's "Vicegerent on Earth." (Koran, II, 30) He proceeds from God with a mission to fulfill, his destiny is ultimately to return to Him. "Whoso does right, does it for his own soul; and whoso does wrong, does so to its detriment. Then to your Lord will you all be brought back." (Koran, XLV, 15)

[At the same time,] he has the capacity to resist God's call, and this capacity is the criterion of his true freedom. Even the Messenger whose mission is properly to convey God's call and message is helpless in such a situation. He is clearly and firmly warned to respect man's freedom and God's mystery. "If it had been thy Lord's will, all who are on the earth

would have believed, all of them. Wilt thou then compel mankind, against their will, to believe!" (Koran, X, 99) A. Yusuf Ali, in his translation of the Koran, comments on that verse in this way:

> Men of faith must not be impatient or angry if they have to contend against Unfaith, and most important of all, they must guard against the temptation of forcing Faith, i.e. imposing it on others by physical compulsion, or any other forms of compulsion such as social pressure, or inducements held out by wealth or position, or other adventitious advantages. Forced faith is no faith.

The Apostle's mission--and all the more ours--is strictly restricted to advise, warn, convey a message and admonish without compelling. He is ordered: "Admonish, for thou art but an admonisher. Thou hast no authority to compel them." (Koran, LXXXVIII, 21-22) In other words, God has set man truly and tragically free. What He wants is, in full consciousness and freedom, willing and obedient response to His call--and that is the very meaning of the arabic word Islam.

I do not mean that we should adopt an attitude of abandon and indifference. In fact, we have to avoid extemes. We have, of course, to refrain from interfering in the inner life of another, as I have stressed. It is time to add that we must avoid also being indifferent or careless about another. We must convey God's message. This obligation of faith also needs stressing....

And God urges us to follow His example, and to turn our steps toward all our brothers in humanity, beyond all kinds of frontiers, the confessional ones included.

> O mankind! We created you from a male and a female; and We have made you into nations and tribes that you may know each other. Verily, the most honourable among you, in the sight of God, is he who is the most righteous of you. And God is All-Knowing, All-Aware. (Koran, XLIX, 13)

A. Yusuf Ali comments:

> This is addressed to all mankind, and not only to the Muslim brotherhood, though it is understood that in a perfect world the two would be synonymous. As it is, mankind is descended from one pair of parents. Their tribes, races, and nations are convenient labels by which we may know certain differing characteristics. Before God they are all one, and he gets most honour who is most righteous.

In other words, man is not created for solitariness and impervious individuality. He is created for community, relationship and dialogue. His fulfillment is in his reconcilliation both to God and to persons. We have to find the way, in each case, to realize this double reconcilliation, without betraying God and without damaging the inner life of the other. To do so, we have to listen to God's advice:

> Do not argue with the People of the Book unless it is in the most courteous manner, except for those of them who do wrong. And say: We believe in the Revelation which has come down to us and in that which came down to you. Our God and your God is one, and to Him we submit. (Koran, XXIX, 46)

The arabic word used in the verse, and rendered in the translation by the verb "to submit," is Muslimun-- Muslims." To be a true Muslim, is to live in courteous dialog with peoples of other faiths and ideologies, and ultimately to submit to God. We must show concern to our neighbors. We have duties to them, and we are not isles of loneliness. The attitude of respectful courtesy recommended by the Koran, must be expanded to embrace all mankind, believers and unbelievers, except for those who "do wrong"-- the unjust and violent, who resort deliberately to fist or argument. In such a case, it is better to avoid so-called dialogue.

In short, from my Muslim perspective, our duty is to bear witness courteously, and respectfully for the inner liberty of our neighbor and for his sacredness. We must also be ready to give him an honest hearing. We have to remember, as Muslims, that a hadith of our Prophet states: "The believer is unceasingly in search of wisdom, wherever he finds it he grasps it." Another saying adds: "Look for science everywhere, even as far as in China." And, finally, it is up to God to judge, for we, as limited human beings, know only in part. Let us quote:

> To each among you, have We prescribed a Law and an Open Way. And if God had enforced His Will, He would have made of you all one people. But His plan is to test you in what He hath given you. So strive as in a race in all virtues. The goal of you all is to God. Then will He inform you of that wherein you differed. (Koran, V, 51)

> Say: O God! Creator of the heavens and the earth! Knower of all that is hidden and open! It is thou that wilt judge between Thy Servants in those matters about which they have differed. (Koran, XXXIX, 46)

But it is a fact that [Muslims] suffered, from time to time, here and there, from discrimination. Things worsened after the reign of al-Mutawakkil (232-247/847-861). Discrimination, expecially in dress, was openly humiliating. The oppression culminated in Egypt during the reign of al-Hakim (386-411/966-1021), who may not have been sane.

In the medieval context of wars, hostilities and treacheries, discrimination or open oppression has always been prompted, or strongly backed, by the theologians. We have to remember that it was not then a virtue-- according to the medieval mentality wherever--to consider all human beings as equal. How, then, to consider equal truth and error, true believers and heretics!

So in appraising the past we must always take circumstances into account. Above all, we must strive to avoid the same situations and errors. In any case, the Koran's basic teachings lay down a clear line of conduct. They teach us to respect the dignity and freedom of another. In a world

where giant holocausts have been perpetrated, where human rights are still manipulated or blandly ignored, our modern Muslim theologians must denounce all forms of discrimination as crimes strictly and explicitly condemned by the Koran.

So the case of the apostate in Islam, though mostly theoretical, needs to be cleared up. First, note that the hadith, upon which the theologians assert the death penalty, is always more or less mixed, in the Tradition books, with rebellion and highway robbery. The cases of "apostates" killed during the Prophet's life or shortly after his death, are without exception those persons who, as consequence of their "apostasy," turned their weapons against the Muslims, whose community was at that time small and vulnerable. The penalty of death appears in these circumstances as an act of self-defense. It is undoubtedly for that reason that the Hnafit School of figh does not condemn to death the woman apostate, "because women, contrary to men, are not fit for war."

On the other hand, the hadith authorizing the penalty of death is not, technically, mutawatir, and consequently it is not, according to the traditional system of hadith, binding. And above all, from a modern point of view, this hadith can and must be questioned. In my opinion, we have many good reasons to consider it a forgery. It may have been forged under the influence of Leviticus 24:16 and Deuteronomy 13:2-19, where the Israelites were ordered to stone the apostate to death.

In any case, the hadith in question is at variance with the teachings of the Koran, where there is no mention of the death penalty required against the apostate. During the life of the Prophet apostacy presented itself at various times, and several verses deal with it. In all, without exception, punishment of the apostate who persists in his rejection of Islam is left to God's judgment and to the afterlife. The cases mentioned in the Koran and by the commentators, concern, on the one hand, individuals or tribes who become turncoats, and on the other, persons attracted by the "People of the Book," (Koran, II, 109, 111, 99-100) Jews and Christians, to their faith. Taking into account the special situation, the Koran argues, warns, or recommends the attitude to take, without ever threatening death.

> How shall God guide those who reject faith after they accepted it, and bore witness that the Apostle was true, and that the clear signs had come to them? But God guides not a people unjust. (Koran, III, 86. See too the following verses· 87-91)

On the other hand, the Koran denounces "People of the Book," who exert pressure on Muslims to induce them to retract. There is no doubt that polemics between the emerging Islam and the old religions were sharp. In this atmosphere the Koran urges persons who espouse Islam to stick firmly to their new faith till their death; to close their ranks, to refuse to listen to those who strive to render them apostates, and to keep out of their trap. They are also reminded of their former state of disunion, when they were "on the brink of the Pit of Fire"; and they are exhorted to ensure their final salvation.

> Say: O People of the Book· Why obstruct ye those who believe, from the Path of God, seeking to make it

> crooked, while ye were yourselves witness thereof? But God is not unmindful of all that ye do....
>
> Let there arise out of you a Community inviting to all that is good, enjoining what is right, and forbidding what is wrong. They are the ones to attain felicity. (Koran, III, 99 ff.)

Thus, unceasingly and by all means, the Koran strives to raise the new Muslim's spirit, in order to prevent him from falling into apostasy. The argumentation is only moral. The Koran goes on: It is "from selfish envy" that "quite a number of the People of the Book wish they could turn you back to infidelity" (Koran, II, 109; see too III, 149); you have not to fear them, "God is your Protector, and He is the best of helpers, soon shall He cast terror into the hearts of the unbelievers" (Koran, III, 150-151); "your real friends are God, His Messenger, and the believers...therefore take not for friends those who take your religion for a mockery or sport" (Koran, V 58-60). And, finally, those who in spite of all this counsel allow themselves to be tempted by apostasy, are forewarned: If they desert the Cause, the Cause will not fail. Others will bring it to a head.

"O ye who believe! If any from among you turn back from his faith, soon will God produce a people whom He will love as they will love Him, lowly with the Believers, mighty against the Rejecters, striving in the way of God, and never afraid of the reproaches of a fault finder. That is the grace of God, which He will bestow on whom He pleaseth. And God is Bountiful, All-Knowing." (Koran, V, 57; see too XLVII, 38)

Finally, the apostates are given this notice: they "will not injure God in the least, but He will make their deeds of no effect." (Koran, XLVII, 32)

The Koran Warns

The young Muslim community is thus given many reasons to stick to the new religion. Members are also warned that their salvation depends on their not departing from their faith. They are urged to follow the true spirit of Islam, which is defined in two ways: First, they will love God and God will love them; second, they will be humble among their brethren, but they will not fear wrongdoers and they will not consort with them. If by fear, weakness or time-serving, they fall into apostasy, the loss will be theirs and punishment will be hard in the Hereafter. [See Koran, II, 217; III, 87; III, 89, 90-91; III, 106, 140; XLVII, 25; XLVII, 26-27; XLVII, 32, 34.]

The Koran Advises

How to deal with obstinate and ill-disposed apostates? How to treat those who try to draw them into their camp, or to manipulate them? Let us underline once more that there is no mention in the Koran of any kind of penalty, including death. To use the Arab technical word, we say that there is no specified hadd in this matter.

On the contrary, Muslims are advised to "forgive and overlook till God accomplishes His purpose, for God hath power over all things" (Koran, II, 109). In other words, no punishment on earth. The case does not answer to the Law. The debate is between God and the apostate's conscience, and it is not our role to interfere in it.

Muslims are authorized to take up arms in only one case, self-defense, when they are attacked and their faith seriously jeopardized. In such a case "fighting" (al-gital) is "prescribed" (kutiba) , even if they "dislike it" (kurhun lakum) (Koran, II, 216), and it is so even during the sacred month of Pilgrimage. (Koran, II, 217; II, 194) To summarize--Muslims are urged not to yield, when their conscience is at stake, and to take up arms against "those who will not cease fighting you until they turn you back from your faith, if they can." (Koran, II, 217)

PROTESTANT CHRISTIANITY AND RELIGIOUS LIBERTY

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When protestants consider questions involving "freedom of religion" we often do so in a paradoxical way. By definition all of the church bodies called protestant arose in one or another kind of "protest;" they were attempting either to reform their religious systems, or to reject them, in order to begin afresh. An observer might think that our awareness of defects in religious systems would lead protestants to defend people's freedom to find their own ways of faith: religious liberty. This has sometimes happened, but not always.

In some situations, protests that achieved their initial goals, establishing new religious communities, also gained significant social and political power. Often, then, former protesters, the formerly oppressed, have become in turn discriminators or oppressors themselves, seeking control over both those within their group and those outside it.

A brief look at English religious history can illustrate this process. In the seventeenth century Oliver Cromwell, a member of the English parliament, used the occasion of the civil war of 1642 to attack the monarchy and the Church of England party aligned with it, under the banner of religious reform. After the king had been killed Cromwell was installed as Lord Protector of the realm in 1653.

He began to reform English society along lines of Puritanism, a form of protestantism. Such reform applied theology to the society, the morally rigorous theology of Swiss reformer, Jean Calvin. His vision of civic righteousness contrasted with the policy of the monarchy (in alliance with the Church of England) which, having used the rising protestant "mood" to achieve its nationalistic and political independence of the Roman Church and continental Europe, showned no taste for the real issues of the reformers. The Church of England, in fact, did not call itself protestant at all. During his short period as Lord Protector Cromwell managed to earn the description "tolerant" for his handling of religious matters. However, the regime he left when he died in 1668 grew increasingly intolerant. The relative freedom of religion enjoyed in England now in the 20th century is generally traced not to Cromwell's "tolerance" but to the posture taken by the government allied with the Church of England after the restoration of the monarchy in 1660.

Some Puritans fled England before the time of Cromwell, seeking freedom for their own religious expression in North America. They founded the Massachusetts Bay Colony in 1620. In this new opportunity there was an opportunity to create a fairer form of government than that which had oppressed them. Instead, the colonists established a "theocracy" according to their interpretation of God's will. Their religious intolerance set the climate for brutal persecution of dozens of women, and some men, as "witches" in several Massachusetts towns. It also led Roger Williams, a Baptist, to flee the Colony in 1635, going to then-Indian territory where he founded the community that eventually became the state of Rhode Island.

These scraps of protestant Christian history illustrate that those who are in the best position to appreciate the value of religious liberty are not necessarily the ones most likely to defend it for others.

Why does this happen? The proverbial wisdom is sound: power corrupts. This is observable in societies regardless of their religious persuasions. But what gives specific "warrant" for religious persecution -- or religious liberty -- in protestant Christianity? To answer this we look to the Bible, the traditional source and authority for all Christian belief, and to the historic contexts in which particular protestant groups have come to exist.

The Bible. Protestants look to the Bible as their authorizing and authoritative canon. This canon includes both the Hebrew scriptures and those generated in the first century of the common era by the new Christian church. While we must recognize that the concept "religious liberty" was not conceived until approximately eighteen centuries after the beginnings of the Christian church, we may nevertheless find in the Christian Bible bases for a religious liberty perspective, as well as for other theological perspectives that underlie the discussion of religious liberty today.

1 One strain of Biblical teaching articulates a prophetic urge to purify faith and practice that have gone corrupt through diverse causes. We might call this: protest and reform!

> Then he [Jesus] began to upbraid the cities where most of his mighty works had been done, because they did not repent. Woe to you, Chorazin! Woe to you, Bethsaida! for if the mighty works done in you had been done in Tyre and Sidon they would have repented long ago....But I tell you, it shall be more tolerable on the day of judgment for Tyre and Sidon than for you.
>
> Matthew 11:20-22

2 Another strain expresses confidence in the sovereignty of God and advocates generosity toward all persons in the expectation of God's final and righteous judgment. This strain might (anachronistically, and loosely) be called "libertarian."

> The kingdom of heaven may be compared to a man who sowed good seed in his field; but while men were sleeping, his enemy came and sowed weeds among the wheat and went away. So when the plants came up and bore grain, then the weeds appeared also....The servants said to him, "Then do you want us to go and gather them?" But he said, "No, lest in gathering the weeds you root up the wheat along with them. Let both grow together until the harvest; and at harvest time I will tell the reapers, Gather the weeds first and bind them ...to be burned, but gather the wheat into my barn."
>
> Matthew 13:24-30

3 A third strain reveres the Holiness of God, by calling the faithful to fight for God's right, and to attack corrupt religion in defense of true faith. This might be characterized holy battle (if not "holy war"). Here Jesus acts, but most Christians understand that his actions are "teachings" no less than his words.

> And Jesus entered the temple of God and drove out all who sold and bought in the temple, and he overturned the tables of the money changers....He said to them, "It is written, 'My house shall be called a house of prayer' but you make it a den of robbers."
> Matthew 21:12-13

I have cited all three from explicitly Christian scriptures , from Jesus' life and teaching, even from the same book; these passages illustrate how differing approaches may be taken when faithful Christians seek to be obedient to their Lord in the political arena, guided by scripture. Scriptures inform the contemporary American Christian's conscience as he or she takes positions on prayer in public schools; tax vouchers for citizens with children in parochial schools, or with senior adults in religiously-run nursing home facilities; even on such matters as war and peace, welfare, and the nation's foreign trade policy.

Scriptures require informed, careful, methodical interpretation, and the perspective brought to the process has a great deal to do with what message the interpreter will receive. Few protestant groups have an authoritative guide to interpretation that their theologians and ethicists are bound to follow. A variety of approaches to our sacred scriptures is taken, and this is one reason why protestant Christians take differing and sometimes paradoxical positions on the question of religious liberty.

Historical context. It is also valuable to consider the effect of particular historical contexts in which people have interpreted and applied such passages as those I have quoted. I think here of Europe in the seventeenth century, in particular those principalities and duchies we have since come to know as "Germany." For millennia the peoples of the Mediterranean and European world had understood that the monarch of any territory had a quasi mystical connection with the land and its people and its God. The sovereign was at once the parent of a people and the agent of God serving the people as God's representative for their good. These are the understandings that lie behind the notion of the "Divine right of kings" and the post-reformation slogan in the German-speaking areas, "as the king, so the religion" meaning, "however the king believes, so also the country." Such an awareness is thought to have supported the Emperor Constantine's embrace of Christian faith back in the fourth century, and the unifying value of religion had not been not lost on subsequent monarchs.

The unity of the people under their monarch had, in other words, been assumed to be more secure, at least, if the people shared a common religion. This assumption, sometimes conscious and sometimes not, has been part of the ideological ground for government persecution of many religious minorities, both groups and minorities of one. It is likely that this "religio-political intuition" continues to be effective today, despite the thoroughly different political situation in most of these countries.

After the protestant reformation, people in the German-speaking lands had experienced renewal of Christian convictions and church-state relations had begun to find new forms of expression. Various principalities sorted themselves out as "Reformed" or "Roman Catholic," -- indeed, among the reformed some were "Calvinistic" and some "Lutheran." All this depended on the

religious allegiances of their ruling nobilities. The situation ripened into political conflict. The "Thirty Years' War", actually a series of conflicts that affected Bohemia, the German-speaking areas, even Scandinavia, ended in 1648 with the treaty known as the Peace of Westphalia. By then, the 2000-year-old Holy Roman Empire had been destroyed, and new religio-political allegiances had toughened into realities that have continued to color European history in subsequent centuries.

In contrast to the age-old alliance of religion and politics, the eighteenth century saw the secularization of much of European life under Napoleon, who tried to eradicate from France all traces of religion. This "intolerance for all" paradoxically set the stage on which the fragile and ancient idea of "religious tolerance" could be transformed into a more radical concept, "religious liberty", the notion that all persons have a natural human right to worship or not, as they choose.

The claim to religious liberty, though increasingly recognized by governments throughout the world, is still contested. Its defenders in this decade have worked to achieve international support for the principle, through such documents as the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (UN, 1981).

The paradox -- protestant Christianity seeking to suppress alternative "protests" -- continues to find expression today.

[In passing I would mention here that by naming some groups in this essay I do not mean to suggest that any protestant denominations are by their nature more likely to aspire to religious dominance in the United States, or less likely. I am not writing to condemn any denominational group or to exonerate any. The human capacity for sinfulness and our love of asserting power over others leads us into temptation against which all of us are called --according to my own faith, called by God in Jesus Christ -- to resist.]

This said, two contrasting examples from the large, varied, and powerful family of protestant communions known as "Baptist" illustrate the continuing strength of our paradoxical response to our protestant heritage.* Consider the Moral Majority led by noted fundamentalist Baptist preacher, Jerry Falwell, and a statement on Religious Liberty offered in 1940 by the Associated Committees on Public Relations which disseminated information for three large Baptist groups, the Southern Baptist Convention, the Northern Baptist Convention, and the National Baptist Convention. (This coordinating group has now been superseded by the Baptist Joint Committee on Public Affairs, which functions on behalf of the original three groups plus six others.)

The 1940 statement traced the history of Baptists' concern with religious liberty, summarized four theories about the relation of religion and the state, and set their historic concerns in then-contemporary context. The statement condemned the union of church and state, opposed special favors extended to any ecclesiastical body, contrasted the special roles of religion and of government in human affairs, and concluded with the following statement:

> "Believing religious liberty to be not only an inalienable human right, but indispensable to human welfare, a Baptist must exercise himself to the utmost in the maintenance of absolute religious liberty for his Jewish neighbor, his Catholic neighbor, his Protestant neighbor, and for everybody else. Profoundly convinced that any deprivation of this right is a wrong to be challenged, Baptists condemn every form of compulsion in religion or restraint of the free consideration of the claim of religion.
>
> "We stand for a civil state, 'with full liberty in religious concernments.'" (The American Baptist Bill of Rights, 1940, the Associated Committees on Public Relations)

One inheritor of this ringing affirmation of religious liberty, is the Rev. Jerry Falwell, pastor of Liberty Baptist Church in Lynchburg, Virginia, and leader of the rising political right among fundamentalist protestants. Despite his community's tradition, he nevertheless took a different approach. In 1986 he was quoted as saying, "The idea that religion and politics don't mix was invented by the Devil to keep Christians from running their own country." (Emphasis mine.) Mother Jones magazine commented in its July/August issue of that year, "It is the ambition to run America as a 'Christian republic' that alarms less-theocratically oriented Americans."

Interestingly, Mother Jones did not advocate absolute separation of religious and political commitment. Nor are many protestant Christian groups today likely to reject all efforts by religious persons and groups to speak prophetically to the society in which they live, all efforts to help the society to reflect the values their religious perspectives lead them to believe good for all. But any committed people might take one of several approaches toward making their "good news" public and available to all. At one extreme is the approach that seeks dominance and would transform society by coercion. At the other is the approach that seeks to serve, and would transform society by working through avenues appropriate to that society, inviting people to consider alternatives. The goal sought by protestant advocates of religious liberty is a society in which people grant liberty to others to express convictions while freely expressing their own.

My sense of the matter may be put this way. Protestant Christianity has every reason to defend the religious liberty of all persons. Optimally we should do so on ground of our faith in a real God who needs our witness but no defense. Short of that high road, we ought also defend religious liberty on the ground of self-interest: from our own histories we should know that at any moment we ourselves may be the minority group whose liberties -- to worship, to speak prophetically in society, to offer others the vision that inspires us, to serve humanity in the name of God -- may need preserving.

But "what ought to be is not usually what is"! This statement is both a thoroughly protestant perspective on the world, and an oblique call for protestant commitment to the cause of religious liberty.

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* No one person or body speaks for the Baptists. There are dozens of large Baptist groups and probably hundreds of smaller ones, all sharing a "congregational polity" according to which each local congregation of Baptists is independent in fundamental ways when it comes to forming policies and making commitments.

RELIGIOUS LIBERTY AS A HUMAN RIGHT IN THE THOUGHT OF JOHN PAUL II

Most Rev. Jan P. Schotte
Vice President
Pontifical Commission on Justice and Peace

Linking religious freedom with other freedoms is not a move that proceeds from tactical considerations. The Pope is not giving lip service to other rights nor stressing the foundational role of religious liberty to secure a special position for believers or for the Church. By stating that religious liberty is the foundation of all human liberties, the Pope brings into focus the intrinsic connection between all freedoms. Religious liberty is not justified by other freedoms: religious freedom is justified in itself.

As recently as March 10, 1984, he stressed this point in an address to the more than two hundred participants in the Fifth International Colloquium of Juridical Studies, sponsored by the Lateran University on the theme "Basic Rights of the Human Person and Religious Freedom." He addressed first the basis of all human rights—the dignity of the human person--and presented this as the reason for the affirmation that religious freedom is at the foundation of all other human rights.

> What criteria can we use in today's world to see if the rights of all persons are being safeguarded? What foundation can we offer as a basis upon which man's rights can flourish? Without doubt, that basis is the dignity of the human person....It is in this dignity of the human person that human rights find their immediate source. And it is respect for this dignity which gives rise to their effective protection....Now among man's rights there is justly listed the right to religious freedom; rather it is the most fundamental, since the dignity of every person has its first source in his or her essential relationship with God the Creator and Father, in whose likeness and image the human person was created, since he or she is endowed with intelligence and freedom....Certainly the limitation of the religious freedom of individuals and communities not only is a painful experience, but above all it wounds man's very dignity, regardless of the religion professed or of the vision one has of the world.

The teaching of the Pope is quite clear religious liberty is the first "human right" because of who the human person is. every person in his or her

being is free and open to the realization of his or her total potential which is the dignity of being created in the image of God. Thus to affirm religious liberty, to guarantee the freedom to express privately and publicly the religious dimension of the dignity of the human person is to acknowledge the intrinsic and inalienable freedom and transcendence of the person. Once this is recognized and honoured, all other human rights follow. This is true because religious liberty means that there is no human institution more important than this freedom of religious expression and hence no institution can rightly hinder its exercise. It is true as well because with the recognition and protection of religious freedom, the basis is laid for fostering and developing all the other human rights that contribute to guaranteeing and realizing the dignity of the whole person.

