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GLAUBE UND FREIHEIT

FIDES ET LIBERTAS



2001

THE JOURNAL OF
THE INTERNATIONAL
RELIGIOUS LIBERTY
ASSOCIATION

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International Religious Liberty Association
(Printed in partnership with *Liberty Magazine*)
12501 Old Columbia Pike

Silver Spring, Maryland 20904-6600, United States of America
Phone: +301.680.6683 - Fax: +301.680.6695

Email: ViHughes@compuserve.com - Web site: www.IRLA.org

INTERNATIONAL RELIGIOUS LIBERTY ASSOCIATION

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We believe that religious liberty is a God-given right.

We believe that legislation and other governmental acts which unite church and state are contrary to the best interests of both institutions and are potentially prejudicial to human rights, and hold that it is best exercised where separation is maintained between church and state.

We believe that government is divinely ordained to support and protect citizens in their employment of natural rights, and to rule in civil affairs; and that in so doing, government warrants respectful obedience and willing support.

We believe in the natural and inalienable right of freedom of conscience – to have or not to have a religion; to adopt the religion or belief of one's choice; to change religious belief according to conscience; to manifest one's religion individually or in community with others, in worship, observance, practice, promulgation and teaching – subject only to respect for the equivalent rights of others.

We believe that religious liberty includes also the freedom to establish and operate appropriate charitable or educational institutions, to solicit or receive voluntary financial contributions, to observe days of rest and celebrate holidays in accordance with the precepts of one's religion, and to maintain communication with fellow believers at national and international levels.

We believe that religious liberty and the elimination of intolerance and discrimination based on religion or belief are essential to promote understanding, peace and friendship among people.

We believe that citizens should use lawful and honorable means to prevent the reduction of religious liberty, so that all may enjoy its inestimable blessing.

We believe that the spirit of true religious liberty is epitomized in the Golden Rule: *Do unto others as you would have others do unto you.*

STATEMENT OF PURPOSES

The purposes of the International Religious Liberty Association are universal and nonsectarian.

- 1** To disseminate the principles of religious liberty throughout the world.
- 2** To defend and safeguard the right of all people to worship, to adopt a religion or belief of their choice, to manifest their religious convictions in observance, promulgation and teaching, subject only to the respect for the equivalent rights of others.
- 3** To support the right of religious organizations to operate in every country by their establishing and owning charitable or educational institutions.
- 4** To organize local, national, and regional chapters, and to conduct seminars, symposiums, conferences and congresses.

MISSION STATEMENT

The mission of the International Religious Liberty Association is to defend, protect and promote religious liberty for all people everywhere.



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RELIGIOUS LIBERTY ASSOCIATION**

12501 Old Columbia Pike
Silver Spring, Maryland 20904-6600, USA
Fax: 301.680.6695
www.IRLA.org

John Graz, Publisher

Phone: 301.680.6680
E-mail: 74532.240@compuserve.com

Jonathan Gallagher, Editor

Phone: 301.680.6682
E-mail: JonGallagher@compuserve.com

Viola R Hughes, Managing Editor/Production Manager

Phone: 301.680.6683
E-mail: ViHughes@compuserve.com

Editorial Committee

Jonathan Gallagher (Chair)

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Printed at House of Printing, Burtonsville, MD

Price US\$5.

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AFTER TWENTY YEARS:

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

JONATHAN GALLAGHER

Deputy Secretary General, International Religious Liberty Association

INTRODUCTION

On 25 November 1981, The United Nations General Assembly promulgated the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*—a lengthy catch-all title for a *Declaration* that was intended to be a milestone achievement in the development of religious liberty and mutual toleration. (In fact it had taken almost twenty years to arrive at the final text of the *Declaration*.)

The 1981 *Declaration* set out in clear terms the expectations required of signatories—and amplified the provisions of the *Universal Declaration of Human Rights*.

Its primary provisions are for complete religious freedom, non-discrimination on religious grounds, and the rejection of religious-based intolerance. In explicit language, countries adopting the *Declaration* agree to adopt and support such provisions, and agree to work for the elimination of religious intolerance and discrimination.

At the time of the twentieth anniversary of the *Declaration*, we are entitled to question its impact and effectiveness.

DISCLAIMERS

First, it cannot be expected that any declaration in and of itself can transform world society. The 1981 *Declaration* is an expression of expectations and ideals to be strived for. However, it does provide a baseline by which the actions of states parties can be judged.

Secondly, compliance with the *Declaration* is monitored by the U.N. Commission on Human Rights, along with the special *rappporteur* on Religious Intolerance. The reports of the Commission are, therefore, a commentary on the success or otherwise of the *Declaration*.

Thirdly, the *Declaration* has no force of law; its provisions are the agreed-upon standards, not a mandatory legal framework.

Have religious intolerance and discrimination been eliminated by the 1981 *Declaration*? Manifestly no, they have not. Does this mean the *Declaration* is ineffective. That should also be answered in the negative, since the *Declaration* surely serves useful purposes and can be appealed to as a basis for criticism over religious freedom violations.

INCREASING RELIGIOUS INTOLERANCE

Yet all the caveats aside, it must surely be agreed that the overall situation of religious freedom and tolerance has become worse, not better, since 1981. One does not need to look far for examples.

The Balkan conflict was fueled by religious intolerance; the break-up of the former Soviet Union has not seen the elimination of religious discrimination—in fact in many ways, inter-religious conflict in some republics is now often much worse; and from all round the world come reports of violence which is so often based, at least in part, on religious hostility and discrimination.

The rise of religious fundamentalism and extremism has resulted in scenes of massacre and carnage in Indonesia, the Sudan, Afghanistan, Nigeria and India, ongoing state-sponsored religious persecution occurs in China, Vietnam, Iran and Turkmenistan, with state-tolerated violence against religious minorities occurring in many areas such as Pakistan, Egypt, Israel, Jordan, Lebanon, Georgia, Sri Lanka, Nepal and Bhutan.

That is not to say that all is doom and gloom. The transformed situation in Spain and Portugal, the rapid advances in Romania, the patchy but generally positive improvement in Russia post 1991, the constitutional advances in a number of South American nations, all point to a complex picture of gains and losses for religious freedom around the world.

Yet it is clear that the current scene is a long way from the ideals enshrined in the *Declaration*.

DECLARATION GAINS IMPORTANCE

It is against this worsening picture that the *Declaration* gains importance. In spelling out the implications of the *Universal Declaration of Human Rights* in the area of religion and belief, the 1981 *Declaration* challenges those gov-

ernments who would wish to avoid dealing with the realities of religious repression.

For example, the 1981 *Declaration* explicitly mandates the right to specific religious *practices*, rather than simply an emphasis on individual *beliefs*:

Article 6

In accordance with article I 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 connection 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.

Such clear statements of what is meant by “religious freedom” are very helpful in dealing with the many means by which such rights are violated. Using the 1981 *Declaration*, it is easier to point to specific violations without having to resort to interpretations of article 18 of the *Universal Declaration of Human Rights*. Appeal is frequently made to the *Declaration* in the reporting of religious freedom abuses at the annual sessions of the Human Rights Commission in Geneva, for example.

So, to take a current example, the action of the Turkmenistan government in destroying churches and other places of worship contravenes section (a) of article 6;

the confiscation of religious materials section (d); the banning of meetings section (e); the interference in the funding of church operations section (f); the denial of training centers section (g); the refusal to accommodate days of worship section (h); and the interference in internal and external communications section (i).

While persecuting regimes such as the Turkmenistan government are blatant violators of all kinds of human rights and seem uncaring as to their actions in this regard, the 1981 *Declaration* is helpful in demonstrating to the world the full extent of their abusive actions against religious groups.

EDUCATING FOR RELIGIOUS TOLERANCE AND NON-DISCRIMINATION

The recognition that the situation is far from what it should be is what has led Prof. Abdelfattah Amor, U.N. special *rapporteur* on Religious Intolerance to call for far more action. The 20th anniversary of the *Declaration* was celebrated by a conference held from November 23 to 25, 2001, in Madrid, Spain, hosted by the Spanish government in conjunction with the special *rapporteur*. The conference examined ways to integrate religious freedom and human rights principles into education curricula as a way of prevention, attempting to teach concepts of tolerance and mutual respect in the place of religious discrimination and hatred.

Already preparatory committees and conferences have been held, for example the one in Caceres, Spain entitled “Meeting of Experts on Education and Religion in Relation with Freedom of Religion and Belief.” The clear intention is to ensure that the fundamental principles enounced by the 1981 *Declaration* are put into practice in an educational setting so that the objectives of the *Declaration* can be realized.

THE EXPERT VIEW

This direct action by the special *rapporteur* on religious intolerance is to be commended, since it demonstrates an intention to directly address the problems. As the expert assigned to review the world situation as a result of the 1981 *Declaration*, his views are significant.

In his 2000 report, Prof. Amor said that “Once again, the situation with regard to intolerance and discrimination based on religion or belief is alarming.”

He cited the case of the Taliban, whose actions just a few months ago in requiring non-Moslems to wear a distinguishing label brought widespread

criticism and has been likened to the situation of Jews under Hitler who were required to wear a distinguishing yellow star.

“Several communications transmitted in the framework of this report cite an ever-growing scourge, namely religious extremism, whose primary victims are vulnerable groups, such as women and minorities. The case that epitomises this is that of Afghanistan, where the Taliban, in the name of their own interpretation of Islam, but in reality using religion as a political tool in the interests of power, have taken an entire society hostage,” said Amor. “Also specifically targeted by Taliban extremism are religious minorities and, of course, non-Muslim communities, whose religious identity is directly threatened by a policy of forced conversion to Islam.”

His conclusion is a chilling one:

“Clearly, despite the goodwill of many states, it remains very difficult to contain and combat religious extremism. The active contribution of the international community outside and the civil society within remains crucial in this regard.”

Calling religious extremism “an ever-growing scourge,” Amor told the U.N. that “States and the international community must condemn that phenomenon unequivocally and combat it relentlessly, to preserve the human rights to peace.”

THE IRLA PERSPECTIVE

The perspective from the International Religious Liberty Association (IRLA) is that such a chilling scenario must be directly and practically addressed. Several disturbing trends alert us to the vital importance for action:

1•The trend towards direct religious persecution

This has been clearly enunciated above. The frequency with which regular reports of religious-based violence and intolerance fill the news is clear demonstration of this most direct assault on religious freedom rights.

2•The trend towards geographical religious exclusivism

This is especially evident in the resurgent nations of eastern Europe and Russia, with the Orthodox claiming preeminence and frequently the exclusive right to religious instruction and adherence of the population. Such religious exclusivism also manifests itself in certain Islamic nations and others, in which the dominance of a large majority faith is equated with national identity.

3•The trend towards the defamation of religious minorities

Whether it is a question of “sects” in France, Belgium, or Germany; or Protestant groups in the Central Asian republics, or new religious movements in the West; or the Orthodox in Kosovo; or Muslims in the former Yugoslavia; or Christians in south Sudan—all experience various levels of defamation and hatred. The tactics of misrepresentation and vilification are used to stir up hatred against such religious minorities, with the obvious consequences.

4• The trend towards official recognition of a dominant religion

More and more, the dominant religious group seeks to gain official approval and endorsement as the “state religion” in some way. This may be as an actual state religion, or by way of gaining special privileges for the dominant religion, or by actions of preferment. Whatever the case, other religions are discriminated against.

5•The trend towards seeing religion as a tolerated activity, not a right

Instead of recognizing religious freedom as a fundamental human right, the increasing trend is to view any religious activities as being tolerated to some degree by the state. This also means that there is less of a perceived need to accommodate religious needs and conscientious objections, etc. It is becoming clear that such a perspective is developing in some of those nations supportive of religious freedom and not usually considered intolerant or discriminatory.

6•The trend to see religious freedom as “western philosophy”

The *Universal Declaration of Human Rights*, the 1981 *Declaration*, and other similar international instruments are viewed by a minority of nations as the products of “western philosophy” and therefore not binding. Arguments for repression of religious freedom are often along the lines of culture, nationalism, and tradition, as well as the expression of some claimed “religious right” of the dominant faith.

7•The trend towards religious extremism

Many religious communities are experiencing different forms of extremism within their ranks, with intolerance of other religious groups becoming part of previously tolerant faiths. In many ways this is the most troubling scenario, for such extremism is influencing all the major world faiths. If such extremism continues, the world faces a very troubled future, and religious freedom will increasingly be viewed as an unaffordable luxury

CONCLUSION

The IRLA is committed to full support of the 1981 *Declaration*. Attention must go beyond mere assent to the declaratory principles, and must seek to change attitudes and opinions in all societies. Only as public opinion also supports the fundamental rights and actions enshrined in the *Declaration* will it have a real impact on the development of religious freedom and the elimination of intolerance and discrimination that so often blight the experience of so many around the world.



END



INTERNATIONAL HUMAN RIGHTS: THE PROTECTION OF RELIGIOUS PERSUASION

W. COLE DURHAM, JR.

Director, BYU International Center for Law and Religion Studies

J. Reuben Clark Law School, Brigham Young University

We live in a world in which the right to engage in religious persuasion is increasingly under attack. These pressures exert themselves both in the form of direct legal constraints on proselytizing and through a variety of regulations that operate indirectly in practice to restrict efforts for sharing religious beliefs. The positions of those supporting constraints on proselytism are laced with irony and sometimes outright hypocrisy. They often criticize “coercive or manipulative practices” involved in what is referred to disparagingly as “proselytism,” not noticing that the cultural force of tradition and the actual activities of dominant groups may be just as coercive or manipulative as the activities of groups with more active outreach programs.

Whatever one thinks of such ironies, it is vital to stress the importance of the right to engage in religious persuasion and the full range of protections available to defend this right and its practical implementation under international law and through international institutions.

The term “proselytism” has become freighted with pejorative connotations. The negative charge that has come to be associated with the term “proselytizing” appears to be an example of the subtle cultural power wielded by larger religious groups in protecting their position. Within the Mormon tradition (from which I come), “proselytizing”—refers to legitimate religious persuasion: sharing one’s belief with others under genuinely non-coercive circumstances. Only when I engage in dialogue with individuals from larger traditions did I hear the message that “proselytizing” is suspect—something that might not be eligible for the normal protections of freedom of religion and freedom of expression. We owe current formulations of the distinction between legitimate witnessing activities and improper proselytism to documents drawn up by larger denominations.¹ Unstated is an implicit message of condescension (perhaps not intended, but nonetheless felt by smaller groups): a religious organization that needs to engage actively in community

building is definitely doing something distasteful or uncouth and, quite possibly, behaving unethically as well. The very terminology we use—proselytizing—is thus molded by the culturally powerful into a not-so-subtle tool of disparagement. Because of the negative charge that increasingly taints even “proper” proselytism, I use the term “religious persuasion” when I refer to legitimate proselytizing and the term “improper” (or “abusive”) proselytizing when I refer to illegitimate activity.

For many religious groups, the obligation to share their witness with others is as central as other core religious beliefs. Within the Christian tradition, this imperative derives from the Great Commission of the Lord Jesus Christ, who commanded His disciples, “Go ye therefore, and teach all nations.”² Every great world religion has had periods during which its message was actively spread. For those who feel the divine call to stand as witnesses of their beliefs and to share their faith with others, the notion that religious freedom protects the right to worship but not the right to engage in conduct that would attract and persuade others makes a mockery of the right to freedom of religion, or at the very least, eliminates one of its most crucial dimensions.

Of course, different religions at differing points in time have differing attitudes toward other religions and cultures, and this affects attitudes within the respective traditions toward engaging in religious persuasion. A variety of positions is possible. The positions lie along a continuum with extremes of radical tolerance and radical intolerance. *Radical tolerance* would be the view that all religions are absolutely equal and there is really no basis for preferring one over another. *Radical intolerance* would be the view that neither the religion nor any state in which it exists can countenance the existence of alternative views.

One can imagine a range of intermediate points. One would be the “many paths to heaven” model, which comes close to the radically tolerant model, but recognizes that for a variety of cultural and personal reasons, individuals may well prefer their own path. Within this model, one could distinguish *ecumenical consolidationists*, who advocate a merging of religious traditions, and *ecumenical cooperationists*, who favor retaining the plurality of traditions, but strive to promote common cooperative efforts ranging from occasional common liturgical services to joint charitable ventures.

Another position could be called *respectful exclusivism*. This position holds that all traditions have laudable teachings that deserve respect, but a given religion may have certain teachings, sacraments, rituals and the like which are necessary for salvation and are not available elsewhere. Still another position

could be styled *noncoercive exclusivism*. This view could go so far as to hold that other religions are fundamentally misguided or lacking in divine authority, but would take the position as a matter of doctrine that possession of religious truth does not justify coercive imposition of beliefs on others.

A more problematic approach could be styled “discriminatory preferentialism.” In this type of scheme, a religion views itself as being sufficiently better than other religions that it should be preferred above others, and discrimination against some or all of the others is warranted. The Muslim millet system has operated in this manner in various historical settings, and multi-tiered European church-state schemes arguably exhibit a weak version of this type of attitude. Finally, one would need to identify a religious extremism category, which views its religious tenets as justifying violence against other groups and/or the state, at least under certain conditions.

The fundamental point about all these positions is that they are themselves reflections of religious beliefs. Only some of these beliefs, however, have the capacity of being universalized—that is, made universally applicable. Essentially, those which entail coercing others to adopt beliefs or which entail discriminatory treatment cannot be universalized because those who are the victims of coercion or discrimination would object. Thus, there cannot be a universal right to religious extremism, because authorizing all religious groups to act on this principle would lead to inter-religious violence that would cause society to self-destruct. Radical intolerance and various coercive positions suffer from the same problem: they would authorize contradictory activities by different groups. Ecumenical consolidationism suffers from this problem and because it is inclined to coerce consolidation toward a “lowest common denominator,” because it is highly unlikely that all groups would consent to consolidate in the same direction. Discriminatory preferentialism would generate similar asymmetries. The core of the notion of discrimination is that the treatment of the individual discriminated against is not consistent with that of the party receiving the more favorable treatment: the unfavorable conduct is not being universalized.

In contrast, there is no difficulty in allowing groups to act on principles at the more tolerant end of the continuum. An individual can believe that many paths lead to heaven without forcing others to adopt the same view. Similarly, assuming that no one is forced to cooperate with others, one can cooperate with other religious traditions without necessarily compromising one’s own (or the other group’s) beliefs. Both respectful and non-coercive exclusivism are attitudes that can be widely and even universally held

in a society without generating contradictory or destructive results. This line of thinking helps explain why classic liberal thinkers have recognized that while a broad range of beliefs can coexist within a society limits must be placed on intolerant conduct at some point. It also helps explain why religious persuasion that does not entail coercion or manipulation is legitimate. A rule that allows everyone to engage in religious persuasion as they see fit is able to be universalized in a way that coercive or manipulative practices are not.

The right to engage in religious persuasion is not merely universalizable, it is universal. Growing chorus of voices in the contemporary world challenge this universality claim. Briefly, such views typically point to the fact that a variety of cultures and religious traditions do not affirm this right. This is, of course, evidence that must be taken seriously, but it is not determinative. The fact that a particular right is not universally recognized as a descriptive matter does not prove that it should not be universally recognized as a normative matter. One of the vital intellectual tasks in the current human rights environment is to buttress claims that rights so often violated in fact are nonetheless normatively correct in principle.

In this regard, forcing people to remain silent when they feel conscientiously obligated to witness and share their beliefs with others is to encroach on the most fundamental aspects of religious expression and human dignity. It sends a profound signal of disrespect to those holding such beliefs. It suggests either that their views are unacceptable or that their overt expression is dangerous or intolerable to society. Such a position is itself intolerable. It is no accident that the key international instruments recognize the right to engage in religious expression.

A variety of broad cultural factors on the current scene constitute threats to full protection of the right to engage in religious persuasion. I will list some of the more salient factors:

- *The growing support for the claim that human rights are not in fact universal, but are culturally determined.*
- *Claims that the human rights movement constitutes a kind of neo-imperialism, an attempt to impose Western values on other parts of the world.*
- *Claims of a right to cultural integrity or self-defense.* The argument is that proselytism is forbidden because it threatens the continued existence of certain cultures. The difficulty with this view is that, pushed to extremes,

it implies that everyone should be coerced to remain in the culture in which they were born, and that communities or individual members should not be able to change or adopt new views.

- ***The prevalence of certain versions of ecumenism that propound the view that there is something unethical about remaining committed to any form of exclusive religious beliefs***, including respectful and non-coercive exclusivism.
- ***The increasing value attached to pluralism, diversity and multiculturalism as values in their own right***. If pluralism and diversity are valuable as ends in themselves, and not merely as a result of the underlying respect for individual dignity and religious autonomy, they can be converted into a premise for an argument to insulate groups from any influences that might result in assimilation or loss of members of the community to “outside” influences such as proselytism. This type of argument misconceives the relation of pluralism and diversity to liberty. It puts static pluralism ahead of dynamic social and individual liberty.
- ***The rise of the right to privacy***. It creates a perception that efforts to attempt to make other individuals aware of alternative views constitutes an impermissible intrusion into private space. Of course, certain encroachments on private spheres (involving trespassing or harassment), do constitute valid limits to efforts of persuasion. But the right to be left alone cannot be extended so broadly as to impose an obligation of silence on all other speakers.
- ***Increasing concern for consumer protection***. There are growing trends in Europe, for example, to extend state paternalism aimed at protecting consumers from economic coercion or fraud into the domain of the marketplace of religion. This is a dangerous development. In certain respects, it lies behind the French legislation likely to be passed that criminalizes “mental manipulation” (the currently fashionable term for so-called religious brainwashing) and a number of other anti-cult measures. State paternalism in the domain of religion profoundly compromises the obligation to maintain state neutrality that governs the sphere of religion.
- ***The process of secularization***. Patterns of secularization tend to blind those in its grip to legitimate needs of religious belief systems. Too often, secular bureaucrats understand the role of religion in excessively narrow ways, and equate religious institutions such as religious schools, hospitals,

employment relations and the like as the equivalent of secular counterparts, equally open to state regulation. This can be profoundly disruptive to key institutions needed for cultivating and maintaining religious life, ultimately weakening religious institutions and their ability to be a productive force in maintaining a vibrant civil society.

- ***The view that religion is itself a social danger, and that interaction between religious groups is a source of social tension that should be minimized.*** There is a tendency to believe, for example, that religious communities who take truth seriously constitute a danger to society, particularly so when they make exclusive claims to truth. Two beliefs frequently held by those making exclusive claims to truth typically avert any threat of social danger. First, if the belief system includes internal beliefs that the dignity of other human beings should be respected even if they hold erroneous religious beliefs, one cannot assume that this exclusive truth claim poses any threat to society. Second, if a religion does not believe it is entitled to use coercive force to convert, whether that force is in private or public hands, the risk does not arise. That is, exclusivist beliefs that are either respectful or non-coercive do not pose this danger.
- ***The influence of nationalism,*** particularly where historically there has been a close tie between religion and national identity. Nationalist instincts combined with efforts on the part of politicians to curry favor with dominant religious groups can lead to the imposition of legal constraints on missionary work.
- ***Fear and prejudice concerning new religious movements.*** It is primarily the smaller and more vulnerable religious groups for whom the right to engage in religious persuasion is most critical, and it is primarily against their efforts that the sharpest constraints on missionary efforts are leveled. Efforts of smaller religious groups advocating unusual or novel beliefs are stereotyped all too easily as “brainwashing” or “mental manipulation.” There are, of course, examples of genuine abuses among religious groups both large and small, traditional and non-traditional.
- ***The reality that in many areas, political authorities see religious freedom as a threat to their power and legitimacy.*** Thus, in various parts of Central Asia, claims of religious extremism which may well be justified with respect to a small set of extremists are used as a justification to criminalize or tightly restrict missionary efforts in general.