Concrete Conditions For Religious Freedom

At every moment of history, in every specific context, it will be necessary to analyze the specific elements which constitute the very concept of religious freedom and whose application enables individuals and communities to carry out their religious activities. In the expression and practice of religious freedom, all aspects are closely interrelated, be they individual or community aspects, private or public activity. Any endeavor to spell out in practical terms what religious liberty entails, must take into account that individual and community aspects are interrelated and complementary.

In order to contribute to such an analysis, Pope John Paul II sent a personal letter to the Heads of State of all those nations who signed the Helsinki Final Act (1975). With this letter, forwarded on the eve of the Madrid Conference on European Security and Cooperation, 1 September 1980, a document was included in which the Holy See spelled out what it feels are the necessary requirements for effective religious freedom. Two basic considerations were given:

a) The starting-point for acknowledging and respecting religious freedom is the dignity of the human person, who experiences the inner and indestructible exigency of acting freely according to the imperatives of his or her own conscience; thus he or she has the right to recognize and follow a religious or metaphysical concept involving his or her whole life with regard to fundamental choices and attitudes.

b) Religious freedom is expressed not only by internal and exclusively individual acts, since human beings think, act and communicate in relationship with others. Professing and practicing a religious faith is expressed through a series of visible acts, whether individual or collective, private or public, producing communion with persons of the same faith, and establishing a bond through which the believer belongs to an organic religious community. That bond may have different degrees or intensities according to the nature and the precepts of the faith or the conviction one holds.

In the light of the foregoing premises, the Holy See presented the following elements as indispensable for true religious freedom at the individual level, at the level of community, and at the international level.

At the personal level, the following have to be taken into account:

* freedom to hold or not to hold a particular faith and to join the corresponding confessional community;

* freedom to perform acts of prayer and worship, individually and collectively, in private or in public, and to have churches or places of worship according to the needs of the believers;

* freedom for parents to educate their children in the religious convictions that inspire their own life, and to have them attend religious instruction as provided by their faith community;

* freedom for families to choose the schools or other means which provide this sort of education for their children, without having to sustain directly or indirectly extra charges which would in fact deny them this freedom;

* freedom for individuals to receive religious assistance wherever they are, especially in public health institutions, in military establishments, during compulsory public service, and in places of detention;

* freedom at personal, civic or social levels, from any form of coercion to perform acts contrary to one's faith, or to receive an education or to join groups or associations with principles opposed to one's religious convictions;

* freedom not to be subjected, on religious grounds, to forms of restriction and discrimination, vis-a-vis one's fellow-citizens, in all aspects of life (in all matters concerning one's career, including study, employment or profession; one's participation in civic and social responsibilities, etc.).

At the community level, account has to be taken of the fact that religious denominations, in bringing together believers of a given faith, exist and act as social bodies organized according to their own doctrinal principles and institutional purposes.

The Church as such, and confessional communities in general, need to enjoy specific liberties in order to conduct their life and to pursue their purposes; among such liberties the following are to be mentioned especially:

* freedom to have their own internal hierarchy or equivalent ministers freely established by the communities according to their constitutional norms;

* freedom for religious authorities to exercise their ministry freely, ordain priests or ministers, appoint to ecclesiastical offices, communicate and have contacts with those belonging to their religious denomination;

* freedom to have their own institutions for religious training and theological studies, where candidates for ministry, priesthood and religious consecration can be freely admitted;

* freedom to receive and publish religious books related to faith and worship, and to have free use of them;

* freedom to proclaim and communicate the teaching of the faith, whether by the spoken or the written word, inside as well as outside places of worship, and to make known their moral teaching on human activities and on the organization of society;

* freedom to use the media of social communication (press, radio, television) for the same purpose;

* freedom to carry out educational, charitable, and social activities so as to put into practice the religious precepts.

At the international level, the following requirements have to be respected:

* with regard to religious communities which have a supreme Authority responsible at world level, in line with the directives of their faith, for the unity of communion that binds together all ministers and believers in the same confession: freedom to maintain mutual relations of communication between that authority and the local ministers and religious communities;

* freedom to make known the documents and texts of the religious world authorities;

* freedom to exchange freely in the field of communication, cooperation, religious solidarity, and more particularly the freedom and possibility of holding multinational or international meetings;

* freedom for religious communities to exchange information and other contributions of a theological or religious nature;

* the possibility for the institutions that are by their very nature at the service of religion, to contribute to the discussion and definition of national laws and international instruments that endeavor to express the exact tenor of the exercise of religious freedom.

A CHECK LIST ON RELIGIOUS DISCRIMINATION

by Homer A. Jack

There is a popular feeling in some circles that discrimination based on religion or belief is confined today to one or two countries and involves only one or two world religions. This is an error. Religious discrimination today, as in recent times and the remote past, involves many religions and beliefs in many countries of the world.

Also there is a popular feeling that religious freedom is equated with freedom to hold public worship or other services. Yet as the 1981 U.N. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief makes abundantly clear, there are many levels of discrimination based on religion or belief. Indeed, that is why the U.N. Declaration, although not a treaty, is an improvement over the Universal Declaration of Human Rights (and the covenant on civil and political rights). The Universal Declaration asserts, in Article 18, that "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." Article 18 of the International Covenant on Civil and Political Rights is only slightly more specific. On the other hand, the U.N. Declaration is much more explicit about some of these religious freedoms (even if it is not as detailed as some of its supporters had originally hoped).

There is no known continuing inventory of discrimination, worldwide, based on religion or belief. There should be. But individuals and organizations can at least attempt to prepare their own check list, however imperfect. This memorandum may be helpful for those who desire to make this effort.

A. Areas of Religious Discrimination.

This section paraphrases the areas of possible discrimination by religion or belief as given in the 1981 U.N. Declaration. Whether in fact any country does discriminate against any religion is a judgment often difficult to make, even after an on-the-spot visitation. Yet the brief, truncated listing below may be useful.

1. Freedom to worship or assemble in connection with a religion or belief.
2. Freedom to establish and maintain places for such worship or assemblage.
3. Freedom to establish and maintain appropriate charitable or humanitarian institutions by religious organizations.
4. Freedom to make, acquire, and use necessary articles and materials related to the customs of a religion.
5. Freedom to write, issue, and disseminate relevant publications by religious organizations.
6. Freedom to teach a person of any age a religion in a suitable place, including the family.
7. Freedom to solicit and receive voluntary financial contributions for religious insiitutions.
8. Freedom to train and elect appropriate religious leaders.
9. Freedom to observe days of rest and celebration based on religion.
10. Freedom to communicate with religious individuals and communities at the national and international levels.
11. Freedom to choose a religion without being subject to coercion.
12. Freedom to change one's religion. (This is found in the Universal Declaration but not, significantly, in the 1981 Declaration.)
13. The above freedoms shall be subject to certain limitations to protect public safety.
14. The above freedoms shall be made into national legislation.
15. The above freedoms shall involve belief as well as religion.

B. World Religions from B to Z.

This section lists eleven major world religions. The approximate number of adherents is given. Also resources are given for some religions where further information on religious discrimination might be obtained. Whatever information is received must be evaluated very carefully, since there is, or can be, little objectivity in this field. This listing of informational resources is very incomplete, but hopefully useful.

1. Buddhism. (256 million)*
   a. World Fellowship of Buddhists, 33 Sukhumvit Road, Bangkok 11, Thailand.
   b. Buddhist Peace Fellowship, 905 South Normandie, Los Angeles, CA 90006, U.S.A.

2. Christianity. (997 million)
   a. World Council of Churches, 150 route de Ferney, 1211 Geneva 20, Switzerland.
   b. American Coptic Association, P.O. Box 9119, G.L.S., Jersey City, N.J. 07404, U.S.A.
   c. General Conference of the Seventh Day Adventists, 6840 Eastern Ave., NW, Washington, D.C. 20012, U.S.A.
   d. Pontifical Commission Justice and Peace, Palazzo San Calisto, 00120 Vatican City.
   e. Office for Urban Justice and Peace, U.S. Catholic Conference, 1312 Massachusetts Avenue, NW, Washington, D.C. 20005, U.S.A.

3. Confucianism. (?)

4. Hinduism. (481 million)

5. Islam. (592-907 million)
   a. World Muslim Congress, 224 Sharafabad, Karachi 0511, Pakistan.

6. Jainism. (2.6 million)

7. Judaism. (14 million)
   a. American Jewish Yearbook. American Jewish Committee, 165 East 56th Street, New York, N.Y. 10022, U.S.A.
   b. Interreligious Task Force on Soviet Jewry, Chicago, IL, U.S.A.
   c. World Jewish Congress, 1 rue de Varembe, Geneva, Switzerland.
   d. Anti-Defamation League of B'nai B'rith, 345 East 46th Street, New York, N.Y. 10017, U.S.A.

8. Shintoism. (58 million)

9. Sikhism. (9 million)

10. Taoism. (?)

11. Zoroastrianism. (270,000)

* These figures and others listed below are very approximate estimates. Religious statistics are difficult to authenticate

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12. Other Religions.
    a. Baha'is: Baha'i International Community, U.N. Office, 866 U.N. Plaza, New York, N.Y. 10017, U.S.A.
    b. Indigenous Religions (e.g., of American Indians).
    c. "New Religions."
        1. The Center for the Study of New Religious Movements, 2465 Le Conte Aveuue, Berkeley, CA 94709, U.S.A.

13. Other Possible Resources.
    a. Amnesty International, 10 Southampton Street, London WC2E, England.
    b. International League for Human Rights, 236 East 46th Street, New York, N.Y. 10017, U.S.A.
    c. International Commission of Jurists, P.O. Box 120, 190 Route de Chene, 1224 Geneva, Switzerland.
    d. International Association for the Defence of Religious Liberty, Schlosshaldenstrasse 17, 3006 Bern, Switzerland.
    e. World Conference on Religion and Peace, 777 U.N. Plaza, New York, N.Y. 10017, U.S.A.
    f. Christians Associated for Relationships with Eastern Europe (CAREE), Rosemont College, Rosemont, PA 19010, U.S.A.

C. A Few Contemporary Examples.

It may be worthshile to pin-point a few examples of contemporary instances of discrimination because of religion. However, even in these cases it is often difficult -- as it is especially in Northern Ireland and West Asia -- to isolate the religious dimension from the more basic economic-social dimension.

Asia: against Muslims in the Southern Philippines.
against Baha'is in Iran.
against Jews in Syria.

Africa: against Coptics in Egypt.

Europe: against Christians and Jews in the U.S.S.R.

Etc., etc.

This memorandum is prepared and issued by the World Conference on Religion and Peace (WCRP), 777 U.N. Plaza, New York, N.Y. 10017, U S.A. Comments and suggestions are solicited to make the next edition of this memorandum more comprehensive and useful.

THE U.N. DECLARATION AGAINST DISCRIMINATION BASED ON RELIGION OR BELIEF: A BRIEF HISTORY

By Homer A. Jack.

The history of the U.N. Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief is a long one. It began in a sense with the adoption, by vote of the U.N. General Assembly, of the Universal Declaration of Human Rights in December 1948. Below is a brief, cryptic chronology of events leading to the adoption of the religious declaration by the General Assembly in November 1981. Even this history has not been completed, for the U.N. is attempting to implement this Declaration and some are urging the U.N. to complete its longtime attempt also to elaborate a convention or treaty against discrimination based on religion or belief.

1948 - The Universal Declaration of Human Rights was adopted by the U.N. General Assembly (G.A.). Article 18 proclaims the right of freedom of religion and the practice of religion.

1953 - The Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission hereafter) included a study of discrimination in religious rights and practices in its list of projected work.

1956 - The Sub-Commission decided to proceed with the study and appointed Mr. Arcot Krishnaswami of India as its Special Rapporteur.

1959 - The Sub-Commission and the Commission on Human Rights (HRC) expressed appreciation to the Special Rapporteur for the study. The Sub-Commission prepared, on the basis of the Report, a series of draft principles. The HRC requested the Secretary-General to transmit to member States the draft principles and asked them to respond before October 31, 1960.

1960 - The Sub-Commission discussed the epidemic of swastika-painting occurring in 1959-60 and decided to study these events and their causes, an initiative later endorsed by ECOSOC and the 15th G.A. in resolution 1510 (XV).

1962 - The 17th G.A. in resolution 1981 (XVII) requested the Economic and Social Council (ECOSOC) to ask the HRC to prepare 1- a draft declaration on the elimination of all forms of religious intolerance and 2- a draft international convention on the same topic. (In resolution 1780 (XVII) it requested a declaration and convention on racial discrimination and gave these priority.)

(1963 - The U.N. Declaration on the Elimination of all Forms of Racial Discrimination was proclaimed by the G.A., with the adoption in 1965 by the G.A. for signature by States of the International Convention on the Elimination of all Forms of Racial Discrimination.)

(1966 - The International Covenant on Civil and Political Rights was adopted by the G.A. for signature by States. Article 18 spells out in greater detail than the Universal Declaration the right of freedom of religion and the practice of religion. It did not enter into force until 1976.)

Draft Declaration

1963 - HRC asked its Sub-Commission to prepare a draft resolution.

1964 - The Sub-Commission meeting in January presented a preliminary draft declaration to the HRC which set up a Working Group to prepare a draft declaration. Owing to

lack of time, the Working Group was unable to complete the draft and the HRC was likewise unable to do so for the same reason. The HRC decided to transmit its work to ECOSOC, including comments from member States. ECOSOC decided to refer all the materials to the G.A.

1965 - The 20th G.A. in resolution 2020 (XX) requested ECOSOC to ask the HRC to complete the draft declaration for consideration by the 21st G.A.

1966 and on - HRC did not give further consideration to completing the draft declaration.

Draft Convention

1964 - ECOSOC voted to prepare a draft convention and asked the Sub-Commission to prepare a draft.

1965 - The Sub-Commission prepared a preliminary draft convention. HRC considered the draft and adopted a preamble and four articles of a draft convention.

1966 - HRC resumed preparation of a draft convention and adopted five additional articles, but was unable to complete its work.

1967 - HRC considered the draft further and asked ECOSOC to transmit its unfinished draft convention to the G.A. for completion and adoption. ECOSOC transmitted this material to the 22nd G.A. The latter devoted 28 meetings to this subject, adopting a preamble and Article I. It then voted in resolution 2295 (XXII) to give priority both to the draft declaration and the draft convention at its 23rd session.

1968 - The 23rd G.A. voted to postpone consideration of the item to its 24th session and give it "high priority."

1969 - The 24th G.A. voted to defer consideration of this item to its 25th session.

1970 - The 25th G.A. voted without objection to defer consideration of this item to its 26th session.

1971 - The 26th G.A. in resolution 2844 (XXVI) declaring that "there is not enough time for the consideration of all the items on the agenda of the Third Committee" and "bearing in mind the need for a full discussion of all the items," decided "to consider at its next session the item entitled . . . 'Elimination of all forms of religious intolerance.'"

(1972 - NGOs at Headquarters met in an effort to give new impetus to the declaration -- rather than to the convention.)

1972 - The 27th G.A. in resolution 3027 (XXVII) decided to give priority to completing a declaration and asked Member States to submit comments to the Secretary-General on previous drafts by the Sub-Commission and a working group of the Commission.

Priority to Declaration

1973 - The 28th G.A. in resolution 3069 (XXVIII) decided to request the HRC again to elaborate a declaration after the Third Committee spent seven meetings drafting certain paragraphs.

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1974 - The 30th HRC established an informal working group to draft the declaration and tentatively agreed upon the title and one preambular paragraph.

1975 - The working group of the 31st HRC tentatively adopted six additional preambular paragraphs.

1976 - The working group of the 32nd HRC tentatively adopted one additional preambular paragraph.

1977 - The working group of the 33rd HRC tentatively adopted one additional preambular paragraph.

1978 - The working group of the 34th HRC began to draft the operative paragraphs, with some Islamic States becoming more involved.

1979 - The working group of the 35th HRC tentatively approved three articles and the HRC formally adopted them.

1980 - The working group of the 36th HRC tentatively adopted the fourth article and part of the fifth article.

1981 - The working group under the chairmanship of the late Justice Abdoulaye Dieye of Senegal of the 37th HRC reported that it had completed the declaration, consisting of the preamble and seven articles. This draft text was approved by the HRC for transmission to the ECOSOC and the 36th G.A.

Adoption of Declaration

1981 - A revised text was adopted "without a vote" by the Third Committee of the 36th G.A., under the chairmanship of Mr. Declan O'Connor of Ireland. (November 9.)

1981 - The declaration was adopted "without a vote" by the plenary of the 36th G.A. (November 25.) (Resolution 36/55.)

1982 - ECOSOC in decision 1982/138 asked the Secretary-General to "disseminate widely" the text of the declaration (May 7.)

1982 - The 37th G.A. adopted without a vote resolution 37/187 which, inter alia, invited all governments to ensure wide publicity for the declaration and requested the HRC to consider how to implement the declaration.

1983 - The 39th HRC discussed measures to implement the declaration, and in resolution 1983/40 requested the Sub-Commission to study the current dimensions of the problem and the Secretary-General to hold a seminar in 1984-85 on the encouragement of freedom of religion or belief (February/March.)

1982 - The 35th session of the Sub-Commission discussed the declaration and in resolution 1982/28 decided to consider at its 36th session the question of updating the 1959 study on Religious Rights and Practices. (August/September.)

1983 - The 38th G.A. has on its provisional agenda the item: "Elimination of all Forms of Religious Intolerance." (September/December.)

1984 - The 40th HRC will discuss the item further.

Additional copies available from the World Conference on Religion and Peace, Room 7B, 777 United Nations Plaza, New York, N.Y. 10017, U.S.A.

Item 9

The U.N. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

A BRIEF OVERVIEW extracted from

The U.N. Declaration on the Elimination of Religious Intolerance and Discrimination Historical and Legal Perspectives

by
Sidney Liskofsky

Contents:

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 the Declaration).[1] This event was the culmination of almost a quarter century of persistent efforts by a small, dedicated group of representatives of several governments, helped and encouraged by several 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 Covenants--one on Economic, Social and Cultural Rights, and the other 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.[2] 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 more than two 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 views and political difficulties that had to be reconciled or overcome. For example, the Soviet Union, which opposes in principle all forms of religion, contended that the issue of religious freedom had been raised as a cold-war maneuver. For most Muslims, Islamic law held supremacy over any other religious or secular law. Black African states, which were 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. However, an internationally felt need and favorable circumstances converged to make the Declaration's adoption possible.

The Declaration is a moral and political document rather than a legally binding instrument. Its importance lies in its adoption by consensus, its specificity (especially in Article 6), and the fact that it is the only UN instrument devoted specifically to promoting tolerance in matters of religion or belief. 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 agreements. Again, like other declarations, it required separate decisions to initiate follow-up activity. In focusing on the specific issue of religious intolerance, it has 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 encourage its observance and, above all, on the zeal with which governments, and religious and other nongovernmental organizations, including academic institutions, promote it and teach about it. In the UN, some steps have already been initiated, for example, to publish it in all the official languages and disseminate it widely, and to conduct a comprehensive worldwide study of current dimensions of religious intolerance and discrimination as well as a seminar under the UN's human rights advisory services.

PART I

THE UN AND HUMAN RIGHTS

In 1945 the UN Charter became the first international agreement to incorporate the idea of universal human rights, and one of the world organization's principal purposes was to encourage "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. Marxist theory precluded whoehearted participation in an undertaking based on assumptions of natural rights or universal rights. In this theory, rights are simply rules imposed by the ruling class, the bourgeoisie under capitalism and the workers under socialism; the individual freedoms of capitalism are a formality without content.[3]

But neither was the commitment of the Western countries unqualified; nor did they have a clear idea of the direction they intended or envisaged for 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."

When it was adopted, the UN Charter was faulted by many people for not including an international bill of rights that would spell out the rights and freedoms it would protect or promote. However, the process of spelling them out began almost at once and has continued to the present day.[4] The Universal Declaration was adopted in December 1948 with only the European Communist bloc, South Africa, and Saudi Arabia (eight members in all)abstaining in the General Assembly vote. With the addition to this document of two legally binding Covenants in 1966--on civil and political rights, and on economic, social and cultural rights, the goal of an international bill of rights was finally achieved. A year earlier, in 1965, a far-reaching convention on the elimination of racial discrimination had been adopted.

The Universal Declaration was followed over the next three decades by conventions, declarations and other norm setting statements focused on a wide range of specific rights and issues: refugees, stateless persons, slavery and slave-like practices, women's

and children's rights, discrimination in education and occupation, torture, treatment of prisoners, medical ethics, and others. More recently, human rights norm-setting efforts were begun on many other problems: the mentally ill, enforced "disappearances," arbitrary and summary executions, human rights "defenders," states of emergency, indigenous peoples, minorities (ethnic, religious and linguistic), genetic engineering, data protection, and so on. There have also been proposals for new categories of rights, sometimes called "solidarity" or "third generation" rights, such as the right to development, to a clean environment, and to peace. (Civil and political rights were called "first generation" rights, and the economic and social rights "second generation"; and on several occasions the General Assembly has affirmed the interdependence and equal importance of the two categories). With many other new rights proposals waiting in the wings, projects are under discussion concerning new international economic, information, cultural and humanitarian "orders."

This proliferation of new and proposed rights and world orders has troubled some observers about the direction of the UN's human rights enterprise, which still suffers from the handicap of a lack of shared ideological basis and cultural heritage to serve as a sound foundation for it. They cite serious flaws in the existing jurisprudence, among them, blurred distinctions between binding and non-binding rules, gaping loopholes created by permissible limitations attached to individual freedoms, and formulations susceptible to contradictory interpretations. While acknowledging the validity of the endeavor to expand the list of recognized human rights to reflect changing needs and perspectives, they are concerned that it not harm the integrity and credibility of long-established human rights principles and of the human rights tradition. They therefore urge care in the procedures by which new rights may be proclaimed.[5]

The effectiveness of international implementation in the framework of the UN, whose many authoritarian member states violate human rights systematically, is also questioned. Most of the special committees center on South Africa, Israel, Chile and Central American countries. Procedures in these committees are rudimentary and subject to political influence, as are those in committees and working groups with general mandates, and even those established under the authority of the major human rights treaty agreements (i.e., the Covenant on Civil and Political Rights, the Convention on Racial Discrimination and several UNESCO and ILO Conventions).

Though cognizant of such shortcomings, many observers are more hopeful. They see promise in the wide acceptance of the civil and political rights, even if this acceptance by states that violate them is now hypocritical and on "paper." The world might be even grimmer than it is, they hold, but for the restraints, however intangible, exerted by the human rights agreements and processes.

Doubtless, "selective morality" persists (manifested among other ways by overconcentrating on some countries, such as Isreal, while overlooking more egregious and pervasive human rights infringements elsewhere), but the UN has actually extended its coverage to a degree, albeit limited, to include human rights situations in certain African and Asian countries, and even, fleetingly, in Poland. It has done so through standing committees with general mandates as well as through the special committees, working groups, rapporteurs and representatives authorized to deal with such special problems as slavery, disappeared persons and summary executions, among others.

In the UN's first decade and a half, when it was Western-dominated, its norm-setting efforts focused on civil and political rights. This emphasis changed with the admission of a large number of African and Asian states which, abetted by the Soviet-guided East European states, sidetracked projects in these areas in favor of activities centered on colonial, racial and economic issues. The series of studies carried out under the auspices of the Subcommission on Discrimination and Minorities and the Human Rights Commission, on the right to leave one's country and to return, political rights, religious rights, and several others, suffered this fate. The recommendation in the study on religious rights that the right to freedom of thought, conscience and religion (proclaimed in broad terms in the Universal Declaration and the Covenant on Civil and Political Rights) be spelled out in a special norm-setting declaration and/or convention, was stalled. Twenty years elapsed before supporters of this recommendation could convince the General Assembly in November 1981, to carry it out by adopting the Declaration on Religious Intolerance.

PART II

THE UN DECLARATION ON RELIGIOUS INTOLERANCE AND DISCRIMINATION

As indicated in its full title, the 1981 Declaration deals with both intolerance and discrimination. Here the UN is following its 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 in special instruments that set standards for governmental and private conduct.

The Long Road to Adoption

Originally, the UN's efforts against racial and religious discrimination were linked to one another. They were combined, for example, in the conventions on discrimination in employment and in education adopted in 1958 by ILO and UNESCO, respectively. Again, 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 of a Similar Nature."[6] However, 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.[7]

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 slowly and all but petered out.

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

In 1962, the Assembly asked the Commission for such drafts, and two years later, six articles of a declaration were ready. A draft convention, including a preamble and 13 articles, including possible implementation provisions, was submitted in 1967.[8]

The draft convention's definition of "religion or belief," which included "theistic, nontheistic and atheistic beliefs," was opposed by the Catholic Church and some other religious groups, but especially by the Islamic states.