Thus far, I have addressed the importance of the right to religious persuasion and the mounting sources of pressure that threaten this right. Let me turn now to the protections by sketching the key elements of the body of international law and international institutions that can be invoked in defense of the right to freedom of persuasion. Because many of the general features of this system are well known, I will focus on some of the lesser known but vital features, as well as on current trends.

At the outset there is broad agreement among both the larger and smaller religious groups about the conditions for religious persuasion. Everyone recognizes that at some level, religious persuasion and teaching is vital to a flourishing religious life. While different traditions have different views about how actively beliefs should be shared, everyone recognizes that all religious traditions have depended on fairly active proselytizing at some stage in their history. Moreover, every tradition believes that the power of teaching by example should be allowed. It is further understood that for many religions, active sharing of faith is as central to religious practice as is participation in such sacramental rituals as the Eucharist.

An array of international instruments address religious freedom issues. These instruments can be used as the basis for an expansive right to engage in religious persuasion. It is important that the legitimacy of these arguments not be undermined by the fact that the issue of proselytism is not more explicitly addressed. We all know the history of silence on these issues. Silence reflects compromise rather than principle. That is, the key international instruments were adopted in settings in which it was not possible to secure commitment to a full measure of religious freedom by socialist and Muslim countries. But we need to remember that we are dealing here with a human right. Human beings are entitled to religious freedom—including the right to engage in religious persuasion. Humans do not hold these rights at the discretion of any state or any collection of states. Remarkable success has been achieved at the international level in articulating and codifying principles of religious freedoms, but the fact that all states have not yet agreed to the full range of legitimate religious freedom does not mean that the right does not exist or that every effort should not be made to achieve it in fuller form.

The starting point, of course, is the set of documents that have come to be known as the International Bill of Rights: The Universal Declaration of Human Rights adopted by the United Nations in 1948,³ and the two International Covenants—one on Economic, Social and Cultural Rights and the other on

Civil and Political Rights, which were adopted in 1966. The Covenant on Civil and Political Rights has been widely ratified, so that at this point, it is somewhat of an embarrassment for a country which is not yet ratified.

Article 18 of the Universal Declaration and the essentially parallel article 18 of the Civil and Political Covenant contain the key provisions on religious freedom. Let me focus on article 18 of the Civil and Political Covenant because it contains the official treaty language that is legally binding on all ratified states (which include most countries in the world). It begins with the proclamation that “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...” This language “intentionally” does not explicitly state that an individual has a right to “change” his or her religion, because this was extremely sensitive among Muslim countries. Significantly, however, the U.N. Human Rights Committee, which is the institution charged under the Covenant with interpreting compliance with the treaty, has promulgated General Comment No. 22 (48), paragraph 5, which states:

The committee observes that the freedom to “have or adopt” a religion or belief necessarily entails the freedom to choose a religion or belief, including, *inter alia*, the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief. Note that the right to change one’s belief does not necessarily involve “manifestation,” and is thus arguably absolutely protected, without being subject to the limitation provisions of article 18:3. Article 18 continues by assuring that individuals shall have the “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.” For religions that believe in active witnessing and sharing of their beliefs, this would appear to be a protected “manifestation” of religion. It qualifies as “observance,” as a “practice” of various religions, and as “teaching.” There is nothing in the provision that restricts “teaching” to “teaching only of individuals who already belong to the religion in question.”

The second paragraph of article 18 provides that “no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” Taken at face value, this provision is designed primarily to bar explicit bans or imposition of criminal sanctions on the adoption of a religion. As noted earlier, maintaining ignorance can be one of the strongest

forms of coercion. In this sense, restrictions on sharing of religious beliefs “impair” the freedom to have unfettered access to information necessary to make the decision to adopt a previously unknown religion or belief.

Paragraph 3 of article 18 contains the limitations clause. It starts out by saying, “Freedom to manifest one’s religion or beliefs may be subject only” to certain limitations. Significantly, it is only “manifestations” of belief that may be limited. The freedom of inner belief is absolute. The significant point here is that the limitations are extremely narrow in scope. Limitations of manifestations of religion are permissible only when 1) they are prescribed by law” (mere exercise of administrative discretion is not sufficient); 2) they are necessary 3) to protect public safety, order, health or morals or the fundamental rights and freedoms of third parties.” The first point to make about these limitations is that they must be strictly necessary. The mere fact that state action furthers one of the legitimating purposes is not enough. The proposed restriction must be genuinely necessary. This means that there must not be some less burdensome way to further the state objective; if there is, the limitation in question is not necessary. Moreover, the legitimating grounds should be narrowly construed. It is not any right of third parties that justifies a limitation; only “fundamental” rights count.

The U.N. Human Rights Committee’s General Comment on article 18 stresses that “Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18.”⁴ Moreover, the limiting grounds are “to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated.” Also, with respect to limitations based on “public morals,” the General Comment notes, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.”

Article 18:4 notes the right of parents and guardians to guide the upbringing of minors in their care. This provision would appear to be subject to the provisions of the Convention on the Rights of the Child, at least for those nations which have also ratified that Convention. It states that parents and guardians have the right “to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.” With this lim-

itation in mind, article 18:4 suggests that when minors are involved, efforts at religious persuasion should respect the views of parents and guardians.

Too often, analysis of relevant provisions of the International Bill of Rights focuses only on article 18, which deals directly with freedom of religion or belief. Several other provisions are also very significant. Several other provisions should be noted. Most significant is article 19, dealing with freedom of expression. Significantly, paragraph 2 of article 19 provides:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

There is absolutely no reason to think that this provision does not provide overlapping coverage with article 18 when it comes to the right to engage in religious persuasion. Note that article 19 confirms the freedom “to seek, receive and impart information and ideas of all kinds.” Legislative restrictions curtailing any of these three aspects of obtaining or transmitting information or ideas, including religious persuasion, would violate this provision.

Additional relevant provisions include article 21 (the right to peaceful assembly) and article 22 (the right to freedom of association). These provisions obviously cover the right of people to gather in peaceful ways to discuss and share religious ideas, and to organize in ways that can be conducive to sharing and propagating ideas:

In addition to the United Nations provisions is the significant European Convention for the Protection of Human Rights and Fundamental Freedoms. This instrument parallels the International Bill of Rights in most of its key provisions except to note two key differences.

First, article 9 of the European Convention explicitly states that “freedom of thought, conscience and religion...includes freedom to change his religion or belief,” thus eliminating an interpretive ambiguity in article 18 of the Civil and Political Covenant. Second, the limitations clause of article 9:2 states that not only must legitimating grounds of limitations be “necessary;” they must be “necessary in a democratic society.” Thus, restrictions found unnecessary in most other democratic societies would arguably not be given much credence.

Perhaps even more important than the European Convention is the case law of the European Court of Human Rights in Strasbourg. The European Court of Human Rights has now established itself as the preeminent human

rights court in the world. Not only does its jurisdiction now extend to the 800 million inhabitants of the Council of Europe (including the countries of the former socialist bloc with the exception of those in Central Asia), but since the restructuring and streamlining of the Strasbourg Court since Protocol No. 11 went into effect on November 1, 1998, the court has become a full time court, and a much more expeditious review of human rights violations is now available. It has now generated a very impressive and growing body of case-law which has a very significant bearing on freedom of religion issues.

Specifically, the court has handed down decisions protecting the right to engage in religious persuasion,⁵ the right to be free from arbitrary denials of the right to worship,⁶ the right to be granted legal entity status,⁷ the right to be exempt from religious oath requirements,⁸ the right not to be excluded from licensed professions on the basis of criminal convictions for conscientious objection to military service,⁹ and the right to autonomy in internal affairs¹⁰

The leading *Kokkinakis* case makes it clear that reasonable proselytizing efforts, such as door-to-door proselytizing routinely conducted by Jehovah's Witnesses, is protected by article 9. *Kokkinakis* and its progeny recognize some limits on legitimate proselytizing. The central point here is that persuasion accompanied by coercion is illegitimate. As the European Court of Human Rights recognized in *Kokkinakis v. Greece*, there are several species of improper conversion: **(1)** physical force; **(2)** deception; **(3)** undue influence; and **(4)** inappropriate material incentives. The resulting religious choice made under their influence is not genuine or authentic. Freedom in the most sensitive and sacred of all domain—the realm of conscience—is violated. Similarly, there is broad agreement that discussions of religious differences should be respectful, honest and civil. This does not mean that society, groups or individuals should be shielded as a matter of law from robust and sometimes overzealous discussion, and it certainly does not mean that one group cannot question the validity or truth of the beliefs of another. But such respect needs to go in two directions. Majority groups are all too prone to disparage smaller groups as “sects” and to engage in stereotypical thinking about them. My sense is that smaller groups suffer far more from such disparagement than larger groups. Moreover, smaller groups tend to be deterred from challenging such behavior, because any effort to do so simply attracts intensified reactions in return.

Not only does the case law of the European Court provide direct protection for religious persuasion; it also provides a number of indirect protections as well. I will mention two: the right to form legal entities and the right to autonomy in internal religious affairs. With respect to the latter, the Court has

handed down significant decisions in the field of freedom of association that have a significant bearing on helping to expand religious communities through missionary work. In particular, these decisions recognize that the right to have a legal entity as an integral part of the right to freedom of association.¹¹ In *Sidiropoulos* the court stated categorically that “the right to form an association is an inherent part” of the right to freedom of association and that the right of

*citizens to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which the right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly states have a right to satisfy themselves that an association’s aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions.*¹²

Religious organizations constitute a special form of association entitled to heightened associational protections. The mere fact that an individual—even a prominent member of a group—has been found guilty of criminal offenses does not constitute adequate grounds to deprive the rest of the members of the group of the right to associate. There is no question that the individual in question may be subject to criminal sanctions, but visiting sanctions on the group as a whole is not proportionate.

At first glance, the right to a legal entity seems to be quite a technical issue with little direct relevance to the issue of missionary work. In fact countries around the world often use restrictions on access to legal entity rights to effectively restrict legitimate efforts of religious groups to establish the material base they need in terms of obtaining location for places of worship and undertaking other activities necessary if growth of a religious community is to occur. Moreover, in many areas of the former Socialist bloc, only legal entities are allowed to invite foreign missionaries into a country. This is often vital to growth of local congregations and training of indigenous leadership. Thus, the European Court cases on legal entities are extremely significant for issues of religious persuasion.

The religious autonomy decisions have primary relevance to resolution of internal religious disputes such as schisms or disputes in the appointment of religious leaders, and establish a strong requirement that states must remain neutral with respect to the resolution of religious disputes.¹³ But they can also

have relevance to missionary issues. One of the classic examples of “internal religious affairs” is the selection and appointment of religious officials or workers. In a number of areas in Eastern Europe, officials routinely use questionable residence registration requirements or requirements that missionaries must have an invitation to work in a particular congregation to ban or inhibit missionary work in new areas. This appears to be flatly inconsistent with the right to autonomy in internal religious affairs.

RELIGIOUS FREEDOM COMMITMENTS IN THE OSCE

On another front, OSCE Commitments have provided a fruitful basis for addressing concerns about freedom of religion or belief.¹⁴ To address these issues, the OSCE’s Office of Democratic Institutions and Human Rights has created an advisory panel of experts on freedom of religion and belief. This advisory panel has three working groups: one that deals with conflict prevention and resolution, one that deals with legislation and one that deals with education for tolerance. The advisory panel consists of 25-30 experts on religious freedom matters from throughout the OSCE countries. It has had several opportunities to work on legislative matters, as new draft legislation emerges in OSCE countries, some of which are ongoing. The OSCE Commitments are not legally binding, but they are politically binding and provide an additional powerful basis for encouraging governments to respect human rights. With respect to proselytizing issues, they specifically recognize the right to disseminate religious views.¹⁵

IRONIES IN THE CRITIQUE OF PROSELYTIZING RIGHTS

Before concluding, let me note a certain irony I have observed among those who criticize the right to engage in religious persuasion. Smaller groups tend to be acutely aware of the subtle, even invisible, forms of coercion often exercised — consciously or unconsciously— by dominant groups. One of the early arguments for religious freedom was the claim of John Locke that since religious beliefs cannot be coerced, the state should not waste its efforts in trying to impose them. While it is generally true that the most one can hope to accomplish by coercion—at least in the short run—is inducing hypocrisy, Locke’s theory overlooks coercion accomplished by maintaining ignorance:

that is, coercion may not be very effective as a device for instilling sincere religious belief, but it is extraordinarily effective in blocking change of belief. It is extremely difficult to be converted to a belief that is totally unfamiliar. Concerted conduct to filter the ideas to which believers are exposed, or to tarnish ideas with negative stereotypes so that they are avoided, are far more effective devices for conditioning belief than physical brainwashing.

In a parallel vein, just as material incentives may constitute improper inducements to convert to a religion, so material disincentives may constitute impermissible inducements at the point of exit. My sense is that whatever material inducements proselytizing groups may use to encourage conversion pale in comparison with the economic and social disincentives larger groups can mobilize to deter an individual from leaving a religion: disinheritance, reduced job and educational opportunities, social isolation and the list goes on. Dominant groups tend to worry little about the coercive effects of religious instruction, unless the instruction is provided by someone else. To the extent that coercion in religious matters is impermissible, the coercive mechanisms used by larger groups may be as deserving of scrutiny as the techniques used by smaller groups. (I use the term “scrutiny” advisedly here because, in general, I believe that state intervention in these areas should be minimal.)

CONCLUSION

Religious persuasion and witnessing behavior is a core aspect of religious life. It is vital to the life of religious communities. Particularly for smaller religious groups, who are constantly suffering attrition as a result of the combined pull of traditional religions and secular culture, ongoing outreach efforts are quite literally the lifeblood of the community. Strong forces are currently combining to challenge rights to engage in religious persuasion. Fortunately, a strong matrix of international norms is in place supporting this right. This matrix needs to be reinforced and defended. Religious persuasion constitutes the cutting edge of religious growth, development and new life. Failure to protect this vital branch of religious liberty will inevitably have serious ramifications for the entire tree. Vigilance in this area is vital.



E N D

1. See, e.g., "Common Witness and Proselytism," reprinted in *The Ecumenical Review*, Volume 23, No. 9 [1971] (study document prepared in 1970 by a Joint Theological Commission Between the Roman Catholic Church and the World Council of Churches).
2. Matthew 28:19; Mark 16:15-16.
3. See, e.g., *Kokkianakis v. Greece*, 17 E.H.R.R. 397 (1994) (ECtHR, May 25, 1993) (proselytizing); *Hoffmann v. Austria*, 17 E.H.R.R. (1994) (ECtHR, June 23, 1993) (depriving Jehovah's Witness of custody of a child violated right to respect of family life); *Larissis and Others v. Greece*, 27 E.H.R.R. 329 (1999) (ECtHR, Feb. 24, 1998) (proselytizing).
4. *Manoussakis and Others v. Greece*, 23, E.H.R.R. 387 (1997) (ECtHR, Sept. 26, 1996); *Hasan and Chaush v. Bulgaria* (ECtHR, Oct. 26, 2000) (interference with internal organization of Muslim community and managing its affairs violates religious freedom).
5. *Freedom and Democracy Party (OZDEP) v. Turkey* (ECtHR, Decision of Dec. 8, 1999); *United Communist Party of Turkey v. Turkey* (ECtHR), Decision of 30 January 1998; *Sidiropoulos & Others v. Greece* (ECtHR, Decision of 10 July 1998. Cf. *Canea Catholic Church v. Greece*, 27 E.H.R.R. 521 (1999) (ECtHR, Dec. 16, 1997) (legal personality of Roman Catholic church protected); *Hasan and Chaush v. Bulgaria* (ECtHR, Oct. 26, 2000) (interference with internal organization of Muslim community and managing its affairs violates religious freedom, and decision on grounds of freedom of association was unnecessary because freedom of religion analysis was carried out in light of freedom of association requirements).
6. *Buscarini and Others v. San Marino* (ECtHR, Feb. 18, 1999) (non-believers not required to take religious oath).
7. *Thlimmemos v. Greece* (ECtHR, April 6, 2000) (conviction for violation of draft laws prompted by conscientious objection could not be used as ground to deny professional license). Cf. *Valsamis v. Greece*, 24 E.H.R.R. 294 (1997) (ECtHR, Dec. 18, 1996) (coerced participation in parade contrary to pacifist beliefs); *Tsirilis and Kouloumpas v. Greece*, 25 E.H.R.R. 198 (1998) (ECtHR, May 29, 1997) (detention pending application for ministerial deferment from military held arbitrary).
8. *Serif v. Greece* (ECtHR, Dec. 14, 1999) (state intervention in selection of Mufti violates religious freedom); *Hasan and Chaush v. Bulgaria* (ECtHR, Oct. 26, 2000) (interference with internal organization of Muslim community and managing its affairs violates religious freedom). But cf. *Jewish Liturgical Ass'n Cha-are Shalom Ve Tsedek v. France* (ECtHR, June 27, 2000) (ultra Orthodox Jewish group denied special authorization for certifying food preparation).
9. *Freedom and Democracy Party (OZDEP) v. Turkey* (ECtHR, Decision of Dec. 8, 1999); *United Community Party of Turkey v. Turkey* (European Court of Human Rights, Decision of 30 January 1998); *Sidiropoulos & Others v. Greece* (European Court of Human Rights, Decision of 10 July 1998).
10. *Serif v. Greece* (ECtHR, Dec. 14, 1999) (state intervention in selection of Mufti violates religious freedom); *Hasan and Chaush v. Bulgaria* (ECtHR, Oct. 26, 2000) (interference with internal organization of Muslim community and managing its affairs violates religious freedom). But cf. *Jewish Liturgical Ass'n Cha-are Shalom Ve Tsedek v. France* (ECtHR, June 27, 2000) (ultra Orthodox Jewish group denied special authorization for certifying food preparation).
11. *Freedom and Democracy Party (OZDEP) v. Turkey* (ECtHR, Decision of Dec., 8, 1999); *United Communist Party of Turkey v. Turkey* (European Court of Human Rights, Decision of 30 January 1998).
12. *Sidiropoulos & Others v. Greece* (European Court of Human Rights, Decision 10 July 1998).
13. *Serif v. Greece* (ECtHR, Dec. 14, 1999) (state intervention in selection of Mufti violates religious freedom); *Hasan and Chaush v. Bulgaria* (ECtHR, Oct. 26, 2000) (interference with internal organization of Muslim community and managing its affairs violates religious freedom). But cf. *Jewish Liturgical Ass'n Cha-are Shalom Ve Tsedek v. France* (ECtHR, June 27, 2000) (ultra Orthodox Jewish group denied special authorization for certifying food preparation).
14. For a summary of relevant OSCE Commitments, see <http://www.osce.org/odihr/docs/compilation/compilation-them2.htm#p2b7> (summary of OSCE commitments relating to freedom of thought, conscience, religion, or belief prepared by the Office of Democratic Institutions and Human Rights [ODIHR]).
15. Vienna Concluding Document, Principle 16.



THE FIGHT AGAINST DISCRIMINATION IN WESTERN EUROPE

ROSA MARIA MARTINEZ DE CODES

Ministry of Justice, Spain

INTRODUCTION

In recent years, international religious freedom has become a high-profile issue. The increased interest in freedom of religion within the international community can be attributed to a number of different causes. Particularly notable nowadays, for instance, is the persecution of religious minorities throughout the world. This has been condemned successively by the Commission on Human Rights, General Assembly resolutions and successive reports from the Special Rapporteur on freedom of religion or belief. Nevertheless, intolerance and discrimination based on religion and belief continue to manifest themselves worldwide.

In order to combat these phenomena, in 1998 the U.S. Congress passed the International Religious Freedom Act (IRFA), with the purpose of making the issue of international religious freedom an integral part of the nation's foreign policy.

This Act put in place a number of interrelated mechanisms to further U.S. promotion of international religious freedom, such as an office for religious freedom, headed by an ambassador-at-large within the State Department. The Act also requires an annual report to be provided by the State Department regarding conditions of religious freedom in each country of the world, as well as on U.S. action to promote religious freedom. The Act also makes recommendations to the President on action against countries designated as “of particular concern” and which are the most egregious violators of religious freedom. Thus the U.S. Commission on International Religious Freedom was set up to monitor the situation of international religious freedom.

The protection and promotion of religious freedom has evolved gradually and in a distinct form within the European framework. To fully comprehend the locus of religion in law and to assess the legal developments relating to

religion, both at the national and international level, one needs to understand the prevailing social and political perceptions of religion in Western Europe.

Religious freedom has come to be an integral part of instruments dealing with international fundamental rights. Following the 1948 Universal Declaration on Human Rights (UDHR), religious freedom was guaranteed by the 1950 European Convention on Human Rights (ECHR) and the 1966 International Covenant on Civil and Political Rights (ICCPR). Religious freedom is also featured in many other international treaties and documents and is implied in guarantees of equal treatment or non-discrimination. However, in the above-mentioned texts, the predominant model is that of individual rights backed by the courts.

The achievement of religious freedom requires both a sphere of freedom for individuals within which they may adhere to a set of beliefs, as well as a corresponding duty on the part of public authorities not to curtail this freedom. However, religion also has social, institutional and communicative dimensions that should be embraced by the law.

THE PUBLIC NATURE OF RELIGION

There are three aspects to the public nature of religion. The first is religion's potentially problematic tendencies. The second is the positive aspect of religion, i.e., its contribution to the understanding of ethics and its part in the construction of a civil society, and thirdly, a broader awareness that, given the social nature of religion, the protection of fundamental rights requires more than simple abstention by public authorities.

The public nature of religion is more visible at international and cross-border levels than at the national level. At the national level in Western Europe, religion's social and communicative dimensions often seem to be neglected. In the international arena, religion is seen less as a private phenomenon with its own place and more as a complex reality that influences opinions, actions and culture, and thus also entails its own vision of society and a concept of freedom itself.

In this article we focus first on new dimensions and developments in the provisions protecting rights related to freedom of thought, conscience, religion and belief within the European framework, with a specific focus on the Council of Europe, the United Nations, the OSCE commitments and the European Commission.

Secondly, we focus on proposals and strategies implemented by some European regional bodies and institutions in order to prevent and eradicate

manifestations of intolerance and discrimination on the grounds of religion and belief.

NEW DIMENSIONS IN RELIGIOUS LIBERTY PROTECTION

The rights relating to religion and belief are often implied and provisions protecting these rights are included in practically every major human rights convention. However, there is no natural centerpiece document - such as an international convention – or international body devoted solely to the issue, nor has there ever been an official world conference on the subject.

The need to protect religious groups from discrimination and persecution is strongly felt today. Discrimination is a well-defined, legal notion and, at least when it is based on racial grounds, is adequately addressed by international law. Moreover, it seems that the trend is moving toward according the same status to discrimination on religious grounds.

Let us take a look at some relevant provisions and commitments in developing mechanisms for effective realization of religions freedom.