By 1968, the Assembly could only--and even then with many abstentions--adopt a controversial preamble. No further work was done on this matter 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, intruded. In 1967, for example, while the Assembly was reviewing the Commission's draft convention, a proposed amendment to one of its articles, requiring that states institute educational and informational measures to combat prejudices, would have added "as, for example, anti-Semitism and other manifestations which lead to religious intolerance ..." The USSR and several Arab states, with Libya in the forefront, put forth a sub-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 decision to omit all specific examples of prejudice, including anti-Semitism.[9] However, there is no doubt that anti-Semitism is covered by the general prohibitions in the Declaration on Religious Intolerance, and also in the 1965 convention on Racial Discrimination and in other UN instruments. But the debates were a portent of things to come; in 1975 the General Assembly passed a resolution equating Zionism with racism.[10]

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 to work first on a declaration were again stalled. By 1977 the preamble to a declaration, but not a single operative article, had been agreed on.[11] During these bleak years, except for a few Western governments, only the nongovernmental organizations kept insisting on the need for action.

Finally, in 1979, after several years of continuous obstructionism, the Commission's Western members reluctantly agreed to bypass the prevailing understanding (normally insisted on by them) that decisions to formulate human rights instruments be made only by consensus. Three operative articles put to a vote and approved were not new, for they were largely adaptations of earlier UN instruments. But the logjam was broken.[12]

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.[13]

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. (The abstainers were the USSR, Byelorussia, Poland, Bulgaria and Mongolia. Cuba, Syria, Uganda and

Pakistan voted for the Declaration, with reservations).[14] That autumn, the General Assembly's Third Committee, after making a few minor revisions to accommodate the Islamic and Soviet delegations, and adding a saving clause (in an eighth article) to accommodate the Nordic delegations, approved the Declaration as a whole by consensus; it was also adopted without a vote by the Assembly in plenary on November 25, 1981.[15]

Provisions

The new Declaration reaffirmed and spelled out Article 18 in both the Universal Declaration and the Covenant on Civil and Political Rights. Its original title was "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 Socialist 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 in favor of religion. Contending also that the term intolerance lacked juridical meaning, they wanted to limit the content of both the proposed declaration (and any parallel convention) to "discrimination." The compromise formulation 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 is comprised of 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. 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 milder version of a Soviet proposal, which had stated that religion "continues to serve in this manner." The Assembly added the modifier "whatever" to "belief" at the last minute as a concession to the Soviet Union whose reiterated request to emphasize that belief includes atheism, the Commission had declined.

The issue on this and many other occasions was not whether atheism deserves recognition as a protected belief, but rather whether it should be singled out for specific mention along with religion. There was general agreement that it is entitled to the

same protection, and was in fact covered in the term "belief" as well as in other phrases in the draft Declaration. However, some Western states did not consider it appropriate to single out one form of belief and, more significant, the Islamic states had always opposed specific mention of atheism, and had given notice that they would vote against the Declaration in the event it was mentioned. In the end, the Soviet Union yielded on the atheism issue in order not to antagonize the numerous Islamic member states, after extracting the "whatever" [belief] concession.

It is essential, 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 the elimination of "ideologies or practices of colonialism and racial discrimination." Again the language is softened from other wording advocated by the Soviet Union, which alluded to the need to prevent exploitation of religion for political ends and to impede efforts to eliminate colonialism and racism.

Article 1

Article 1 contains the essence of the Declaration. 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."[16]

At the insistence of the Islamic states during the 1981 General Assembly, the reference in the Universal Declaration to the right to "change," and in the Covenant to 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 not defined either in this article or 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, an attempt to define "religion or belief" would be fruitless at best. As noted, the prefacing of "belief" with "whatever" in the Preamble and in this Article, as well as the legislative history of Article 18 in both the Universal Declaration and the Covenant, and the express statement of understanding by the Commission's working group chairman, leave no doubt that "atheism" has been covered.

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 freedom to "manifest" it, subject to certain limitations, i.e. "public safety, order, health or morals or the fundamental rights and freedoms of others." But governments cannot limit manifestations arbitrarily; for these limits must be "prescribed by law" and "necessary." Because the necessity criterion 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.

In the main, the discussion over criteria for balancing the individual right to manifest religion or belief with the community's collective concerns for public safety and the other specified limitations, recapitulated arguments and understandings during debates over the Covenant years before.

Proposals to add "national security" to these permissible limitations were not accepted. Even so, those agreed to already offer governments the widest loopholes and have too often been cited in UN or other international forums in defense of denials of the freedom to manifest religion or belief.

Article 2

Article 2 proscribes discrimination "by any state, institution, group of persons or person on grounds of religion or other belief" in both the public and the private spheres. 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 discriminatory practices cited are to be prohibited whether intended to discriminate or whether they have the effect of discrimination, regardless of intention. Discrimination is a well-understood concept with clear legal meaning, but intolerance is not. Here, intolerance and discrimination are treated as a combined concept and so defined. With regard to the definitions the article raises difficult questions of interpretation, for example, on the issue of affirmative action in the form of reverse quotas.

Like Article 18 of the Universal Declaration and the Covenant, this article does not proscribe an established religion, which the Soviet Union had proposed be declared as discriminatory in itself. It 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 most Islamic countries, maintain state religions, or, at least, afford preferred status to a particular religion. 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 therof." However, such separation is not always indicative of the level of tolerance in a country which is higher in some countries with state religions--and the latter differ widely in how tolerantly they treat religious minorities and non-believers.

Since the Declaration prohibits an establishment of religion but not religious discrimination, it could not be invoked to proscribe policies, such as subsidizing religious schools or enforcing Sabbath closing laws, simply on the ground that the "wall of separation" had been breached. On the other hand, if these policies were to adversely affect minority religious groups or nonbelievers, in some cases they could be challenged on the basis of the Declaration's antidiscrimination provisions.

Not only state discrimination is proscribed but also discriminatory practices by private institutions, groups or persons.

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 the Covenants, and an obstacle to peaceful inter-State relations.

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." 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 these and other fields are covered.

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") as well as educational and other means to counteract religious discrimination and intolerance.[17] The obligation to enact legislation is repeated in Article 7.

Article 5

Article 5 ensures for parents the right "to organize the life within the family in accordance with their religion or belief," including the child's "moral education."[20] 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" (An earlier qualification limiting this criterion to children who have reached a "sufficient degree of understanding" was rejected).[18] But who decides what are the "best interests" of the child? The parents? The teacher? 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."[19]

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 and, in fact, the article's drafting history demonstrates that the supporters were thinking of such problems as the parents' refusal to permit a medically recommended blood transfusion or other treatment for minors, in which case the parents' wishes would not prevail. More problematic are the term "mental health" (which replaced "moral harm" in an earlier draft) and, even more, "full development."

The provision concerning the child's right "to have access to religious education" has been faulted as not specific enough (although Article 6 adds some protection); it does not mention, for example, the right to establish the religious schools that would make such education possible. In this connection, it is noteworthy that another international instrument, the 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, according to Article 2.)

The Covenant on Economic, Social and Cultural Rights also 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 (21)). Article 8 of the Declaration states that in case of conflict between any of its provisions and those in the Covenants on human rights, the latter would apply, therefore this provision in the Economic and Social Covenant would prevail over a contrary ruling based on the Declaration.[20]

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. The list is clearly not meant to be exhaustive and includes other freedoms, left unspecified to avoid polarization that might have jeopardized the entire undertaking. Although the article fails to include some rights recommended by the Sub-Commission on Discrimination and by nongovernmental organizations 20 years before, the provision is more far-reaching than even optimists had expected.[21]

The Soviet Union and its allies had wanted 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."

Credit for Article 6, probably the most significant in the Declaration because of its particularity, belongs to Canada, the Netherlands, the United Kingdom and the United States which offered the initial text. Representatives of these nations participated in lengthy working-group meetings, often late at night, and stood firm when other Western members of the Commission would have accepted a truncated document.[22] Some of the disputed issues are indicated in the article's nine subparagraphs.[23] Wrangling over them continued until they were finally approved by the Commission in 1981. They 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 had insisted that these be defined. (In Communist countries, the state owns the "places" outside private homes.) Religious groups did not like the ambiguity introduced by this change.

-- Freedom to "establish and maintain appropriate charitable or humanitarian institutions." The additional 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. All the same, it is possible to argue that "acquire" implies the right to import a needed article if it is not available domestically.

-- 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, because the latter is more susceptible to arbitrary application.

-- Freedom to teach a religion or belief, in "places suitable for these purposes." The right to establish private religious schools, in addition or as an 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 "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 fought vigorously against the entire provision. 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. 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." Religious believers in antireligious countries with only secular days of rest as well as adherents of minority religions in countries where only the majority religion's day of rest is recognized, are benefited by this provision.

-- Freedom "to communicate" in religious matters "with individuals and communities at the national and international levels." For years, nongovernmental groups had urged that the right to form local, regional and international associations or federations, and participate in their activities, be recognized.

All the freedoms listed in Article 6 were approved in the Commission's working group by consensus, except for those 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. Several other specific freedoms, suggested but not included in the list, had 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 teach and learn the sacred languages of one's religion; 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.[24]

A recommendation rejected for inclusion in this article, offered in an important Netherlands-Sweden working paper, was the freedom to express the implications of religion or belief in public life.[25]

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. 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.[26]

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."

The intent of this article, proposed by the Netherlands, was to declare the continuing validity of the right to "change" one's religion or belief as provided in the Universal Declaration, or the right to "have or adopt" one as provided in the Covenant. As noted earlier, the Muslim members conditioned their agreement on the Declaration on the exclusion of these provisions. 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 other provisions in these or other international instruments that may be more liberal than those in the 1981 Declaration.[27] The device of covering over irreconcilable differences by including provisions geared to both sides of an issue is a common practice in international documents.

* * *

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." Another USSR proposal was that both school and state be separated from the church, to legitimize the prohibition of church-related schools; and it wanted to specify the right to criticize religion. These proposals were not accepted.

Also not accepted, was a proposal by some Western nongovernmental groups for a ban on incitement to religious hatred analogous to the provision against racial hatred in the Convention on Racial Discrimination. (Some civil libertarians might be concerned, if

such an article were included that some religious groups with government support would try to stifle mere critical comment on their religious practices or pronouncements, on the pretext of preventing incitement to hatred.)

A proposal for a provision 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 article 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 Soviet bloc and the Islamic group, issued statements of understanding, or reservations, after the Declaration had been adopted without a vote in the Assembly's Third Committee.[28] 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 atheist beliefs and the right "to conduct atheist propaganda"--vigorously done under official Soviet policy, whereas religion may only be "professed," at least in theory. More important was the Soviet objection to all 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 Vietnamese and Polish delegates repeated the charge that the Declaration disregarded the rights of nonreligious persons. The Polish representative added that his country's national law treated all persons equally regardless of religion and punishes those who discriminate; and also praised the constructive role of the Catholic Church in Poland. The East German representative said that the right to profess and practice one's religion "must not be used to keep citizens from fulfilling their civic duties." The Czechoslovak representative said that the Declaration must "not be a pretext for interference in the internal affairs of countries." The Rumanian representative objected that Article 5, which gives parents the right to determine their children's education, was inconsistent with Rumanian law.

Syria objected to Article 7, which requires that states reflect the Declaration's rights and freedoms "in national legislation." Speaking for the Islamic group, the Iraqi official representative took exception to any provision inconsistent with the principles of, or legislation based on, the shariya, the Islamic law. But the Iraqi President of the General Assembly expressed his personal view at a press conference after the close of the session, that "... there is absolutely no justification for any kind of discrimination whatsoever based on religion and faith. If you do not solve that problem,

it is very difficult to have the kind of society that the Charter of the UN calls for. I think that the full freedom of belief and religion should long ago have been enshrined as an instrument which should have been adopted and should be lived up to by all Member States."[29]

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 support the Declaration during the years of its tortuous drafting was not based, in most cases, on principled opposition. "A key aspect of African society is the widespread religious tolerance. Virtually all African countries are characterized by religious pluralism."[30] The Africans remained passive because they felt the UN should concentrate on racial and economic issues, and because many viewed the issue of religious freedom as only 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 religious matters.

III. The Declaration and After

With the adoption of the Declaration, its supporters turned their attention to educational and promotional activities that could make it 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. The Assembly also invited governments to publicize the Declaration and asked the Human Rights Commission to consider measures needed to "implement" it, a term pressed by the Western delegations and viewed with disfavor by the East European and certain Muslim states.[31]

In spring 1983 the Commission on Human Rights endorsed a recommendation by its Sub-Commission on Discrimination and asked the Secretary-General to convene a seminar on "the encouragement of understanding, tolerance and respect" in matters of religion or belief. Set for December 3-14, 1984, at the UN Headquarters in Geneva, Switzerland, its provisional agenda deals with: 1. the principle of tolerance in the UN Charter and freedom of religion or belief under human rights instruments; 2. the nature and dimensions of manifestations of such intolerance; 3. models for national or local action to prevent or combat it; 4. education programs to foster tolerance; and 5. future actions to promote and to protect religious freedom particularly the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.[32]

The Commission also approved the Sub-Commission's appointment of its Costa Rican member, Mme. Elizabeth Odio Benito, as Special Rapporteur to produce a comprehensive study--using the Declaration as a standard--of manifestations throughout the world of intolerance and discrimination on the grounds of religion or belief. From information received from governments, specialized agencies, regional intergovernmental organizations and from nongovernmental groups, she was asked to identify the "root causes" of such manifestations and to recommend specific remedial measures, especially in education.[33]

Given the complex, sensitive theological and philosophical issues involved, and the normal politics of the UN, how this study and the seminar deals with the issues will depend heavily on the activity of nongovernmental organizations.

Nongovernmental groups and some Western governments have offered suggestions for additional UN activities, among them, that the General Assembly proclaim November 25, the date of the Declaration's adoption, as an 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. It was further suggested that the Commission or Sub-Commission set up a working group (analogous to the monitor groups established on disappeared persons or slavery) to review annually official and nonofficial information on denials of religious freedom, and to intercede with offending governments. Even now, notwithstanding difficulties in politicized forums, procedures in the Commission and Sub-Commission, in UNESCO's human rights committee, and in other UN entities provide some opportunities to call attention to such violations. States that have ratified the Covenant on Civil and Political Rights might be asked to include in their periodic compliance reports information on their laws and practices bearing on the question of religious intolerance and discrimination.[34]

Finally, it has been suggested that the Declaration be developed into a legally binding convention. There are those who believe the effort should be initiated at once, but others say that it should be postponed because some states might try to add more exceptions to a legally binding instrument than they have to the Declaration, and thus diminish the value of both. Another fear is that governments hostile to the Declaration might use the long drafting process of a convention and the long wait till enough ratifications are secured to bring it into force, to argue against discussing in the meantime reported denials of religious freedom.

CONCLUSION

It is now more than two decades ago since 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 people questioned the need for a special declaration or convention on religious freedom because it was already protected, explicitly or implicitly, 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 of assembly and association, including for religious purposes, is implied in the Covenant's provisions on those subjects. Similarly, freedom to write and disseminate religious publications and to communicate about religious matters is implicit in the provisions on freedom of opinion and expression. Freedom to teach a religion or belief is guaranteed by the right of ethnic, religious and linguistic minorities "to enjoy their own culture, to profess and practice their own religion, or to use their own language.") Nevertheless, a special declaration on religious freedom offers important benefits by the very fact of its special focus on religion. In addition, it particularizes principles previously agreed upon, and establishes a setting for special educational and promotional programs under UN, governmental and nongovernmental auspices.

Furthermore, the Declaration can enhance the standing of the Covenant's Article 18. Avenues of impact were described as follows by one authority:

> 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 government's 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.[35]

Only time will tell how much the new Declaration can do to prevent religious discrimination and overcome religious intolerance. Respected political theorists, now and in the past, have been skeptical of highminded moral and political statements. 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 concepts in similar ways."[36]

Surely, however, the Declaration will have little impact unless governments--and even more, religious and other national and international nongovernmental groups--promote it energetically. If it is allowed to gather dust on library shelves, it will be nothing more than a footnote for scholars. But if used thoughtfully and imaginatively, it can help people who must still struggle for the basic right to freedom of religion and conscience. It can dramatize the contrast between the real and the ideal, expose violations of freedom, give hope to victims, and shame oppressors. All this can be done despite the reservations and the "understandings," even the hypocrisy, of some states that joined in adopting the Declaration.

NOTES

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 and Politics 227 (1978).

3. Laqueur and Rubin, "The Marxist Critique," pp. 179-92.

4. For detailed discussion of this process see Egon Schwelb, Human Rights and the International Community: The Roots and Growth of the Universal Declaration of Human Rights (Chicago: Quadrangle Books, 1964); Louis Henkin, editor, The International Bill of Rights: The Covenant on Civil and Political Rights, N.Y., Columbia University Press, 1981, Introduction, pp. 1-31.

5. Philip Alston, "Conjuring Up New Human Rights: A Proposal for Quality Control," American Journal of International Law, July 1984, Vol. 78, pp. 607-621.

6. 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).

7. GA Res. 1781, 17 GAOR, Supp. 17, UN Doc. A/4217 (1962).

8. Commission on Human Rights (CHR), Report on 23rd Session, ESCOR, Supp. 6, E/4322, pp. 13-40. Liskofsky, Eliminating Intolerance and Discrimination.

9. GA Res. 2295, Press Release GA/3570 (GA Round-up), December 15, 1967, Part V, p. 13.

10. Daniel P. Moynihan, "The Significance of the Zionism-as-Racism Resolution for International Human Rights," in Sidorsky, pp. 37-45.

11. CHR, Report on 32nd Session, 1976 ESCOR, Supp. 3, E/5 768, pp. 37-41; Report on 33rd Session, 1977 ESCOR, Supp. 6, E5927, E/CN.4/1256, pp. 43-48.

12. Commission on Human Rights (CHR), Report on 35th Session, 1979 ESCOR, Supp. 6, E/1979/36, pp. 69-76.

13. 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 5, 1980.

14. CHR, Report on 37th Session, 1981 ESCOR, Supp. 5, E/1981/25, p. 22

15. GA Res. 55, 36 GAOR, Supp. 48, A/36/48 (1981), Press Release GA/6546, pp. 332-35.

16. For differing views in Commission discussion of Article 1, see note 17 below. CHR, Report on 34th Session, 1978 ESCOR, Supp. 4, E/1978/34, pp. 56-65. Consideration of this article was resumed in 1979.

17. CHR, Report on 35th and 36th Sessions, 1979 ESCOR, Supp. 6, E/1979/36, pp. 69-76, and 1980 ESCOR, Supp. 3, E/1980/13, pp. 108-118.

18. Ibid. CHR, Report on 36th Session.

19. 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. When the Universal Declaration and Covenants were being drafted, Jewish nongovernmental organizations recommended including the following provision: "Children whose parents were killed in a war or other catastrophe shall be brought up in the religion of their parents," implying unqualified presumption that the murdered parents would have wanted their children brought up as Jews. The Jewish 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.

20. 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.

21. CHR, Report on 36th Session. Note 17 above.

22. 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.

23. CHR, Report on 37th Session, 1981 ESCOR, Supp. 5, E/1981/25, C/CN.4/1475, pp. 138-54.

24. Krishnaswami, pp. 71-73; N. Lerner, Israel Yearbook on Human Rights, 1981, op cit, p. 95.

25. UN Doc. A/C.3/L.2131 (1974), Art. VI(3). This Netherlands-Sweden working paper is reproduced in Roger Clark, "The United Nations and Religious Freedom," Journal of International Law and Politics (New York University), 1978, Annex 2, pp. 223-225.

26. T. Johnson, op cit, p. 847.

27. Ibid, p. 850.

28. 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.

29. T. Johnson, op cit, p. 851.

30. 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).

31. GA Res. 187, 37 GAOR, Supp. 51; A/37/51 (1982), Press Release GA/6787 (January 4, 1983), p. 402.

32. CHR, Report on 39th Session, 1979 ESCOR, Supp. 3, E/1983/13, pp. 101-102 and 173. UN Secretariat Memorandum accompanying letter to invitees to UN Seminar on Religious Intolerance, G/SO 216/3 (37).

33. E/CN.4/Sub. 2/1984/3, pp. 46-47 and 98-99. As of the time of writing, the study was in its initial stages.

34. 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.

35. Partsch, in Henkin, p. 214.

36. The New York Times, Op. Ed., October 20, 1981.

IN BRIEF
Human Rights at the United Nations: Fighting Religious Intolerance

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The following pages provide background and recommendations on the "Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief" to be discussed at the UN General Assembly (GA) in 1988

Several initiatives on the "elimination of religious intolerance" will be considered in connection with the report of the Commission on Human Rights (the Commission) Among the items will be the second report of the Commission's Special Rapporteur on this subject, the renewal of that Rapporteur's mandate, the question of whether to begin drafting work on a convention on the freedom of religion or belief and elimination of discrimination, and other measures to implement the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (the Declaration)

Background

Although the drafting of the Declaration consumed nearly 20 years, the UN embarked on new efforts in this field with surprising rapidity following adoption of the Declaration by consensus in 1981

In 1983 the Commission's subsidiary expert body, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, appointed a Special Rapporteur, Professor Elizabeth Odio Benito of Costa Rica, to report on the causes and current dimensions of religious intolerance and discrimination based on religion or belief and to propose remedial measures. Her appointment marked the beginning of a new stage in the development of the normative content of the principles stated in the Declaration The Sub-Commission's mandate explicitly referred to the Declaration as the standard against which manifestations of intolerance to religion were to be assessed

In 1987 Special Rapporteur Odio presented her comprehensive final report to the Sub-Commission It summarized contemporary manifestations of intolerence and discrimination in Europe, the Americas, Eastern Europe, Africa and Asia, without identifying specific countries or groups Explicit references to the situations in Iran, Albania, Pakistan and Afghanistan were included because the human rights situations in those countries were the subjects of study by specialized UN bodies. The report set forth detailed recommendations for programmes of action to be undertaken by the Sub-Commission, the Commission, the specialized agencies in the UN, the member states and NGOs and religious bodies. Based on her findings, Special Rapporteur Odio urged a renewed effort to draft a convention on the elimination of religious intolerance and discrimination

An additional implementing mechanism for the Declaration was created in 1986, when the Commission appointed its own Special Rapporteur, Mr Angelo d'Almeida Ribeiro of Portugal, by a vote of 25 to 5, with 12 abstentions The mandate instructed the Rapporteur to examine "incidents and governmental actions inconsistent with the [Declaration]" and to recommend remedial measures, including "the promotion of a dialogue between communities of religion or belief and their Governments" He was requested to carry out this work "with discretion and independence"

In his 1987 report to the Commission, Mr Ribeiro summarized factors that hamper implementation of the Declaration, including legislative provisions, governmental policies, socioeconomic and political circumstances, and intolerant religious attitudes. He also inventoried practices inconsistent with the Declaration but did not identify by name the countries cited in the allegations he received His decision not to name names was, he explained, based on a concern that the need for objectivity would be compromised by identifying specific countries as violators without also presenting their responses to the allegations More pointedly, the Special Rapporteur noted that this approach took into account the Commission's instructions to exercise "discretion and independence" in carrying out his mandate

This decision not to name names was perhaps well-taken following

consideration of the Rapporteur's 1987 report, the Commission extended his mandate for one year None of the five governments that originally voted against the creation of the Rapporteur's post -- Bulgaria, Byelorussia, the GDR, Syria and the USSR -- opposed the extension In his second report, Ribeiro redirected the focus of his activities to center on the role of governments in violations of the Declaration (His first report, like Special Rapporteur Odio's final report, had drawn attention to the role of religious communities themselves in such violations and the persistence of interreligious strife) Based on the responses to his 1987 report, the Rapporteur decided to provide specific information on the situation in particular countries This was a striking departure from the path of "discretion" he pursued in his first year

The 1988 report not only described alleged infringements of religious and other freedoms in Albania, Bulgaria, Iran, Pakistan, Turkey and the USSR, but also reproduced both the texts of the Rapporteur's communications on those allegations to the governments concerned and the latter's responses Ribeiro even conducted a fact-finding mission to Bulgaria at that Government's invitation In updating his first report, he briefly mentioned violations of the Declaration in several other countries, including Bangladesh, Rwanda, Australia, the U S A and Singapore

When the Commission discussed Ribeiro's 1988 report at its 44th session, responses ranged from the strong support for the decision to address concrete cases voiced by some Western countries, to the approval of approaches emphasizing dialogue and cooperation voiced by some Third World states, to the inevitable denials by the representatives of the governments cited in the report Widely divergent opinions were expressed by both government representatives and NGOs over the recommendation that the UN begin work toward a convention -- a course of action urged by Ribeiro in both reports and by Special Rapporteur Odio Benito The Soviet Union had previously caused considerable consternation among many longtime advocates of UN action in the field of religion when it decided in 1987 to promote work on a convention (Efforts to draft a convention were initiated together with the work on the Declaration but were abandoned in 1972, when the General Assembly decided to give priority to the draft declaration)

The Commission debate yielded Resolution 1988/55, which reflects the Commission's growing reluctance to make a clear statement about the desirability of a convention Resolution 1988/55 requests the Sub-Commission to examine "the issues and factors which should be considered before any drafting of a binding instrument on freedom of religion and belief takes place " In contrast, the Resolution clearly affirms the Commission's commitment to the role of the Special Rapporteur, by calling for a two-year extension of his mandate

The Sub-Commission, in turn, appointed one of its members, Professor Theo van Boven of the Netherlands, to prepare a working paper to assist it in carrying out the two tasks assigned by the Commission in Resolution 1988/55 compiling the international human rights provisions relevant to the freedom of religion or belief and examining, in light of GA Resolution 41/120, the factors to be taken into account before elaborating a convention

Three key issues emerge as central to the debate in the UN on the elimination of intolerance based on religion or belief whether to begin drafting a convention in the near future, what the role of the Special Rapporteur should be, and how the Rapporteur's activities regarding violations in specific countries will be received

Is This the Time To Move Toward a Convention?