In the European Convention on Human Rights (ECHR), the individual-freedom approach holds a dominant position. Article 9 of the European Convention defines religious freedom as the right to exercise one's religion, either individually or in a community with others, and provides a lengthy enumeration of the various ways in which religious expression is protected. The article guarantees the individual right to non-interference from public authorities, thus appearing to suggest there are few structural links between religion and the law.

The European Convention presupposes existing national arrangements concerning religion and the law and contains no preference for any particular model of church-state relationship. Nonetheless, article 9 exercises a critical function with respect to existing national laws. If national legislative frameworks do not comply with this guarantee, they cannot be upheld. Article 9 also guarantees the right to non-interference with religion; however, there is evidence of broader developments relating to state responsibility for fundamental rights: the responsibility to respect, protect, ensure and promote these rights. In the context of article 8 of the ECHR, the European Court has pointed out that the difference between interference and non-interference is difficult to distinguish.

In certain instances, a positive state obligation with respect to religion has been acknowledged, i.e., some form of positive action in order to help ensure

that religion can actually be practiced. In cases where religious intolerance is practiced by some citizens interferes with the freedom of others. It could be argued that article 9 is violated when a state does not act to curtail private action that is aimed at inhibiting religious practices.

We can thus conclude that article 9 serves not only to guarantee individual religious freedom but also has implications for the legal infrastructure of religion.

Guarantees of the United Nations are no less relevant for European religious freedom. Article 18 of the International Covenant on Civil and Political Rights (ICCPR) is similar to article 9 of the ECHR, but the Covenant has no judicial supervisory mechanism as such. Instead, the U.N. Committee on Human Rights deals with individual complaints through a reporting system.

Individual complaints concerning religious freedom cover a variety of issues. Supervision also takes place through a system of country reports. There is one element in the U.N. system for protecting religious freedom that deserves further brief discussion: General Comment No. 22 on article 18 adopted by the Human Rights Committee on 20 July 1993.

Paragraph 9 of the General Comment stresses that non-discrimination and equal treatment of religious matters should not to be interpreted as simply meaning identical treatment:

The fact that a religion is recognized as a State religion, or that it is established as official or traditional, or that its followers comprise the majority of the population shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion, or giving economic privileges to them, or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26.

Moreover,

The Committee wishes to be informed of measures taken by State Parties concerned with protecting the practices of all religions or beliefs from infringement and to protect their followers from discrimination. Similarly, information as to the respect for the rights of religious minorities under article 27 is necessary for the Committee to assess the extent to which the freedom of thought, conscience, religion and belief has been implemented by

State Parties. State Parties concerned should also include in their reports information relating to practices considered by their laws and jurisprudence to be punishable as blasphemous.

It seems that the committee, while accepting the persistence of various types of church-state relationships and their historical, social and religious roots, establishes certain minimal conditions to safeguard religious freedom. States also have a duty to counter discrimination and unequal treatment, to promote tolerance and to review potentially outdated legislation.

General Comment 22 approaches religion in a broader context than that of individual freedom alone. Throughout, promoting tolerance and combating discrimination play a substantial role.

A remarkable stance towards religion is also reflected in the Conference on Security and Cooperation in Europe (CSCE). The CSCE human rights texts are not legally binding conventions but, as commitments, they have a strong political significance. This organization's strength lies in its unique approach through consultation and dialogue.

Provisions addressing rights related to religion and belief are contained in a variety of CSCE documents, but it is the *Vienna Concluding* document adopted in 1989, which obligates the participating states to:

Take effective measures to prevent and eliminate discrimination against individuals or communities, on the grounds of religion or belief, in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life and ensure effective equality between believers and non-believers (article 16:a).

Beyond the limits of ensuring private individual rights, the States will *grant, upon their request, to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries (article 16:c), as well as engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom (article 16:e).*

The wording of article 16:e provides a new approach to religious freedom. Such an explicit exhortation to direct communication, dialogue and exchange of views and ideas between states and religious entities is a significant step forward which we shall deal with when we focus on strategies adopted by some European regional bodies.

Finally, we should mention how religious freedom is guaranteed within the European Union and how the European Commission approaches the issue.

Churches and religious communities are not mentioned in any founding treaty of European institutions. Neither the European Parliament nor the Council have ever invited the Commission to take an interest in churches and religious communities and, even less so, to establish a dialogue with them.

Over the last few years, a slight change can be noted in the attitude towards religion. A tangible sign of this development is the adoption of a Declaration to the Final Act of the Treaty of Amsterdam which states:

The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the member states. The European Union equally respects the status of philosophical and non-confessional organizations.

This Declaration brings to mind the efforts made to place a similar article in the Treaty of Amsterdam. In fact, the West German government had adopted an initiative along these lines, followed later by the Austrian and Italian governments.

As a result of this initiative, the German churches feared that progressive integration and growing adoption in EU countries of EU policies and regulations might have a negative effect on their position, which was especially privileged in many respects. In a common stance adopted and published by the central service of the Evangelical church and the secretariat of the Catholic Episcopal Conference in January 1995, they declared:

It would be desirable for future development that the legal position of the church also became rooted in the constitutional structure of the EU, without this producing confusion as a result.

As regards to the regulation of ecclesiastic activities, it would be indispensable that material regulatory competence were left up to the member states. In addition, the evolution of community law would require to take more consideration than before of the direct and indirect effects in national provisions which regulate relations between the state and the church and that, conversely, the system which regulates relations between church and state integrate aspects of community law with greater force than before.

The initiative in favor of an article on the church suffered right from the start from being exclusively directed at the defense of particular interests. The

churches of the other member states were less interested in this, since the majority did not enjoy the privileges it was attempting to defend.

Finally, however, it was the attitude of some governments, in favor of a rigorous interpretation of the principle of secularity and a reluctance to recognize a place in the “public arena” for the churches, which seems to have been decisive in leading the intergovernmental conference not to approve this article on the church.

Nevertheless, Declaration 11 represents a step forward from the point of view of necessary clarification of the churches and religious communities with the Union and its institutions. In accordance with the principle of subsidiarity, the Declaration expresses the commitment of the European Union to respect the status of the churches and religious communities in the member states and not interfere in them. This will also help to produce consensus regarding the type of relationships which should be established between the institutions of the EU and the European structures of the churches and religious communities.

The adoption of the Amsterdam Declaration is not just a matter of legal significance. It is a public recognition of the presence and role of churches in society. Indirectly, the Declaration acknowledges that religious traditions can and do offer ethical approaches and insights into value-oriented policy matters and play an active role in discussions on the future of Europe and the development of its legislation.

Not only is strict legal protection of religious freedom of importance, but there is also an awareness of the insights of religious traditions and their contribution to society. The formation of a dialogue-based structure between the EU and churches, (such as is described in the second part of this article) provides a natural integrative framework.

NEW STRATEGIES TO PREVENT AND ERADICATE RELIGIOUS INTOLERANCE AND DISCRIMINATION

Within Europe, positive steps are being taken toward preventing and eradicating intolerance and discrimination based on religion and belief. The protection of religious freedom requires not only a policy of noninterference, but also of positive action.

New developments at the European level involve promotion, consultation, dialogue and education. The traditional state “abstentionist” approach

to religious freedom will always remain important, but innovative approaches are necessary to do justice to such a complex phenomenon as religion and to support religious freedom in its deepest sense, as a human right.

Each European institution or organization obviously deals with the relevant issues within the framework of its mission. We now refer to some remarkable developments that offer new approaches and insights into value-oriented policy matters.

1999 OSCE MEETING IN VIENNA

Since 1996, religion and religious freedom have been of special interest to the OSCE. In 1999, its Office of Democratic Institutions and Human Rights (ODIHR) organized in Vienna a “Supplementary Meeting on Freedom of Religion and Belief.” The goal of this meeting was to discuss the concerns raised previously with respect to freedom of religion and belief and to assist in identifying priorities for OSCE action. This initiative accords with the organization’s role in promoting and protecting security and cooperation in Europe.

In order to highlight varying approaches and viewpoints, the meeting was opened to NGOs and international organizations, in addition to the participating states. Approximately 200 people attended the meeting and took part in the discussion.

The first topic on the agenda focused on strategies to promote dialogue and reconciliation in situations where religion is a factor or potential factor in conflict. Many concerns and recommendations were raised during the course of the meeting, some of which are now summarized as follows:

Several states noted that religious tensions, intolerance and the political use of religious identity have emerged as significant factors in a growing number of conflicts in the OSCE region. Since preventing conflict is a principal mission of the OSCE, several participants noted the importance of early identification of cases where religion is likely to be drawn into conflict, and of encouraging the positive role that religious communities may play in conflict prevention and reconciliation.

A second theme emerging from this meeting was the need for greater dialogue and consultation between religious groups and between government officials and religious communities. Several states and NGOs noted that in many countries, there is no process or mechanism for consultation between the state and religious communities, even on matters directly relating to free-

dom of religion and belief. As a matter of fact, the United States found it essential to ensure that religious leaders - both lay and clerical – should have an opportunity to engage the government on issues of public policy. The moral dimension which that dialogue has offered has frequently spurred a more effective public policy, while ensuring that the full dimension of political participation forms part of democratic decision-making.

The third agenda item was to discuss the future role and structure of the ODIHR Advisory Panel of Experts on Freedom of Religion. This panel, which was comprised of 19 representatives from major research institutions and ecumenical bodies in the OSCE region, was set up in 1997 to assist the ODIHR in implementing specific, practical projects for the promotion of religious freedom.

Among the recommendations emerging from the Supplementary Vienna Meeting, I wish to underline the importance of the fact that members of the panel reviewed legislation relevant to freedom of religion or belief and identified “best practices”. This panel is to prepare a proposal for a joint project with the ODIHR to develop proposed legislation on religious communities in Bosnia-Herzegovina, in cooperation with religious communities and the government.

Moreover, members of the panel are to help the ODIHR draw up a roster of experts on religious freedom, as well as on religious dialogue and conflict prevention, to be drawn on as needed by the ODIHR.

One more relevant recommendation from panel members and participants at this meeting was that the ODIHR should organize training activities on issues of religious freedom, including training for government officials, members of the judiciary and representatives of the media.

IMPORTANCE OF DIALOG WITH RELIGIOUS COMMUNITIES

In addition, the European Commission, in its processes of European integration, has taken up dialogue as a strategy for general policy-making. On the initiative of Presidents Delors and Santer, some years ago the Commission began to foster and maintain relations with Christian churches and other religious communities. These informal relations, although regular, were essentially forged at the request of the churches and religious communities themselves. At this point we should mention the European representations of Christian churches, spanning the Catholic, Protestant and Orthodox religions,

including some smaller Christian bodies, as well as the Muslim and Jewish religious communities who also have representation and liaison offices linked to the European institutions.

These bodies follow the activities of EU institutions, particularly the Commission and the Parliament, with a critical but constructive approach. Their mission consists of keeping the authorities and decision-making bodies informed regarding the viewpoint of their respective organizations in the development of European policy and, where these interests are concerned, of using their influence to draw up policies.

However, beyond actual practical cooperation, the churches and religious communities also wish to establish a dialogue with the European Commission on the meaning, spiritual orientation and ethical dimension of European unification and the policies followed in this context.

In the eyes of the European Commission, the importance of these interlocutors does not derive essentially from the key role they play as actors in civil society, but it also result from the collaboration they provide when the ethical dimension of the process of European unification requires to be taken into account, giving it both a meaning and an identity.

The importance the Commission attributes to dialogue with the churches and the religious communities depends on a phenomenon which may be observed in other contexts, i.e., the return of the “religion” factor to the political scene in “post-secular” society, as opposed to the indifference of specific areas of the media and, in particular, of sizeable spheres of political leadership.

The study of the importance of the “religion” factor in politics and society forms part of the natural mission of the Forward Studies Unit, entrusted by the President of the Commission to maintain dialogue with the churches and other faith- or conviction-based communities.

Its task also covers informing the representative bodies of the churches and other faith- or conviction-based communities of their role in European society and their contribution to peace-making and reconciliation in Europe, and even to advise on the development of the program “One Soul for Europe: Ethics and Spirituality.” This program enables the Commission, in agreement with the European Parliament, to promote financing of projects of a religious or ethical nature aimed at reinforcing tolerance and pluralism, as well as stressing mutual respect and the acceptance of differences of nationality, gender, religion and culture.

COUNCIL OF EUROPE RECOMMENDATION ON RELIGION AND DEMOCRACY

The Council of Europe, in view of its cultural and educational mission and its role in protecting fundamental rights, issued on 27 January 1999, a significant recommendation on religion and democracy :

Democracy has proved to be the best framework for freedom of conscience, the exercise of faith and religious pluralism. For its part, religion, through its moral and ethical commitment, the values it upholds, its critical approach and its cultural expression, can be a valid partner of democratic society

Article 13 recommends that the Council of Ministers invite the governments of the member states to guarantee freedom of conscience and religious expression, in particular, in order to:

- a)** safeguard religious pluralism by allowing all religions to develop in identical conditions;
- b)** facilitate, within the limits set out in article 9 of the European Convention on Human Rights, the observation of religious rites and customs, for example, with regard to marriage, dress, holy days (with scope for adjusting leave) and military service;
- c)** denounce any attempt to foment conflict within and between religions for partisan ends;
- d)** ensure freedom and equal rights to education for all citizens, regardless of their religious belief, customs and rites;
- e)** ensure fair and equal access to the public media for all religions.

THE IMPORTANCE OF EDUCATION FOR A CULTURE OF TOLERANCE

It is significant that the states assembled at the second United Nations World Conference on Human Rights in 1993 underlined the importance of education in strengthening respect for human rights and fundamental freedoms, and of fostering mutual understanding, tolerance and peace.

In this context, the General Assembly proclaimed the ten-year period of 1995 to 2005 as the United Nations Decade for Human Rights Education, and

requested the United Nations High Commissioner for Human Rights to coordinate the implementation of the plan of action.

Among the suggestions to be considered for inclusion in an international educational strategy to fight against all forms of intolerance and discrimination based on religion or belief, it is appropriate to note that the Human Rights Commission's Special Rapporteur on the question of religious intolerance introduced the notion of a preventive strategy. The Special Rapporteur believes that prevention can be ensured mainly through establishing a culture of tolerance, notably through education, which could make a decisive contribution to the promotion of human rights values, and particularly attitudes and behavior which reflect tolerance and non-discrimination, hence the role of schools.

In 1994, the Special Rapporteur conducted a survey through a questionnaire, addressed to the states, on the issue of freedom of religion and belief from the standpoint of the curricula and textbooks for primary and secondary educational institutions. The 77 state results were used as a basis for a number of provisional comments, *inter alia*, intolerance as reflected in curricula and textbooks, ignorance and distorted descriptions of religions as such (including minority groups), leading to a lack of respect. The Special Rapporteur considered that the material collected could be further developed by taking into account other relevant state, regional and international experiences with a view to drawing up a set of conclusions and recommendations to be submitted to an international consultative conference on the question of tolerance and non-discrimination with regard to freedom of religion and belief in primary and secondary educational institutions. The Spanish government has decided to jointly organize such a conference and to assist the Special Rapporteur in shaping an international educational strategy centered on the definition and implementation of a tolerance and non-discrimination common minimum curriculum to combat all forms of intolerance and discrimination based on religion or belief.

SPANISH GOVERNMENT'S COMMITMENT TO RELIGIOUS FREEDOM

Since 1978, the Spanish government has carried out a complete revision of the legal system relating to religious freedom, providing a more just and democratic treatment of this fundamental human right, recognizing its transcen-

dence and the need for it to be included and specifically protected in the country's legislation. Our commitment to safeguarding and implementing plans of actions for religious freedom extends beyond national borders in order to cooperate with those institutions which are to support this freedom, as well as tolerance and respect, in order that these should be recognized in all public and private spheres.

Thus, in Madrid in November 2001, the Spanish government hosted an International Consultative Conference on school education in relation to freedom of religion and belief, tolerance and non-discrimination. The outcome of the conference will be reflected in the adoption of a declaration to be submitted to the U.N. Commission on Human Rights and the General Assembly.

At the beginning of a new millennium, it seems essential not only that all types of discrimination be eradicated, but also that in the future no one should be subjected to any treatment likely to undermine his or her right to freedom of thought, conscience and religion.



E N D



RELIGIOUS LIBERTY IN COUNTRIES IN TRANSI- TION IN CENTRAL AND EASTERN EUROPE.

REINDER BRUINSMA

Secretary General, International Religious Liberty Association, European Section

KADUNA, Nigeria, 13 March 2000 –About 300 Christians of the Kabe ethnic group in the city of Kaduna were abducted by their Muslim captors and forced to renounce their faith during religious clashes in the state in February 2000, according to a human rights group. *Human Rights Monitor*, a Kaduna-based human rights group, issued a report recently that stated those who refused to renounce Christianity were killed. It did not say how many died.

The forced renunciation of Christianity came during a week of clashes between Christians and Muslims over the introduction of Sharia law. As many as 400 people died in Kaduna state and in some southern cities when fighting spread.

Fighting in Kaduna began February 21, when Christians demonstrating against Sharia were attacked. According to *Human Rights Monitor*, an initial understanding between Christian and Muslim youths in the Hunyin Banki area of the city was disregarded when Muslim youths attacked the Baptist Theological Seminary. Four student pastors at the 52-year-old seminary were killed by Muslim youths who stormed the school during the riots.

This report from Nigeria is only one of a multitude of violent episodes spawned by religious intolerance. Think, for instance, of events in countries as Tajikistan, China, Nepal, the Sudan and Pakistan. And there are so many other hot spots of religious-motivated violence. No one knows how many people in today's world are victims of religious persecution. Some scholars claim that there is more religious persecution in this century than there has been at any other time in history. Thousands of religious believers have been martyred in the last few years. Many others have suffered imprisonment, torture, burning, enslavement and starvation. Most of them are Christians, and possi-

bly as many as 200 million Christians are currently being persecuted for their faith. *The International Bulletin for Mission Research* estimates the total of current religious persecution victims at no less than 164,000.¹

Religious intolerance is limited to Christians being persecuted by non-Christians. Christians, unfortunately, also persecute each other, and many traditionally-Christian nations do not excel in support for full religious freedom or, at least, tolerance for all. Those who want recent examples of what is happening in the area of religious intolerance around the world, can discover a mass of information at all sorts of Internet sites. I would also suggest reading two recent, very comprehensive reports: *Freedom of Religion and Belief A World Report*, edited by Kevin Boyle and Juliet Sheen² and *Religious Freedom in the World: A Global Report on Freedom on Religion and Persecution*, edited by Paul Marshall.³

Religious intolerance is considered to be such an important issue that in 1997, legislation was introduced in the United States, aimed at curbing the growth in religious persecution. The *Freedom from Religious Persecution Act*, which was signed into law in 1998, created a new Office of Religious Persecution Monitoring in the Executive Office of the White House and imposed sanctions on governments who actively participate or fail to take steps to curtail religious persecution.

I would venture to suggest that every global religious community is either consistently, or at least occasionally, faced with religious intolerance or persecution. That is certainly also true for the religious community to which I belong—the Seventh-day Adventist Church. Here are two recent examples.

The first example is from Cape Verde, a Portuguese-speaking country of ten small islands south of Senegal, off the west coast of Africa. About 90 percent of the nation's approximately 400,000 citizens are Roman Catholic. Seventh-day Adventists number just over 3,000.

In July of 1998, Jose Maria Monteiro Rodriguez and Jorge Adalberto Ramos Tavares were arrested and jailed on charges of desecrating Catholic churches and property on the island of Boavista. A third man, Benvindo de Cruz Ramos, was accused of being an accomplice but was not held. Rodriguez and Tavares spent a year in jail during their protracted trial. While incarcerated, the men were subjected to ongoing torture, including beatings to the head and stomach, starvation and electric shock, all in an attempt to force them to confess to crimes they did not commit.

The trial was unique in its length and the public interest it generated. When it ended with an acquittal on 26 July 1999, Judge Helena Barreto

emphatically noted in her verdict: “The only crime which the three Adventists committed, if that constitutes a crime, was to be Seventh-day Adventists.”

The second incident took place in Sri Lanka. Pastor Alexander, a Seventh-day Adventist minister and teacher—and a Tamil, was arrested by the national police in March 1998. The charge leveled against him was that he supported the anti-government Tamil Tiger movement. Though subjected to extensive physical torture, he resisted signing a false confession until the police warned him that they would punish his wife and five children if he continued to hold out. Imprisoned without a trial (technically legal under Sri Lanka’s emergency laws) Alexander did not get a first hearing in court until December 1999, which came about because the Adventist Church focused global attention on his case. As the trial continued through the winter and spring of 2000, the government’s case unraveled. The coerced “confession” was ruled inadmissible. Physical evidence was shown to be utterly unreliable. Ruling on a defense motion, the presiding judge on May 15 declared Pastor Alexander innocent of all charges and ordered his immediate release from prison.

EUROPE

It might be tempting to say that the cases cited so far have all been outside of Europe and that, fortunately, the situation in Europe is much better. Apart from the conflict in Northern Ireland and the recent wars in the Balkans, it would be difficult to find instances where people have died as a direct result of confessing a particular religion. Yet the record of many European nations is far from perfect when it comes to religious tolerance.

The Watchtower Society and the Church of Scientology are highly unpopular in many countries. I must admit that I do not concur with many of their beliefs and practices and am not affiliated with them in any way. But we should always remember that we do not find it difficult to grant full freedom to those we admire and feel comfortable with. The real test of our belief in religious freedom and equality for all comes when we are confronted with individuals and movements we strongly disagree with or even dislike. This is not to say that we must approve of everything said and done in the name of religion. Individuals and communities cannot be permitted to harm others or to be financially dishonest in the name of their faith. But they should never be victims of religious discrimination. There must, therefore, be serious doubts about the measures of the German authorities against L. Ron Hubbard’s followers, and against initiatives in Belgium and France to create a “new religious

movements” list that demands special scrutiny from the authorities.⁴ The problem with this is not just the frequent use of outdated or incorrect sources of information, but the fundamental flaw in wishing to distinguish between “traditional” religious communities and “new” movements.

Admittedly, though many serious breaches of religious tolerance can be found throughout Europe, the situation is much better there than in some other parts of the globe. This does not mean, however, that the champions of religious liberty can relax as far as Europe is concerned. History has taught us that we must always be vigilant. Dormant trends may suddenly become very much alive, and basic legal flaws in church-state relationships and in the legislation for religious communities may come to haunt us in the future.

In everything we say and do in the area of religious freedom, I believe three fundamental issues need to be kept in focus. Firstly, we must be firm in our defense of the principle that every human being has the right to full religious freedom. Second, we must ensure that state and religion each have their own spheres; the state should not be ruled by the church, nor should the church be ruled by the state. And third, even as all *individuals* must have equal status before the law, so must all *religious communities* have equal status.

1 • Every individual has the right to full religious freedom. We are all aware of the statement found in the article 18 of the Universal Declaration of Human Rights:

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.

We are equally conversant with the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* adopted by the General Assembly of the United Nations on 25 November 1981. Article 3 and 4 reads:

Article 3

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.