The common practice in the UN has been to follow the adoption of a human rights declaration with the preparation of a binding instrument on the same subject. In the context of that practice, there is nothing unusual in the recommendations by both Special Rapporteurs on religious intolerance that the UN now embark on the second stage of standard-setting Treaties offer obvious advantages over declarations by imposing unequivocal legal obligations and creating reporting procedures. The question is not whether the UN should draft a convention on the freedom of religion or belief-- it should-- but <u>when</u> drafting work should begin

Many Western nations, and particularly the United States, fear that the Soviet Union now advocates the formation of a working group to draft a convention as a means of undermining the activities of the Special Rapporteur and weakening the legal significance of the Declaration itself Comments on the establishment of a working group for this purpose were submitted to the Secretary-General by a few member states These comments point to an apparent consensus among the Western governments responding (Canada, France, the FRG, Italy, the US and the UK) that the establishment of a working group is premature

A Soviet initiative in the Commission now calls for the work on a

convention on religion or belief to begin only when the Working Group on the draft convention on the rights of the child has completed its tasks The earliest date by which the work toward a convention on religion could begin seems to be 1990

There is a real danger that work on a binding instrument undertaken without the necessary consensus-building and analytic groundwork might produce a convention less protective of freedom of religion or belief than is the Declaration

Enhancing the resources devoted to implementation of the Declaration is probably the better course for the UN in the immediate future The experience gained in activities to implement the Declaration will help to develop the content of the relevant norms and could facilitate the delicate and time-consuming process of building greater political consensus But regardless of whether it is possible to influence the timing of the drafting effort, four objectives must be protected

First, the activities of the Commission's Special Rapporteur must continue with full support from the UN and the cooperation of governments. The Rapporteur has focused attention on severe infringements of religious and other rights Whenever drafting work on a convention is revived, it will unquestionably extend over many years -- witness the 20 years required to achieve agreement on the Declaration If there is no Special Rapporteur charged with investigating compliance with the Declaration, violations would in all likelihood receive no systematic attention during this drafting process of indefinite duration States would have little incentive to observe and promote the Declaration's standards

From the point of view of the success of the drafting itself, the continuation of the Rapporteur's activities can benefit the technical quality of a future convention The information gathered by the Special Rapporteur, like the experience gained in national efforts to implement the Declaration, can guide the drafters in determining what norms to include in the convention.

Second, the UN must continue continue to press for implementation of the Declaration. The Declaration gives specific content to the basic rights to freedom of religion or belief and freedom from discrimination guaranteed by the Universal Declaration and the Political Covenant Resolutions on the subject of intolerance based on religion or belief should continue to call for implementation of the Declaration through legal and policy initiatives by governments and educational measures by NGOs and religious organizations The programmes of action outlined by Special Rapporteur Odio Benito offer an excellent frame of reference for implementation strategies in the national, intergovernmental and nongovernmental settings

Third, great care must be exercised to ensure that a convention, if one is drafted, does not erode the standards stated in the Declaration. The aim should be to arrive at a consensus on standards even higher than those stated in the Declaration Agreement on the international norms that should govern the freedom of religion or belief has been difficult to achieve in part because powerful groups of states oppose effective international guarantees for this freedom. But there is also legitimate controversy over the scope of the beliefs and practices that should be protected Given the virtually unbounded variety among religious beliefs, this controversy is not surprising When work on a convention proceeds, the issue of religious freedom must not become the property of any one state or group of states Only with the support of a large number of countries across a broad sociopolitical spectrum is there reason to hope that a draft convention will be both legally sound and transformed into practice by states parties.

Fourth, the Declaration must continue to apply to states that do not become parties to the convention. Because the convention should raise the level of protection and build on the principles set forth in the Declaration, calling for continued application of the Declaration after the elaboration of a convention will not generate any conflict between the relevant standards.

The Role of the Special Rapporteur

The Special Rapporteur's mandate instructs him not only to report on violations of the Declaration but also to recommend remedial measures, including dialogue between religious communities and their governments The latter aspect of his role troubles some observers, who fear that the Rapporteur will substitute "dialogue" for fact-finding and the denunciation of violations in order to avoid political controversy Certainly, Ribeiro's 1988 report should allay those fears to some extent, since that report highlighted grave violations of religious and other human rights by governments that have often been among those most vehemently opposed to UN action to guarantee the freedom of religion or belief Moreover, the Rapporteur was quite active in his pursuit of information about those violations and was more successful in eliciting responses from the governments he contacted than the UN Special Rapporteurs on torture and summary and arbitrary execu-

tions have been Only Iran has not responded to Ribeiro's inquiries

Although it is difficult to determine the proper balance between fact-finding for purposes of denunciation and resort to processes of dialogue and conciliation, the Rapporteur can utilize both approaches, where appropriate, without compromising the aim of promoting the Declaration When confronted by situations of massive violations the Special Rapporteur should engage in aggressive fact-finding for the purpose of denunciation. Other situations may be most effectively resolved by mediation For example, an approach emphasizing dialogue may be vital to the success of the Rapporteur's activities in situations involving interreligious conflict. (Both the text of the Declaration and the *travaux preparatoires* clearly indicate that the Declaration applies to nongovernmental action, including the conduct of religious groups themselves, as well as to governmental practices and policies)

The Situation of the Muslim Community in Bulgaria

During his visit to Bulgaria at the invitation of the Government, Special Rapporteur Ribeiro sought information concerning allegations that ethnic Turks in Bulgaria have been persecuted on religious grounds The alleged violations include the penalization of Islamic religious practices, the destruction of Muslim mosques, the prohibition of printing or importing the Qur'an and discriminatory employment practices In addition, Ribeiro considered information on the official campaign, reportedly conducted in 1985, to coerce Muslims in Bulgaria to change their Islamic names to Bulgarian Slavic ones

The Bulgarian Government has not only denied the factual basis of the allegations concerning violations, but also refuses to acknowledge the Turkish ethnic character of the Muslim community in Bulgaria or the existence of any Turkish minority there Bulgarian authorities contend that the Muslim community consists of ethnic Bulgarians who were "Turkicized" by force during Ottoman rule and now wish to reclaim their Slavic identities

Mr Ribeiro concluded that the sociopolitical legacy of the Ottoman conquest and strained bilateral relations between the two countries account for the problems encountered by the Muslim community in Bulgaria. He recommended bilateral negotiations as the best means of guaranteeing respect for the religious rights of that community *This recommendation is a disappointing departure from the premise, basic to international human rights law, that human rights do not depend for their existence on reciprocal obligations between states*

Documentation submitted to the 43rd General Assembly on religious intolerance includes a letter from the Turkish representative to the UN, transmitting the findings of a three-member contact group of the Organization of the Islamic Conference of Foreign Ministers that visited Bulgaria in 1987 (UN Doc A/43/230 (1988)) The text of a resolution on the plight of the Turkish Muslim minority in Bulgaria adopted by the Islamic Conference has also been distributed by Turkey (UN Doc. A/43/263 (1988))

In response, Bulgaria has circulated information on a protocol recently concluded between Bulgaria and Turkey (UN Doc. A/43/320 (1988)) The protocol addresses relations between the two countries and measures for bilateral cooperation In its first operative paragraph, the protocol refers to the "aim of finding solutions to the problems existing in the [sic] bilateral relations, including in the field of humanitarian cooperation "

Like Mr Ribeiro's recommendation, this protocol apparently treats human rights as claims to be resolved through "humanitarian"(i e discretionary) bilateral action

If there is debate on the situation of the Turkish Muslim minority in Bulgaria in the GA, delegates should object to any attempts to characterize that situation as a dispute between Bulgaria and Turkey that is properly resolved through a bilateral agreement between those two governments Under international law, rights of the Muslim minority are guaranteed by the applicable human rights instruments, including the Declaration.

The guarantee of those rights should not be subject to the conclusion of successful negotiations between Bulgaria and Turkey Turkey has no special standing under human rights law to raise the claims of the Bulgarian Muslims--the entire international community has a responsibility to call on Bulgaria to respect and ensure their rights. Finally, if a resolution on this subject is adopted, it should include an explicit reference to the Declaration in addition to the Universal Declaration and the Political Covenant.

Recommended Action in 1988

At the 43rd session of the Assembly, the key issue in debate on the elimination of religious intolerance will almost certainly be the role of the Special Rapporteur The Rapporteur's treatment of particular country situations will undoubtedly be criticized by the states involved and their allies.

Strong support should be voiced for the continuation of the Rapporteur's investigative activities as a vital part of the effort to implement the Declaration.

Any resolution adopted on the elimination of intolerance based on religion or belief should

-- commend the Special Rapporteur and welcome the renewal of his mandate;

-- commend the governments contacted by Ribeiro for cooperating with him and call on those governments that have not done so to respond fully to the Rapporteur's requests for information

--emphasize the importance of the role NGOs have in promoting the Declaration and encourage the Special Rapporteur to continue consulting NGO representatives

-- stress the indispensable role of education at all levels as a way to eliminate attitudes of intolerance based on religion or belief

--call on states to undertake, "pursuant to Article 4 of the Declaration" legislative and constitutional measures to implement the standards stated in the Declaration. This explicit reference to the relevant provision of the Declaration should be included as a means of affirming its normative character

* * *

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UN Seminar on the Encouragement of Understanding, Tolerance and Respect in Matters Relating to Freedom of Religion or Belief, UN Doc. ST/HR/SER.A/16 (1984)

UN Docs E/CN 4/Sub 2/1985/26 (progress report by Special Rapporteur Odio), E/CN 4/Sub 2/1987/26 (Odio's final report)

Compendium of National Legislation and Regulations of States on the Question of the Freedom of Religion or Belief, Report by the Sec'y-Gen'l, UN Docs E/CN 4/ 1986/37 and Add 1/Rev 1, Add 2-5, E/CN 4/1987/34 and Add 1-2, E/CN 4/1988/43 and Add 1-5

Commission on Human Rights ("CHR") Res. 1986/20, UN Doc E/CN 4/ 1986/65,p 66 (appointing Spec. Rapporteur for Commission)

UN Docs E/CN 4/1987/35 (1st report by Spec Rapporteur Ribeiro), E/CN 4/1988/45 (2nd Ribeiro report), E/CN 4/1988/45/ Add 1 (Pakistan reply to Ribeiro report)

CHR Res 1987/15, UN Docs E/ CN 4/1988/44 and Add 1-7 (states' comments on establishing working group to draft a binding instrument)

CHR Res 1988/55, UN Doc E/ CN 4/1988/L.11/Add 5 (recommending 2-yr extension of Special Rapporteur's mandate, instructing Sub-Commission to prepare compilation of international provisions on religious intol and to examine factors before drafting a convention)

Selected Analytic Works

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Karl Partsch, Freedom of Conscience and Expression, in The International Bill of Human Rights the Covenant on Civil and Political Rights 208 (Louis Henkin ed 1981)

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IN BRIEF
Human Rights at the United Nations: Ending Discrimination Against Women

A Publication of the **International League for Human Rights**
432 Park Avenue South, New York, NY 10016 Tel. (212)-684-1221

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Number 2*

The Committee on the Elimination of Discrimination Against Women (CEDAW)

The following pages provide background and recommendations relevant to the 43rd UN General Assembly's consideration of the Convention on the Elimination of All Forms of Discrimination against Women ("the Convention") and its supervisory body, the Committee on the Elimination of Discrimination against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination Against Women is the major international treaty focusing on the human rights of women States parties to the treaty, of which there are presently 94, undertake to submit regular reports to the Committee on the Elimination of Discrimination Against Women (CEDAW) on the progress they have made in implementing the Convention CEDAW comprises 23 independent experts elected by states parties to serve in their personal capacity

Independence of CEDAW

CEDAW is thus an independent body established by treaty It reports annually to the General Assembly through the Economic and Social Council Article 17 of the Convention provides that the Secretary General of the United Nations "shall provide the necessary staff and facilities for the effective performance of the functions of the Committee" under the Convention

It is important for governments to reaffirm the independent status of CEDAW in the face of the attacks which have been made on it, particularly in relation to its request for a study on the effect of Islamic law and practices on the status of women

The essence of a supervisory committee's independence is its ability to define what it considers to be the important issues and to adopt an appropriate program of work within the framework of its treaty

Governments, in particular states parties, should reaffirm their support for CEDAW's independent status and ensure that the Secretary General actually provides the necessary support facilities and staff for CEDAW to pursue what it considers to be the appropriate priorities within the framework of the Convention

Fulfilment of Reporting Obligations by States Parties

The reporting system under the Women's Discrimination Convention is facing many of the same problems that have arisen under the other treaty reporting systems As of March 1988, there were 94 states parties to the Convention, at the same time there were 36 initial reports and 36 second reports which should have been submitted to CEDAW but which had not been received While the majority of the delinquent stateswere small and/or developing nations, four of them were Western European states

One of the explanations offered for failure to submit reports has been the lack of technical expertise in the relevant areas. In this context, more needs to be done to ensure that useful UN technical advisory services can be made available to states parties to assist them in preparing their reports under the Convention, and states should be encouraged to make use of them

States Parties whose reports are overdue should be urged to submit those reports as soon as possible and to make use of any available technical advisory services, the technical advisory program should include assistance to states thatseek assistance in fulfilling their reporting obligations under this Convention

Another difficulty faced by stateshas been the lack of detailed guidance available about the specific information which should be included in their reports The International Women's Rights Action Watch, an NGO established to monitor the implementation of the Convention, has recently published a manual which provides a detailed list of questions arising under the substantive articles of the Convention and which is designed to

assist states in fulfilling their reporting obligations Governments may wish to encourage the Committee to undertake a similar exercise in an effort to assist states parties in preparing their reports

Publicity for the Convention and CEDAW

At its 1988 session, CEDAW adopted a general recommendation urging states parties to give greater publicity at the national level to the Convention, CEDAW and their national reports to CEDAW Very few states have made any genuine effort to make their reports to CEDAW available to a large audience at the national level Extreme cases include failure to translate the report or make a summary available in the national language(s) or even banning the dissemination of the report nationally

National awareness of the reporting progress is essential to the achievement of the goals of the Convention Governments should therefore be urged to take concrete steps to ensure wide distribution of their national reports and details of their reception by CEDAW

Reservations

States Parties have made more reservations to the Convention than to perhaps any other major human rights treaty States Parties from all regional groupings, including Western European States, have entered reservations A number of these reservations limit the obligations undertaken in vague and sweeping terms, while others concern areas of fundamental importance to the achievement of women's equality, such as family law In a number of cases the reservations appear to be inconsistent with the object and purpose of the treaty

The large number of reservations means that ratification of the Convention involves quite different obligations for the various states parties, some States have assumed significantly more onerous obligations than others In many cases, the very States which have entered reservations to the Convention have accepted, without reservation, identical obligations of non-discrimination under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The reservations question has been considered by the states parties on a number of occasions, but without any definitive resolution To their credit, a number of states parties, in particular Sweden and Mexico, have consistently notified their objections to reservations which they believe to be inconsistent with the object and purpose of the Convention

It is important that attention continue to be focused on the reservations issue, to encourage the withdrawal or limitation of existing reservations and to deter new states parties from making broad, sweeping reservations

States Parties should be urged to reconsider their reservations with a view to withdrawing them as soon as possible States should also continue to make objections to reservations which they consider to be incompatible with the object and purpose of the Convention

CEDAW's Agenda

CEDAW's work to date has consisted largely of the examination of individual reports of states parties and the adoption of a number of recommendations dealing with fairly general matters There is now a need for CEDAW to undertake a more ambitious agenda and to synthesize the experience it has gained in a manner which will assist states parties in their implementation of the Convention The Human Rights Committee has done this by formulating general comments on the provisions of the ICCPR, CERD has done this by preparing detailed studies of individual articles of the Racial Discrimination Convention

Governments should encourage CEDAW to use its power to make general recommendations and suggestions to develop a detailed guide to the content of individual articles of the Convention to assist states parties in fulfilling their reporting and implementation obligations.

Resources Available to CEDAW

CEDAW has been experiencing serious resources problems and has had inadequate sessional and intersessional support During its 1988 session, for example, members of the Committee, in particular the Rapporteur, were reduced to doing a large amount of their own secretarial work. As a result of the inadequate support, the Committee was unable to adopt its report at the end of the session There are a number of other instances in which CEDAW has been unable to obtain a level of servicing which some of the other committees seem to be able to take for granted

Although the human rights activities of the United Nations have suffered serious financial cutbacks, there is a strong perception among the members of the Committee that CEDAW is being treated as the poor cousin of the human rights treaty bodies. It is difficult to determine the level of financial and human resources being made available to

each of the supervisory bodies funded completely from the UN budget, as budget figures are not broken down in this way Such a detailed comparison is necessary before any convincing assessment of inequitable treatment of CEDAW can be made

Governments should call on the Secretariat to provide a detailed breakdown of the relative workloads and the human and financial resources actually made available to each of the treaty supervisory bodies to ensure that CEDAW is not being treated inequitably At the same time, they should insist that all the treaty bodies should be provided with adequate resources to carry out their duties efficiently and effectively

Request for an Extended Session in 1989

The Convention provides that normally CEDAW shall meet for a period of two weeks CEDAW requested and was granted an additional four days of meetings for its 1988 session "on an exceptional basis" As of March 1988, CEDAW had received a total of 21 reports which it had not yet had time to consider In order to clear most of that backlog, it has requested an additional week of meeting time for its 1989 session, also on an exceptional basis

CEDAW's use of its time while considering reports has been relatively efficient It spends an average of about six hours on each initial report it considers, the two second periodic reports it has considered were dealt with in approximately three hours By comparison, the Human Rights Committee spends approximately twelve hours on each report it considers

An extended session in 1989 will help to alleviate CEDAW's current backlog, but it is clear that this is not a long-term solution and that other measures need to be adopted to expedite the work of the Committee These could include the establishment of a pre-sessional working group, to do some of the work that CEDAW's two sessional working groups now perform, the Human Rights Committee has made use of pre-sessional working groups, and the Economic, Social and Cultural Committee has proposed that it be permitted to establish one Another possibility would be to encourage the Committee to develop the role of Committee members between sessions by assigning members particular tasks on which they would report back to the Committee at the next session

Governments should support CEDAW's request for additional meeting time at its 1989 session and should encourage CEDAW to explore further ways of expediting its work during its sessions

Relations with Specialized Agencies

The UN's specialized agencies have played a very limited role in the work of the Committee so far They are entitled to be represented at the consideration of implementation of provisions of the Convention relevant to their activities, and the Committee has the power to invite them to submit reports on the implementation of the Convention in areas falling within the scope of their activities

CEDAW has issued general invitations to the specialized agencies on a number of occasions The response has been disappointing WHO, UNICEF and FAO have provided relatively little material, all of it general UNESCO has provided more, also of a general nature and not focused specifically on the position in countries whose reports were considered by the Committee Only the ILO has provided any country-specific information, although various members of the Committee have expressed dissatisfaction with the usefulness of even this information

The meaningful participation of the specialized agencies in the work of CEDAW is extremely important In many cases they have the information necessary to supplement incomplete or inadequate reports submitted by states parties Furthermore, their expertise can be of considerable assistance to the Committee in its endeavours to set standards by which progress in the implementation of the Convention can be measured, particularly in the area of social and economic rights

Governments should urge the specialized agencies to participate more fully in the work of the Committee by supplying detailed country-specific information to the Committee and contributing to its standard-setting work

Study of Islamic Laws and Practices Requested by CEDAW

At its 1987 session, after having examined reports from a number of Islamic states, the Committee adopted a decision requesting the United Nations system as a whole and the specialized agencies in particular "to promote or undertake studies on the status of women under Islamic laws and customs and in particular on the status and equality of women in the family on issues such as marriage, divorce, custody and property rights and their participation in public life of the society, taking into consideration the principle of El Ijtihad in Islam"

When the 1987 report of CEDAW was considered in the Economic and Social Council and the Third Committee, this request encountered a hostile response from a number of (mainly Islamic) states who attacked the decision, accusing the Committee and its members of being ignorant of and hostile to Islam and of having exceeded their powers in making a "decision" of this sort. Subsequently, the General Assembly decided that no action be taken on that request and requested the Committee to review that decision, in light of the views expressed at ECOSOC and in the Third Committee

At its 1988 session, the Committee adopted a statement which sought to explain and justify its 1987 decision While disclaiming any intention to criticize any religion or state, the Committee pointed out that the reports and replies of some states parties had referred directly or indirectly to Islamic religion, traditions and customs as a source of or influence on laws relating to the status of women Accordingly, it had considered that a general study of this sort would be useful to the members of the Committee, who were not experts in Islamic law and culture, in carrying out their duties under the Convention This statement was once again the subject of attack at the 1988 session of ECOSOC

In response to the charge that the Committee has been singling out Islam for attack, it is important to note that members of the Committee have regularly asked questions of state representatives presenting reports about the impact that religion has on the position of women in their countries, that concern has not been confined to Islamic countries Furthermore, only Islamic states parties have included in their reservations specific references to religion as a source of limitations on the obligations they have assumed under the Convention For the Committee to know the extent to which these broadly worded reservations limit states parties' obligations, they need to have detailed information about the ways in which women's status is affected by different Islamic laws and practices

A particularly important aspect of the controversy is that the attacks on the Committee represent a threat to its independent status as an expert treaty body It is important that the Committee be able to set its own agenda within the framework of the Convention and that it be given the support necessary to carry out its assigned duties

Governments should reassert their support for the work of the Committee and reaffirm its independent status as an expert body established by treaty

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This *In Brief* has been prepared by Andrew Byrnes of International Women's Rights Action Watch

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IN BRIEF
Human Rights at the United Nations: Afghanistan

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Background

By the time the 43rd UN General Assembly ("the GA") takes up the question of human rights violations in Afghanistan in November 1988, the announced Soviet withdrawal of its troops will have been underway for some six months This development will undoubtedly influence the GA's attitude toward the continuance of the topic on its agenda in 1988 and beyond

Governments faced this problem in a less direct fashion when the issue came up at the 42nd Assembly and the subsequent 1988 session of the Commission on Human Rights ("the Commission") They concluded, however, that the matter of foreign troops and the self-determination question were distinct from the internal human rights situation in Afghanistan which required continued scrutiny

The 43rd Assembly will hear an interim report from the Special Rapporteur on Afghanistan, Dr Felix Ermacora of Austria, which will be based on a visit to parts of Afghanistan as well as to Pakistan Professor Ermacora's report will be a key element in determining the shape of the 43rd GA's resolution

During the past year, the Special Rapporteur already acknowledged some improvements in the human rights situation in government-controlled areas since the "national reconciliation policy" was begun in early 1987 but cited "serious contraventions of humanitarian law and human rights" in combat areas He noted a decline in the number of political prisoners, though many are still imprisoned without due process of law He cited no new reports of torture in the six months prior to his report – a point contradicted by evidence from some human rights organizations

Some have criticized Professor Ermacora's 1987 and 1988 reports, claiming that he is moderating his findings now that the government of Afghanistan has permitted him to visit the country Still, in describing combat areas, he detailed extrajudicial executions and other horrifying incidents