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 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.*

It is satisfactory that these basic instruments have, at least in theory, been adopted by most nations. It is heart-warming to note, especially since we are meeting in a country where the majority of the people are Roman Catholics, that the Roman Catholic Church has, since Vatican II, unequivocally affirmed its support for full religious freedom for all individuals. *The Declaration on Religious Liberty*⁵ reversed the condemnation of the concept of religious freedom found in the 1864 *Syllabus Errorum*.⁶ It leaves no doubt that “the human person has a right to religious liberty,” which is rooted in “the very dignity of the human person.” The *Declaration* also underlines that people may form religious communities, which should also enjoy “freedom from coercion.” Significant also is the statement that “religious communities have the further right not to be prevented from publicly teaching and bearing witness to their beliefs by the spoken or written word.”

The *Declaration* emphasizes that no unfair methods may be used in persuading people to shift their religious adherence. This matter of the right to “proselytize” has remained a hot issue in interfaith and interchurch relationships. The organization which I represent, the International Religious Liberty Association, has also recognized that this is an important topic and has tried to contribute to a better understanding of where the line is crossed between the proclamation of one’s understanding of the gospel and unfair pressure and unethical methods of persuasion. In Madrid, Spain, in collaboration with the Spanish authorities, the IRLA recently organized a symposium of experts to study the topic of proselytism. At the end of the session, they issued a statement that has found wide acclaim.⁷

It may be useful to include a brief list of the elements of religious freedom that should be guaranteed by law. These are the things which should also be

included in the new laws on religion which are prepared by a number of the countries in transition. Dr. Gloria Moran, who teaches at the University of Coruna in Spain, summarized it well in the following paragraphs:⁸

- a) Every *individual* must have the freedom to
- profess or not profess a religion or belief
 - have or not have religious instruction
 - participate or not to participate in any form of worship, and to disclose or not to disclose his/her convictions
 - refuse to take an oath when it is contrary to his/her convictions
 - express openly her/his religious beliefs, and remain silent about his/her religious beliefs
 - be exempt from military service, when it is contrary to one's beliefs to serve in the military, offering to do humanitarian work instead
- b) From the point of view of a *collective right*, the laws must guarantee the freedom to:
- manifest convictions and propagate religious choices or beliefs, while each person or group, private or publicly, is protected from coercion or interference from others
 - form associations and religious organizations which may acquire juridical personality and legal status
 - acquire and maintain places of worship, and hold and attend religious services and activities
 - establish, maintain and manage religious institutions, such as schools and charitable organizations, on a self-governing basis, and the free communication with other national or international institutions
 - produce, buy, import, export, and distribute religious literature, printed and audiovisual materials or objects used for religious activities
 - solicit and receive voluntary support from individuals and institutions

2 • We must ensure that state and religion each have their own spheres.

Broadly, this means that the state should not be ruled by the church, nor the church by the state. We have ample evidence in the past and present that a mix of religion and politics can be extremely flammable.

But must we draw as an inevitable conclusion that the American model of separation of church and state is the only acceptable one? Or are there other models? In the United States, religious organizations cannot receive any direct financial support from the state to pay for religious activities such as the

salaries of religion teachers or clergy. In Europe, churches and other religious communities often receive direct or indirect financial assistance. I tend to agree with Dr. Rik Torfs, who teaches canon law at the University at Leuven and who is an expert in church-state matters. He states that in Europe, the complete absence of state funding of churches and religious communities is, given the social-democratic system characterized by a lot of grants and subsidies, impossible without an underlying hostile idea concerning faith and religion.⁹ If assistance is given, care must be taken that “all religious groups are treated equally. Essentially, once the state decides to make public benefits available to some, it needs to provide reasonably equal access to equivalent benefits to all, to the extent they are requested.”¹⁰

Dr. Moran summarized what religious liberty should entail.¹¹ She is emphatic that a non-confessional state is preferable, with no official or established church. At the very least, there ought to be a principle of equality for all religious communities. Therefore:

- No religious community should receive any special privileges from the state, nor exercise any political authority.
- The state must allow religious assistance to individuals who require this from their churches, if they are inmates in public institutions such as prisons, hospitals, Armed Forces, etc.
- The state must stipulate in its legislation special exemptions and benefits in taxation, where there is a religious purpose in activities which are normally subject to taxation.
- Public authorities should not interfere in the selection of religious ministers or officials, nor in the religious rites or governance structure of a religious community.
- The state regulations must include reasonable accommodation regarding work on religious holy days, and the development of an effective, alternative civil service system.
- Religious freedom must be protected in constitutional, civil and penal state regulations, and any act of destroying, damaging, profaning or offending religious objects of feelings must be prosecuted according to the law.

I must admit that I am not so sure about a final point in the list provided by Dr. Moran.

The state may, according to the religious and social background of the country, make and sign agreements with religious organizations, in order to facilitate the exercise of the collective right of religious freedom. Not only has the Catholic Church availed itself of this opportunity to conclude ‘concordats’

with national governments, but even my own church has done so in a few cases. It would seem that this stands in some tension with the principle that all religious communities ought to be equal for the law. To this principle we shall now, briefly, turn.

3 • Even as all individuals must have equal status before the law, so must all religious communities have equal status. It may seem to be a matter of common sense that large religious communities should be treated differently than very small churches and groups. However, champions of full religious liberty cannot accept this. There are no degrees of freedom. The state must not have any preferences in the way it treats religious groups, whether they have existed in the country for centuries or whether they have originated only a decade or so ago; whether they have a million or a thousand adherents. Therefore, I strongly disagree with Roland Minnerath, who states that “there is no need to object when a religious community, because of its continuing link with the identity and history of the nation, receives special recognition by the state, as do the established churches of England, Greece, or Scandinavia, or indeed the states where Islam is the state religion.” Minnerath adds that, in cases where there is such a majority religious community which receives special recognition, “it must be clearly provided in accordance with international norms, that all other religious communities enjoy full freedom to exist and develop under the protection of the law.”¹²

It is, in my view, a positive development that the Lutheran Church in Sweden and the Swedish state are now involved in a process of disestablishment. Likewise, it must be seen as positive that in England, there is an increasing number of voices, both inside and outside the Church of England, that suggest that the concept of a state church no longer fits with the multicultural and multifaith society of contemporary Britain.

While in Western and Northern Europe we hear more and more critical remarks about the concept of an established church, we see an opposite trend in several countries in Central and Southeastern Europe. To a large degree, this is understandable. Emerging from a long period of Communist oppression, the countries that were once part of the Soviet block, now celebrate their national identity, and, naturally, the majority religion of a country is a major factor in this national identity. Many believe that to be a Latvian is to be a Lutheran. To be a Pole is to be a Roman Catholic. To be a Serb is to be a Serbian Orthodox. It is recognized that, even in pre-Communist days, there were other religious communities that have been part of the traditional reli-

gious landscape, and there is no special animosity against them. But the flood of new religious movements is less welcome, especially since many of them seem to have little respect for the ancient religious traditions of the people.

Against this background it is quite understandable that legislation is being developed in various countries (to replace hopelessly outmoded and inadequate laws of Communist times) in which religious communities are put in different categories: those which belong to the “traditional” or “historic” religious communities, and those which do not, and are therefore not quite in the same class. On the surface this seems rather innocuous. It is not. Wherever this is proposed we must object, because it is a serious step in the wrong direction—a step away from the concept of full religious freedom for all, of fully equal status before the law, and a step in the direction of intolerance and discrimination.

The criteria for deciding how a religious community should be classified are usually rather arbitrary. The countries which have voted on (or approved) this kind of legislation or are considering doing so tend to use criteria of age and numbers. Some suggest that a church which has existed in the country for 100 years must be considered ‘historical.’ But why 100 years? Why not 200 years? Why not 50 years? A church may have existed in one particular country for only 50 years, but may have been founded elsewhere centuries ago.

Numbers, likewise, say very little about the strength of a church. A church may be small in one particular country, but may be very numerous in other countries. The Baptists provide a good example. In many European countries they are but small communities numbering in the thousands. Yet in the United States we count tens of millions of Baptists!

On the surface there does not seem to be much reason for alarm when looking at the differences in the provisions and requirements for the “historical” churches and the “new” churches in the new laws that are being enacted or prepared in Central and Eastern European countries. All people in these countries are guaranteed the right to worship according to their conscience (within the reasonable limits that must be respected). But it is wrong to create a system which is seriously flawed in principle, since it condones inequality. It is dangerous to have laws that constantly tell the citizens: We have freedom of religion; we respect all religious communities, but some are more equal than others. To suggest that there is a fundamental difference in the way religious communities must be classified, makes a division between first-class religions and second-class religions. Over time, this distinction may become the basis for feelings of superiority of adherents of certain religious persuasions over others and may, therefore, lead to intolerance.

We have come full circle. The world around us is still full of religious intolerance, religious fanaticism, hatred and even persecution. Champions of religious freedom will do whatever they can to stem this tide of intolerance. And they will raise their voices whenever and wherever laws are prepared and changes are considered which are contrary to the principles of full religious freedom and which may, over time, become a tool in the hands of those who are not committed to the principles we hold in esteem.



E N D

1. *The International Bulletin of Missionary Research*, vol. 27, no. 1 (January 1999), 25.
2. Published by Routledge in New York, 1997.
3. Published by Broadman and Holman, Nashville, TN, 2000.
4. Olivier-Louis Seguy, "Les travaux parlementaires français et belges relatifs aux sectes," *Conscience et Liberté*, no. 57, 1999.
5. see Austin Flannery, ed., *Vatican II: The Conciliar and Post Conciliar Documents* (Northport, NY: Costello Publishing Company, 1975), 799-812.
6. See V. Norskov Olson, *Christian Faith and Religious Freedom* (Brushton, NY: Teach Services, Inc., 1996), 74ff.
7. See the issue of *Fides et Libertas*, 1999, which published a number of presentations by experts given during this conference.
8. See her lecture "What is Religious Liberty? What should the laws guarantee?" in R. Bruinsma, ed.: *The Role of the Churches in the Renewing Societies: Lectures and Documents Budapest Symposium*, March 3-5, 1997 (St. Albans, UK: International Religious Liberty Association, European Section, 1998), 28f.
9. R. Torfs, "Should Churches be Subsidized? Different models. Some perspectives," in R. Bruinsma, ed.: *The Role of the Churches in the Renewing Societies: Lectures and Documents Budapest Symposium*, March 3-5, 1997 (St. Albans, UK: International Religious Liberty Association, European Section, 1998), 52.
10. W. Cole Durham, Jr., "The Distinctive Roles of Church and State," in: *Fides et Libertas*, 1998, 45.
11. Gloria M. Moran, op. cit., 29.
12. Roland Minnerath, "Facing Religious Pluralism: Committed to One's Faith and Respecting the Faith of Others," *Fides et Libertas*, 1998, 63.



THE WESTERN EUROPEAN MODEL OF CHURCH AND STATE RELATIONS

SILVIO FERRARI

University of Milan, Italy

THE PATTERN OF CHURCH AND STATE RELATIONS IN WESTERN EUROPE

The traditional classification of church-state systems in Western Europe is based on a tripartition: separation systems, concordatary systems and national church systems.¹

Italy, Germany and Spain, for example, are called concordatary countries because their relationship with religious groups is based on concordats (with the Roman Catholic Church) and agreements (with other denominations). The basic idea in these countries is that relations with religious groups (or at least with some of them, normally those which are larger in number or have been active in the country for a long time) are better regulated through bilateral provisions, negotiated between the state and each religious group.

The state (or national) church system is a feature of North Europe. Norway, Denmark and England have a state or a national church. This church frequently enjoys a preferential treatment, for example, in the field of religious education in the schools or chaplaincies in prisons, hospitals or in the army. On the other hand, the state exercises a strong control over the organization and activities of the church: the head of the state is the head or the governor of the church, and bishops are appointed by state agencies.

France, Ireland, Belgium and the Netherlands are “separatist” countries. It is a very heterogeneous group: Ireland, whose constitution contains an invocation to the Holy Trinity, has little to do with France, which has constitutionally proclaimed the “laïcité” of the state. Therefore it is correct to say that the separatist group is a residual group, into which the countries without concordats nor state or national churches are placed: an examination of the legal discipline of some central topics in church-state relationships (financing of

churches, teaching of religion in state schools, etc.) confirms that these countries have little in common.

This traditional tripartition is culturally and legally outdated. Therefore it is of little use in understanding what is going on in the field of church and state relations.

Legally, the classification overemphasizes the formal side of the church-state relationship and does not pay enough attention to their content. Belgium and Ireland are separatist countries; they have no concordats, yet the Roman Catholic Church enjoys a better legal position there than in some countries where a concordat has been concluded. The signing of a concordat does not seem to be the qualifying element of the state's attitude toward a church, neither from a political nor from a legal point of view. But the same reasoning can be repeated in relation to state or national churches. The Church of England is a national church, but the support it receives from the state is far less than the support the German State gives the Roman Catholic and Protestant churches in Germany.

From a cultural point of view, that tripartition (concordatarian countries, state/national church countries and separatist countries) is a leftover of a Europe divided among Protestant countries (with a state church), Roman Catholic countries (that is, concordatarian countries) and secular countries (the "separatist" France). But it is highly questionable whether these partitions are still meaningful. After secularization spread all over Europe and after the Vatican II Council, is the border between Catholic and Protestant countries still significant? And as for the revision of the notion of "laïcité" that is going on in France, is it not a sign that the meaning of secular state is changing in the very place where it had become the symbol of the relationship between church and state?

Finally, this tripartition prevents us from asking the question that is really important: Is it possible to speak of a West European pattern of church and state relations?

My answer is yes, provided the analysis is not limited to a simple description of the legal structure of church and state relationship.² Through a deeper examination, aimed at identifying the principles that lie beneath the legal surface, it is possible to detect a common pattern defined by three main features.

a) The right to religious liberty. Most European countries have signed article 18 of the International Covenant on civil and political rights and/or article 9 of the European Convention for the protection of human rights and

fundamental freedoms.³ The text of these articles is not the same, but they have a common central core aimed at protecting the right to have and manifest a religion or conviction within the only limits that are requested by the protection of public order, health, morals and the rights and freedoms of others.

If we pass from international to constitutional law, the result is the same. All the constitutions of the West European countries (and now many of the East European countries too) contain at least one provision that protects religious liberty: basically, the content of these provisions is not far from that of article 18 of the covenant or article 9 of the convention.⁴

Of course, if the legal systems of the West European countries are examined in detail, some significant differences in the way religious liberty is protected can be easily detected. But at the level of the principles fixed in international and constitutional law, it is possible to say that a common notion of religious liberty has taken shape in the law of West Europe and is gaining ground also in the other parts of Europe. Behind this common notion there is the idea that the individual conscience is paramount: when it comes to religion, every person has the right to take the decisions dictated by his/her conscience without incurring any legal discrimination. Again, generalizations should be avoided. There are exceptions to this rule: for example, the prohibition of proselytism in Greece⁵ and, in my opinion, the prohibition of a religious marriage without a previous civil marriage in France, Belgium and Germany.⁶ But apart from these and a few other exceptions, a basic set of religious freedom rights are available to every person living in Europe, irrespective of his/her religion, citizenship, race, etc.

Two consequences of this idea are of particular importance in connection with the legal status of Islam (and other religions) in Europe. First, both in West and East Europe, within Catholic and Protestant or Orthodox churches, the apostate, the atheist, the faithful of a minority religion does not face any restriction of the civil and political rights because of his/her religious choice.⁷ The right not only to adopt but also to leave and to change a religion is part of this non-discrimination principle: the person who leaves a religious group (even the religious group into which he/she has been born) exercises a right that the state is called upon to protect toward everybody, including members of the religious group which has been left.

Second, religious liberty does not entitle the faithful of a religious group to infringe the rules protecting fundamental values (article 9 of the convention and article 18 of the covenant mention synthetically public safety, order, health, morals, the rights and freedom of others): the person who violates these rules

cannot invoke the obedience to a religious obligation as cause of impunity. But these limitations apply only to the manifestations of a religion. Limitations on the freedom to have or adopt a religion are not permitted: nobody can be punished or discriminated against just for being a member of a religious group.

A final remark is required to complete the examination of the legal protection of religious liberty. The international and constitutional provisions quoted at the beginning of this paragraph grant the right to manifest a religion not only individually but also “in community with others.”⁸ There is a collective profile of the right to religious liberty that is taken into account, so that not only individuals but also communities are entitled to religious freedom. The recognition of this collective right has led most European Union (EU) countries to define a set of basic rights that are granted to all religious organizations and which do not depend on any form of previous registration or recognition. These rights include the right to assemble in connection with a religion and to establish and maintain worship places; the right to publish and disseminate religious publications; the right to teach a religion; the right to solicit and receive financial contributions both from individuals and institutions, and so on. Many of these rights are part of freedom of assembly, freedom of expression, freedom of association, which are basic freedoms of a democratic society. Nevertheless, the fact that, in the Western European legal systems, there is a platform of collective rights of liberty available to any religious group is by no means irrelevant.

b) The religious incompetence of the state and the autonomy of religious groups. While widely infringed on in practice, the principle that the state has no competence to deal with religious matters can be traced back to the origins of Christianity; in a different perspective, this same principle is central to the liberal doctrine that prevailed in Western Europe starting in the mid-nineteenth century. From a legal standpoint, the clearest expression of state incompetence in religious affairs can be found in the recognition of the independence and autonomy of religious groups contained in some constitutions (Germany, article 140; Italy, article 7 and 8; Ireland, article 44) and in many concordats and agreements concluded between states and religious denominations⁹. Where no explicit statement is contained in these documents, Constitutional Court decisions have frequently filled the gap.¹⁰ The main consequence of these statements and decisions is that, generally speaking, religious organizations enjoy greater autonomy than many non-religious organizations: for example, they are not obliged to have a democratic internal

structure nor to grant their members freedom of opinion (requirements that have to be respected in most non-religious organizations).

The most relevant difference among the E.U. states regards the extent of the autonomy granted to religious groups. In many countries it covers both the doctrinal and the organizational sides: that is, religious groups can define their belief system without any state interference and enjoy a large degree of self-administration and self-government.¹¹ In some other countries (mainly Northern European countries where a state/national church system is in force), autonomy is limited to doctrinal affairs. Even here, however, state authorities are less and less willing to interfere with the internal organization of religious groups and refrain from making full use of the legal powers they have in this field. Generally speaking, the autonomy (both doctrinal and organizational) of religious groups is on the rise: the history of the Church of England throughout the 20th century and the recent reform of church and state relations in Sweden are good examples of the steps taken toward a broader autonomy of the religious groups even in the countries where the bond between church and state is still very tight.

In the framework of this research, it is important to underline a consequence of state incompetence in religious matters: states cannot outlaw a religious group just because its doctrine is in contrast with state laws. That means a Muslim will be punished if he practices polygamy marriage, but the Muslim community cannot be held responsible because it supports polygamy. The same applies to Jehovah's Witnesses: those who refuse military service will be punished, but the religious group cannot be outlawed because it preaches conscientious objection to military service. In a democratic society it must be possible to support and propagate ideals that are different from the majority and even conflicting with the laws.

This point is a delicate one and needs some specifications. Preaching violence, even for religious motivations or aims, cannot be justified: everybody must respect the rules of democracy, and autonomous religious groups are no exception. The same conclusion must be upheld when a fundamental human right is at stake (for example, when a religion proclaims the racial inferiority of certain people). But once the democratic rules and the fundamental rights and freedoms are respected, disseminating religious beliefs that contrast with state laws are part of the autonomy granted to religious groups.¹²

c) Selective cooperation of states and religious groups. In the whole E.U. cooperation between states and religious groups is the rule.

Cooperation between states and social groups is the prevailing model of government in today's Europe; therefore, it is not surprising it is also a dominant feature of church and state relations. Cooperation may be of different scope, greater in Germany than in France; it can take different forms and concern different subjects. There is formal cooperation through concordats and agreements and hidden cooperation through unilateral state laws that are negotiated beforehand with the religious communities. In any case, cooperation is the keynote to today's relationship between church and state in the E.U. and, after the fall of the communist regime, all over Europe.

This cooperation is selective. States finance the religious groups, give them free access to public mass-media and provide religious teaching in state schools, but this support is selectively distributed: some groups receive more, some less and some nothing at all. Generally speaking, cooperation is broader where the central principles and values of a religious group are in accordance with the principles and values shared by the majority of the secular society; it is narrower where such concordance does not exist. More specifically, it is possible to detect a pyramidal pattern that recurs in many E.U. countries, although with many variations.¹³

At the bottom of the pyramid are the religious communities whose cooperation with the state is very scarce. Normally they can become legal persons as associations of common law, and therefore they can perform some basic activities (buy and sell goods, stipulate contracts, receive donations, etc.); but they have no financial support from the state, no access to public mass-media, cannot teach their doctrine in the schools, etc. As a rule these groups are disciplined by the general law, that is, the law governing associations.

A second group of religious communities occupies a middle position. These communities receive financial support from the state (frequently through tax exemptions or reductions), their ministers are entitled to perform marriages and other religious ceremonies that are valid for the state, the building of their worship places is paid for by the state or local authorities, etc. Frequently these communities are regulated by special laws enacted for religious associations, different from (and more favorable than) the laws applying to associations in general; climbing from the first to the second platform of the pyramid is subject to some kind of state registration or recognition, that is to some kind of state control.

Frequently there is a third pyramid level where there are the religious groups that enjoy the maximum degree of state cooperation. The state/national churches, the Roman Catholic Church in the concordatarian countries and

the Orthodox Church in Greece are placed at this level. Their relationship with the states where they have a dominant position is regulated by specific legal provisions, a sort of tailor-made suit fitting as much as possible the special needs of that religious group.

It must be stressed that the model described in this paragraph is just a model: it does not correspond perfectly to the church-state system in force in any E.U. country. But it is fair to say that everywhere state cooperation with religious groups is selective and graduated: the financing of religious groups, the teaching of religion in state schools, the organization of religious assistance in the prisons and the Army reflect the pattern described in the previous lines.

PROBLEMS AND PERSPECTIVES OF THE EUROPEAN MODEL

What is the *ratio*, the *rationale* behind the model of church-state relationship that has been roughly described in the previous paragraph? In a nutshell, the core of the model is that some basic freedoms are available to all—individuals and groups—but state cooperation can be graduated, and religious groups that share the principles and values upheld by the majority receive more support than the groups that are based on a different *ethos*. The model reflects the history of Europe and, in particular, the special bond between church and state that has characterized a long part of it: the “selective cooperation” manifests the historical predominance of a little group of churches, while the extension of the basic liberties to all religious groups is the modern outcome of the pluralism that was never cancelled from the European religious landscape.

Can this model cope with the ongoing transformations in the religious landscape of Europe? My answer is in the affirmative, provided a few conditions are met.

First, the area of basic liberties granted to individuals and, in particular, to religious communities should be enlarged and strengthened. These liberties perform a fundamental function, giving new and small religious communities the chance to grow and become permanently part of the European religious landscape, a chance that is also open to the religious communities that are farther from the majority’s shared values. In other words, these liberties grant the dynamism of the entire model, defining and protecting a space where its change is made possible. The provisions some states (France, Belgium and Germany, for example) have recently enacted against the so-called “new reli-

religious movements” could result in an excessive restriction of these basic liberties that are fundamental for the correct functioning of the European system of church and state relations.

Second, the legal model should be receptive of historical changes: a constant correspondence between social reality and legal structures must be preserved. That means the legal system should not be too late in recognizing social changes and adjusting to them. For example, Muslim communities in recent years have become a social reality that cannot be ignored by lawmakers: if the legal system does not find a suitable space for their needs in reasonable time, it may face some kind of breakdown.