In 1987, the GA adopted a resolution, introduced by Belgium, by a vote of 94 to 22 with 31 abstentions It welcomed the Afghan government's cooperation with the Special Rapporteur but expressed "deep distress and continuing alarm" at the violations described by Mr Ermacora, including continued violations of the right to life, liberty and security of the person, as well as the rights to freedom of expression, assembly, movement, and association, and expressed varying degrees of concern over detentions without due process, indiscriminate bombing of the civilian population , and the impediments to parents providing religious instruction to their children (A/Res/42/135)

At the Commission on Human Rights, in March 1988, both the Western countries and the Eastern bloc nations presented competing resolutions on the Afghan situation The West saw in Professor Ermacora's report a devastated country, with booby-trapped toys still dropped for children in combat areas and other human rights abuses, the Eastern bloc primarily saw the improvements. The Commission decided not to take action on the Soviet proposal and then, with strong Third World support, approved a Western draft that had been prepared before Secretary Gorbachev's February announcement of the intention to withdraw troops and which largely mirrored the General Assembly's resolution in December 1987

The Commission's resolution welcomed the official co-operation that enabled the Rapporteur to conduct his investigation in Afghanistan and noted his opinion that the human rights situation in certain areas had improved Like the Assembly, it also expressed "deep distress and continuing alarm" over essentially the same list of rights as cited by the Assembly It also acknowledged a reduction in the number of political prisoners and the release of some prisoners as a result of limited amnesties

There was also action by the Commission (and General Assembly) over the situation in Afghanistan related to the denial of the right

to self-determination due to "outside" intervention It called for a political settlement, the immediate withdrawal of foreign troops and full respect for the independence of Afghanistan and strict observance of the principle of non-intervention and non-interference, and it affirmed the right of the Afghan refugees to return to their homes in safety and honor The Commission requested the Secretary-General to continue his efforts with a view to promoting a political solution, in accordance with the provisions of relevant, similar General Assembly resolutions

The situation at the 43rd Assembly will be more complicated With the withdrawal of Soviet troops, some of the reason for Third World countries agreeing to vote and criticize Afghanistan will evaporate But the human rights situation is not simply affected by the question of foreign troops, there are internal factors denying many fundamental rights Key to GA action will be the Ermacora report It can be anticipated that a major effort will be made to include some reference in the resolution to the abuses committed by the various Afghan guerrilla forces -- and to denunciation of same

Major Concerns on the Afghan Human Rights Situation

Concerns prior to the Geneva Accords

A. On the conduct of warfare

1 Indiscriminate bombing of populated areas
2 Reprisals against the civilian population, including summary executions
3 Indiscriminate use of anti-personnel mines
4 Forbidden chemical weapons? (Evidence unclear)
5 Execution, torture, and mistreatment of prisoners
6 Non-recognition of prisoners of war, lack of access of International Committee of the Red Cross

B In government-controlled areas

1 Total government control of political activities, press, culture, social organizations, no civil liberties
2 Arbitrary mass arrests
3 Systematic torture of detainees as a standard administrative procedure
4 Extremely poor prison conditions
5 Lack of judicial safeguards
6 Executions without appeal

C Refugees

1 Attacks on refugees
2 Policies to create refugees
3 Conditions of refugees and refugee registration

Changes resulting from Geneva Accords and related developments

A. On the conduct of warfare

1 Less bombing of some areas of countryside
2 Better ICRC access to Kabul
3 War for cities shelling of Kabul by some anti-government forces, bombing of towns captured by anti-government forces

B In government-controlled areas

1 Formation of new government.
2 Statements of greater toleration for pluralism Legal framework for "multi-party" system
3 Arrests more selective
4 Releases of prisoners, forcible transfer to army

C Refugees

1 Need to remove anti-personnel mines
2 Need an amnesty guarantee
3 Modalities of aid for repatriation Need to assure that no one is denied humanitarian aid because of political affiliation
4 Need guarantee of voluntary and unimpeded repatriation

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The League is grateful to Barnett Rubin of Yale University and Felice Gaer of the International League for their assistance in preparing this *In Brief*

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IN BRIEF
Human Rights at the United Nations: Treaties to Ensure Human Rights

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UN Human Rights Treaties

The standards of the Universal Declaration were given binding form in the two overarching human rights treaties adopted in 1966 the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights These Covenants, along with several other human rights treaties adopted by the UN (addressing racial discrimination, gender discrimination, and torture) are overseen by specialized expert committees charged with monitoring compliance These committees examine reports officially submitted by the countries that become party to the treaties Committee members raise questions with the country's representatives and, in this way, countries that would otherwise escape UN scrutiny of their human rights records come under formal review in public sessions at periodic intervals

More than half the members of the UN are party to the two covenants, with still more states signatory to the race and/or gender discrimination treaties By this status, they agree to ensure the guarantees in the Civil and Political Rights Covenant and to work to achieve those in the Economic and Social Rights Covenant However, with five such treaty monitoring committees in operation, each with different reporting requirements, rights provisions and definitions, many states parties have begun to complain about what they perceive as the burden of reporting in a timely and efficient fashion Moreover, as reports are severely overdue for many of the treaty committees, and the committees' paces create a backlog of existing reports, questions have been raised about whether to continue the existing program or seek some alterations.

The 42nd UN General Assembly ("the GA"), while recognizing the importance of effective reporting to the treaty bodies, expressed concern over the "worsening backlog of reports", the "delays" in their review, and acknowledged that the problem would become still more onerous Pointing positively to the modified reporting requirements adopted by the states parties to the racial discrimination convention ("ICERD") -- the oldest of the group and the one with the shortest time between reports (2 years),-- the GA asked the Secretary General to raise these matters at an October 1988 coordinating meeting of the persons chairing the treaty committees. It asked that the agenda include prospects for

-- consolidating reporting guidelines for more concise reports,
-- developing possible projects for technical advisory services in this area, and
-- exploring "ways of expediting consideration of reports, such as by time limits, avoiding duplication in questioning, requesting supplementary written material and encouraging . succinct [reports] "

The GA encouraged states parties to various treaties and relevant UN bodies to consider other ways to streamline and improve reporting procedures

At its March 1988 session, the Commission on Human Rights ("the Commission") appealed strongly to all states that had not yet become parties to the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights to do so, as well as to consider acceding to the Optional Protocol to the Civil and Political Covenant, so that those instruments would acquire genuine universality It invited the Secretary-General to intensify systematic efforts to encourage states to become parties to the Covenants and, through the program of advisory services in human rights, to provide technical assistance to states that are not parties to the Covenants, with a view to assisting them to ratify them It recommended that states parties periodically review any reservations made on the provisions of the Covenants to ascertain whether they should be maintained

The Commission also "recognized" the important role of the Human Rights Committee and welcomed its continuing efforts towards uniform standards in the implementation of the Civil and Political Covenant, encouraged the Committee on Economic, Social and Cultural Rights to strive towards the application of universally recog-

nized criteria in the implementation of the Covenant, and requested the Secretary-General to consider ways, within existing resources, to assist states parties to the Covenants in preparing their reports

With regard to the elaboration of a second optional protocol to the International Covenant on Civil and Political Rights aimed at the abolition of the death penalty, the Commission decided to consider the idea of elaborating such a protocol at its next session and asked the Secretary-General to inform the GA of the present decision

On the matter of financing the human rights treaty supervisory bodies, the Commission adopted a resolution on the human rights of all persons subjected to any form of detention or imprisonment, the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the status of the International Covenants on Human Rights It noted that different methods applied to the distribution among states parties of expenses incurred for the implementation machinery under the various international human rights instruments, recommended to the Economic and Social Council that it give the matter due attention, and asked the Secretary-General to prepare a concise overview of the various methods applied under different human rights instruments as regards their financial implications for consideration by the Council at its next session This overview was submitted to the Council at its spring 1988 session

The Committees are independent bodies that happen to report to the Assembly However, budgetary and other limitations and advice are given by the General Assembly because the UN initially drafted and approved the treaties and, in most instances, pays for the servicing of the Committee meetings and related matters The different treaties have differing provisions for the supervisory committees for the Human Rights Committee, the Economic and Social Committee and the Committee on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), the UN pays all expenses For the Committee on the Elimination of All Forms of Racial Discrimination ("CERD"), the states parties pay for Committee members' travel and lodging expenses, while the UN pays for all servicing and staff back-up And for the Torture Convention, the states parties are obliged to pay for everything The Rights of the Child Convention has not decided this matter, but is wavering between the UN paying all and the states paying all, with the US, West Germany, and the UK pressing for the latter

Because of the importance of these treaties as legally binding instruments that bring the provisions of the Universal Declaration into binding elements of international law, the Assembly's decision to encourage changes in the reporting procedures -- the only implementational mechanism universally in effect for State Parties to these instruments -- merits the closest review and scrutiny

The Convention Against Torture

The Torture Convention came into force only in June 1987, but the Committee Against Torture ("CAT") was apparently born in dire straits Lack of funds from states parties which are required to pay all costs associated with the Committee including the Secretariat's back-up servicing of the Committee, led to a Secretariat decision to permit the Committee to meet only for five days in 1988 instead of three weeks This was not enough time to consider anything but general Committee procedures

Another major financial issue concerning the Convention has been raised by actions of the German Democratic Republic The main function of CAT is presumably to examine reports from states parties Article 20 of the Convention, however, permits certain action by the Committee when it "receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party " Under Article 28, a State may declare that it does not accept this jurisdiction of the Committee On the other hand, Article 21 of the Convention permits interstate complaints and Article 22 permits states to accept the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention The German Democratic Republic, which has made the reservation under Article 28 and declined to accept the Committee's competence under Articles 21 and 22, has taken further action that complicates the financial picture

In September 1987, the GDR made a declaration "that it will bear its share only of those expenses in accordance with Article 17, paragraph 7 and Article 18, paragraph 5 of the Convention arising from activities within the competence of the Committee as recognized by the GDR (emphasis added) " This would preclude payment for Committee expenses concerning individual or state complaints against other states, it would mean supporting only the review of country reports. It is very doubtful whether it is lawful to pick and

choose what is to be paid for in this way In any case, such reservations would clearly have the effect of nullifying the Convention's--and the Committee's--effective functioning

States Parties in the "West European and Other" Group (WEOG) reportedly made an informal demarche on the GDR, opposing any such unilateral financial action Additionally, when some Western representatives voiced concerns about the GDR's reservation at the first meeting of states parties, they were assured by the GDR delegate that the GDR would bear its financial share of all Committee activities To date, however, the GDR declaration has not been withdrawn And only France has made a formal protest against the GDR's declaration under the treaty itself Governments should be encouraged to protest individually and continue to raise this matter in order to protect the Convention from being undermined by reservations such as that of the GDR

Additionally, because so little was accomplished due to the Secretary-General's decision to permit CAT to meet for only a shortened 5-day session in 1988, the Committee formally asked the Secretary-General to review resource projections and consider possibilities of convening a second meeting in 1988 This makes it the third of five major treaty committees to make a special request related to its meeting schedule and funding constraints

The International Covenant on Civil and Political Rights

The Human Rights Committee is the supervisory mechanism for the International Covenant on Civil and Political Rights, the omnibus treaty in this area Its members include many distinguished legal experts, and it is widely considered the strongest of the treaty supervisory committees in the UN system Under the Covenant, it reviews country reports on compliance with the treaty and also considers individual cases brought under the Optional Protocol procedure, to which more than a third of the states parties have subscribed

Expenses of the Committee are paid by the general United Nations budget, which has the obvious advantage of assuring some measure of continuity in its meeting schedule and performance of its mandate With this formula, a few states parties cannot easily bring to a halt the entire supervisory Committee procedure However, this does make the Committee dependent entirely on the "good financial health" of the UN and the budget of the organization's human rights division Since decisions on budget and staffing are normally made by various persons external to the Committee, such arrangements can raise and indeed have raised problems for the independence of the treaty body

These problems were highlighted during the 1986 UN financial crisis, when the Committee was asked to cut back its operation dramatically The Secretary General asked the GA to request the Committee to defer (read cancel) a meeting, move its New York meeting -- one of the few human rights activities still permitted at headquarters -- to Geneva in the future, cancel summary records of its review of country reports on compliance, and carry out related cost-cutting

The Human Rights Committee members were uncomfortable with this Not a subsidiary organ of the United Nations, since the Committee was set up under a separate treaty, and anxious to maintain its own integrity, it nevertheless requires the support of the United Nations to function at all Thus, when the United Nations suffers, the Committee suffers But its members believed it should determine what kind of austerity measures it should take to discharge its responsibilities under the Covenant This, after all, is what "independence" of the treaty committee is all about

Like other similar UN bodies, the Committee had never before been confronted with <u>any</u> budgetary question, now the members were asked to agree to cost savings that affected <u>many</u> basic services without any real figures or options before them They agreed that in the future summary record coverage would be reduced from three to two weeks per session The Committee has since scheduled all country reports during those weeks.

The matter of summary records illustrates some of the problems of leaving all financial decisions to the general UN budget Most Committee members have long felt that summary records are essential as they best convey the Committee's give and take during its most critical activity reviewing the country reports. But the Secretariat has seen matters otherwise according to the Controller, summary records are paid for from the conference servicing budget--not the human rights program budget. They are, in short, not "substantive program outputs"--in contrast, for example, to the Committee's annual report to the General Assembly Thus, the UN's financial managers have argued, summary records can be eliminated without reducing the Committee's "substantive" program

Because of their status as members of an independent body, however, Human Rights Committee members have worked out a

number of creative compromises, like that on summary records, to ensure that the services most essential to their specialized treaty-supervisory work are maintained in some degree, even during a period of austerity

The Committee, like other treaty bodies, requires periodic reports from states parties Like other supervisory committees, the Human Rights Committee is faced with a backlog and will be considering ways to improve the situation

Convention on the Elimination of Racial Discrimination (ICERD)

The ICERD and CERD are discussed in *In Brief* Number 5

Internat'l Convention on Economic, Social and Cultural Rights

The Economic and Social Rights Convention will be covered in a subsequent *In Brief*

Convention on the Elimination of Discrimination Against Women

The status of the Convention on the Elimination of all Forms of Discrimination against Women is discussed in *IN Brief* Number 2 There is also a budgetary issue that will arise In 1987, CEDAW asked the Assembly to approve an additional week of meetings so it could make its way through some of the enormous backlog of reports before it This was approved as an exceptional measure CEDAW members nonetheless bristled over criticism that they worked too slow and reviewed country reports in too much detail -- in comparison to members of other treaty committees Now, CEDAW has again asked the Assembly to approve an additional week of meetings -- but the argument that this is an exceptional measure will probably garner little sympathy this year, especially when combined with criticism of the Committee's decision to encourage studies on women under Islam

Issues to include in 1988 GA resolutions on the treaties

-- Reference to maintaining the independence of the treaties and their committees is a key item in each resolution

-- Finances Importance of the question "who pays" -- problems with the CERD and the Torture Convention -- should be treated sympathetically; but try to avoid the issue of re-opening the conventions or "bending" the terms of the treaties

-- Reporting The advisability of common reports for all treaty bodies should be resisted; each instrument has its own provisions and requirements It would be better to tinker with less significant alterations, such as changing the reporting cycles

-- Reservations to the Conventions Are these effectively negating the purpose of the treaties? What should/could be done? States should object to reservations that alter the meaning and purpose of the treaty

-- Close attention should be paid to results of the October 1988 meeting of heads of the 5 treaty committees, even though their report is not due at the 43rd GA. Continued cooperation should be encouraged

-- Membership of the Committees ments careful attention by each State Party

-- Provision of advisory services regarding preparation of reports should be encouraged, but should address the quality of the advisory services actually supplied

-- Encouragement of public dissemination and translation of instruments might be accompanied by a rough goal -- such as 100 languages in two years -- and encouragement of individual experts to oversee progress.

-- GA might wish to call for evaluation of the advisory services program in connection with the treaty resolutions

-- Greater cooperation with UN specialized agencies should be encouraged in the review of reports.

-- Expansion of individual complaint procedures should be welcomed Countries should be urged to accede to optional provisions

-- An effort should be made to refer to the enhanced role of NGOs in providing information to members of the treaty committees, as envisaged by the Economic and Social Committee and, to a lesser extent, the Committee Against Torture Urge an expanded NGO role

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This *In Brief* was prepared by Felice Gaer of the International League for Human Rights

The International League for Human Rights, founded in 1942, works to end torture, disappearances, religious intolerance, censorship and other human rights abuses It is a private, non-governmental human rights group that has consultative status with the United Nations, where it often speaks out against human rights violations by member states. As a matter of principle, the League accepts no funding from any government or intergovernmental body The Chairman of the League is Jerome J Shestack

IN BRIEF
Human Rights at the United Nations: Financing CERD -- the Treaty Outlawing Racial Discrimination

A Publication of the **International League for Human Rights**
432 Park Avenue South, New York, NY 10016 Tel (212)-684-1221

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Number 5*

International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD")

The following pages provide background and recommendations relevant to the 43rd UN General Assembly's consideration of the report of the Committee on the Elimination of All Forms of Racial Discrimination ("CERD" or "the Committee") which is the supervisory committee for ICERD CERD has asked the GA to authorize the Secretary-General to provide temporary financial assistance to the Committee from the regular UN budget to enable it to continue its work during the financial crisis which has caused repeated cancellation of CERD sessions

Background

Like other human rights treaties, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) brings into international law many essential provisions of the Universal Declaration on Human Rights With some 129 states parties, ICERD has more countries under its review and implementational procedures than any other human rights convention

ICERD, adopted in 1965, and in force since 1969, requires that governments ensure various rights to citizens free from "racial discrimination" (defined as being any distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition and enjoyment of certain human rights on an equal footing)

Article 5 of ICERD requires that a long list of basic civil and political rights be specifically ensured In practice, the supervisory committee, CERD, has asked states parties to describe how these listed rights are ensured to <u>all</u> citizens (without reference to discriminatory application) Governments have customarily accepted this and respond to such questioning when CERD members inquire specifically For this reason, the Committee's reviews of states parties' reports have often addressed a wide range of basic civil and political rights issues as well as matters of discrimination

ICERD is the principal international treaty that addresses discrimination on account of race The prohibition against racial discrimination is a central one It is noted specifically in the UN Charter itself, in Article 2 and again later There is a universal consensus that the prohibition on race discrimination in fact is a customary norm

The key aspect of the supervisory process of the international human rights treaties is the establishment of committees of experts who receive and review reports from the signatory nations regarding their compliance with the treaties, both in legislation and practice Additionally, under optional provisions of ICERD, states parties may agree to permit either interstate or individual complaints to be heard by the Committee

CERD has been in existence since the treaty entered into force in 1969 It is an independent body under the ICERD and reports to the General Assembly CERD is scheduled to meet twice annually for three weeks each session. However, this schedule has been threatened by the combined effect of the UN financial crisis and the requirement that states parties themselves pay for CERD's expenses

CERD's Perilous Finances

The ICERD contains cost-sharing provisions, with states parties paying for the travel and expenses of the Committee on the Elimination of Racial Discrimination, and the UN paying the rest This arrangement and the UN's financial crisis have caused severe problems, raising questions about the Committee's ability to operate successfully in the future and about the viability of the treaty itself

Since 1986, states parties' nonpayment of assessments has led to cancellation and curtailment of CERD meetings, and some diversion of its sessions from substantive matters to fiscal problems.

Over the years, many states parties have not paid their quite modest assessed contributions for CERD. Until 1985, the UN General Fund was able to fill the gap pending receipt of the arrears. But with the UN's financial crisis in 1986, this practice came to an end. At their tenth meeting in January 1986, states parties took measures to reduce travel expenses of Committee members, appealed for help from the Secretary-General, and asked states parties to pay what they owed.

Some responses were forthcoming, but by mid-June, the shortfall of states parties' obligations, considered together with the overall fiscal UN crisis, was sufficient to require "deferment" of CERD's August 1986 session. Various urgent appeals over the course of the next year reduced the arrears from $262,611 (on June 16, 1986) to $159,319 (as of July 31, 1987). Even this was not enough to convene the meeting. However, the Secretary-General again advanced funds from the UN General Fund for the March 1987 meeting and later made possible a one-week session in August.

At the shortened session, Committee members queried whether the outstanding financial debt was the real source of the problems it faced in meeting and noted that some countries were delinquent not only in payment, but also in reporting.

By September 30, 1987, the shortfall was reduced to $151,623 and in August 1988, to $149,834.

A close examination of outstanding assessments and overdue country reports revealed that as of 1987 all outstanding assessments, save one, were owed by Third World countries. No "Western" or "Eastern" bloc state party, except Romania, owed money to CERD as of July 31, 1987. In 1988, however, two Western states, Canada and Luxembourg, fell into arrears.

Moreover, as of August 1988, no country owes more than $10,169 (Bolivia), most owed dramatically less. In 1987, 20 of the 55 countries in arrears accounted for almost 75% of the cash shortfall, in 1988, 18 of the 61 countries continued to account for 75%.

And, contrary to speculation at the General Assembly and among some CERD members, there is no clear-cut correlation between financial delinquency and reporting delinquency. Many -- but by no means all -- of the countries most delinquent in reporting also fall in the top twenty countries in financial arrears. But of the nine who owed the most in 1987, three were up to date on their reporting, four owed only one report, and only two -- Burundi and Sierra Leone -- owed a large number of back reports (three and six respectively). Of the nine in greatest financial arrears in 1988, Sierra Leone alone owed seven reports, among the others, only Burkina Faso owed more than one. If one looks at the next ten countries in financial arrears, however, more than half owed three or more reports in 1987.

In 1988, Burundi, Libya, and Niger --all of which owed several reports and were among those owing the largest outstanding sums-- submitted the reports. Of the three, only Niger paid any portion of its financial arrears. Several of the countries that owe the most reports to CERD are up-to-date on their payments. Finally, among the twelve countries with greatest arrears to the entire United Nations budget, it will come as no surprise that five are also in arrears to CERD.

Because of these financial problems, the Committee's continued functioning is in severe jeopardy.

In 1988, CERD was able to meet only once, in August, for a reduced two-week session. Discussing finances, and the problems they present to the Committee's ability to conduct its work under the convention, CERD adopted a decision appealing to the 43rd General Assembly to authorize the Secretary-General to temporarily ensure financing of Committee expenses from the UN's regular budget. CERD seeks to be able to continue to meet "until a more permanent solution of the financial difficulties impeding the functioning of the Committee is found."

This matter merits careful and positive consideration from the General Assembly. Taken in conjunction with the requests from the CEDAW for additional meeting time, and the mammoth problems encountered by the Committee Against Torture, a coordinated response on the financing of the treaty bodies is needed from the genuine supporters of human rights treaty instruments in the Assembly.

These events highlight the way even the modest cost-sharing arrangements of CERD can affect a supervisory committee's ability to maintain effective oversight of the treaty. The matter grows even more ominous when considering the Torture Convention, which must pay for even more of the actual costs it incurs.

Why Bother?

Some have questioned whether it makes any difference if CERD meets less often, or perhaps not at all. Why, they ask, should the UN general budget support a body set up under a separate treaty, and

in an informed manner about their laws and reports of violations of the treaty when representatives appear before them

Most reports simply cite national constitutions or laws that guarantee the relevant rights and do not discuss how the rights are actually implemented Reports commonly neglect to present evidence of inadequate guarantees or violations of a country's compliance with the treaty under review

Committee members are, thus, often without independent information UN Secretariat staff officials do not normally provide documentation to committee members other than the materials submitted by states parties themselves Information from non-governmental sources is not available from the UN

This means that expert members often cannot marshal the special resources, laws, or information to enable them to query the reporting nations in detail about topics in which they either fail to live up to the treaty's provisions or completely violate them

Yet it is only when committee members know the facts -- that government compliance does or does not fall short of treaty provisions -- that a committee can begin to be effective in overseeing compliance Only then can they ask probing questions that cause the governments to reveal actual conditions, only then can they bring pressure for their correction

The most effective ways to change this practice follow

First, the Secretariat staff servicing the Committee should be encouraged to actively gather information related to the country reports and make it available to Committee members, perhaps in a specialized library setting in Geneva or New York Such information should come from other UN specialized agencies and from nongovernmental organizations, particularly those in consultative status with the UN

Second, independent information from nongovernmental organizations (NGOs) can be made available to members of the supervisory CERD committee This information, presently given to CERD members informally by NGOs, could be made a more formal -- and legitimate-- part of the review process For this to occur, CERD members would have to agree to modify their evolving rule and practices about information from sources other than states parties to ICERD Such consideration is long overdue and, may be timely, in view of positive developments in other new treaty bodies (the Economic and Social Rights Committee and the Committee Against Torture), as well as the somewhat modified position that the USSR has begun to evidence regarding some of the UN's human rights procedures

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IN BRIEF
Human Rights at the United Nations: Stopping "Disappearances"

A Publication of the **International League for Human Rights**
432 Park Avenue South, New York, NY 10016 Tel. (212)-684-1221

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Among the most important advances in recent UN human rights enforcement mechanisms is the development of "thematic procedures"-- the first of which was the establishment in 1980 of a Working Group on Enforced or Involuntary Disappearances. By creatively interpreting its mandate, and providing a steady focus on trying to prevent "disappearances" and bring relief to the families of the "disappeared", the Working Group became the first UN mechanism that responded on an emergency basis to feared violations

This *In Brief* discusses the background, achievements, and criticisms of the Group It contains recommendations for the 43rd UN General Assembly ("the GA")

What is a "Disappearance"?

Rather than arresting, detaining and bringing to trial dissidents or others through normal judicial procedures, some governments have been known to resort to the practice of "disappearances " Individuals are seized, often by persons in plainclothes and either in government service or protected by government agencies, and are never seen or heard from again The government denies any knowledge of the individual or any responsibility for his/her whereabouts. Often these abductions and subsequent killings, torture or other abuses are carried out by well-organized "death squads" or other groups linked to the military or government.

"Disappearances" have a pervasive chilling effect the victim is eliminated and other citizens are terrorized The government remains unaccountable "Disappearances" flout all international guarantees for personal liberty and due process and leave relatives in a permanent state of anxiety

UN Action Against "Disappearances"

The modern phenomenon of "disappearances" emerged on a wide scale in the 1960s in Guatemala, but its use in Chile after the 1973 military coup galvanized the attention of non-governmental organizations ("NGOs") and others to raise the issue at the UN and elsewhere Later, widespread "disappearances" in Argentina brought pressure for concerted UN action

In 1978, the UN General Assembly first adopted a resolution (A/33/173), introduced by Colombia, asking the Commission on Human Rights ("the Commission") to consider the matter of "disappearances" and make recommendations about it Due to a "lack of time", the Commission was inactive on this in 1979, but on February 29, 1980, following a series of tense, complex, and sensitive negotiations and debate, it created the Working Group on Enforced or Involuntary "Disappearances." The resolution was adopted without a vote

The Working Group was to consist of five members of the Commission appointed by the Chairman to serve as experts in their individual capacity The mandate instructed the Group "to examine questions relevant to 'disappearances,'" to receive and seek information from a wide range of sources including NGOs, to perform effectively and expeditiously, to carry out its work "with discretion", and to adopt working methods that would enable it "to respond effectively" to the information brought before it.

Initially approved for one year, the Working Group was renewed annually until 1986, when its mandate was renewed for two years This decision, repeated in 1988, places the Working Group within the regular UN budget cycle, rather than on a temporary mandate

In a resolution adopted in late 1980, the GA welcomed the new Working Group and urged the Commission to continue to study the matter and "to take any step it may deem necessary to the pursuit of its work on the question " Since 1980, the Assembly has adopted a supportive resolution annually It is expected to do so again in 1988

Accomplishments of the Working Group

The Working Group addresses the problem of "disappearances" as a worldwide practice Since 1980, it

has asked some 45 governments throughout the world to explain more than 15,000 cases of "disappearances" Its 1987 Report reveals that 7-8% of all cases have been formally "clarified" -- i e , the details and whereabouts of the "disappeared" person revealed satisfactorily The Working Group states that when cases are submitted promptly and taken up within three months of their occurrence, it is able to "clarify" a great many more cases, -- as many as 25% When Governments "clarify" cases, they often acknowledge the "disappeared" person to be either in incommunicado detention, in regular jails, or dead But nearly as often, they deny any knowledge of the victim's whereabouts

It is widely acknowledged that the publicity given to cases through the intervention of the Working Group has clarified some cases and, moreover, may have prevented many more "disappearances" from occurring Some governments engage readily in dialogue with the Working Group and provide information on the whereabouts of the "disappeared " A few have even invited the Group to send a delegation to the country, as did Mexico in 1982, Bolivia in 1984, Peru in 1985, and Guatemala in 1987 At the 1988 session of the Commission on Human Rights, Colombia, where some 481 "disappearances" were reported outstanding in the Group's 1987 Report, reversed its prior criticism of the Group and invited it to examine the situation in that country first-hand

In 1987, the Working Group reported that it asked fourteen governments (nine in Latin America) to explain 1094 cases of disappearances, of which 261 occurred in 1987 Since the end of the 1970s, it stated that the overall number of reported "disappearances" has declined, but the number of countries involved has increased

Criticisms of the Working Group

Many non-governmental organizations (NGOs) have criticized the Group for not transmitting to governments more of the cases sent to it by victims' families and private organizations and for not taking stronger action For example, the specific cases -- and names -- are neither made public nor mentioned in the Report This tends to shield governments, whose alleged "disappearances" are in the main described in numerical, but anonymous terms

Moreover, NGOs have been critical of the Group's limited ability -- or reluctance -- to act when governments ignore its inquiries or respond with blatant lies Many NGOs would like to see the Working Group do still more -- perhaps denounce governments or individuals responsible for the "disappearances" and go beyond merely determining where the victim is

NGOs have also voiced criticism of the mandate itself the fact that the Group ceases to be concerned about a victim once he or she is located -- regardless of conditions of detention, whether charges will be brought, or any other factor

For their part, governments have criticized the Working Group for so readily accepting cases brought by NGOs, whom they accuse of bad faith, political motives, etc Such governments would prefer a more formal procedure and limited admissibility

Not surprisingly, the strongest criticisms of the Group have often come from those countries accused of causing new "disappearances" A backlash takes the form of pressure to curtail the Group's activities, shorten its mandate, or otherwise limit its scope of action

In its December 1987 Report, the Working Group spent considerable time responding to criticisms levelled by various unidentified sources Sharp criticism of the Group's methods -- particularly from Colombia and Mexico -- has apparently now led the Working Group for the first time to describe its methodology in its Report.

A key point made by a high-level Colombian delegation to the Group in 1987 -- and described in the Report -- was that it was "high time" to spell out the Group's method and detail "unambiguous procedural rules " Colombia advocated application of the rules for the consideration of individual cases under the Optional Protocol of the Covenant on Civil and Political Rights which require that domestic remedies must first be exhausted Further, it wanted some recognition of the difference between "totalitarian" and "democratic" governments accused of "disappearances", and of events that are government policy and those that occur despite official government policy against the practice Finally, Colombia demanded that the "accusatory character" of the Working Group be changed

Methodology

In explaining its methodology, the Working Group expressed the hope that it "will dispel existing misunderstandings and further enhance the dialogue it has established with many Governments and non-governmental organizations"

The Working Group says its methods are specifically geared "to assist families in determining the

fate and whereabouts of their missing relatives who, having disappeared, are placed outside the protective precinct of the law the Working Group endeavours to establish a channel of communication between the families and the Governments concerned " And, it also explains, its "role ends when the fate and whereabouts of the missing person have been clearly established irrespective of whether that person is alive or dead The Group's approach is strictly non-accusatory It does not concern itself with the question of determining responsibility "

The Group states it does not deal with "disappearances" in the context of international armed conflict, nor cases attributed to terrorist or insurgent movements fighting a government in its own territory

Reports on "disappearances" are admissible from family or friends of the missing person, or if channeled through representatives of the family, governments, intergovernmental organizations, humanitarian organizations and "other reliable sources" They must be submitted in writing with the sender's identity clearly indicated and with the following minimum elements
(a) Full name of the missing person,
(b) Date of disappearance,
(c) Place of arrest or abduction or where the missing person was last seen,
(d) Parties presumed to have carried out the arrest or abduction or to hold the missing person in unacknowledged detention,
(e) Steps taken to determine the fate or whereabouts of the missing person

Cases deemed admissible by the Group are transmitted to the governments. They are asked to investigate and inform the Group of the results Urgent cases are transmitted by cable, on authorization by the Chairman, to whom the Group has delegated this authority

All replies from governments on reports of "disappearances" are examined and summarized in the Group's annual Report A statistical summary outlines cases on each country and the replies Information on specific cases is forwarded to the sources of those reports who are asked to make observations or to provide additional details

If the reply clearly indicates the whereabouts of the missing person and if that information is sufficiently definite, the Working Group considers the case clarified If there are doubts, the source is consulted again Depending on the results, this process can continue back and forth between both parties

The Working Group retains cases in its files as long as the exact whereabouts of the missing persons have not been determined

Other Rebuttals of Criticism

The Working Group's 1987 Report concluded, "Both the continued occurrence of the phenomenon and the mounting case-load of unresolved "disappearances" are reasons for the Commission to give this question its unstinting attention"

The Working Group rejected the government criticisms of its work first, that the Group should distinguish between "disappearances" under a military regime and those under an elected government, and second, that past situations should be treated differently from those in which "disappearances" still occur Properly, the Working Group declined "to enter, even implicitly, into the intrinsic merits of any given system of government." In its experience, "civil government did not imply the absence of disappearances " On the second point, the Group felt "a distinction between present and past regimes would essentially detract from the need to bring past cases to light and would not be fair to those whose agony over the loss of a relative or friend did not subside with the mere passage of time "

As to Colombian demands for more formal procedures, equality and so forth, the Working Group pointed out that it "is not a court of law and that therefore the standards of due process do not come into play Nevertheless, there are basic norms of equity, such as equality of opportunity, below which no human rights machinery should descend "

Finally, the Working Group addressed the charge that it has concentrated too heavily on "disappearances" in one region of the world -- i e , Latin America It argued that "this is not a valid criticism" because "the Group is entirely dependent on cases being drawn to its attention"

Using Public Information and Advisory Services

In its 1987 recommendations, the Working Group encouraged useful future efforts through the proposed expanded human rights public information programs Citing the well-developed NGO infrastructure in many countries in which "disappearances" are reported, the Group cited the value of enhanced publicity in advancing awareness of its goals and work, and in avoiding false expectations about what it can achieve An increased level of public awareness might well remedy its problem of "geographical imbalance " The Group urged the Commission to ask the Secretary-General "to pay particular atten-

tion to the Working Group as part of the envisaged stepping up of information activities in the field of human rights "

Finally, the Group encouraged actions through the UN advisory services program "It has been the Group's experience, that many Governments faced with 'disappearances' would greatly appreciate assistance from the United Nations Particularly during visits by members of the Working Group, it was found that measures, such as training of military or police officers, could substantially improve the prospect of promoting and protecting human rights The Working Group has therefore learned with satisfaction of the establishment of the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights, from which such activities may be financed in the future "

Recent Action by the General Assembly and Commission

In 1987, as in past years, the GA's consensus resolution declared its continuing concerns about forced or involuntary "disappearances" (A/Res/42/142) and commended the Working Group

Importantly, the GA expressed "profound anguish" at the human suffering of the families of the "disappeared" and appealed to governments to take steps to protect them from intimidation or ill-treatment

In 1988, the Commission on Human Rights formally extended the Group's mandate for two more years Its resolution addressed many points cited previously and also referred to the need to protect families of the "disappeared "

On "methodology," the Commission expressed appreciation for the way the Working Group conducted its work, noted the Report's discussion of methodology, and, as previously, reminded the Group of its obligation to work "with discretion", and the need to adhere to UN standards in handling communications

In effect, the Commission endorsed the Working Group's recommendation on publicity by specifically asking the Secretary-General to consider ways to publicize knowledge of the Working Group through the Centre's public information program

But no mention was made in the resolution of the favorable comments in the Working Group's Report about new possibilities of utilizing advisory services programs to train police and military officials In the debate, several governments expressed support for this approach, but FEDEFAM, the Association of Families of the Disappeared, warned about pursuing such an approach without undertaking other simultaneous structural reforms

The Commission's resolution did not address the Group's recommendation that consideration be given to drafting a new international human rights instrument outlawing "disappearances " During the Commission's 1988 debate, most countries that spoke on the issue expressed caution about the need for a new instrument India summed it up best by noting that the idea should be encouraged only if there was a "fair degree of certainty" that its adoption would make it possible to put an end to those practices Of other countries that addressed the matter, only Bolivia could be characterized as positive, with the USSR courteously interested Other governments encouraged a focus on enforcement of existing instruments Argentina suggested a meeting of experts and non-governmental organizations be convened to discuss the need for a new instrument, after which they could advise the Commission

Recommended Action in 1988

At the 43rd session of the General Assembly, the key issues in debate will probably be the methodology of the Working Group and the prospects for utilizing public information and advisory services to assist the Group The Group's work on particular countries will probably meet with criticism by many of the states involved

A GA resolution should again voice strong support for the continuation of the Working Group and for its method of work It should

-- Invite the Working Group to continue to present to the Assembly and the Commission suggestions necessary for fulfilling its tasks.

It is important for the GA to continue to defer to the expert judgment of the Group members and encourage their advice on new approaches, rather than to attempt to instruct the Group or the Commission In the past, the GA and Commission have given the Working Group wide latitude The Assembly should continue to support the flexible, creative, and constructive approaches of the Group Additionally, by continuing to invite the Group's recommendations, the GA would lend support to the Working Group's responses to the criticisms levelled at it.

-- Commend the Working Group for the way in which it has conducted its activities, especially the urgent action procedure, and for its humanitarian approach to help locate the missing.

-- Welcome the Working Group's decision to provide information on its methodology that clarifies its procedures and process for screening information.

Care should be taken, however, to *avoid* any action that would limit the Working Group's procedures or diminish its flexible approach to resolving cases In the past, resolutions have referred to the need for the Group to act "with discretion," a term used in its original mandate, and have pointed to the need to follow UN standards in handling communications Such reminders should not be too heavy-handed, lest they have a chilling effect on the Group's handling of cases The admissibility criteria have already been criticized by some NGOs on the ground that they are simply too onerous, requiring too many specific details that are difficult to obtain in many less developed societies

-- Urge governments to cooperate more actively with the Working Group, for example by responding more completely to the Working Group's inquiries, by clarifying a greater number of cases brought to their attention, and by inviting the Group to their country in an effort to clarify the fate of alleged victims

One of the most creative aspects of the Working Group's activities has been its decision to go "where the action is" -- that is, to travel to countries that have experienced present or past waves of "disappearances" There, the Group has met with local organizations of relatives of the "disappeared" and other human rights and humanitarian groups, as well as government officials This should be encouraged It not only brings information to the Working Group, but also brings information about the UN's work in human rights to those struggling to protect those rights

The Working Group has sent special missions to several countries at their request The earliest such missions were distinctly non-judgmental in their conclusions, this changed somewhat in the report of the trip to Peru Continuing missions should be encouraged.

-- Urge governments to protect relatives of the "disappeared" from continuing harrassment.

Family members who join or form organizations for relatives of the "disappeared" are often harrassed for simply demanding explanations and information about their relatives Such organizations work to obtain the protection of the law and the human rights protections governing due process, detention, and the right to life They are frequent targets for repression While a Commission Working Group is currently drafting a declaration on the rights of such human rights defenders, the families of the "disappeared" need the immediate protection which can be afforded by international attention to their plight This need should be mentioned specifically in the General Assembly's 1988 resoluition

-- Urge the Secretary General to ensure that the Working Group has sufficient staff and financial resources, particularly for missions to countries with records of "disappearances" and for meetings in other countries that are prepared to receive them.

The UN's overall financial crisis has taken a severe toll on the staffing of the Human Rights Centre, including persons assigned to work on the case load of the Working Group on Disappearances That staff once included as many as five persons, but was reduced to three, and at one point, even fewer Thus, in addition to assuring funding for travel and meeting expenses in various countries, there is a need to provide resources to back up the Working Group

-- Encourage enhanced, well-planned and conducted public information on the role of the Working Group

Under Secretary-General Jan Martenson has promised an expanded public information program concerning the UN's human rights activities and Governments have in principle endorsed this concept. Little is planned on "disappearances" now other than a glossy booklet on the topic meant for wide distribution. The Working Group has commented on the ways enhanced public information might encourage more cases to be brought to it from a wider range of countries In view of the Group's practice of travelling to countries where "disappearances" are alleged, more creative use of the public information program should be encouraged For example, effective use of radio and television programming could produce substantial results.

-- Encourage non-governmental organizations of the "disappeared" and others throughout the world to transmit cases to the Working Group.

There is a continuing value in endorsing and thereby legitimizing the participation of NGOs and individuals in Working Group activities

-- Reserve options for the time being on utilizing the advisory services program.

It is important to ensure that conditions to safeguard the effectiveness of any such program are clearly spelled out and meet rele-

vant human rights standards Additionally, there is a danger that too great an emphasis on advisory services activities may prompt the Working Group to emphasize its diplomatic, consensus-building role to the detriment of its fact-finding activities Care must be taken to ensure this does not occur

Further recommendations concerning the advisory services program are discussed in *In Brief*, Number 7

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IN BRIEF
Human Rights at the United Nations: Using Advisory Services

A Publication of the **International League for Human Rights**
432 Park Avenue South, New York, NY 10016 Tel (212)-684-1221

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The UN Advisory Services Program

The future of the UN program for advisory services for human rights is increasingly the subject of attention in the Commission on Human Rights (the Commission) and other UN human rights organs as well as in the NGO community The General Assembly (the GA) increasingly mentions advisory services in resolutions addressed to specific human rights matters the improvement of reporting to the several treaty supervisory committees and country situations The subject is thus expected to arise in several contexts during the GA s 43rd session

The small budgetary allocation for the UN's regular advisory services program has been augmented by the creation of a Voluntary Fund for Advisory Services (the Fund) As yet unanswered questions about the relationship between the UN s human rights promotion activities and its mechanisms for investigating and reporting on violations have been highlighted in 1988 by the Commission s action on certain country situations and the recommendations of investigative bodies For example the Special Rapporteur on summary or arbitrary executions has urged that training courses be provided for law enforcement officers to educate them about international standards and encourage them to exercise due respect for the individual The Working Group on Enforced or Involuntary Disappearances has recommended training for military or police officers and noted that such activities could be financed under the Voluntary Fund

The objectives scope and content of the program have been addressed by the Secretary-General in a medium-term plan consisting of several sub programs (UN Doc E/CN 4/1988/40) But the central policy question remains unanswered by the medium term plan and UN resolutions addressing advisory services under what circumstances should the UN provide advisory services to governments? The answer is critical not only to the success of the UN s activities promoting human rights but also to the future of the mechanisms for protecting human rights

Project design and implemention should guard against the use of assistance programs by governments to shield their human rights practices from critical scrutiny and to gain the approval of the international community Expansion of the advisory services program for the long term promotion of human rights is needed to supplement the activities for implementation of the existing standards and protection against violations But that expansion must not be allowed to result in what one commentator has characterized as the "gentrification" of human rights in which the UN responds to serious violations with an offer of cooperative assistance

Funding

In 1987, the Commission asked the Secretary-General to establish a voluntary fund for advisory services and technical assistance in human rights The Secretary-General is authorized to receive voluntary contributions from NGOs individuals, governments and intergovernmental organizations and to report annually to the Commission on the administration of the Fund Support provided by the Fund is intended by the Commission to augment the budget for practical activities focusing on implementation of the UN s human rights instruments Contributors can earmark funds for particular projects Responsibility for overseeing the administration of the Fund rests with the Under-Secretary General for Administration and Management

Several observers have argued that this plan for administration of the Fund is likely to repeat the poor experience under other trust funds administered by the Secretariat The expertise needed to evaluate projects and monitor their implementation cannot be supplied by the Secretariat Moreover political oversight will be exercised only via the Commission s consideration of the Secretary-General's annual report These difficulties might be avoided by the creation of an independent body, like the boards of outside expert advisors respon-

sible for adminstering the Fund for Torture Victims and the International Research and Training Institute for the Advancement of Women The board's mandate could be extended to the regular advisory services program as well

Recommendations

-- An independent board should be established to administer the Voluntary Fund. The board could also oversee the administration of the regular advisory services program

-- Criteria detailing the terms and conditions for donations and receipt of funds should be formally established.

-- The regular budget for the advisory services program should not be decreased because additional funds are now available from the Voluntary Fund The assistance programs are vital to the long term promotion of human rights and cannot be conditioned on the availability of voluntary contributions

Activities Under the Advisory Services Program

Regional Programs

In the last two decades seminars and regional training courses have comprised the core of the advisory services program The Secretary-General's medium-term plan proposes that the seminar program be focused on regions where a large number of states are not parties to human rights instruments The seminars are to address selected human rights issues The target audience includes officials involved with the administration of justice media personnel, academics and teachers, and representatives of professional organizations, trade unions and NGOs

A specific regional focus may well improve the content of the seminars by encouraging an emphasis on human rights issues of particular concern in a region A targeted focus will prove more effective than a generalist approach Replacing seminars on the international scale with regional activities should also improve the cost efficiency of the projects, and so allow the UN to involve more participants

The medium term plan proposes that the regional training courses be directed toward states parties to major human rights instruments and treat obligations entailed in implementing those instruments Such training courses have been conducted in recent years under the auspices of UNITAR (in cooperation with the Centre) with private support from the Ford Foundation The target audience includes government officials directly involved in the subject matter legislators judges police and prison personnel and others responsible for the administration of justice Unfortunately NGOs the media educators and trade unions are not among the groups targeted The training courses would educate these groups about their governments reporting obligations and further their own efforts to advance human rights Their participation might also facilitate their greater involvement in the reporting process itself

Moreover there is little reason to limit participation in the seminars to those states that have not ratified the major instruments or to include only states parties among the participants in training courses The latter can benefit from issue-oriented seminars particularly those focused on specific regional human rights problems Conversely the training courses would educate non parties about the scope of the obligations under the relevant instruments and approaches to their implementation

If the seminars and the training courses are to be effective, a coherent plan for identifying and developing the topics to be addressed in specific regional contexts must be developed Systematic program development, in turn, will require effective supervision to coordinate the resources and expertise of many different UN agencies Among the UN organs whose work should be integrated into the regional program are UNESCO, UNITAR, the treaty bodies, and the Sub-Commission on Prevention of Discrimination and Protection of Minorities (the Sub-Commission)

Recommendations

-- A procedure should be developed for ensuring that seminar topics are selected as part of a coherent plan and are specifically related to the needs of the target audience

--- Planning for the regional programs should rely on the guidance of experts and NGOs as well as governments and UN agencies

- Participants in the training courses and the seminars should include NGOs as well as government officials and educators, lawyers, legislators and others involved in the implementation of human rights standards. NGO representatives should be asked to serve as lecturers or trainers and should be given greater opportunity for active participation in the courses and seminars

Fellowships

Approximately 30 fellowships are awarded each year to government nominees for six weeks of study in human rights The Secretariat has

not defined criteria for evaluating the qualifications of candidates but has merely relied on the principle of equitable geographic distribution in making selections Candidates chosen have not received adequate supervision nor has adequate attention gone into developing their programs of study Not surprisingly, many of the candidates put forward by governments have been officials without significant qualifications or involvement in human rights, nominated merely in recognition of their government service

The medium-term plan calls for fellowships to be awarded to official government nominees "directly involved in functions affecting human rights, members of national commissions of human rights" and NGO representatives Fellows are to attend the human rights training course at the International Institute of Human Rights in Strasbourg or another program approved by the Centre, in addition to briefings and meetings of UN human rights bodies at the Centre for two weeks before and after the training course

The emphasis on the participation of officials more directly involved in human rights is welcome but falls short of identifying criteria for selection that would discourage governments from treating nominations as political rewards In addition, the content of the training program outlined by the Secretary-General seems too general to contribute significantly to the fellows' educational needs If the fellowships are to help expand the human rights expertise on which governments can draw, more specialized study programs should be devised

Recommendations

--- A systematic process for selecting fellowship recipients should be developed, with more rigorous criteria for selection and more thorough application procedures.