Third, a certain proportion should be always kept between the cooperation offered by the state to the religious groups at the bottom and those at the top of the pyramid: if the gap between them widens too much, the basic liberties themselves become useless. The very notion of religious liberty can easily become evanescent once it has been separated from the concept of equality: where there is a plurality of religious denominations, the concept of religious freedom takes on a relative status, in the sense that it cannot any longer be defined except in terms of a correlation between what is granted to the followers of each *communitas*. The result is that individual and collective religious freedom suffers when the inequality between the legal provisions for the various denominations exceeds a certain level.

If these conditions are met, the most debatable feature of the European model of church and state relations—that is its inborn degree of unequal treatment—can be kept under control and the balance between basic freedom for all and selective cooperation can assure a reasonable integration between old and new Europe. If not, the legal system is bound to accentuate its components of discrimination and privilege and, sooner or later, will give way to other systems more capable of coping with the changes that are taking place in Europe.



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1. The following lines provide a very rough description of these systems. For a more accurate and detailed analysis see Silvio Ferrari, “Stato, diritti e confessioni religiose. Un modello europeo,” in *Il Regno-attualità*, 18/1996, pp. 559-63.

2. For this reason it would be useless to substitute the traditional tripartition with another descriptive classification, like the one that classifies the Church-State systems according to the public or private law status granted to religious organizations by the State. Again, the public law/private law status is not the decisive factor if we approach the question of Church-State relations from the point of view of their content. In Ireland churches are not corporations of public law, but their legal position is as strong as that of the German churches which are public law corporations.
3. The Covenant was adopted on December 16, 1996, and the Convention on November 4, 1950. The text of both documents is reproduced in *Human Rights: A Compilation of International Instruments*, New York-Geneva, United Nations, 1993-1997.
4. For a review of these constitutional provision see the texts listed in note 1.
5. See Anastase N. Marinos, "La notion du prosélytisme religieux selon la Constitution grecque," in *Conscience et liberté*, 58, 1999, pp. 53-73. More generally, see Natan Lerner, *Religion, Beliefs, and International Human Rights*, New York, Orbis, 2000, pp. 80-118.
6. See European Consortium, *Marriage and Religion in Europe*, Milano, Giuffrè, 1993.
7. This is not fully true for the countries where some state authorities must profess a specific religion (for example, Denmark, Norway, United Kingdom): but this obligation, although of high symbolic value, impacts a very limited number of people.
8. Article 18 of the Covenant and article 9 of the Convention, quoted in note 4. Many European constitutions contain analogous provisions.
9. For example, see the preamble of the Spanish Concordat of 1976, article 1 of the Italian Concordat of 1984, of the Polish Concordat of 1993, the Croatia Agreement of 1996, of the Slovakian Agreement of 2000 and of the Latvian Agreement of 2000. Analogous statements are contained in the agreements concluded with non-Roman Catholic denominations: see for example, article 2 of the Italian Agreement with the Valdensians (1984), article 3 of the Italian Agreement with the Lutheran Church (1993).
10. That is the case of Hungary: see the Constitutional Court decision 4/1993 quoted by Peter Erdo—Balsz Schanda, "Church and State in Hungary. An overview of legal questions", in *European Journal of Church and State Research* (hereinafter: *European Journal*), 1999, p. 222.
11. And a further sub-distinction has to be drawn between countries (Germany for example) where internal autonomy is extended to the educational and social institutions (schools, hospitals, etc.) connected to religious organization and the countries (Italy and France, for example) where it is limited more strictly to the religious institutions.
12. But, as already said, this is not excuse for violating the law on the part of religious groups members.
13. For a more detailed analysis of the pyramidal model see Silvio Ferrari and Ivan C. Iban, *Diritto e religione in Europa occidentale*, Bologna, Mulino, 1997, pp. 43-71.



SECTS:

FRANCE VERSUS U.S.A.

JOHN GRAZ

Secretary General, International Religious Liberty Association

France recently passed new and controversial legislation against sects to “reinforce the prevention and repression of groups of a sectarian nature.”¹ Since the French Senate voted the bill on June 22, 2000, the text has been read and reread by both of the French Assemblies. This law marks a further step in the growing gulf between France and the United States on the issue of sects and religious freedom. The law, viewed by the French as protection against dangerous groups, is interpreted as a restriction of religious freedom by the United States.

In 1996, the French National Assembly issued a list of 172 dangerous or potentially dangerous sects.² This list became an official reference in creating an aggressive policy against religious minorities.³ An *Interministerial Mission for the Fight Against Sects* (MILS) was created on October 7, 1998, and publishes an annual report.⁴ The MILS plays an essential role in the current regulations and in the religious freedom climate of France. The Mission accuses the U.S. of providing asylum and refuge for dangerous sects and exporting them.⁵ The U.S. accuses France of not respecting religious freedom according to the International Bill of Rights.⁶ Religious freedom is no longer on the agenda for bilateral discussion.⁷

French anti-sect politicians and activists want to lead a world crusade against “dangerous” or “potentially dangerous” religious groups. They have no legal definition of the word “sect,” which is terribly confusing, but they agree to use the common sense of the word.⁸ Religious minorities now experience many problems.

The international image of France as a “light bearer” of human rights appeared not to have been significantly affected by its anti-sect policy. On May 3, 2001, a few weeks before the law passed, the French candidate received 52 out of 53 country-votes from the United Nations Economic and Social Council for membership of the Human Rights Commission, while the U.S. received only 29 votes and lost its seat on the Commission.⁹ Some of the support for France, however, came from nations with a dreadful human rights record.

Questions are raised about this new law. Is it a good law, or is it a hidden and subtle renewal of a traditional anti-religious force? Why are France and the U.S.A. opposed on this matter? Will the French policy influence the world?

THE ANTI-SECTS LAW

This law has at least three controversial sections:

- 1 • The dissolution of sects. The law will give the courts the authority to dissolve sects which have been found guilty of criminal offenses.¹⁰ Among these offenses are:
 - a. Intentional or unintentional prejudice to the life or the physical or psychological integrity of the person;
 - b. Illegal medical or pharmaceutical practice;
 - c. Deceptive advertising, frauds and falsifications.¹¹
- 2 • The provision that makes “abuse of the state of ignorance or condition of weakness.” illegal.¹² Minors, or a person whose specific vulnerability due to his age, an illness, a disability, a physical or psychological deficiency, or a pregnancy fall into this category. This begs the question, is the act of conversion considered an “abuse of the state of ignorance?” In spite of a lack of precision, the sentence for this “crime” is severe and includes very large financial penalties and significant prison terms.
- 3 • The right of private associations to initiate civil legal action to dissolve so-called “sects.” Only private associations that which protect and assist individuals and public rights and freedoms qualify to initiate such actions. However, under the terms of the law, only the main anti-sect associations meet this qualification. Therefore, private entities, many of which have anti-religious minority agendas, have the power to litigate selectively against those they choose.

UNITED STATES OPPOSITION

The United States views the new legislation as another step toward restricting religious freedom in France, and is concerned about the example France is setting for the rest of the world. France is a state-of-law with solid democratic institutions, which is not the case for many other countries which

may follow it. The United States' opinion echoed the reservations voiced by the President of the French Protestant Federation, Reverend Jean Arnold de Clermont, and the Catholic Bishops Conference of France. Many majority churches and religions see the possibility of becoming victims of this anti-sect thrust sometime in the future.¹³

American opposition has been perceived as interference in France's internal politics, and suspected religious groups are accused of being the United States' "Trojan horse in Europe."¹⁴ In other words, they are considered by some as the arm of "American imperialism" which is not totally new: French Protestants and Jews have often faced a similar suspicion in their history.

France and the U.S. have been a refuge for people who are persecuted in their countries. The large religious freedom and pluralism in the U.S. encourages those who are persecuted for religious reasons to find security within its borders. It does not mean they are above the law and can engage in criminal activities. Rather, they can practice their faith without being discriminated against or listed as dangerous sects.

WHY FRANCE AND THE UNITED STATES ARE ON OPPOSITE SIDES

Freedom was the great cry of the American and French Revolutions. But from the very beginning, the two countries did not share the same concept of religious freedom.

Since its revolution in 1789, France accepted religious freedom. Article I of the Declaration of the rights of man and of the citizen claims, "All citizens, being equal before (the law)" (Article I), "and no one shall be molested because of his opinions, even religious opinions, provided their expression does not disturb the public order established by law (Article X)."¹⁵

The Declaration was a great step toward more freedom in a country which for centuries had been dominated by one exclusive and intolerant church.¹⁶ Protestants, then Jews, were recognized, which was not the case in most of the countries in Europe.

A comparison between the French and American Declarations is useful. God is almost absent in the French Declaration, and religious freedom is accepted with timidity. The only mention of God can be found in the Preamble: "En presence et sous les auspices de l'Être supreme (Supreme Being)." The 1776 American Declaration of Independence states: "We hold

these truths to be self-evident, that all men are created equal, endowed by their Creator with certain inalienable rights, and among these are life, liberty, and the pursuit of happiness.”

God is also the “Supreme Judge,” and the One who provides “divine protection.”¹⁷ Religious freedom which had not been explicitly included in the Declaration of Independence was strongly affirmed by the first Amendment of the American Constitution which states: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...”¹⁸

In contrast, the French revolutionaries were suspicious of religion or too timid, according to the expectations of the Protestants. Religious freedom appeared as a concession: Amème/even and strongly limited by APourvu que/provided their expression do not disturb public order established by law.

The dream of many French revolutionaries was to organize a church closely linked to the state. A church independent from the Vatican but under the authority of the monarch was also the dream of several kings.¹⁹ For the French revolutionaries, religious freedom was not the most important issue. Transferring the power from the king to the people was the key reform. The monarch and the aristocrats believed that the king was king by the grace of God. He was not accountable to anyone but God. He had the right of tolerating or not tolerating other religions outside of the official Church. The religious and political context of the French and American revolutions was different, and so the French provided protection for human rights and religious tolerance instead of religious freedom.

But since that time in France, religious tolerance and anti-religious intolerance have alternated. The negative image of religion, due to religious wars and extremists, has fed anti-religious feelings in a segment of the population and leaders. The state’s control of religion was largely accepted as a way of protecting all citizens. It would not be excessive to say that the concept of tolerance rather than religious freedom inspired the rulers. Tolerance under control is probably the most accurate phrase to describe the current policy. Thus, the Americans and the French have never shared the same approach to religion. For Americans, religion is seen as an essential factor in maintaining a democratic society and in providing a high level of values and solidarity. For many French Republicans and secular humanists, religion is a potential opponent of freedom and human rights, especially sects. Some sects represent a real and legitimate concern to society, but minority religious groups could also be an easy target for the anti-religious freedom activists.²⁰

A RENEWAL OF A TRADITIONAL ANTI-RELIGIOUS TREND

The French anti-sects policy seeks justification by pointing to a succession of tragedies and mass suicides which happened in Guyana, Texas, Switzerland, France, California, Japan and Uganda. The French believe that the best way to protect citizens against harmful or potentially harmful religious groups is to adopt repressive legislation. Sects are more or less equated with criminal organizations.

The first problem the authorities had to face was to provide a definition of a sect. They decided to use the common usage.²¹ This choice is in itself significant. It meant that objectivity and academic research was not considered by the authorities. The list of 172 churches, associations and groups which was published raised many questions and some opposition. What were the criteria? Why were some independent evangelicals groups and the Jehovah's Witnesses, a minority of more than 200,000 members, listed?²² Why did the Parliamentarians declare them guilty before the public before being judged by a court?

Publishing a list to stigmatize groups before there was a judicial process to determine the guilt of any crime was resorting to totalitarian methods.

It is shameful for a democracy to have fallen to this level. During the last 20 years, France had to face corruption at a very high state levels. Child abuse by priests and educators working for mainline churches, and the staff of the National Education Institutions was recorded by the media. Corruption and scandals did not spare political parties, including the Free Mason Lodges. The respectable and recognized Association for Research against Cancer (ARC) was not spared from scandal. Did the authorities publish a new list with potentially dangerous official institutions? Did they vote a new law targeting these institutions? Of course not! The penal code is well equipped to deal with these criminal activities. Similarly, the current penal code makes ample provision to deal with the alleged abused by those entitled pejoratively labeled dangerous sects

The government policy towards the so-called dangerous sects creates a climate of hostility which encourage bias and favors discrimination. The new law may well fuel the anti-religious bigotry that periodically rises in France, and that in the past has resulted in the most severe abuse of people of faith and religious institutions.

WILL THE FRENCH LAW INFLUENCE THE WORLD?

The French government has increased the state control of religions.²³ The state has the mission to protect its citizens by building discriminative legislation against sects. Who can be sure that in times of crisis, any government won't follow in this path? The French model has received interest from South America, Asia and from some former communist countries in Europe.

In a number of countries, governments and societies have problems dealing with the new religious pluralism.²⁴ They feel closer to the French approach by their history and national context than to the American model. Some claim that the U.S., with its religious pluralism, is too unique to be a realistic model. In spite of their democratic ideal, these nations must deal with a majority faith. They cannot ignore that. If politicians want to stay in office, they need the support of the national, traditional church to build their new democracy. Asking them to treat all religious groups equally could be impossible and politically risky. In giving special recognition to the traditional church, they can assure a protection for some acceptable minorities. In fighting ultra-controversial groups, they set limits to their tolerance, and in doing so they comfort their majority church. The state keeps religion under control, and no one needs to be worried about a dramatic change in the religious landscape. This is the same dilemma that the French democrats had to face since the Revolution. France alternated a policy of conciliation with an open or more subtle anti-religious policy. Its complexity in finding an acceptable way to deal with this issue has been attractive for other countries which are not able or do not want to follow the unique model of America. In doing so, they miss a great opportunity to turn away from the old concept of tolerance and open a new area of religious freedom. Mere tolerance is a short-term strategy which will favor discrimination and frustration in the long run.

American leaders and citizens should be especially concerned about this trend. The best response they can give to the new legislation is to remain faithful to their extraordinary heritage of freedom. A democracy doesn't need discriminatory legislation against religious groups to protect its citizens. It simply needs to enforce its penal code in a fair manner. United States' citizens and leaders need to continue proclaiming that religious freedom is a fundamental right and should be promoted and protected for all people everywhere. In so doing, they will stand for the ideal of their founding fathers and side with the persecuted, defending the true values of their Republic. *It would be disastrous*

for freedom and for the world if the U.S. gave up its strong stance. The U.S. remains a model, imperfect though it may be, of religious freedom to this world, even for its old allies like France.

HOW SHOULD THE UNITED STATES DEAL WITH FRANCE ON THIS ISSUE?

It would be a mistake to treat France as an enemy of human rights and religious freedom. Disagreements about how to best deal with these issues may occur between allies. *France is wrong in equating sects with terrorism. France is wrong in listing religious groups as potentially dangerous sects. France is wrong in favoring discrimination on the basis of religion.* But this does not mean that religious minorities are systematically persecuted in France. France is not Turkmenistan. The United States should maintain a constant dialogue with French officials, share information and explain their policies. A commitment of both countries to human rights will help improve religious freedom and insure that it is respected as a fundamental right.



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1. *Journal Officiel de la République Française*, (3 juin 2001), pp. 9337-9340.
2. *Les sectes en France*, Rapport fait au nom de la Commission d'enquête sur les sectes, enregistré à la Présidence de l'Assemblée nationale le 22 décembre 1995. no. 2468 Assemblée nationale. Mis en distribution le 10 janvier 1996.
3. In 1985 the Prime Minister of France asked Alain Vivien to present a report which was titled: "Les sectes en France: expression de la liberté."
4. Alain Vivien was nominated president for five years. *Journal Officiel* no. 234, (9 octobre 1998): p. 15286.
5. *Mission interministérielles de lutte contre les sectes*, Rapport janvier 2000, p. 23. On the role of the USA. Read also pp. 31-33.
6. *France, Country report on Human Rights Practices for 1998*, U.S. Department of State, (February 26, 1999).
7. At the request of France. In *mission interministérielles* Ibid., p. 33. The reason given is that the Americans are leading an inquisition based on "contre vérité" untruth.
8. See *Les sectes en France*, Ibid., p. 14.
9. See Evelyn Leopold, "U.S. Loses Seat on U.N. Rights Commission," *Reuters*, (May 3, 2001).
10. *Agence France Presse – Revue de presse* no. 51, Paris (29 mai 2001).
11. *Journal Officiel... Ibid.*, Chapitre Ier, Article 1 er.
12. Ibid., Chap. V, Section 9, Article 6 bis.
13. *CNS News*, (May 31, 2001).
14. Brune Fouchereau, "Au nom de la liberté religieuse les sectes, cheval de Troie des Etats-Unis en Europe", *Le Monde Diplomatique*, (mai 2001), no. 566.

15. J. F. MacLear, editor, *Church and State in the Modern Age*, New York, Oxford, Oxford University Press, (1995), p. 76.
16. See, Michelle-Marie Fayard, "Les Déclarations des Droits de l'Homme," *Conscience et liberté*, no. 10, (1975), pp. 72-89 and from the same author: "La Révolution de 1789 et la liberté religieuse," *Conscience et liberté*, no. 18 (1979), pp. 25-34.
17. See Michelle Fayard, *Ibid.*, p. 74.
18. J. F. MacLear, *Ibid.*, p. 74.
19. See *The Gallican Articles*, March 19, 1682. In J. F. MacLear, *Ibid.*, pp. 3-4.
20. The introduction of the report, *Les sects en France*, begins by the death and the suicides caused by several cults. *Ibid.*, p. 5.
21. See *Les sects en France*, *Ibid.*, p. 14.
22. *Ibid.*, p. 25.
23. An opposition against a special legislation had prevailed until the suicide of the adepts of the Solar Temple. See Alain Vivien, "Les sects en France, interview by Pierre Lanarés and John Graz," *Conscience et liberté*, no. 23, (1982), pp. 69-78.
24. See Catherine Picard, *Agence France Presse*, no. 51. *Ibid.*



THE HIJACKING OF RELIGION:

HOW RELIGIOUS BELIEFS ARE EXPLOITED FOR POLITICAL AND SECULAR ENDS, AND THE CONSEQUENCES FOR RELIGIOUS LIBERTY

JONATHAN GALLAGHER

Deputy Secretary General, International Religious Liberty Association

When inter-religious violence erupted in Indonesia just three years ago, the primary response was astonishment. Had not Christians and Muslims, Hindus and Buddhists – in fact believers of just about every faith under the sun – lived together in relative tranquility, with mutual toleration marred only rarely by religious difference?

SO WHERE DID THE SUDDEN ANIMOSITY COME FROM?

Tracing the waves of massacre and death back, it seems that the trouble began with a minor dispute between two villagers. It just so happened that one was Christian, the other Muslim. But that was not the cause of the disagreement. However, as the situation became inflamed, the opposing families began to exploit the religious difference, until the whole pot boiled over into violence against the other side, ultimately defined purely on the basis of religious persuasion.

The end result? Thousands dead, hundreds of thousands displaced, refugees in their own country. Holy war, forced conversions, rape and mutilation – all apparently because of “inter-religious conflict.”

Yet this vivid example clearly reveals that the motive forces behind the violence are not primarily based on religious concepts, but on the use of religion to label and define the enemy.

The end of an authoritarian regime, competition for land and resources, employment issues, inter-tribal disputes, economic disparities – all these have a far more significant causes for the communal violence in Indonesia. Religion is just a convenient “identifier” that sanctions war and murder because of the perceived threat to one’s own community.

In the words of Maksum Maksum, chief editor of the Indonesian daily newspaper *Jawa Post*, “Different communities have difficulty in detaching themselves from religious matters. There can be jealousy and suspicion between religious groups, and a very complex societal problem can develop that is very difficult to resolve.”¹

Why does it happen? Why the inter-religious violence? According to Aidir Amir Daud, vice-director of the Indonesian daily newspaper *Fajar*, “The Indonesian constitution guarantees religious freedom, but this is not always applied in practice. Religion is the right of the individual, but other factors such as affluence can cause problems. The key is communication between religious leaders and a working together for socio-economic equality.”²

In other words, the root causes are economic, social and political. Religion is simply the tool that is used to gain control.

For a country to move from general tolerance to extreme intolerance in just a few short years speaks of the power of religion, and its ready exploitation by those seeking political authority and control. The fuel is human competition. For where there is enough food, land, water and other resources, the need to fight other communities is much reduced. But as the world becomes increasingly overpopulated, then such scenarios can only increase. Religion is so close to the heart of how any society defines itself that those seeking political power and worldly goals will readily use such a potent weapon. The exploitation of religious beliefs is not new—witness the jihads and crusades from history—but its greatly increased impact and extent will be the dominant factors for the foreseeable future.

AFGHANISTAN

The extreme militant Taliban militia that formerly controlled most of Afghanistan also exemplifies the use of religious dictates as powerful, political tools. Claiming that their interpretation of the Islam mandated their actions, the Taliban essentially barred women from participation in education and many aspects of society; decreed death to anyone leaving the Islamic faith or encouraging another to do so; banned access to the Internet; destroyed the religious heritage of other faith (e.g. the Buddhist statues); and required religious minorities to wear a distinguishing label, reminiscent of Hitler’s yellow star requirement for Jews.

Through the total integration of religion and politics in Afghanistan, there was no opportunity for political dissent, for that equates to religious apostasy.

Religion is completely hijacked in the service of the state, an unquestionable tool of oppression and discrimination to which there can be no opposition.

THE SUDAN

So too in Sudan, which was named in the 2000 report of the *US Commission on International Religious Freedom* as the world's worst violator of religious liberty. The 2001 report indicates that the situation has not improved, but deteriorated:

“The situation in Sudan has grown worse in the year since the release of the Commission’s report. The government of Sudan continues to commit egregious human rights abuses – including widespread bombing of civilian and humanitarian targets, abduction and enslavement by government-sponsored militias, manipulation of humanitarian assistance as a weapon of war, and severe restrictions on religious freedom.”³

The Islamic government of the north is waging a genocidal war against the south, whose population is mainly Christian and animist. Through a policy of massacre and destruction of villages, the government uses “Islamicization” as a tool to forcibly convert and enslave those captured in the south. Girls are forced into slavery and worse, boys forced to join the army and sent to fight in the south.

The methodology is one designed to eradicate all opposition and to enforce conformity. The tool of choice is religion; religion exploited as a vicious mechanism of destruction and death for all who will not comply.

Many moderates protest that such use of religion is against the fundamental principles of the faith in question. It is undeniably true that all the major religions speak to greater or less degrees about tolerance and compassion. Yet when religion becomes aligned with the political extremists, such moderate views are lost in the rhetoric and violence. No one wants to be seen as being in opposition to what is deemed a matter of faith, of being opposed to those who have not only demanded what is Caesar’s, but what is God’s too.

INDIA

India provides a troubling picture of religious trends. The development of “Hindu fundamentalism” correlates with the establishment of BJP, the “Hindu nationalist” party that now forms the government of India. India has traditionally been a tolerant and pluralistic society as far as religion is concerned. It has welcomed religions from beyond its borders, and Hinduism itself has

always promoted toleration and acceptance. That is not to say that there have been no conflicts in the past, but generally India has been free from major religious conflict.