--- The study programs for fellows should be tailored more closely to the experience and specialized needs of the individual fellows, drawing on the resources of academic institutions active in human rights research and training

--- Governments should be urged to consult with NGOs about potential candidates and to nominate NGO representatives themselves.
The greater involvement of NGOs in the nominating process could help to ensure the selection of more competent candidates

Assistance in Creating "National Infrastructures"

The Secretary-General's medium-term plan suggests that expert and technical assistance be directed toward helping governments develop the "necessary infrastructure to meet international human rights standards " Several representatives at the Commission s 44th session expressed enthusiasm for this approach

Since 1983 the Sub-Commission on Prevention of Discrimination and Protection of Minorities has been attempting to compile information on the availability of technical assistance for strengthening national legal institutions and the specific needs in this area of those states receiving aid from the UN Development Program (UNDP) The needs targeted by the Sub-Commission include, *inter alia*
- the development of law libraries,
-- the training of judges,
-- the establishment or strengthening of law faculties and
-- the collection of legal materials

Assistance in these areas is unlikely to arouse political opposition but cannot accomplish the fundamental change necessary where functioning independent legal institutions no longer exist Other less formal types of technical assistance, such as training to facilitate the establishment of national legal aid programs, are better means for aiding the development of an infrastructure to meet international standards

To meet this goal, expert and technical assistance focused on specific human rights problems will have to be matched by technical and financial contributions from the UN development agencies Indeed, expertise and programming experience will have to be drawn from agencies, departments and specialized bodies throughout the UN For example, public information campaigns to make the instruments themselves available as widely as possible, an obvious first step toward implementation of the standards, should be carried out on several fronts A coordinated advisory services program would integrate the relevant programs and resources of, *inter alia*, the Centre for Human Rights (the Centre), the Department of Public Information (DPI), the UNDP, UNITAR, UNESCO, ILO, the treaty bodies, the Commission, the Sub-Commission, and the Crime Prevention and Criminal Justice Branch of the Secretariat

The Commission's most recent resolution on the regular program of advisory services calls for the Centre to function as a focal point, "as appropriate", for coordination of UN activities in all aspects of advisory services The Centre lacks the resources and technical expertise essential for this task Evaluating, initiating, implementing and monitoring projects will require expertise in a broad range of disciplines that the Centre lacks The Secretariat is

similarly ill-equipped to play this role Once again, the creation of an independent supervisory body for the advisory services program clearly represents the best solution The need for a board of experts to administer the Voluntary Fund has been noted earlier, the task of the new body would be to develop and administer an effective program guided by sound policy on the relationship of assistance programs to the UN's efforts to end violations

At a minimum, however, the technical and financial resources of the Centre must be strengthened Agencies whose formal mandate lies outside the field of human rights, particularly those responsible for economic assistance programs, should acquire human rights expertise With that expertise, they would be better able to evaluate and implement assistance projects in human rights or with human rights components and to take account of the possible impact on human rights of economic development strategies

Recommendations

--- ***The UN organs charged with designing and administering the various components of the advisory services program should solicit and facilitate the active involvement of national and international NGOs at all stages of the process.***

--- ***The current lack of program coordination among different UN organs involved in assistance activities and the resulting fragmentation of the advisory services program should be replaced by integration of the various program components into a coherent whole***

--- ***An independent body should be established to administer the program and its budget. The resources of the Centre should in any case be strengthened and UN agencies outside the world body's human rights program should acquire expertise in human rights***

Policy Issues

When Will Governments Receive Assistance?

The Secretary-General's medium term plan suggests that the Centre make offers of expert and technical assistance to "newly-established governments advocating the promotion and protection of human rights " The governments presumably targeted by this recommendation are those that succeed repressive regimes and have the political will to improve human rights conditions but lack the resources and technical expertise needed for the undertaking But what proof of a commitment to restoring human rights will be required of successor governments? Participation in the advisory services will provide governments with a powerful political tool to deflect scrutiny and criticism of their human rights performance Objective criteria should be outlined for determining when a newly established government, or any government should receive assistance and the conditions on which it will be offered The failure to do so will threaten not only the effectiveness of the advisory services program but the integrity of efforts to end human rights violations

The Commission's practice todate offers little reassurance that the danger inherent in extending assistance to states with recent histories of serious violations can be averted in the absence of such guidelines

In the case of *Haiti*, for example, the Commission first offered assistance while Duvalier was still in power and yet continued consideration of the human rights situation under its confidential 1503 procedure Following the departure of Duvalier, a special representative was appointed to evaluate the human rights situation and to consult with the Government on advisory services that might be made available

The representative's report to the Commission in 1987 resulted in the removal of Haiti from the 1503 list With its concomitant request that the Secretariat appoint an expert to advise the Government on restoring human rights, the Commission apparently abandoned the dual approach of protection and promotion for an emphasis on advisory services Appointment of the expert was delayed until October 1987, despite reports of rapid deterioration in the human rights situation

On election day in November 1987, voters were attacked and killed at the polls The expert never reached Haiti Unable to fulfill his mandate, he reported the results of the January 1988 elections to the Commission in general terms In evaluating his report, neither the expert nor the Commission offered anything more than a vague acknowledgement of the well-attested, serious violations that occurred in November or the widespread challenges to the validity of the January election results

The UN's response to the situation in Haiti has undermined its investigative mechanisms, while failing to contribute toward improvement in human rights through its advisory services Similarly damaging results have followed the Commission's decision to substitute advisory services for investigative activities in the case of Guatamala

The Commission's efforts to secure assistance for Bolivia, Uganda, and Equatorial Guinea have yielded few concrete results and no fundamental changes in these countries

A few basic limitations on eligibility for assistance can be identified at the outset At the 44th session of the Commission, the representative for Canada suggested that the discussions on advisory services for specific countries take place under Item 12 according to three categories states refusing to cooperate with the UN, states cooperating with special rapporteurs and experts, states emerging from "difficult" circumstances and requiring assistance The UN's efforts to protect human rights will be undermined by giving assistance to governments that refuse to cooperate with a UN investigation Moreover, such refusals clearly manifest the absence of the political will to improve human rights conditions There is consequently no reason to believe that technical and expert assistance can bring about significant improvements in those situations

The practice of "graduating" states with records of gross violations to the advisory services program should be avoided The better course would be to extend assistance and to continue investigating and reporting on alleged violations Building or rebuilding the legal and institutional framework necessary to ensure human rights after a period of ongoing gross violations requires time Such periods of transition are likely to be marked by abuses on some level and require the continued scrutiny of human rights practices

Development Activities and Human Rights

The challenge posed by the need for advisory services is not merely how the UN can provide effective assistance but also how advisory services in human rights can be related to the activities of its development agencies International development agencies like UNDP have long insisted that human rights conditions cannot be included among the factors to be evaluated in reviewing economic assistance programs or as objectives to be pursued in devising development strategies The current emphasis by the human rights bodies on the development of national "infrastructures" to meet human rights standards should prompt a concerted effort to overcome this resistance ***Coordinated programming and integration of human rights concerns into all relevant agency programs are essential if the advisory services program is to make any significant contribution to the broad-based changes envisaged***

Human rights activities have been segregated within the UN and human rights considerations have *not* been integrated even into the economic and social programs For example the Secretary General has completed a report for the 43rd Assembly on the preparation of a new international development strategy for the fourth UN development decade which reflects discussion in the Administrative Committee on Coordination (ACC) [UN Doc A/43/376 (1988)] Although the report lists the alleviation of poverty health employment and the advancement of women among the development objectives that might form part of a focus on "human resources" in the new strategy no mention is made of human rights conditions or objectives

Similarly the ACC decision on preparation of the new development strategy acknowledges that development problems should be addressed through an integrated approach rather than in exclusively economic terms The decision calls for an emphasis on human development that views economic objectives "as a means for achieving the human goals " This very positive initiative toward an integrated approach to development should incorporate human rights per se

The Role of Investigative Bodies in Proposing Assistance Measures

The medium-term plan identifies human rights organs, such as the Sub-Commission, the Human Rights Committee and special rapporteurs, as possible sources of project proposals *The fact-finding activities of special rapporteurs, working groups and special representatives of the Commission should remain clearly separate from the advisory services program*

Those whose mandate is to investigate and report on violations should *not* be given the task of proposing specific assistance measures an undertaking that will require a collaborative relationship with governments Their recommendations should be limited to general proposals concerning the types of expert and technical assistance that could help governments to achieve institutional and administrative change

Recommendations

*--- **The development of strategies for the advisory services and technical assistance program should begin by defining the relationship between that program and the UN programs for the protection of human rights. The latter should be augmented, not replaced, by assistance initiatives.***

*— **As a general rule, governments whose human rights practices are***

under investigation by country or thematic rapporteurs or working groups should not receive assistance through the program

--- Criteria should be developed for determining when exceptions to this rule can be made, and the types of assistance granted in such exceptional circumstances should be precisely defined

---Governments that have refused to cooperate with UN investigations should not be eligible for assistance

--- Investigative bodies should not propose specific projects to be undertaken through the advisory services program

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This *in Brief* was prepared by Donna Sullivan of the Jacob Blaustein Institute for the Advancement of Human Rights

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For further information on the UN advisory services program in human rights, see UN Assistance for Human Rights, by Radda Barnen (Swedish Save the Children) and the Swedish section of International Commission of Jurists September 1988

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The **International League for Human Rights**, founded in 1942 works to end torture, disappearances, religious intolerance censorship and other human rights abuses It is a private, non-governmental human rights advocacy organization that has consultative status with the United Nations where it often speaks out against human rights violations by member states As a matter of principle the International League accepts no funding from any government or intergovernmental body The Chairman of the League is Jerome J Shestack Its Executive Director is Felice D Gaer

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IN BRIEF
Human Rights at the United Nations: Chile

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On October 5, 1988, Chile held a plebiscite on the continuance in office of President Augusto Pinochet, the candidate nominated by Chile's governing military junta in accordance with its 1980 Constitution That event has been greatly anticipated and hailed as an opportunity for the beginning of a return to democratic government, a broad goal repeatedly called for in resolutions of the UN General Assembly ("the GA") over the past fourteen years.

The Chilean population voted "no" to General Pinochet, thereby triggering a process which will lead to elections for President in 1989 and a Congress in 1990 In view of the events surrounding the plebiscite, the 43rd General Assembly in some ways addresses a different Chilean situation than it has in the past. This "*In Brief*" discusses some of the concerns of the international community on the human rights situation in Chile

Past UN Action

At the 42nd session, in December 1987, the General Assembly (A/Res/42/147) expressed its concern and distress at the situation in that country, in language reminiscent of past GA resolutions and somewhat sharper than that used in recent years in the UN Commission on Human Rights ("the Commission") The resolution, introduced by Mexico, was adopted by 93 in favor, 5 opposed (Chile, Indonesia, Lebanon, Paraguay, and Thailand) and 53 abstentions.

Departing from its usual previous practice of voting "no", the United States abstained at the 42nd GA, criticizing the resolution's lack of "objectivity" and citing the US's longstanding view that Chile had been singled out for excessive criticism in the UN while other countries with grave abuses continued to go unnoticed. The US, stressing its awareness that Chilean human rights abuses would only end when a democratic government prevailed, nonetheless complained that the resolution failed even to "recognize" the "tangible" steps to improve human rights taken by the Chilean government.

As outlined by the Commission's Special Rapporteur on Chile, Professor Fernando Volio of Costa Rica, these positive steps during 1987 included

–closing detention centers of the CNI (security police) in which the most notorious torture took place;

– signing international and American conventions against torture,

– concluding working agreements to allow the International Committee of the Red Cross to have access to detainees, and

– permitting the return of most exiles.

Since his 1985 appointment (succeeding other Special Rapporteurs on Chile appointed since 1979), Professor Volio has come in for criticism from some governments and non-governmental groups because of his efforts to acknowledge improvements – however modest – in the Chilean government's human rights actions, his muted tone in detailing and drawing conclusions about the abuses, and his discussion of the problems posed by terrorism by organized groups. The latter, in particular, is controversial because some human rights activists and Chilean exile groups believe that even a reference to the topic in the resolution strengthens the Chilean government's claims that its actions are justified

The Assembly's resolution enjoined the Chilean government against misusing the excuse of terrorism to justify its actions or to abridge due process rights. It emphasized the government's need to "guarantee that anti-terrorist legislation shall not be used against persons who have not committed terrorist acts."

Additionally, the Assembly again pressed the Chilean government to comply with its international human rights obligations, emphasizing in particular its need

– to end the states of emergency;
– to end torture and desist from intimidation, persecution, abductions, arbitrary arrests, incommunicado detention, detention in secret locations, and assassination,
– to investigate all reports of

deaths, torture, abductions and other human rights violations by the military, police and security forces as well as by private or security force-connected bands and groups,
-- to investigate and clarify the fate of "disappeared" persons,
-- to ensure the independence of the judiciary and prevent the intimidation of judges, defense lawyers and witnesses ,
-- to reestablish the jurisdiction of civilian rather than military courts and end the appointment of ad hoc military prosecutors,
-- to reorganize the police and security forces to help end rights abuses,
-- to end the practice of exile and internal banishment,
-- to restore labor and trade union rights, and
-- to respect the activities of organizations and persons active in the promotion and protection of human rights

In his February 1988 Report to the Commission on Human Rights, following a new visit to Chile in January, Professor Volio very firmly and clearly outlined both the government's positive actions and its major, appalling human rights abuses. For example, he declared unequivocably that Chile's judiciary system was not independent, spoke of the tragedy of "two Chiles" and the divisions in the society and various parts of the government -- contributing to the country's continuing problems. Such strong language -- coming from Professor Volio -- is important critical commentary on the Chilean human rights situation.

At its spring 1988 session, the UN Commission on Human Rights once again asked the Special Rapporteur to present his findings on Chile to the General Assembly For years, the Commission has asked the Rapporteur, along with some other country Rapporteurs, to go before the GA with an interim report of findings That interim report has often been quite important in the shaping of a GA resolution

The 1988 Commission welcomed the Chilean government's actions that enabled the Special Rapporteur to visit the country but cited its regret that this co-operation had not led to a substantial improvement in the human rights situation It urged the government of Chile to take measures indispensable for a legitimate plebiscite, such as abolishing the state of emergency and other restrictions on freedom of association and of assembly, and assuring full access to all means of communication and control by citizens over the electoral process.

After the Plebiscite: Rights Problems that Continue

While the October 5, 1988 plebiscite in Chile resulted in the defeat of General Pinochet's efforts to stay in power for eight more years, that vote did not end the structural limitations on human rights in Chile These include constitutional restrictions, a weak judiciary, excessive jurisdiction for military courts and an incredibly broad definition of national security Additionally, there is the problem posed by armed extremists. All this suggests that the transitional phase until March 1990 could witness some serious rights violations.

Under Chile's 1980 constitution, Article 8 gives the government extraordinary powers to control political debate and arrest individuals for disrespect of the govenment, the armed forces or their leaders. As a result of this provision over thirty journalists and editors continue to be under indictment.

Since the 1973 coup which brought the military to power, the Chilean judiciary has been under heavy pressure not to take action against government officials accused of rights violations. Evidence that such pressure has not diminished is provided by the post-plebiscite suspension of a judge for having pursued a case involving torture by government officials

In addition, the jurisdiction of the military courts has been expanded since 1973 to such a degree that most human rights cases come to them This has contributed to the fact that there have been virtually no convictions to date on allegations of human rights violations. This situation has been further aggravated by an exceptionally broad definition of national security which prohibits or restricts activities commonly regarded as legitimate exercises of civil or political rights.

Hence, there is the possibility that legitimate electoral activities could be alleged to be violations of national security There is an additional fear that the government or civilian extremists might manufacture incidents that would result in the reimposition of a state of emergency and the suspension of the projected elections.

Many analysts believe that the transitional phase could be disrupted in order to allow General Pinochet to remain in power It must be remembered that the present government of Chile is much more personalistic than the military regimes that transferred power to civilians in Brazil, Uruguay and Argentina in the early and mid-1980s. Hence, there is not as much institutional weight guaranteeing the conclusion of the process in Chile That makes continued close monitoring of the situation in Chile of

utmost importance.

In framing the 1988 GA resolution, both the fairness of the plebiscite and Professor Volio's interim report will be very important. Other key issues to be considered will be the items recommended by the Commission and noted above, including the issues of continuing reports of torture, freedom of the press and harassment of journalists, and limits on freedom of association Further, attention may be drawn to the mounting problem in 1988 of harassment of activists engaged in political registration and/or campaigning.

The Chile resolution may be at a crossroads this year First, there is the matter of whether to "single out" Chile at all, now that it has held the plebiscite. Some will want the resolution to be dropped from consideration altogether Yet human rights conditions still fall far short of international standards, much can occur to interrupt the "return to democracy", and too speedy and too benign GA action on Chile would not necessarily help keep the timetable moving in Chile

Alternatively, some might wish to end the mandate of the Rapporteur and "graduate" consideration of Chile to the Commission's "advisory services program", as happened for Guatemala after Cerezo took office. That has been widely criticized as an inappropriate action, although it still stands. It would be all the more inappropriate in Chile, where human rights abuses, including torture, have continued to be documented. (Readers seeking more information on this option are encouraged to consult the League's *In Brief* on the UN advisory services program (No. 7) which discusses Guatemala and Haiti and use of advisory services to reward countries for limited progress.)

Still another option would be for the GA to recommend -- and later take action to see -- that Chile no longer be a separate agenda item at the Commission, but be considered under the general item 12, "gross violations." This problem doesn't apply for the General Assembly, where Chile is already considered under the general "gross violations" item

Whatever ensues at the 43rd GA, continued scrutiny of the human rights situation by the international community could help encourage greater compliance with international human rights standards by the Pinochet government and an end to reported abuses. Moreover, it might help keep Chile's leaders from halting the timetable for elections and a return to democratic government.

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This *In Brief* was prepared with the assistance of Margaret Crahan, Henry R Luce Professor of Religion, Power, and the Political Process at Occidental College and Felice Gaer of the International League for Human Rights.

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The International League for Human Rights, founded in 1942, works to end torture, disappearances, religious intolerance, censorship and other human rights abuses. It is a private, non-governmental human rights advocacy organization that has consultative status with the United Nations, where it often speaks out against human rights violations by member states. As a matter of principle, the International League accepts no funding from any government or intergovernmental body The Chairman of the League is Jerome J Shestack

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IN BRIEF
Human Rights at the United Nations: New Standard Setting

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Forty years after the adoption of the Universal Declaration of Human Rights ("the Universal Declaration"), the UN continues to grapple with the protean relationship between political forces and legal considerations in human rights standard setting As proposals for new instruments continue to be advanced, the theoretical and the operational relationships between the implementation of existing human rights standards and the progressive development of norms are implicitly (and often explicitly) called into question

In its 1987 report, for example, the Working Group on Enforced or Involuntary Disappearances created by the Commission on Human Rights ("the Commission") recommended that consideration be given to drafting a new instrument on "disappearances" In the Commission's debate on this issue, several governments advocated that efforts remain focused on the implementation of existing standards Similarly, the two Special Rapporteurs on religious intolerance for the Commission and the Sub-Commission on Prevention of Discrimination and Protection of Minorities ("the Sub-Commission"), respectively, have called for a convention to augment the existing declaration on the subject. This proposal has met a mixed political reception by governments At its 1988 session, the Sub-Commission appointed one of its expert members to examine, in light of the 1986 General Assembly ("the GA") resolution on standard setting in human rights, the factors to be taken into account before elaborating a convention on the elimination of religious intolerance and to report on existing international human rights provisions relevant to the freedom of religion or belief This reference to the GA resolution on standard setting raises a question what guidance can the GA offer in human rights law-making?

GA Guidelines for New Instruments

In 1986 the GA responded to concern that proliferating claims for the recognition of additional human rights could threaten the integrity of the existing corpus of human rights law by adopting resolution 41/120, on "setting international standards in the field of human rights " Resolution 41/120 sets forth general requirements to be met in elaborating normative instruments It states that new instruments should

(a) Be consistent with the existing body of international human rights law,
(b) Be of fundamental character and derive from the inherent dignity and worth of the human person,
(c) Be sufficiently precise to give rise to identifiable and practicable rights and obligations,
(d) Provide, where appropriate, realistic and effective implementation machinery, including reporting systems;
(e) Attract broad support.

To what extent do these requirements provide objective guidelines for determining which rights should be the subject of new instruments and how standard setting should proceed? First, consistency with existing law demands that new standards not conflict with existing norms The resolution might have identified such essential means for avoiding normative conflict as adequate preparatory research on relevant international standards and resort to drafting devices such as savings clauses

Although the requirement that new instruments be of "fundamental" character and "derive from the inherent dignity and worth of the human person" seems to suggest that only certain rights are appropriate subjects for standard setting, it does not provide adequate guidance for identifying those rights Except for a small number of jus cogens rights, there is no political or legal consensus on which rights are fundamental in nature The reference to rights derived from the "inherent dignity" of the human person suggests that collective or "peoples'" rights are not the proper subject of law-making This individual rights formulation is borrowed from the Universal Declaration, however, which itself proclaims an array of economic and social rights.

The requirement that new instruments be precise enough to form the basis of identifiable rights and obligations suggests that the

content of the norms stated must be sufficiently detailed to impose specific obligations on states and to be amenable to remedial measures when they are violated The requirement that new instruments provide, where appropriate, for implementation machinery should be interpreted to mean that either an implementation mechanism will be established with the coming into force of the instrument or the new instrument will be brought under existing implementation machinery Finally, the requirement that new instruments attract broad international support restates the principle that the norms set forth must reflect a sufficient degree of political consensus to be eventually transformed into practice

The guidelines thus suggest only general answers to the questions posed above But resolution 41/120 also articulates several principles with significant implications for future standard setting activities

First, the GA emphasized the "primacy" of the Universal Declaration and the two Covenants At a minimum, this insistence on the primacy of the Universal Declaration and the Covenants requires that standards stated in new declarations or conventions not conflict with norms contained in those instruments

Second, resolution 41/120 recognizes the value of additional standard setting in human rights, but calls for the UN and member states to give priority to the implementation of existing standards Although the resolution highlights guidelines for standard setting, it advocates restraint in, if not abstention from, further law-making efforts until established norms have been transformed into practice This emphasis on realization of existing human rights guarantees is reflected in the GA's reaffirmation of the "fundamental importance" of effective implementation of the Declaration and the Covenants and its reference to the "extensive network" of established human rights standards In addition, the GA urged that the established legal framework be given "due regard" in developing new standards.

Third, law-making processes should be "as effective and efficient as possible" In this connection, the GA recognized the need for "adequate preparation" in the standard setting activities Resolution 41/120 reaffirms the "important role" of the Commission on Human Rights (the Commission) in that process but does not elaborate on the nature of that role The Secretary-General is requested to assist in the process by providing "appropriate specialized support" to bodies engaged in standard setting

Procedural Aproaches to Human Rights Standard Setting

While it is difficult to identify in the abstract those human rights that should be the object of new standard setting efforts or the appropriate timing for undertaking such efforts, it is possible to identify procedural approaches to law-making that will better enable the UN to determine those questions in specific cases.

Commentators and governments have repeatedly criticized the lack of structure and coordination in the UN's human rights law-making process Standard setting activities are taken up by the Commission, the Sub-Commission, and even the GA itself, in addition to the specialized agencies like the ILO and functional commissions of ECOSOC (such as the Commission on the Status of Women)

Drafting has frequently proceeded, without serious preparatory work, by means of open-ended working groups characterized by a lack of continuity and expertise among their members Under these circumstances, the drafting process has been slow and unnecessarily repetitive, particularly where no initial draft text was prepared as a basis for discussion Both the efficiency of the process and the quality of the instruments produced have suffered as a result.

Among the human rights standard setting activities currently in progress in the UN are
-- principles for **the protection of mentally-ill persons**, being drafted by a sessional working group of the Sub-Commission,
-- a declaration on **the protection of detained or imprisoned persons**, submitted by the Sub-Commission in 1978, and under consideration by an open-ended working group of the Sixth Committee,
-- a declaration on **the rights of human rights defenders**, being drafted by an open-ended working group in the Commission,
-- a declaration on **the rights of minorities**, being drafted by an open-ended working group in the Commission, and
-- a convention on **the rights of the child**, also being drafted by a working group in the Commission.

These and other law-making activities in progress have been hampered by inadequate coordination and attention to existing standards and sometimes haphazard approaches to assigning drafting responsibilities.