Today that tolerant scenario is fading rapidly. The exclusivistic attitude of the “Hindu national” politicians has encouraged an atmosphere of suspicion and fear, with inter-religious conflict the obvious result. Instead of being an inclusive expression of religion, Hinduism is now being marketed as the “national faith.” Calls are made from the government to resist the work of Christian missionaries.

Any attempts by other religious groups to share their faith and gain converts is strongly resisted, and legislation is already in place in some areas which requires government permission to convert from one faith to another. Antagonism to Christian missionary work is becoming increasingly intense, and viewed as a threat to national security and identity. Pressure to re-convert to Hinduism is strong.

A note left at the site of three bombings in the northern state of Bihar said, “Stop conversations under the pretext of social service. India is a Hindu nation. Christians leave India.”

Why? Again, this is no accidental process. The role of religion in society is exploited and corrupted to self-serving ends by those who wish to gain power. By equating faith and nationalism, politicians gain support – for who would dare contradict what is presented as an “article of faith”? Religion is once again hijacked, and the threat to religious minorities is ominous. For in situations of crisis, the majority seeks scapegoats. In a country of more than one billion people, with great competition for food and water, with most resources rapidly being depleted, it does not take much imagination to foresee inter-religious conflict of cataclysmic proportions.

WHEN SOCIETY REACHES BREAKING POINT, RELIGIOUS TOLERATION IS A SCARCE COMMODITY

“Militancy” in religion takes many forms, yet is a very “portable” concept. To have suggested, even just a few weeks ago, that a militant form of Buddhism could be developed, would have seemed absurd. Such an idea is no longer laughable. Even Buddhism, which is so linked with concepts of peace, tranquility and acceptance, has been hijacked to support nationalistic and political concerns.

For example in the Himalayan kingdom of Bhutan, Buddhism is the state religion. Conversion to other religions is illegal. Attacks on minority religious groups are increasing. Christians have been arrested and beaten. Some have been forced to leave the country.

Again, why? Because the religion of the majority—in this case, Buddhism—is viewed as essential to social stability and order. Nothing is to disturb society, and so a hostile and antagonistic attitude is developed towards other religious faiths. The result: severe restrictions on religious freedoms, and the potential for violent conflict.

On the international scene, such exploitation of religion for political and secular objectives does not augur well for the fundamental human rights. The pressures of overpopulation, resource depletion, famine, disease, pollution, crime and so on all impact society in negative ways that contribute to the desire to hijack religion for personal and national purposes.

Consequently the currently accepted norms of religious liberty and freedom of conscience will come under increasing attack. While nations nominally subscribe to such international instruments as the *U.N. Charter*, the *Universal Declaration of Human Rights*, and the *Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief*, such documents no longer seem to be well respected. One high-ranking diplomat at the U.N. referred dismissively to the Universal Declaration on Human Rights as “western philosophy,” and that her country did not believe it should be bound by such agreements.

Without becoming alarmist, such a situation should be cause for grave concern. When religion is hijacked, so is our fundamental humanity. Religion lies close to the heart of who we claim to be. So in exploiting religion, we exploit ourselves. As a result, multiplied millions are deceived by duplicitous leaders who claim to be speaking in the name of faith. What hope is there for separation of church and state when religion is employed in the service of politicians?

In his latest annual report, Professor Abdelfattah Amor, United National Special *Rapporteur* on Religions Tolerance writes:

“The worldwide trend as regards to religion and belief is towards increased intolerance and discrimination against minorities and a failure to take account of their specific requirements and needs ... Sadly, tolerance and discrimination based on religion or belief are ever-present in the world ... An appraisal of the status of freedom of religion and belief in the world today reveals a somewhat negative and disturbing picture.”⁴

There is no question that the intermixing of religion and politics will become an even greater part of this “negative and disturbing picture.” Amor goes on to describe what he calls “the ever-worsening scourge of extremism. This phenomenon, which is complex, having religious, political and ethical roots, and has diverse objectives (purely political and/or religious), respects no religion. It has hijacked Islam (as in Afghanistan, Egypt, India, Indonesia, Jordan, Lebanon, Pakistan, the Philippines and Turkey), Judaism (is Israel), Christianity (in Georgia) and Hinduism (in India) ... The casualties of this aberration are ... religions themselves.”⁵

The casualties are religions themselves. And, it should be added, the freedom to believe, practice and worship that go along with religious tolerance and freedom of conscience.

The irony of the hijacking of religion is that the aim – to create a unified society based on the enforcement of one religion – is an illusion. The result is the complete opposite: the fracturing and destruction of society, and the degrading and debasing of humanity. For as any individual’s religious freedom is violated, we are all violated. For there can be no truth in force and imposition, in hatred and violence. In the words of Thomas Clarke, “All violence in religion is irreligious, and that whoever is wrong, the persecutor cannot be right.”⁶

That is true tragedy – that in enforcing religion, hijacking the belief system – then truth is turned to error, right becomes wrong, and the whole set of moral and ethical values are debased and corrupted. The result for religious liberty is devastating.

For hijacked religion is no religion at all.



E N D

1. Personal interview, February 14, 2001.
2. Personal interview, February 14, 2001.
3. USCIFR report 2001, p. 123.
4. E/CN.4/2001/63, pp. 46-47, available at: [http://www.unhchr.ch/huridocda/huridoca.nsf\(symbol\)/E.CN.4.2001.63.En](http://www.unhchr.ch/huridocda/huridoca.nsf(symbol)/E.CN.4.2001.63.En).
5. *Ibid.*, p. 46.
6. Thomas Clarke, *History of Intolerance* (1819 ed.), Vol. 1, p.3, available at <http://www.preparingforeternity.com/br/br101.htm>.



PROSELYTISM IN THE CONTEXT OF GLOBALIZATION, RELIGIOUS LIBERTY, AND NONDISCRIMINATION

BERT B BEACH

Vice President, International Religious Liberty Association

THE CURRENT SETTING

We are living in a newly found climate of religious freedom. Increasingly, we no longer have government protected (and financed) state churches with religious “hunting reserves.” Islamic countries, of course, offer a different picture of their own. Proselytism is an inevitable sign or consequence of religious division and growing religious pluralism. As there will be political campaigns by competing parties where there is democracy; as there will be economic competition where there is an open market; thus there will be competitiveness in the religious forum. We must strive, however, to see that this clash of religious beliefs be fair, without discrimination, hatred, prestige chasing, vindictiveness, or acrimony.

NON-UNIFORMITY REGARDING EVANGELISM

Evangelistic mission is an inescapable mandate of Christianity.

In the New Testament we find not only the “great commandment”—to love God and neighbor— but also the “great commission” to go, teach, baptize and disciple all people as followers of Jesus Christ (Matt. 28:19, 20). Christianity can be said to have a global vision.

On the other hand, evangelism and its correlative activity, proselytism, are not generally practiced by Hindus and Jews, and only to some extent by

Buddhists. Islam practices what appears to be a two-sided form of proselytism, promoting Islam in non-Muslim areas, but prohibiting any evangelism/proselytism in Muslim countries, thus endeavoring to ensure that people born into Muslim homes remain by all means Muslims. As Silvio Ferrari has pointed out, in Muslim countries the condemnation of any apostasy from the integral Muslim way of life is clearly linked to the prohibition of proselytism. (*Fides et Libertas*, 1999, p. 14)

DISAGREEMENTS AND AGREEMENTS REGARDING EVANGELISM

There are no doubt significant disagreements among Christians regarding mission, witness, evangelism, and proselytism.

Disagreements regarding ecclesiology and sacrament, disagreements between those who are outgoing and those who emphasize evangelism as internal renewal, between those who think globally and see the world as their parish and those who have an exclusivistic or canonical territorial view of the church and think locally or nationally. There will also be in evangelism/proselytism disagreement between those who believe in the legal equality of all religious bodies, without discrimination, and those who claim that historical precedence and/or greater numerical size gives them special and more rights than others. Thus, we find laws against proselytism in various countries where there is a majority religion linked to national identity, such as Greece, Ukraine, Israel, and many Muslim countries.

One reason for anti-proselytism legislation is a false hope and illusion: achieving uniformity or religious homogeneity. Such societies can no longer exist and keep power in this age of globalization, rapid change, travel, and instantaneous communication of information, except by a holocaust type of approach, religio-ethnic cleansing (as appears to be the case in parts of Indonesia), use of religious police, and medieval totalitarianism.

There are, however, some general agreements among Christians that have a bearing on evangelism:

Evangelistic mission is central to the Christian faith

Christ has a unique role

Power of prayer

The church community is not conterminous with society

Evangelistic mission is what *God does* more than what human beings do, albeit God works through human instrumentalities.

The implications of this last point are not always fully understood. If God is the Author, then when a Christian is hindered in evangelism he or she feels violated, limited, discriminated against, restricted in obedience to the divine mission, even persecuted.

TENSIONS BETWEEN RIGHTS

We already mentioned the great new fact of our era—religious liberty. However, there seems to be a conflict between the *universality of religious freedom*, as supported by the United Nations instruments and other documents, and the concept of *cultural relativism of religious freedom*. Furthermore, there is also a perceived conflict between the right to freely change religion and the right to freely *keep* a religion, the right to try to convince other people, and the right to be left alone. Two other rights, which at times are complementary, but at other times are in opposition to each other, are the right of the individual person and the right of the institution (e.g. - the church). Of course, every person should be able to exercise the right to determine to which organization to belong or not to belong, and similarly every religious organization should have the right to decide its own membership requirements, including “entrance” and “exit.” The problem comes when the religious organization does not want to permit leaving and uses the police power of the state to enforce membership. Van der Vyver says very pointedly: “By submitting to totalitarian control of their internal affairs by governmental agencies, the religious institution forfeits its internal sphere sovereignty and becomes a pawn of religious oppression by the powers that be.” (Johan D. van der Vyver, “Religious Freedom and Proselytism,” *The Ecumenical Review*, Oct. 1998, p. 422)

Despite these tensions, the UN has clearly upheld the right to spread one’s religion by teaching and manifesting it. The final act of the UN World Conference on Human Rights (Vienna 1993) affirmed that “All human rights are universal, indivisible, and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner...it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights.” (Part I, par.5) “Equal manner” means no discrimination.

DEFINITIONS OF PROSELYTISM

Looking again more closely at the question of proselytism, we have to remember that historically, the term did not have a pejorative connotation, as it gener-

ally does today. Unfortunately, there has been for some years a tendency to give proselytism a negative sectarian meaning, by using it to refer to witness and evangelism by other religious confessions, never one's own, for, after all, reprehensible methods are never used by "my" church, but only by "other" religious bodies!

I prefer to use the term "improper proselytism," than simply "proselytism." Proselytism is an equivocal term, rife with misapplications. There are many different definitions of proselytism, many self-serving. Here are some definitions:

- 1 • Proselytism is witness and evangelism aiming at conversion.
- 2 • Proselytism is false or corrupt witness, using *wrong methods*.
- 3 • Proselytism is sheep-stealing with a view to enlarging one's own church and empire-building, based on *false motivation*.
- 4 • Proselytism is evangelizing the wrong people, using *false targets*.
- 5 • Proselytism is interfering with the belief and religious life of other people, *false tactic*.
- 6 • Proselytism is keeping people ignorant about real faith and religion, in essence, keeping them captive in the church of their accidental birth, *false confession/formalism*.
- 7 • Proselytism is a conscious effort with the intention to win members of another church, *false strategy*.

IMPROPER PROSELYTISM

As already stated, it seems preferable to use the term "improper" or "false" proselytism. It is easier to come to an agreement on this basis, because most people are opposed to what we might call corrupt witness. We have false proselytism when there is:

- 1 • Use of cajoling, material inducements, and even bribery to win adherents.
- 2 • Use of intimidation, such as a superior in the workplace exerting improper pressure on employees.
- 3 • Offering social or educational inducements.
- 4 • Falsely attributing teachings or beliefs to others, which they do not hold.
- 5 • Any form of evangelism involving fiscal fraud or extortion.
- 6 • Use of slander and libel.
- 7 • Keeping individuals in intensive indoctrination and separated from family and old friends.
- 8 • Consciously and as a matter of strategy taking advantage of people's misfortune (e.g. poverty, ignorance, sickness, death in the family).

Many and maybe most people would agree that these eight approaches constitute false proselytism (though some would say that all proselytism is by definition false!) There are a number of problems that arise, some ethical, some ecumenical, and some doctrinal. For example, evangelistic activities by members of one church among members of another church (even non-practicing or lapsed formal members) are seen by some as *ipso facto* false proselytism. They would say: if you must, go preach in non-Christian countries. The answer is: while every Christian has a right and duty to witness, not everyone is called to go to non-Christian countries. Furthermore, Christian witness cannot be limited because one's neighbors are formal members of a church.

WHO IS "CHURCHED"?

There are also the fundamental questions regarding *who is a believer*, who is a Christian, *who is "churched"* and who is "unchurched"? Is a baptized person automatically a believer all his or her life, even though that person never (or almost never) goes to church, has no living faith, and apparently no living connection with Christ? Is such a person really "churched"? This question becomes all the more significant due to the substantial inroads of secularism and agnosticism within formal Christian ranks, not least in established churches.

COMMON WITNESS AND PASTORAL CARE

The suggestion is made in ecumenical circles that the answer to some of the proselytism problems lies in joint witness based on love and mutual recognition. This is the approach suggested by some Orthodox Church leaders. Where there may be, for example, inadequate pastoral care, evangelical churches should support existing historical churches by engaging in common witness. This makes some sense when applied to situations where there are already well-developed ecumenical relations and mutual respect and equality, and basic doctrinal agreement. But this is difficult to envision where there is substantial doctrinal disagreement and where newer (though not necessarily new) churches are looked down upon, discriminated against and, at times, treated by some established churches as a sort of religious plague to be vaccinated against, at best, or preferably placed in quarantine by government action!

It is also at times claimed that the proselytizing efforts by the evangelicals are nullifying the pleasant climate of Christian love that existed in the past.

However, historically this has often not been the case. For example, in eastern Europe before the communist revolution, the minority churches or religious groups were discriminated against and often persecuted, not infrequently with the connivance of the majority churches.

Evangelistic cooperation presupposes a modicum of agreement in theology and ecclesiology, respect, conversations and dialog. This ecumenical potting soil is often lacking. Churches that have been around for well over a century or longer are identified as sects and refused recognition or status as churches. There are cases where churches that complain vociferously about western proselytism, refuse conversations or dialog and discriminate against other churches. Is it logical to talk about Christian love under these conditions? One can rightly ask whether what the anti-proselytism lobby wants is not so much cessation of proselytism, as the elimination of other religious bodies seen as unwanted competition.

RIGHT TO BE PROSELYTIZED

There is one aspect of proselytism that is often overlooked. In dealing with the right to proselytize, one must also consider the *right to be proselytized*, that is the *right to receive information*, to be taught, to grow in religious experience. We should recognize not only the right to witness and impart information, but also the right to receive information. This is one of the basic human rights recognized by the United Nations. Any strict anti-proselytism regulations cut off the supply of new and different religious information, restricting both the dissemination and receiving of ideas. Furthermore, should we not also listen to the witness and views of those who have been proselytized and converted from one church (usually formal belief) to another church (usually living faith)?

RIGHT NOT TO BE COERCED

Spiritual teaching, which may lead individuals to abandon their organized religion, *of their own free will*, is not improper proselytism, as indeed the European Court held in the Greek Kokkinakis case. The crucial issue of proselytism is the question of *coercion*. If there is coercion, such proselytism is improper and to be condemned as false. Tad Stahnke puts it this way: "Thus, the more that proselytism interferes with the ability to freely choose, the more the regulating power of the state may be attracted." ("Proselytism and the

Freedom to Change Religion in International Human Rights,” *BYU Law Review*, 1999, No. 1, p. 327)

While opposing harmful competition, the *Charta Oecumenica* adopted (April 27, 2001) jointly by the Conference of European Churches and the Catholic Council of European Bishops’ Conferences, makes it clear “that every person can freely choose his or her religious and church affiliation as a matter of conscience, which means not inducing anyone to convert through moral pressure or material incentive, but also not hindering anyone from entering into conversion of his or her own free will.”

It is my view that a key—perhaps *the key*—issue in proselytism is the use of *force*. In this context, force is a two-edged sword: force can be used to pressure people, to cram a new religion down peoples’ throats, to coerce them in various ways to change religious affiliation. This is wrong. However, force can also be used to twist peoples’ religious arms, constraining them to remain within a given religious affiliation. This is also wrong. We have here what I would call reverse proselytism. In essence, forcing people to remain formal members of the church in which they were baptized, usually soon after birth, with no free choice of their own. In this connection, all kinds of constraints can and are at times used:

- 1• Social pressures
- 2• Cultural pressures
- 3• Family pressures
- 4• Patriotic pressures
- 5• Economic pressures
- 6• Use of force (by local community, police)
- 7• Employment threats

VIOLATIONS OF ETHICAL OR MORAL NORMS

Recognizing that false proselytism is improper, it must also be said that most wrong forms of evangelism come under the aegis of ethical behavior, not statutory limitations. Much *false proselytism is a violation of moral norms not legal norms*. Such behavior may be undesirable and morally suspect, not to say reprehensible, but the government is not there to correct faulty thinking or repress false religious witness. The state cannot read minds or consciences and motives. State involvement in this sphere can easily lead to great human right abuses and partisan discrimination. While we can agree on various defi-

nitions of improper proselytism, it is not easy to always know where to draw the line and where just public order and the rights of others are violated. Indeed, the state must protect such rights, but most false proselytism falls into the area of moral violations which should not come under the purview of the state. Indeed, the Hungarian Constitutional Court was quite right in holding (1993) that it is not for government authorities to decide what is proper religion, but a matter of “self-interpretation by the churches.” (“East European Case Reporter of Constitutional Law,” *The Ecumenical Review*, October 1998, p. 425)

GUIDING PRINCIPLES FOR RESPONSIBLE DISSEMINATION OF RELIGIOUS BELIEF

Let us present a few thoughts regarding a possible “Code de Bonne Conduite” dealing with proselytism. As already mentioned, there are two-sides in the matter: the proselyters (outside) and those subject to proselytism (inside). Both sides need to act properly and respectfully.

To deal with the issue of proselytism and aiming at a constructive relationship between religions and human beings, the International Religious Liberty Association (IRLA) convened conferences of experts in 1999 and 2000 (primarily in Spain). The following 14 important principles were agreed to by consensus of the experts, for the responsible dissemination of religious beliefs: (*Fides et Libertas*, 2000, pp. 96-98)

- 1 • To teach, manifest, and disseminate one’s religion or belief is an established human right. Everyone has the right to attempt to convince others of the truth of one’s belief. Everyone has the right to adopt or change religion or belief without coercion and according to the dictates of conscience.
- 2 • Aware of their common responsibilities, religious communities should build relationships through contacts and conversations, manifesting convictions with humility, respect and honesty. Dialogue should replace confrontation. In witnessing to others or in planning missionary activity, the inviolable dignity of the addressed persons requires consideration of their history, convictions, way of life, and cultural expressions.
- 3 • Religion, faith, or belief is best disseminated when the witness of a person’s life is coherent with the message announced, and leads to free acceptance by those to whom it is addressed.

- 4• In disseminating faith or beliefs, one should be truthful and fair towards other religions and beliefs. This requires comparing the ideals of one's own community with the ideals of other communities, and not with the alleged failures of others.
- 5• In the dissemination of religion or beliefs, both the rights of majority and minority should be protected in accordance with international human rights instruments which condemn all forms of discrimination and intolerance.
- 6• In referring to other religious and belief communities, respectful and non-offensive terminology should be used.
- 7• Social and humanitarian activities should not be linked to the dissemination of faith or beliefs in a way that exploits the poor and vulnerable members of society by offering financial or other material incentives with the intent to induce people to keep or change their religion or belief.
- 8• While the right to hold and manifest religious beliefs and convictions is recognized, inter-religious strife, hatred, and antagonistic religious competition are to be avoided and replaced by dialogue in truth and mutual respect.
- 9• No one should knowingly make false statements regarding any aspect of other religions, nor denigrate or ridicule their beliefs, practices, or origins. Objective information about these religions is always to be desired in order to avoid the spreading of ill-founded judgments and sweeping prejudices.
- 10• Dissemination of religious faith or belief should respect the addressed person's freedom to choose or reject a religion or belief without physical or psychological coercion, and should not force that person to break the natural ties with family, which is the foundational component of society.
- 11• Using political or economic power or facilitating its spread under the guise of disseminating religious faith or belief is improper and should be rejected.
- 12• Responsible dissemination of religious faith or belief should accept that it may invigorate the faith of the persons or groups addressed, or lead to a free and unfettered choice to change one's religious affiliation.
- 13• Bearing in mind their responsibilities for the common good of society, religious communities should, where feasible and in harmony with their

convictions, join in efforts aimed at improving justice and welfare, and peace among peoples and nations.

- 14• Where conflicts arise with respect to dissemination of religion or belief, the relevant communities should consider entering into a process of conciliation.

SOME SOLUTIONS AND CONCLUSIONS

- 1• There is a need for dialog between 1) proselyters; 2) opponents of any form of evangelism among baptized members of a church; and 3) those who have been proselytized. Dialog within one side is really a waste of time—like preaching to the choir about the importance of being in church next week.
- 2• Proper evangelism/proselytism must involve tolerance, not compromise, but tolerance that does not discriminate, and respects the equal rights of others. Not infrequently “there can be a lack of respect for the beliefs and practices of minority groups in contexts dominated by a majority church, and an inability to see them as full and equal partners in society.” (*Joint Working Group Between the Roman Catholic Church and the World Council of Churches, Seventh Report, 1998, p.48*) Dominant religious groups must not push for or allow restrictive laws to be passed limiting or disfavoring the witness of other traditions.
- 3• Any form of coercion to *change* or *keep* one’s religion must be condemned and rejected, for every human being has the inalienable right to adopt the religion of his choice and/or change his religion according to conscience. This right is of the essence of human dignity.
- 4• Evangelism yes, with vigor and with modern, effective means of communication, but with a clear sense of responsibility and limited knowledge. We may know much truth, but only God knows the truth in all its fullness.
- 5• Religious views and beliefs that cannot stand up for themselves in a free religious market and survive in a climate of freedom, equality and evangelistic persuasion, may well be on the way to the museum or the library. To use the heavy hand of the state to protect such religious groups from the forces of proselytism and religious persuasion weakens the moral integrity of such religious bodies.

- 6 • “The responsibility of fostering religious freedom and the harmonious relations between religious communities is a primary concern of the churches. Where principles of religious freedom are not being respected and lived in church relations, we need, through dialog in mutual respect, to encourage deeper consideration and appreciation of these principles and of their practical applications for the churches.” (“Challenge of Proselytism and the Calling to Common Witness,” *Joint Working Group between the Roman Catholic Church and the World Council of Churches, Seventh Report*, 1998, p. 47)
- 7 • False proselytism does not liberate, but enslaves and replaces ignorance with subservience to legalism and isolation from the dynamic realities of life. In contrast, authentic evangelistic mission must be liberating—liberation from intellectual and spiritual blindness, liberation from confining ecclesiastical structures, liberation from dead formalism. Such evangelism will lead people to enjoy the freedom Jesus spoke about when He said, “the truth shall make you free.” (John 8:32)



E N D



INTERNATIONAL PROVISIONS FOR PROSELYTISM: THE UNITED STATES

MITCHELL A. TYNER

Legal Counsel, International Religious Liberty Association

Is there freedom to proselytize in the United States? The short answer is of course, there is. But, as usual, the short answer misses some important nuances.