---For example, draft principles on **the independence and impartiality of the judiciary** have been elaborated by a Special Rapporteur for the Sub-Commission In 1985, the UN Congress on the Prevention

of Crime and the Treatment of Offenders adopted a set of Basic Principles on the Independence of the Judiciary The Netherlands government has properly suggested that in order to avoid overlap and repetition, the Sub-Commission postpone consideration of the Special Rapporteur's report and draft principles until the results of the Eighth UN Congress on Crime Prevention and the Treatment of Offenders in 1990 are available That Congress will have before it a Secretariat report on implementation of the Basic Principles that should inform the Sub-Commission's (and the Commission's) action on the Special Rapporteur's draft principles

—In 1979, an open-ended working group of GA delegates was established to draft a UN Convention on **the Protection of the Rights of All Migrant Workers and Their Families** The decision to assign this task to generalists (many of whom have been unquestionably knowledgable and skilled) rather than experts was questioned by the ILO, which has greater experience and considerable expertise in the area of standards governing the rights of migrant workers Since 1979, drafting has progressed haltingly, as the working group attempts to reconcile often conflicting proposals

—Similar potential for encroachment on the ILO's mandate and the elaboration of overlapping or conflicting standards has now been raised by the Commission's decision to request an expert member of the Sub-Commission to prepare a draft declaration on **indigenous rights** The ILO is currently revising its Convention 107, for 30 years the only international instrument on the rights of indigenous and tribal peoples, to reflect normative developments, particularly regarding the right to self-determination The Sub-Commission's indigenous peoples' working group should follow the ILO's revision of Convention 107 closely and postpone its own drafting on the subject until the revision is completed and the results can be assessed

The Reform of Standard Setting Procedures

Admittedly, the limits of political consensus shape the instruments adopted Nonetheless, as a result of poor drafting by bodies lacking the necessary competence or the failure sufficiently to analyze normative relationships, some instruments have not the reflected the full reach of political consensus In addition, a more structured approach to standard setting in human rights might facilitate political input at stages where it can be most effective and reduce the impact of obstructionist political interventions

The work of the International Law Commission (the ILC) and its reception in the GA's Sixth Committee illustrates the complex interaction of political factors and legal considerations within a structured process Although some observers have decried the slow pace of the ILC's work, the drafts prepared by the ILC have met notable success from both legal and political viewpoints. The ILC initiates its lawmaking process with the appointment of a special rapporteur who prepares one or more reports presenting analysis of particular legal problems and draft articles, with commentaries Governmental input is obtained through written observations on the draft texts and debate in the Sixth Committee of the GA. Supporting research tasks are assigned to the Secretariat as necessary

After the ILC, taking into account the reports and the input from governments, adopts the final draft articles and accompanying commentaries, it submits the draft text to the GA with a recommendation on whether to conclude a convention If the GA decides in favor of adopting a convention, it may then convene a diplomatic conference, which bases its discussion on the articles adopted by the ILC, or may itself proceed to adoption of the articles

The positive features of such well defined law-making processes might be adopted as means for improving the efficiency of the UN's human rights standard setting activities and, most important, to enhancing the technical quality of the instruments drafted and their acceptance by states The heads of the UN's human rights treaty bodies recently proposed an approach to new standard setting paralleling the law-making practice in the Council of Europe under the European Convention for the Protection of Human Rights and Fundamental Freedoms Expansion of the rights stated in the Convention has been accomplished by means of a series of protocols addressed to civil and political rights The heads of the UN treaty committees have recently recommended that new human rights instruments be elaborated as protocols to existing instruments and attached to the implementation mechanisms established under those instruments

Among the key elements of an effective and sound standard setting procedure are:

*** ***Adequate preparatory research by the Secretariat or outside experts to inform the decision to initiate new standard setting***

Preparatory work should be

aimed at ascertaining whether a new instrument is needed, defining the reach of political consensus on that need and on the norms that are likely to be accepted by states, and suggesting whether the new instrument should take the form of a declaration or a convention The necessary political discussion in the GA or ECOSOC of the need for a new instrument would then be informed by such prior studies Preparatory work should include soliciting and analyzing the views and recommendations of governments, relevant governmental organizations and interested non-governmental organizations (NGOs)

At the initial stage of the ILO's highly structured and effective law-making procedure, for example, the International Labour Office prepares a preliminary report summarizing national law and practice and circulates this report to governments, together with a questionnaire designed to determined what standards states would be prepared to accept Governments are required to consult with organizations representing workers and management in formulating responses to the questionnaire Drawing on those government responses, the office compiles a second report identifying the principle issues to be considered by the General Labor Conference and presenting proposals concerning the form of the instrument to be adopted and its substantive content These reports are discussed at the Conference and on an ongoing basis by drafting committees which analyze and vote on draft provisions and proposed amendments

*** ***Thorough research at the initial stages to identify relevant existing standards.***

Such preparatory studies should seek to identify the areas of potential normative conflict, overlap or gaps and determine how the proposed instrument would relate to the established legal framework Supporting research and comment on draft texts should be sought at subsequent, fixed stages of the drafting process for further clarification of the normative relationship between the draft instrument and existing standards. In this connection, the Administrative Committee on Coordination has proposed that intergovernmental bodies formally provide for mutual consultation prior to the adoption of new instruments and for submission of comments by other organizations on draft texts

Again, the ILO's procedures offer a useful model The ILO Secretariat includes information on relevent conventions and recommendations in preliminary questionnaires circulated to ILO members on a proposed subject for new standard setting The Secretariat draws attention to existing provisions that parallel any of the draft provisions and also drafts a provision to be included in the new instrument, recalling existing instruments

*** ***The initial draft of a new instrument should be prepared by experts***

A draft text prepared by experts with deliberate attention to existing standards can facilitate more focused debate and ensure that technical legal considerations are taken into account In general, bodies with broad membership, such as the GA, will face considerable difficulty in attempting to elaborate a sound draft on the basis of competing proposals by government representatives.

In assessing the ILC's work, several commentators have argued that negotiations between states based on ILC drafts have yielded more success than deliberations initiated without a preliminary draft or with drafts prepared by government representatives Of course, much of that success can be attributed to the scholarly qualifications of many of the experts who have served on the ILC

*** ***Ongoing research support by the Secretariat and continuing resort to governments, other UN bodies and the specialized agencies, and experts for comment on successive drafts.***

Drafting work should proceed according to a fixed timetable In a positive step in this direction, the Commission decided at its 44th session to submit the draft **convention on the rights of the child** to the Secretariat for technical review The Secretariat is mandated to identify overlap and repetition between and within draft articles, check for consistency in the language of the text, compare the norms stated with existing international standards, particularly those contained in the Covenants, and recommend textual changes that would correct normative conflict or overlap In reviewing the draft, the Secretariat is to incorporate comment by such agencies as UNICEF The Commission also imposed a moratorium on new proposals and established a timetable for the second reading of the draft by the working group, and its subsequent consideration by the Commission, approval by ECOSOC, and review and adoption in the GA. This procedural innovation on the part of the Commission can be adapted for other standard setting in progress.

The Role of the GA in Standard Setting

The Charter of the UN confers on the GA a broad authority over the UN's law-making activities which it has failed to exercise systematically No coordinated infrastructure has been evolved in the UN for legislative activity in the field of human rights, standard setting tasks have been dispersed among numerous ad hoc and standing bodies

Although the GA cannot be expected, given the limits on its time and expertise, to undertake systematic coordination of the UN's human rights law-making, it can ***improve its coordinating role***

Particularly in light of its increasingly active role in instructing the Commission and the Sub-Commission, ***the GA could offer general guidance for human rights standard setting***, as it attempted to do in resolution 41/120, by outlining key elements to be incorporated in law-making procedures

Moreover, ***the GA should emphasize the importance of the Secretary-General's role in coordinating the distribution and exchange of information about the UN's human rights law-making activities in progress***, including expert studies and reports, as well as in providing adequate technical assistance

As the appropriate forum for the development of political consensus, ***the GA should attempt to achieve an effective balance between the implementation of existing instruments and the progressive development of new standards.***

The GA should urge restraint in law-making initiatives and ensure that proposed subjects for new standard setting are referred to the most appropriate and competent organs for consideration

Through ECOSOC, the GA can also exercise the power of recommendation to specialized agencies regarding standard setting initiatives

Both the GA and ECOSOC should refrain from engaging in standard setting in areas in which the specialized agencies have greater competence and more experience In recent years the GA has embarked on law-making in fields that are within the constitutional mandates of specialized agencies such as the ILO and UNESCO, creating the potential for conflicting decisions as well as unnecessary overlap

* * *

This *In Brief* was prepared by Donna Sullivan of the Jacob Blaustein Institute for the Advancement of Human Rights

The **International League for Human Rights**, founded in 1942, works to end torture, disappearances, religious intolerance, censorship and other human rights abuses It is a private, non-governmental human rights advocacy organization that has consultative status with the United Nations, where it often speaks out against human rights violations by member states As a matter of principle, the International League accepts no funding from any government or intergovernmental body The Chairman of the League is Jerome J Shestack Its Executive Director is Felice D Gaer

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IN BRIEF
Human Rights at the United Nations: Informing the Public

A Publication of the **International League for Human Rights**
432 Park Avenue South, New York, NY 10016 Tel (212)-684-1221

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Getting the Message Out

Since the Universal Declaration of Human Rights was adopted by the UN General Assembly ("the GA") in 1948, the GA and other organs of the world body have called for the Declaration to be widely disseminated "among all peoples throughout the world" and to be publicized by governments and read and expounded in schools and elsewhere. The GA asked that its text be produced and distributed not only in the official languages but in *all languages possible*. Even in the early years of the UN, the specialized agencies and non-governmental organizations were urged to join in bringing the Declaration to the attention of their members.

Similar circulation and publicity were encouraged for virtually all later human rights instruments.

Since 1979, the UN Commission on Human Rights ("the Commission") has each year adopted a specific resolution on the "Development of public information activities in the field of human rights". The Secretary-General has prepared annual reports to the Commission on work in this field.

Certain themes recur in the resolutions, the Commission's primary concern has been with teaching, education and information activities. Commission recommendations have been directed not only at the United Nations but also to governments and nongovernmental organizations ("NGOs"). The Commission has recommended that the UN take measures
-- to further develop public information activities in human rights,
-- to assure wider distribution of the text of the Universal Declaration of Human Rights in "personalized" versions and local languages,
-- to provide wider distribution of the texts of other major human rights instruments in regional languages,
-- to provide basic reference works for UN Information Centers,
-- to make greater use of audio-visual techniques and co-productions,
-- to produce UN material in a simplified, attractive and accessible form,
-- to produce a human rights teaching booklet and a "Compilation of International Instruments",
-- to provide adequate funding from existing resources and in particular from the budget of the Department of Public Information ("DPI") for public information activities on human rights,
-- to encourage NGO activities,
-- to assure that key roles are played by the Department's UN Information Centers ("UNICs"),
-- to use the mass media, especially radio and television,
-- to utilize other parts of the UN system, as well as NGOs, in the dissemination of material on human rights,
--to harmonize UN activities with other organizations,
-- to further develop the promotional and public information activities of the UN Centre for Human Rights,
-- to establish and publish a register of ways human rights material can be utilized on the national level.

The Commission has also asked governments
-- to publicize the United Nation's work on human rights, especially the work of the Commission and expert bodies,
-- to disseminate the text of the Universal Declaration of Human Rights and the Covenants in local languages,
-- to establish national focal points,
-- to include human rights issues in national educational curricula.

Recent UN Action

At its 42nd session, the General Assembly requested the Secretary-General "to prepare a report for presentation to the General Assembly at its forty-third session on the advisability of launching, within existing resources, a World Public Information Campaign on Human Rights in 1989 and to include in the report an outline of planned activities". The Commission on Human Rights, in its resolution 1988/74 of 1988, welcomed that request and asked the Secretary-General to seek the views of Member States, UN organs and non-governmental organizations on activities for inclusion in the report. These documents will be available at the 43rd GA.

Recent Achievements and Plans for the World Campaign

Under Secretary Jan Martenson, who heads the Human Rights Centre in Geneva, has repeatedly stressed his desire to dramatically improve the UN's public information programs To this end, he has outlined a number of new initiatives, some mandated by the Assembly and Commission, and some undertaken by the UN Centre for Human Rights directly

In addition to completing a number of publications requested by the Commission, the Centre has begun to produce an array of materials on the fortieth anniversary of the Universal Declaration fact sheets, question and answer booklets, posters, and so forth In this effort, the Centre has worked together with the DPI, which now has a staff person specializing in human rights materials

Among their achievements are the following In printed information The text of the Universal Declaration is now available in 77 languages During 1988 the Department of Public Information published in 7 new languages and production of 7 additional language versions is underway The Centre claims that a survey of stocks of local language versions held by UN Information Centers was undertaken to ensure sufficient quantities were available and, where necessary, reprints of out-of-stock texts have been undertaken 60,000 copies of a special Anniversary edition of the *International Bill of Human Rights* was produced by the DPI, which includes the texts of the Declaration and Covenants, in all official languages 140,000 copies of *Human Rights, Questions and Answers* have been distributed primarily to schools and NGOs The Centre for Human Rights has begun the publication of the *Human Rights Fact Sheets* Two issues have appeared; other glossy booklets are promised on advisory services, racial discrimination and apartheid, torture, disappearances, indigenous populations and on summary or arbitrary executions An information kit for NGOs consists of some of the materials noted above A Human Rights Newsletter is also being produced

According to the Centre, the new World Information Program would be based on the "three pillars" of standard setting legislation, implementation and information The campaign would be carried out in all regions of the world "in a balanced, factual and objective manner", and it is anticipated that in addition to the UN, all member states would participate, along with NGOs and others In addition to new printed materials, the world program would include regional workshops and training courses in various parts of the world on the basis of specific UN mandates, fellowships, and special observances

Assessing the Impact

In assessing the impact of the UN's public information program in human rights, the foremost criterion must be whether the program will help people learn what their rights are For without knowing this, they cannot claim those rights or otherwise make use of the international -- or national -- machinery to protect their human rights To date, as one representative remarked at the GA last year, the UN's human rights programs are "invisible in most parts of the world"

In overcoming this shield of invisibility, much depends on the clarity of materials and their accessibility The least controversial of the human rights public information campaign must necessarily be the distribution of the principle human rights instruments approved -- usually by consensus-- by the member states But even here the picture is very clouded Production of the Universal Declaration is so far, proceeding very slowly Only a few language versions have been added to the official UN storehouse in the past year --bringing the number from 70 to 77, as noted But most of the 77 versions are not readily available, even at headquarters Earlier surveys indicate they are absent from many of the UNICs worldwide Going beyond the Universal Declaration to other instruments brings one into murkier ground Translations of these treaties and declarations rarely exist in more than three languages Comparatively few copies are produced in official UN languages other than the three major working languages, English, French and Spanish Some instruments, such as the Declaration Against Religious Intolerance have *never* been published in Russian or Arabic even though an official version necessarily exists in each language (drawn up when the instrument was adopted) and despite the fact that UN bodies have requested such publication in specific resolutions.

Secondly, there is a bureaucratic problem that must be overcome DPI normally has the technical expertise in the area of public information production and dissemination, but it is the Human Rights Centre that has the factual knowledge and genuine understanding of the subject matter The two divisions must work better together, drawing on the enormous resources of the DPI

It is important to the effort to expand awareness of human rights guarantees that human rights not

be concentrated exclusively at the Centre in Geneva, but that other bureaus and specialized agencies have their own experts "in house"

Furthermore, there must be genuine accountability on the production of public information materials in human rights to the responsible UN organs To date, targets have neither been set nor adhered to As a result, little has been accomplished and years pass with few results A teaching booklet on human rights has languished for years, ready for final production

In using modern audio-visual technology and communications technology, more attention needs to be paid to the content of programming Several recent UN radio programs on human rights drone on citing UN resolutions and debates but do virtually nothing to explain the nature of the human rights guarantees or their denial A program on racial discrimination, for example, never explains in human terms what the phenomenon means in practice, concentrates exclusively on South Africa, and refers to the global problem of race discrimination by merely stating in passing that racial discrimination does exist in other parts of the world Programming on the Universal Declaration is little better Only specific programs on political prisoners in South Africa, for example, get into the human side of human rights – what the violations are, how they are conducted, and what is being done about it

Much greater UN oversight is required of radio and other mass programming where huge numbers of persons can be reached and where large sums are being spent. Production of glossy booklets for distribution in Western Europe or North America will do little to help those who are most in need of knowing and finding ways to exercise their fundamental rights.

Additionally, all of this material lacks the human side who are the heroes of the human rights movment? The UN has none The people in UN radio programs, the texts in UN booklets all address organs of the UN, and repeatedly cite high officials of the Secretariate The UN's most recent lengthy account of its human rights accomplishments, *The UN and Human Rights*, published in 1984 and presently scheduled for translation and re-issuance in several other languages, omits mention of all real people – except for a few UN Special Rapporteurs who completed studies on topics many years ago In discussing the events leading to the formation of the UN, the adoption of the Charter and later, the Universal Declaration of Human Rights, the UN s book refers to the role of the "President of the United States" and the "Prime Minister of the United Kingdom" -- without ever mentioning the names of Franklin Roosevelt or Winston Churchill And Eleanor Roosevelt, whose key role regarding the Universal Declaration is widely acknowledged, and who chaired the Commission during the drafting and thereafter, is simply never referred to History – whether of an organization like the UN or a movement like modern human rights advocacy – is made by people They belong in the UN's public information work.

Much more must be done to personalize and humanize the UN's human rights public information programming, located, ironically in one of the world's foremost bastions of media talent

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This *In Brief* was prepared by Felice D Gaer of the International League for Human Rights with the assistance of J Stedman Stevens of Columbia University

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Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

United Nations

INTRODUCTION

One of the basic purposes of the United Nations, as set forth in its Charter, is the promotion and encouragement of respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion

Freedom of belief is one of the rights proclaimed in the Universal Declaration of Human Rights, adopted by the General Assembly in 1948, and in the International Covenant on Civil and Political Rights, adopted in 1966

The Preamble to the Universal Declaration of Human Rights states that "the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people"

Article 2 declares that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"

Article 18 of the Universal Declaration of Human Rights states that "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 "

This right was transformed into a legal obligation for ratifying States in article 18 of the International Covenant on Civil and Political Rights, which states that

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

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

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

"4 The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions "

Preparation of a draft declaration on the elimination of all forms of intolerance and of discrimination based on religion and belief originated in 1962, when the idea of a United Nations instrument on this issue was first approved by the General Assembly Two distinct documents were then envisaged a declaration and an international convention

In 1972 the General Assembly decided to accord priority to the completion of the Declaration before resuming consideration of the draft International Convention At the Assembly's request, the question of a draft Declaration was considered by the Commission on Human Rights at each of its annual sessions from 1974 to 1981 In March 1981, the Commission adopted the text of a draft Declaration, which was submitted, through the Economic and Social Council, to the General Assembly at its regular session later that year

On 25 November 1981, the General Assembly proclaimed the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief, stating that it considered it essential "to promote understanding, tolerance and respect in matters relating to freedom of religion and belief" and that it was resolved "to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the grounds of religion or belief"

The full text of the Declaration follows

DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF

Adopted by the General Assembly on 25 November 1981 (resolution 36/55)

The General Assembly,

Considering that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the Organization to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights and the International Covenants on Human Rights proclaim the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief,

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

Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible,

Convinced that freedom of religion and belief should also contribute to the attainment of the goals

of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

Noting with satisfaction the adoption of several, and the coming into force of some, conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

Concerned by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

Resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the grounds of religion or belief,

Proclaims this Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

Article 1

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

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

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

Article 2

1 No one shall be subject to discrimination by any State, institution, group of persons or person on the grounds of religion or other beliefs

2 For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis

Article 3

Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations

Article 4

1 All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life

2 All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter

Article 5

1 The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up

2 Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle

3 The child shall be protected from any form of discrimination on the grounds of religion or belief He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men

4 In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion

or belief, the best interests of the child being the guiding principle

5 Practices of a religion or beliefs in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration

Article 6

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

(a) To worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes,

(b) To establish and maintain appropriate charitable or humanitarian institutions,

(c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief,

(d) To write, issue and disseminate relevant publications in these areas,

(e) To teach a religion or belief in places suitable for these purposes,

(f) To solicit and receive voluntary financial and other contributions from individuals and institutions,

(g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief,

(h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief,

(i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels

Article 7

The rights and freedoms set forth in the present Declaration shall be accorded in national legislations in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice

Article 8

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights

READINGS AND PROGRAM SUITABLE FOR ADAPTATION TO RELIGIOUS SERVICES

This service is composed of readings from the Declaration on the Elimination of all Forms of Intolerance and of Discrimination based on Religion or Belief. For each circumstance, the liturgy may be different. Groups may wish to add study materials or prayers from their own faith. All could have the following parts: an opening call to celebration; remarks on religious freedom ; a general service based on readings from the Declaration; original prayers and meditations written for the occasion or adopted from the participants' tradition; silent meditation; closing words.

In the enclosed readings from various faiths, some words have been changed, such as "man" becoming "people" or "all".

The purposes of a prayer or meditation service are not only for information and celebration but also for people to commit themselves to religious freedom.

MEDITATION SERVICE ON
THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF
INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF

CALL TO CELEBRATION

REMARKS ON THE MEANING OF RELIGIOUS FREEDOM

READINGS FROM DECLARATION

UNISON:

Considering that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in cooperation with the Organization to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

READER:

Considering that the Universal Declaration of Human Rights and the International Covenants on Human Rights proclaim the principles of non-discrimination and equality before the law and the right of freedom of thought, conscience, religion and belief,

UNISON:

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

READER:

Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

UNISON:

Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissable,

READER:

Convinced that freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of idealogies or practices of colonialism and racial discrimination,

UNISON:

Noting with satisfaction the adoption of several, and the coming into force of some conventions under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

READER:

Concerned by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

UNISON:

Resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the ground of religion or belief,

READER:

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

UNISON:

No one shall be subject to discrimination by any State institution, group of persons or person on ground of religion or other beliefs...

READER:

Discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

UNISON:

All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition,

exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life...

READER:

The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and in universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men...

UNISON:

The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

PRAYERS

SILENT MEDITATION

CLOSING WORDS

FROM

PRAYERS AND THOUGHTS FROM WORLD RELIGIONS

HUMAN FAMILY DIVERSITY

The diversity in the human family should be the cause of love and harmony, as it is in music where many different notes blend together in the making of a perfect chord. If you meet those of a different race and colour to yourself, do not mistrust them and withdraw yourself into your shell of conventionality, but rather be glad and show them kindness. Think of them as different coloured roses growing in the beautiful garden of humanity, and rejoice to be among them.

Bahai — *ABDU'L -BAHA*

We cannot in truthfulness call upon that God who is Father of all if we refuse to act in a brotherly way toward certain people, created though they be to God's image. A person's relationship with God and with other people is so linked together that Scripture says: "He who does not love does not know God" (1 JN.4:8). The ground is therefore removed from every theory or practice which leads to a distinction between peoples in the matter of human dignity and the rights which flow from it. As a consequence, Christians reject, as foreign to the mind of Christ, any discrimination against people or harassment of them because of their race, color, condition of life, or religion. Accordingly, following in the footsteps of the holy Apostles Peter and Paul, may all Christians "maintain good fellowship among the nations" (1 Pet.2:12) and, if possible, as far as is in them lies, keep the peace with all (cf.Rom.12:18) so that they may truly be children of the Father who is in heaven (cf.Mt.5:45)

Christian — *Adapted from N.A.-Vatican Council II*

IN THE HEARTS OF ALL

God is seated in the hearts of all.

Hindu — *Bhagavad Gita*

ALL BROTHERS AND SISTERS

May the time not be distant, O God, when all your children will understand that they are brothers and sisters, so that one in spirit and one in fellowship, they may be for ever united before You. Then shall Your kingdom be established on earth, and the word of your prophet shall be fulfilled; 'the Lord will reign for ever and ever.'

Jewish — *Service of the Heart*

HUMANKIND - A SINGLE NATION

O God, it is Thy word that humankind is a single nation, so all human beings are born free and equal in dignity and rights, they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood and sisterhood.

Muslim — *Koran, and United Nations Universal Declaration of Human Rights*

THE RELIGION OF LOVE

My heart is capable of every form; it is a pasture for gazelles and a convent for Christian monks, the pilgrim's Kaaba, the tables of the *Torah* and the book of the *Koran*. I follow the religion of Love, whichever way his camels take.

Sufi

IN EVERY RELIGION A SEVERAL RAY

Creator of all, thy people of every clime, of every creed, wait upon thee. In thought of our common origin, all diversity is lost, and sense of our human brotherhood and sisterhood remains. Of the one light of Truth, teach us to see in every religion a several ray. Inspire our souls with love of the good in every form, that we may keep our temple always open-doored to every breath from Heaven, where Truth and Peace may come to dwell.

Zoroastrian — *Adapted*

POSSIBLE CLOSING WORDS

AKBAR'S DREAM

Take leave of rancour of caste and creeds,
Let people worship as their hearts commend.
Uphold from every faith the noblest deeds,
And bravest soul for counsellor and friend.

The sun shall rise at last when creed and race
Shall bear false witness each of each no more.
Before one altar Truth shall Peace embrace,
And Love and Justice kneeling shall adore.

Tennyson-adapted by Will Haes

All nations are coming into ever closer unity. Peoples of different cultures and religions are being brought together in closer relationships. There is a growing consciousness of the personal responsibility that weighs upon every individual. All this is evident. Consequently, in order that relationships of peace and harmony may be established and maintained within the whole of humankind, it is necessary that religious freedom be everywhere provided with constitutional guarantees and that respect be shown for the high duty and right of the person to lead a religious life in society. May the God and Creator of all grant that the human family, through careful observance of the principle of religious freedom in society, be brought to the sublime and unending freedom of the glory of the children of God.

Adapted from D.H.-Vatican Council II