The freedom to proselytize involves at least two facets: the freedom to change one's religion, and the freedom to urge another, by effective means, to change his/her religion. The first has long been established in American constitutional jurisprudence. The second is the subject of ongoing struggle as it is far more threatening to majoritarian impulses and established interests.

THE RIGHT TO CHANGE RELIGIOUS BELIEF

No American law or court decision overtly states that Americans have the right to change their religious views. That right, instead, is an application of the entrenched principle that government must be neutral in religious matters, and must treat all religions equally.

This principle was enunciated in an early church property dispute, where the Supreme Court was asked to identify the rightful owners based on adherence to true doctrine. Said the court, "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect".¹ Religion "should flourish according to the zeal of its adherents and the appeal of its dogma," without the influence of government.²

In a 1944 case in which a man was accused of fraud by the dissemination of religious doctrines he allegedly knew to be false, the court stated that freedom of thought, which includes freedom of religious belief, is basic in a society of free men. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or

beliefs.... The Fathers of our Constitution...fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views."³ The right to hold and act upon convictions obviously includes the right to change those convictions.

In what has been described as its finest hour from a religious freedom point of view, the court, in the midst of World War II, held that Jehovah's Witnesses children could not be forced to participate in a pledge of allegiance that they found religiously repugnant. Justice Jackson, for the majority, wrote:

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no election.

"We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes.... Freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order."

"If there is a fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which would permit an exception, they do not now occur to us."⁴

A more modern statement of the right to change one's religion may be found in the 1987 case of *Hobby v. Unemployment Appeals Commission of Florida*.⁵ After working 2 ½ years, Paula Hobby informed her employer that she had become a Seventh-day Adventist, and that she could no longer work on her Sabbath, which extended from sunset on Friday to sunset on Saturday. Although she and the store manager were able to work out a mutually satisfactory coverage arrangement, upper management fired Hobby for her refusal to work when scheduled. The employer, Lawton Jewelry

Company, also contested Hobby's application for unemployment benefits on the ground that she was disqualified, by having been discharged for work-related misconduct.

The case appeared to be controlled by earlier decisions of the Supreme Court holding that one could not be denied unemployment benefits because of conduct mandated by or forbidden by religious belief. For example, in *Sherbert v. Verner*, a Seventh-day Adventist lost her job because she would not work on the Sabbath, and was subsequently denied unemployment benefits because she was not available for work as required by the South Carolina statute. The Supreme Court ruled that such a denial was the equivalent of a tax on her religion.⁶

In 1981, the court was asked to reconsider this ruling. Eddie Thomas, a Jehovah's Witness, worked for a steel mill in Indiana. When production slowed, he found that all remaining work in the mill involved military armament, work that to him was religiously unacceptable. He quit his job and was subsequently denied unemployment benefits, in part because other Jehovah's Witnesses similarly employed did not resign. The court, citing *Sherbert*, awarded Thomas the requested benefits.⁷ These, then, were the cases that appeared to control the Hobby appeal.

The state attempted to distinguish the previous cases by emphasizing that Hobby was the 'agent of change.' In *Sherbert* and *Thomas*, the employees held their religious beliefs at the time they were hired; subsequent changes in the conditions of employment made by the employer caused the conflict between work and belief. But Hobby's beliefs changed during the course of her employment, creating a conflict that had not previously existed and that was not of the employer's making. In essence, she should be denied otherwise available benefits because she changed her religion.

Not relevant, said the court: "In effect, the Appeals Commission asks us to single out the religious convert for different, less favorable treatment than that given an individual whose adherence to his or her faith precedes employment. We decline to do so. The First Amendment protects the free exercise rights of employees who adopt religious beliefs or convert from one faith to another after they are hired. The timing of Hobby's conversion is immaterial to our determination that her free exercise rights have been burdened; the salient inquiry under the Free Exercise Clause is the burden involved."

Hobby is significant in that it involves something that governments and most other organizations hold dear: the expenditure of funds. The right to change one's religion is of sufficient value as to trump an appeal to conserve

government funds! The first part of the proselytization equation, the freedom to change one's religion, is secure.

THE RIGHT TO URGE ANOTHER TO CHANGE RELIGIOUS BELIEF

The foregoing notwithstanding, another thread, constant in American case law on religious freedom, must be recognized. The [first] Amendment embraces two concepts, freedom to believe, and freedom to act. "The first is absolute, but in the nature of things, the second cannot be."⁸ The second part of the proselytization equation involves urging others, by effective means, to change religious views – actions, not belief, and therefore not the subject of an unlimited freedom. How has this second part of the right to proselytize fared in American life?

A chain of cases beginning in 1938 rejected numerous attempts to restrict the sort of public advocacy of religious belief necessary for effective proselytization. In the first of this group of cases, the court ruled that an ordinance prohibiting the distribution of literature of any kind is an unconstitutional abridgement of the freedom of the press.⁹ The next year the court ruled that an ordinance making it unlawful to distribute handbills on a sidewalk, street, or other public place is unconstitutional.¹⁰

In *Cantwell v. Connecticut*, the court held that a state may not unduly suppress communication of religious views under the guise of conserving public peace or deciding what is a legitimate religion for solicitation purposes. This decision for the first time expressly applied the Free Exercise Clause to the states through the Fourteenth Amendment.¹¹

But religious advocacy did not always win. As World War II began, the court ruled that it is not unconstitutional to charge a parade or assembly fee so long as the amount of the fee reflects the expense incident to administration of licensing and the maintenance of public order. The authority of a municipality to impose regulations in order to assure safety in the use of public space is not inconsistent with civil liberties.¹²

City ordinances designed to deter the dissemination of unpopular religious opinion did not fair well during this period. In 1943, the court decided cases involving five such ordinances. It held the following: an ordinance prohibiting the dissemination of handbills on public property is unconstitutional,¹³ an ordinance prohibiting all distribution of handbills is unconstitutional,¹⁴ a state may not prohibit the distribution of handbills in pursuit of a religious

activity because handbills seek to raise funds in a lawful manner; [even if the ordinance were non-discriminatory, liberties guaranteed by the First Amendment are in a preferred position];¹⁵ the mere fact that religious literature is sold by itinerant preachers rather than given away does not transform evangelism into a commercial enterprise, subject to regulation;¹⁶ and an ordinance forbidding door-to-door distribution of handbills, circulars or other advertising matter is unconstitutional.¹⁷

The following year the court explicated one of the reasons for which religious freedom, specifically the freedom to proselytize, may properly be curtailed: the protection of minors. It held that a statute forbidding boys under 12 and girls under 18 to sell magazines in a street or public place is not an unconstitutional denial of the free exercise of religion.¹⁸ But it also ruled that a flat tax on a minister distributing religious material was not constitutionally acceptable.¹⁹ As the war ended, the court took up the question of how far these rulings should extend to private property. It held that the more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the First Amendment rights of those who use it,²⁰ and held invalid a statute prohibiting distribution of literature in a government-owned town.²¹

But not all methods of proselytization are permissible. Curtailment may be proper if done in the context of objective standards applicable to all users and applicants. Many decisions through the years have held that overly loud sound amplification by evangelists may properly be curtailed. But in the absence of standards, an ordinance prohibiting all use of sound amplification equipment infringes the right of free speech;²² the lack of standards in the issuing of licenses renders the practice open to discrimination contrary to the rights of both free speech and free exercise of religion;²³ ordinances which require that permits be obtained from local officials for the use of public places are unconstitutional in the absence of narrowly drawn, reasonable and definite standards.²⁴ But an ordinance leaving officials no discretion in granting permits for conducting religious meetings in public areas was upheld.²⁵

The foregoing cases basically state the law as it stands today: the requiring of a permit will be upheld if approval is subject to objective criteria rather than left to the discretion of officials as to who may or may not be issued such a permit. A fee for such a permit is permissible if it only reflects the cost of processing the application, and does not render the desired activity impossible. Religious activities must be allowed, but may be subject to reasonable time, place and manner restrictions. Within reason then, the second half of the

proselytization equation is also secure: religious people must be given the opportunity to urge others to change religious belief and affiliation.

More recently, the court has narrowed the protection of proselytizing activities by allowing the prohibition of the sale or distribution of all written materials on a fair grounds.²⁶ Although it ruled that an airport regulation banning all first amendment activities within a public or non-public forum was a constitutionally unacceptable,²⁷ the court also ruled that an airport terminal is a non-public forum where a ban on religious handbills and solicitation need only be shown to have a reasonable relationship to a legitimate state interest.²⁸

CURRENT CHALLENGES

The challenges continue, especially for minority and/or unpopular religions. Of the major religions in the United States, Islam is subject to the most consistent manifestations of intolerance. In the late 1980's Muslims in the university town of Starkville, Mississippi, found themselves with just such a problem. They sought to establish an Islamic Center for Islamic students in a residential neighborhood near a university. In that zoning district, religious uses were permitted only by exception. However, 25 houses of worship were operating in the district—16 as non-conforming uses and 9 by exception after the ordinance was enacted. The Islamic Center was the only applicant ever denied an exception. The federal district court, upheld on appeal, found that the city had no compelling interest in denying this exception when all other applications, all from Christian churches, had been granted.²⁹

In Hastings, Nebraska, a zoning ordinance permitted religious uses in residential areas, but not in the central business district. The city justified the exclusion by its concern for the effects of non-commercial use on the vitality of the commercial district. However, many other non-commercial uses, such as a Masonic Lodge, Alcoholics Anonymous, and a pregnancy counseling center, were permitted in the district. In ruling in favor of a church that challenged the ordinance, a federal court noted that “It is difficult to imagine how a church would displace commercial activity any more than a second story apartment, which is permitted.”³⁰ Unspoken was the reality that such an ordinance disproportionately affects new religions, groups who will seek to rent any empty space, as opposed to those religious groups that are already established in their own places of worship.

Perhaps the most flagrant of such cases is *Church of the Babalu Lukumi Aye v. City of Hialeah*. In *Lukumi*, practitioners of the Santaria faith leased land in

the City of Hialeah, Florida, and announced plans to establish a place of worship. A regular component of their faith is to kill animals as an element of worship and subsequently to cook and eat the animals. Shortly after the congregation's announcement the city adopted several ordinances aimed at prohibiting the sacrifice of animals but not other ritual slaughter, ostensibly based on public health concerns. But the legislative history, and strained definitions in the ordinances themselves, tended to show that the ordinances were merely a poorly veiled attempt to keep the Santarians out of Hialeah. The court stated that "The neutrality inquiry leads to one conclusion: the ordinances have as their object the suppression of religion. The pattern we have recited discloses animosity to Santaria adherents and their religious practices."³¹

Are these zoning cases really relevant to an inquiry about the freedom to proselytize? Yes, if such freedom really does include the right to urge others to change belief, and to use effective methods in doing so. How can an individual or group effectively do that if kept from establishing a meeting place and conducting the rituals of worship, as do all other religious groups?

Perhaps the key is in the phrase "as do all other religious groups" for therein lies a claim not just to freedom, but to equal freedom. That equality is something the city fathers and mothers in places like Starkville, Mississippi and Hialeah, Florida are evidently still not prepared to grant. It is a reminder to all of us who advocate religious freedom that the ultimate protection of our freedom rests not with courts and legislatures, as important as they are, but with the understanding of the governed, the people and their representatives, that without both a societal and governmental stance of objective equality toward all religions, we have, at best, a situation where all are free but some are more free than others.



END

1. *Watson v. Jones*, 80 U.S. 131 (1872).
2. *Zorach v. Clausen*, 343 U.S. 306, (1952).
3. *United States v. Ballard*, 322 U.S. 882 (1944).
4. *West Virginia v. Barnette*, 319 U.S. 1178 (1943).
5. *Hobby v. Unemployment Appeals Commission of Florida*; 480 U.S. 136 (1987).
6. *Sherbert v. Verner*, 374 U.S. 398 (1963).

7. *Thomas v. Review Board, Indiana Employment Security Commission*, 450 U.S. 707 (1981).
8. *Cantwell v. Connecticut*, 310 U.S. 296 (1940). See also *Reynolds v. United States*, 98 U.S. 145 (1879).
9. *Lovell v. City of Griffin*, 303 U.S. 444 (1938).
10. *Schneider v. State of New Jersey*, 308 U.S. 147 (1939).
11. *Cantwell v. Connecticut*, 310 U.S. 296 (1940).
12. *Cox v. New Hampshire*, 312 U.S. 569 (1941).
13. *Largent v. Texas*, 318 U.S. 418 (1943).
14. *Jamison v. Texas*, 318 U.S. 413 (1943).
15. *Jones v. Opelika*, 319 U.S. 103 (1943).
16. *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).
17. *Marin v. Struthers*, 319 U.S. 141 (1943).
18. *Prince v. Massachusetts*, 321 U.S. 158 (1944).
19. *Follett v. McCormick*, 321 U.S. 573 (1944).
20. *Marsh v. Alabama*, 326 U.S. 501 (1946).
21. *Tucker v. Texas*, 326 U.S. 517 (1946).
22. *Saia v. New York*, 334 U.S. 558 (1948).
23. *Niemotko v. Maryland*, 340 U.S. 268 (1951).
24. *Kunz v. New York*, 340 U.S. 290 (1951).
25. *Poulos v. New Hampshire*, 345 U.S. 395 (1953).
26. *Heffron v. International Society of Krishna Consciousness*, 452 U.S. 640 (1981).
27. *Airport Commissioners v. Jews For Jesus, Inc.*; 482 U.S. 569 (1987).
28. *ISKON v. Lee*, 112 S. Ct. 2701 (1992).
29. *Islamic Center of Starkville v. Starkville*; 840 F.2d 293 (5th Cir. 1988).
30. *Cornerstone Bible Church v. Hastings*; 948 F.2d 464 (8th Cir. 1991).
31. *Church of the Babalu Lukumi Aye v. City of Hialeah*; 508 U.S. 520 (1993).



THE SCHOLARLY DEBATE OVER PROSELYTISM

WALTER SAWATSKY

*Professor of Church History and Mission and Director, Mission Training Center of the
Associated Mennonite Biblical Seminary.*

The tensions over proselytism and freedom of conscience involve the many ways in which we have violated each other as Christians, as well as violent conflicts between the different people of the Book. The capacity for love between Christian confessions when all were beleaguered under Soviet atheist oppression seems to have been forgotten. Instead we remember those churchmen who participated in ecumenical events as persons who compromised with political power, who betrayed our true Christian purity by consorting with heretics and pseudo-Christians. When the impulse to exclude the “other” seized the early disciples of Jesus, Jesus’ response was to assert the priority of the love command above all others—to love God with heart, mind and soul, and your neighbor as yourself.

I offer here a highly selective review of recent discourse on mission, proselytism and Christian unity in order to remind ourselves what was really being said in essential terms, in contrast to public posturing. My intent is to offer a perspective on what seems to have changed and that represents new situations needing to be addressed, or that represents some movement toward love of neighbor. Whereas one could detect a growing appreciation for an ecumenism envisioned as a *koinonia* of relationships on the Trinitarian model, now, a decade after the transformations of 1989, that seems less attainable.¹ Yet the signals of Christian fellowship between member churches of the World Council of Churches (WCC) and non-member churches and movements have increased. That is, we have been moving beyond superficial ecumenical courtesies, often shaped by the culture of civil liberties that we owe to the Western Enlightenment, to addressing more directly the deeply-held differences between Christian traditions, particularly what lies at the root of our ecclesial fragmentation. In Europe, the context to which I am restricting my remarks, the recently signed *Charta Oecumenica*, with its references to seeking forgive-

ness and reconciliation, produced sharp reactions—a sign that real issues of pain were getting attention.

Our categories for thinking are often the essential problem. To speak of either Orthodox, Roman Catholic or Protestant in the singular involves drastic distortions, particularly true for Protestants with their proliferation of denominations and democratic unruliness. But the diversity within Orthodoxy, even just within Russian Orthodoxy, is also great. What constitutes an authoritative voice (whether measured dogmatically or sociologically) is so unclear that it is easy to fill treatises with quotations to prove the point of either the advocate or opponent of Orthodoxy. I must limit myself to a very sketchy picture of what is meant by the churches I am speaking about, yet still seek to show how that picture has been changing. So I will attempt brief sketches of the Russian Orthodox church (with short asides on sister churches), depict the changing categories for thinking about the Protestants of Eastern Europe and finally review the stages of the missiological discourse of the past decade.

My concluding reflections of the *Misseo Dei*, on recovering the essential relationship between ecclesiology and mission and on the nature of the Gospel that we are called to incarnate, are my attempt to name theological issues that need attention.

WAYS OF NOTICING MAJOR CHANGES IN THE 1990S

A simple way of identifying the changes within the Former Soviet Union (FSU) during the 1990s is to think of ministries passing through three phases: an initial phase of “frantic evangelism” (1988-93), a period of review and retrenchment (1993-96), then deliberate focusing and prioritizing (1997-present), that could be described as conscious contextualizing. These phases were determined by two parallel developments of internal and external change. First, the Soviet people were suddenly able to become religious if they wished, and they expressed that by lining up for Bibles, attending huge religious gatherings, getting baptized and opening churches. Secondly, there was a quiet, massive influx of charitable funds to assist in this religious resurrection.

During the second phase, the population was no longer so openly interested in religion. There was a widespread atmosphere of depression about political gridlock, economic chaos, corruption and societal breakdown. People learned to listen more carefully to the pluralist market of religions.

Similarly, Western donors lost interest, and missionaries noticed the complexities of what they once thought to be the simple task of bringing Christ to Russia. During the third phase, a much more differentiated and focused agenda became evident. Churches sought to formulate position statements, the state resumed interference, and Western activists shifted to a limited, but more long-term agenda. Therefore one must read church statements on proselytism and religious liberty within chronologically distinct phases.

RUSSIAN ORTHODOXY: FROM RESURRECTION, TO FEAR, TO NEW VISION

Between 1988 and 1995, the Russian Orthodox Church grew from 7,000 parishes with not quite that many priests, concentrated in the western regions of the FSU, to 20,000 parishes, with priests and bishops ordained to meet the exploding needs.² Those new clergy were drawn from a pool of active laity and from new converts with secular higher education, but in general the newly ordained were theologically untrained. The quality of education has remained a serious problem.³

There was also a striking change in the administration of the Russian Orthodox Church. The moderate new Patriarch Alexei II drew on the more open tradition of his Baltic roots and of his predecessors in the Leningrad Metropolitanate and theological academy, and the church was learning to function through regular bishops' councils. Archpriest Ekonomstev forged an alliance with numerous publishing houses for the dissemination of religious literature and to create the curriculum for the new church schools. With the breakup of the Soviet Union in 1990, autocephalous Orthodox churches sought reestablishment in Ukraine, Belarus, Georgia, etc. Invariably mixed with nationalist agendas and bad memories of the way the Russian hierarchy had been used in integrating the believers of the annexed territories after World War II, the situation degenerated into physical violence and formal denunciations in Ukraine. As a result, with at least three major Orthodox or Uniate bodies competing for church buildings and people's allegiance, scholars began pointing out that the fourth largest church entity in Ukraine was the Evangelical Christian Baptist Union.⁴ Several of the major studies of Ukraine during the Pew Foundation-funded Proselytism Project pointed out that the national identity of Ukraine needed to be based on something more inclusive than the claim that the Ukrainians were Orthodox or Uniate. In contrast, in

Armenia, a sense of the primary role to be played by the Armenian Orthodox church was more obvious.

The Western part of the FSU became the focus of clashes between Roman Catholic and Orthodox adherents, though a large part of the problem had to do with arbitrary resettlement of peoples in Siberia and Central Asia, as far east as Magadan. Since 1946, the Uniates (or Eastern Rite Catholics) had existed illegally. The ban was lifted in December 1989, before President Gorbachev visited the Vatican. Vatican actions followed to send priests, then bishops, to minister to the Catholics in the diaspora, including a bishop for Magadan. The Russian Orthodox Church reacted with outrage, claiming this to be a violation of canonical territoriality, and overlooking papal instructions to Catholic clergy to assist the Orthodox in getting reestablished, and only secondarily to function as part of the Catholic church. At a meeting of Orthodox and Catholic representatives in Balamond (Lebanon) in 1993, but without Uniate representation, some rules for interrelationships were worked out. That included disavowing the Uniate approach to reunion of the churches, in effect excluding the Uniates.

Specialists have pointed out that by 1992, the new Russian legislation on religion, which granted extensive religious liberties and allowed missionary work, was already being violated in various localities as officials seemed unable to function in a climate of religious freedom.⁵ By 1995 most wings of Russian Orthodoxy were in favor of new legal restrictions on missionary work, in order to exclude foreign sects. For a short period, spokespersons for Catholics, Baptists and other Protestant bodies called for the lifting of some restrictions on the influx of missions and sects of all stripes. That had changed by the time the newly restrictive legislation of 1997 went into force, marking the end of the era of reassessment.

Russian Orthodoxy began articulating priorities more deliberately at its Bishops' Council of 1994, though finding the specialists, funding and staff to put those policies into effect caused delays. Most significant are four events. In 1994, when the neophyte bishops were finding their voice at the Council of Bishops, there were strident voices denouncing ecumenism, and a resolution to withdraw from ecumenical organizations nearly succeeded. The Georgian Orthodox Church did withdraw in 1997. Second, by 1994, a working group had prepared a report for the Bishops' council—"On Orthodox Mission in the Contemporary World", that was approved. It declared that the Orthodox church must be missional, and needed to address the problem of helping "nominal" becoming "practicing" believers. It called for the reformation of

Russian Orthodox missions, to provide missional curriculum for the seminaries, to foster missiological research and to combat the problem of the sects.⁶ Most noticed in the West at the time were the remarks against the sectarian threat, including the indiscriminate application of the pejorative label by various Orthodox spokespersons to the Chinese sect *Aum Sinriike*, to Moon's Unification Church, to the evangelical sects of Russia of longstanding, the Lutherans and even the Roman Catholics. In July of 1998 a theological conference on "The Mission of the Church, Freedom of Conscience, and Civil Society" was held in Belgorod. Some of its papers served as official Orthodox articulation of the agenda ahead, together with the translation of a major study of *Eastern Orthodox Mission Theology Today*—all included in a 400 page textbook for theological schools, published in 1999 and simply entitled *Orthodox Mission Today*.⁷ Finally, at the Jubilee Council of Bishops in August 2000, the Russian Orthodox Church approved an unprecedented statement on *The Social Concept of the Orthodox Church*.⁸ Divided into 16 major chapters, the statement expanded on the holistic understanding of Orthodoxy's mission to society. There were also short reports on the work of the mission department and a major statement naming a long list of twentieth century martyrs for the faith. This too had great significance for our theme, since in the Russian/Greek linguistic tradition, the intimate link between *Martyria/Missia* is more readily apparent. The delegation sent to the WCC Assembly in Harare in December 1999 was very small and inexperienced; nevertheless, the Russian Orthodox as numerically the largest Orthodox body, still conscious of its tradition of claiming to be the Third Rome, did not leave the WCC, pushing instead for meetings of the new Forum as a venue less skewed in favor of the Western Christian mentality.

In short, the positive agenda of the Russian Orthodox Church is a concern to become more missional, to address social and economic issues responsibly from an Orthodox theological perspective and to continue to converse with other Christians.

THE OTHER CHURCHES AND THE MISSIONS

The church traditions that already existed throughout the Soviet era, the related mission societies and ecumenical organizations also encountered the three phases of shift. The best known Protestant church body, the All-Union Council of Evangelical Christians Baptists (AUCECB) (which had included at

least four distinct groups—Evangelical Christians, Baptists, Pentecostals and Mennonites) went through a series of metamorphoses. In light of the Baptist bias of that union since its formation in 1944, the Pentecostals left to eventually form several alternative denominations, some of the Evangelical Christians made such attempts with less success, and the majority of the Mennonites immigrated to Germany in 1993. The dissolution of the USSR resulted in the formation of national ECB Unions, very loosely linked through the Euro-Asiatic Federation of ECB Unions. This facilitated church administration within new national boundaries, but the strength of specific unions, including the Russian and Ukrainian ones, could not really be tested due to the subsequent financial catastrophe that prevented even simple institutional maintenance. Since at least 1994, the budgets of most national unions depended almost totally on foreign aid, in stark contrast to the self-sufficiency of the AUCEB throughout the Soviet era. During the frantic evangelism era, local pastors and central leaders, as well as many other individuals, devoted their time to meeting the spiritual hunger about them, taking whatever assistance from abroad that came their way, especially relief funding and literature. The ones who were able to continue into subsequent phases had essentially forged personal and regional partnership arrangements with foreign mission societies or sponsoring churches.

Other church bodies with a previous history in the FSU experienced new life and energy. Leading the way initially were the Seventh-day Adventists, who managed to secure permission to start a publishing house and then constructed a campus for its college that was touted as a model for other churches. Its tight international structure meant that key leaders were brought to Andrews University for training and returned home to provide skillful leadership. When the third phase emerged, the tensions were primarily those of international versus contextual ways of being Adventist.⁹ The Adventists grew in number and had their clashes with the Orthodox and others in terms of over-zealous proselytism and being labeled a harmful sect.

The Methodists, who had small congregations in Transcarpathia since pre-revolutionary times and well-established church structures in Estonia, also began to grow. In this case, the United Methodist Board of Global Ministries attempted to work ecumenically, but other Methodist bodies were more denominational, and after a decade new Methodist churches had emerged in Russia due primarily to external mission effort.

Among the most active in mission during the Soviet era were branches of the dissenting Evangelical Christian Baptists. A grouping of so-called

“Autonomous ECB” churches showed considerable energy and organizing skill to launch charity societies, then a variety of social service projects, as well as explicitly missionary societies. A leader among such indigenous missions was the Light of the Gospel mission, based in Rovno, Ukraine, but eventually Donetsk Christian University became the organizing center. Yet its main work was in northern and eastern Siberia, where groups of churches among non-Russian tribal communities were formed without automatic denominational ties to the classic free churches. Here too, the economic collapse forced dependence on foreign funding.

From America in particular came missionaries who were members of North American Protestant denominations not yet represented in Russia—Christian and Missionary Alliance, Evangelical Free Church, numerous independent Baptist denominations and missions, Disciples of Christ, etc. Mapping their influence, including identifying regions where they formed natural alliances with existing ECB congregations, is still in process. Generally, such mission programs began during the frantic period when there were many short-term visitors, extensive financial support and a surfeit of program ideas. Because of the denominational ties, a core of missionaries remained who had learned the language and had begun to establish networks with other missionaries in the classic mission pattern. They tended to avoid publicity about their programs. At issue now is the degree to which some association of evangelical churches that is contextually Russian, Ukrainian, etc., shapes the future, in contrast to the denomination-building of distinct international bodies.

There have been clashes between Orthodox and indigenous evangelicals, but they remain mostly at the level of incidents. More persistent and problematic is the inability of so many from the majority church to grant the minority churches a valid role in building civil society. Few evangelicals are ready to grant Orthodoxy a leading role with themselves as supporting cast.

CHANGING DYNAMIC OF THE PROSELYTISM DEBATE

The scholarly debate over proselytism is only thinkable because of the ways in which the Christian churches began to consider reconciliation after centuries of conflict. It is also predicated on the assumption of necessary religious freedoms. Here it suffices to name a few points of reference before turning to the most recent scholarly discussion.

It has become a truism that the ecumenical century was precipitated by the preceding century of mission, which had caused a growing network of mission and indigenous leaders to seek the strength of the larger church. Yet as Konrad Raiser recently noted when reflecting on his own long ecumenical career, the preoccupation with Faith and Order themes and work in the area of church and society issues had left him with a stronger sense of seeking full communion through church renewal, conversion and reconciliation, a church-centered ecumenism that on the other hand viewed mission as a concern for the world.¹⁰ Yet he discovered when teaching ecumenics a few years ago what Pope John Paul II also observed in *Ut Unum Sint*, namely that the credibility of the Christian witness depends on Christian unity. That is, the prayer in John 17, so often cited on behalf of ecumenism, has too easily been limited to the phrase “that they all may be one” and forgetting the line “that the world may believe that you have sent me.” Mission and unity are interwoven.

Early in the twentieth century, the Ecumenical Patriarch issued several calls for Christian unity, speaking at a time when the dissolution of the Ottoman Empire might be followed by a competition for converts by Christian missions. So the issue of proselytism was explicit agenda for the Eastern Orthodox since the beginning of ecumenical conversations that resulted in the formation of the WCC. When many Orthodox churches did join in 1961, and the International Missionary Council also became part of the WCC structure, this included a revised declaration distinguishing between true witness and proselytism. A fuller declaration of Common Witness emerged in 1971 from a working group of Roman Catholics and the WCC, which detailed at length what would be undesirable proselytism. The new protests against proselytism by several national Orthodox churches, the Russian Orthodox church in particular, refer to violations according to the categories listed in the 1971 document.¹¹ The essential problem is two-fold: the major changes in geopolitics and the fact of the growing influence and power of church entities who did not consider themselves signatories to the Common Witness documents.

Three major shifts have occurred in the past decade that stimulated the flurry of publications and conferences on proselytism. First is the new opportunity for mission in Eastern Europe and the Soviet Union, now in the context of religious freedom, after decades of the most severe persecution. The churches of Eastern Europe called for the evangelization of their nations and appeared to welcome the assistance of the Western churches. In this context, the Polish Pope also called for the re-evangelization of Europe. The recognition that Europe was also in need of Christian mission was articulated by var-

ious prominent persons throughout the century. There was a new emphasis on religious freedom that became part of the way the U.S. government understood its role in the New World Order, as it defined it. This involved the creation of a religious liberty office at the level of an under-secretary of state, the first incumbent being a former staff member of World Vision, an evangelical Protestant service agency.

A quite remarkable gathering of church leaders and lay activists met in Basel during that eventful year of 1989, to report on the discussions in many countries in the preceding year toward peace, justice and ecological accountability. The second such meeting took place in Graz in July 1997 and featured a serious review of “stumbling blocks on ecumenism.” A dozen presentations appeared the following June in Keston College’s journal *Religion, State and Society*. Quite striking were the ways in which ecumenism, peace between nations and charges of proselytism were intertwined. Several contributors emphasized the lopsided nature of the ecumenical movement, in that the Orthodox churches had been dependent on the generosity of the western Protestants for assistance and were expected to show friendliness and muzzle their deep reservations about the Christianity they were encountering. The *de facto* ‘doctrinal gulf’ deepened as a result. This was exacerbated by the neophytes, the new converts showing “exceptional loyalty to the church” and seeking in it their lost identity, while also seduced by nationalism and messianism that was cloaked in religious garb.¹² The legacy of doublespeak meant that the experiences of ecumenism during the Soviet era were grounds for suspicion of further relationships with the ecumenical partners in the West.

Non-theological factors kept recurring as major stumbling blocks to ecumenism. One was persistent ignorance of each other’s history and theology. The other was the degree to which churches in power or churches in minority status acted differently toward other churches.

As was true of the earlier ecumenical agreements on Common Witness, the voices present at the Graz conference were essentially WCC member churches, plus representatives of the European Conference of Catholic bishops. Anton Houtepen of the Dutch Inter-Church Institute for Missiology stated explicitly that “the difficulties surrounding proselytism in Eastern Europe do not stem from the ecumenical movement, but from groups and churches who want to remain aloof from this movement.”¹³ Technically speaking that was not entirely true, but it pointed to the inherent weakness of the ecumenical movement if too many churches of significance were choosing to remain aloof. In 1994, Joachim Wietzke had already pointed out that “branding the

missionary activities of these Christian minorities as proselytism reveals a traditional view of homogeneous denominational states for which there is no place in a plural Europe any longer.”¹⁴

Perhaps the most widely reported study project on proselytism was the Pew Foundation-funded study. It was divided into two major components—one concentrating on the immense diversity of Eastern Europe and the other on the FSU. In both cases the problem of proselytism was set in contrast to the problem of religious freedom. As project director John Witte Jr. put it when introducing a volume of essays on the proselytism problem between peoples of the Book, “two absolute principles of human rights have come into direct conflict: the foreign religion’s free-exercise right to share and expand its faith versus the indigenes religion’s liberty-of-conscience right to be left alone on its own territory.”¹⁵ It is the Orthodox writers who defend the right to be left alone in their canonic territory, and the evangelical Protestants who tend to cite the language of religious freedom. At its most excessive, one advocate of the religious-freedom approach asserted the logical necessity of defending “the right of others to proselytize if they feel compelled by conscience to do so.”¹⁶ That underlines the degree to which a preferential option for the individual is fundamental to contemporary understandings of the right to believe, and the degree to which a concern about proselytism reflects a preference for the importance of the group for the corporate body such as the church.

Are there other ways to frame the issues? Perhaps the most helpful contribution from the many regional studies are the creative attempts to point to issues that are more important. The most consistent finding is how little statistical success the proselytizing sects have had, and secondly, how majorities have shifted between Catholic and Orthodox, or between Baptists and Orthodox in quite specific regions. The implication of the latter finding is that canonical territory might better be seen as pock-marked, certain areas having either a population preponderance of the minority churches or the part of the population actively religious now seems more attuned to Catholic or Baptist. In other parts of the FSU, the territory was never Christian and remains staunchly pagan or unreligious at present. Recent studies in Russian Orthodox mission practices of a century ago also help identify the reasons why some regions were successfully Christianized, while others were not.¹⁷ As we note the changing context in the FSU, there is growing recognition that much of the society of the FSU is deeply secular; one specialist on the phenomena argues that future interreligious conflicts may be due to the “massive breakdown in

the religious and ideological assumption of an entire people” rather than to specific proselytizing activities.¹⁸

Numerous articles in scattered publications have recently addressed the problem of proselytism in terms of missiology and ecclesiology. Appearing mainly between 1996-999, the writers sought to address an audience of missiologists from the world of the WWC, the Evangelicals, and the Orthodox.¹⁹ At a theological level, these scholars sought to fit into a pattern of development whereby Orthodox representatives had been meeting at regular intervals in order to clarify their understanding of the church in mission.

Shortly after the Great Transformation of 1989, Anastasios Yanolatis from the Metropolitan of Albania, delineated three distinct mission challenges: the world of Islam, the world of socialism, and the world of the secular West. The Orthodox leaders embraced a commitment to missional renewal, away from popular perceptions at being passively missionary by waiting for the seekers to come to the liturgy. Invariably, the Orthodox contributors to the discourse on proselytism tended to concentrate on the nature of the church that God is building through the power of the Holy Spirit. The differences between the contexts described by Kishkovsky, Habib, Guroian or Vassiliadis were considerable, but the sense of living and witnessing as church, in contrast to the deeds of individuals, was unmistakable. In that context of understanding the church as eucharistic community, Vassiliadis’ most recent articulation of Orthodox perspectives on mission and unity makes sense. Building on the Johannine understanding, Vassiliadis urged fellow Orthodox to understand the eucharistic community more holistically, to see

The ecclesial and diaconal dimension of the eucharist as a communion event and not as an act of personal devotion; an act of *diakonia* and sharing, and not a sacramentalistic, quasi-marginal rite; an expression of the church as the people (*laos*) and household (*oikos*) of God and as the body of Christ mystically united with its head and a proleptic manifestation of the kingdom to come, and not a mere cultic or witnessing institution.²⁰

Similarly, if evangelical readers take Anne Marie Kool’s counsel to add several participial verbs to their missiological dictionary, namely “enabling, partnering and improving,” then faithfulness to the mission mandate would “require less competition and more cooperation, less self-sufficiency and more self-denial, less ambition and more willingness to serve, less of a drive to dominate and more of the desire to develop.”²¹

IF WHAT THEY ARE SAYING MAKES SENSE, THEN...

Instead of highlighting the problems and sorting out the arguments over proselytism, I have chosen to sketch out movements or changes that show promise. For example, the xenophobic voices against the non-Orthodox west have not yet disappeared from Russia, but they are less influential and less strident than they were in 1994. This approach also enables us to ask questions about deeper efforts at love of neighbor. Gerd Stricker, for example, proposed asking what Orthodox leaders want from ecumenism and what Protestants would be prepared to give up in order to move closer to the Orthodox.

A DEEPENED, INCLUSIVE MISSIOLOGY

The deeper theological reflection on mission which needs to happen requires integrating Eastern and Western European contexts into any missiological discourse that pretends to be global or universal. Some missiologists who are able to speak knowledgeably are getting noticed, but the demand that English be the medium of discourse remains striking. The project to include Europe in mission reflection remains a stumbling block because, for both Catholic and Protestant worlds, a knowledge of the history of Orthodoxy, on which a more inclusive theology and missiology needs to be based, remains broadly unknown. In light of the explosion of literature in Western languages on Eastern Christian history, the persistence of the seminary curricular bias toward the West is inexcusable. Clearly, subject matter now deemed essential to a good seminary training needs to make space for what is missing. Otherwise, the repeated commitments to get to know each other better remain superficial platitudes, not really seeking to love the neighbor “as thyself.”

ECCLESIOLOGY IS ESSENTIAL TO MISSION

The legacy of the famous “century of mission” was to cooperate in the mandate to evangelize by avoiding the ecclesiology question. At some later point, converts were to become churches with confessional statements, policies taken from some tradition would win out, but credible witness required cooperation among Christians. This was short-sighted, but the policy remains essential to most parachurch ministries.

Those Orthodox voices seeking a deepened mission commitment within their own church, such as Ion Bria and Petros Vassiliadis, have recently offered insights intended for all orthodox Christians. One cannot really articulate a uniquely Eastern Orthodox theology and missiology because the sources deemed most authoritative by the Orthodox—“the Bible and the tradition”—are “common to non-Orthodox as well.” Hence their formulation of the essence of mission can become a common Christian understanding: “...mission does not aim primarily at the propagation or transmission of intellectual convictions, doctrines, moral commands, etc., but at the transmission of the life of communion that exists in God. [John 17 as intended Biblical reference]”²² Further “true evangelism is not aiming at bringing the nations in our religious ‘enclosure,’ but seeks to ‘let’ the Holy Spirit use both us and those to whom we bear witness to bring about the kingdom of God.”²³ Is that not what is meant by *Missio Dei*?

A KENOTIC CHRISTOLOGY FOR MISSION

Very early in the Christian mission to Rus, the people declared two princes, Boris and Gleb, to be saints. When their brother, in his quest to secure exclusive power, had them murdered, they chose not to resist. This was the kenosis that Christ had modeled who emptied Himself on behalf of all creation. The kenotic tradition has continued to resonate in Slavic lands. In speaking to his own Orthodox tradition, Ion Bria relied on the requisite quality of humility of the kenotic tradition to say to them that “they have to accept that no concrete historical tradition of Christianity can ever fully embody the kingdom of God,”²⁴ a clear way of relativizing canonical borders. In his turn, Vassiliadis pointed out that “all churches within the ecumenical movement have eventually realized, following the kenotic example of Christ, that love in fact means that they leave for a while their selfish theological preoccupations and proceed to a ‘common’ evangelistic witness.” What really matters is to exemplify the triune love to the world through “ecclesial inclusiveness.”²⁵

Loving God and loving the neighbor—so simple and yet still too unexplored.



END

1. "The Unity of the Church as Koinonia: Gift and Calling," statement from the seventh assembly of WCC, Canberra 1991, printed in Micahel Kinnamon and Brian E. Cope, eds. *The Ecumenical Movement. An Anthology of Key Texts and Voices*. Grand Rapids: Wm. B. Eerdmans, 1997, p. 124-5.
2. For the most systematic regional statistical survey, see Nathaniel Davis, "Hard data on Russian and Ukrainian Orthodox Churches," *Religion in Eastern Europe (REE)*, XX, 6, December 2000, 22-38; and his more descriptive assessment of major problems: "Tribulations, Trials and Troubles for the Russian Orthodox Church," *REE*, XX, 6, December 2000, 39-50.
3. Hilarion Alfayev, "The Problems Facing Orthodox Theological Education in Russia." *REE*, XVIII, 1 (February 1998), reprinted from *Sourozh*, a *Journal of Orthodox Life and Thought*.
4. For a more extended discussion see Anatoly Kolodnyk, "Traditional Faiths in Ukraine and Missionary Activity," *REE*, XX, 1 February 2000, 20-45.
5. For a review of the incidents from 1992-95, see Yakov Krotov, "The Flight for Freedom of Conscience in Russia 1992-1995. The Story of the Law on Religion," *REE*, XVII, 3, and XVII, 4.
6. Published in Russia in, Valdimir Fedorov, red. *Pravoslavnia missiia sevodnia. Sbornik tekstov po kursu "missiologija" dlja pravoslavnykh dukhovnykh shkol I bogoslovskikh uchebnykh zavedenii*. St. Petersburg: Apostolskii Gorod, 1999. 7-16.
7. Ibid. 61-70. The center of the book constituted the Russian translation of James Stamoolis, *Eastern Orthodox Mission Theology Today*. Maryknoll: Orbis, 1981, with endorsements by respected Orthodox of this sensitive study by a Protestant evangelical.
8. From the official webpage of the Russian Orthodox church: <http://www.russian-orthodox-church.org.ru>.
9. For example, Mikhail M. Kulakov, "Seventh-day Adventists" in John Witte Jr. & Michael Bourdeaux, eds. *Proselytism and Orthodoxy in Russia. The New War for Souls*. Maryknoll: Orbis, 1999, 151-162.
10. Konrad Raiser, "That the World May Believe. The Missionary Vocation as the Necessary Horizon for Ecumenism," *International Review of Mission*, LXXXVIII, No. 350, p.187.
11. For the published texts, see Kinnamon and Cope, eds. *The Ecumenical Movement*. p. 351-353.
12. So Vladimir Fedorov of St. Petersburg, "Barriers to Ecumenism: An Orthodox View from Russia," *Religion, State & Society*. vol. 26, no. 2, 1998 p. 132.
13. Anton Houtepen, "Evangelisation and Ecumenism; Contradiction or Challenge?" *Religion, State & Society*, vol. 26, no. 2, 1998, p.98.
14. Wietzke, p. 23.
15. "Preface" in John Witte Jr. & Richard C. Martin, eds. *Sharing the Book. Religious Perspectives on the Rights and Wrongs of Proselytism*. Maryknoll: Orbis, 1999, p. xii. The relevant publications referred to here include Witte and Bourdeaux, *Proselytism and Orthodoxy in Russia*, 1999; a special issue of *Journal of Ecumenical Studies* (Winter-Spring 1999) edited by John Witte Jr. & Paul Mojzes and entitled "Pluralism, Proselytism, and Nationalism, in Eastern Europe," a 735-page special issue of *Emory International Law Review* (Winter 1998) entitled "Soul Wars: The Problem of Proselytism in Russia," and a series of articles, often related to the Pew project, that have appeared since 1996 in *Religion in Eastern Europe*.
16. So Kent Hill, "Christian Mission, Proselytism and Religious Liberty: A Protestant Appeal for Christian Tolerance and Unity," *Religion, State and Society*, 25 (December 1997) 307-332.
17. See Andrei A. Znamenski, *Shamanism and Christianity. Native Encounters with Russian Orthodox Missions in Siberia and Alaska, 1820-1917*. Westport Conn: Greenwood Press, 1999, who applies the concept of ethno-history to evaluate native responses to Christian missions.
18. Aleksandr Shchipkov, "Interreligious Relations in Russia After 1917," in Witte and Bourdeaux, p. 98.
19. I am thinking in particular of the special issue "To Evangelize or to Proselytize" of the *International Bulletin of Missionary Research*, vol. 20, no. 1 (January 1996) with key articles by Robeck, Kishkovsky, Volf and David Kerr. A consultation organized by this writer in response, to foster further responses from non-member WCC churches, resulted in 12 articles appearing in *Mission Focus: Annual Review*, 1998 (vol. 6) pp. 1-124. Several other contributions will be noted below.
20. Petros Vassiliadis, *Eucharist and Witness. Orthodox Perspectives on the Unity and Mission of the Church*. Geneva: WCC Publications, 1998. p. 5.
21. Anne-Marie Kool, "A Protestant Perspective on Mission in Eastern and Central Europe" *REE*, XX, 6 (December 2000), 1-21, the latter quotation taken from a Peter Kuzmich speech in 1990.
22. Vassiliadis, p. 35.

23. Ibid. p. 38.

24. Ion Bria, "Orthodoxy and Mission," *International Review of Mission*, LXXXIX, 352, 2000.

25. Vassiliadis, p. 44.

PRESIDENT'S MESSAGE

The date of September 11th will be etched in the minds of our generation as a day when terrorists struck at the heart of freedom-loving people worldwide. The amazing response of all nations to the horror and tragedy of this event has made all of us think deeply about the question of the relationship of religion and civilization.

President Jimmy Carter's national advisor, Professor Samuel Huntington, wrote a book entitled, *The Clash of Civilizations-and the Making of a New World Order*. This significant book has as its thesis that the conflict of the 21st Century will not be between Capitalism and Communism, but a "clash of civilizations." The basis of civilization is religion, and therefore it will be a clash of religions!

Much of the rhetoric on the right and the left has unfortunately made the September 11th attack a conflict between two great religions. I believe we must be careful to distance ourselves from such views, and to recognize that fundamentalism and fanaticism, combined with religion, is a tragic mixture that results in despair and alienation. Therefore it is important that we, in the International Religious Liberty Association, continue to emphasize the need for religious freedom for all religions all over the world. It is incumbent upon us to emphasize the fact that the three great monotheistic religions, Judaism, Christianity and Islam believe in a compassionate and loving God. As Christians, we believe that God has revealed himself fully in Jesus Christ, and therefore, all of our actions must be guided by the mercy and compassion of the God whom we see in Jesus. During these days of conflict, we would emphasize the need to be loving, forgiving, reconciling and peacemaking.

As we prepare for our International Conference on Religious Liberty in Manila in June, 2002, let us remind ourselves, again, that more than ever it is our responsibility not only to encourage, but to work constantly for religious freedom for all peoples, all cultures, and all religions, so that indeed each individual might be free to glorify God in his own way without restrictions from oppressive governments and ideologies. Let's encourage all of our people to defend religious freedom as the basis of all freedoms!



Denton Lotz



THE INTERNATIONAL
RELIGIOUS LIBERTY
ASSOCIATION

12501 Old Columbia Pike
Silver Spring, Maryland 20904-6600, USA
Fax: 301.680.6695
www.IRLA.org