ADF International White Paper

The UN's Failure to Promote and Protect Religious Freedom

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Summary

This white paper presents how the United Nations has failed to promote and protect freedom of religion, despite its obligation to do so. Among its failures are its refusal to recognize as genocide the crimes committed against Christians by the Islamic State in Iraq and Syria, the inclusion of religious freedom violators on the Human Rights Council, and the ineffectiveness of the Universal Periodic Review in ending States' mistreatment of religious minorities. The Office of the High Commissioner for Human Rights and the Human Rights Committee focus almost entirely on 'rights' that have no basis in international law, ignoring religious freedom. At the end of each section, the paper provides a plan of action to combat the identified threats to religious freedom within the UN.

About the Author

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1) Introduction

In 1981, the United Nations General Assembly passed the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The Declaration is a detailed call for United Nations (UN) Member States to protect and promote freedom of religion, and its preamble makes a strong case for why freedom of religion is essential: its disregard has led to 'wars and great suffering to mankind'; to the person who has religion or belief, it is fundamental to 'his conception of life'; it is necessary for 'understanding, tolerance and respect'; and it 'contribute[s] to the attainment of the goals of world peace, social justice and friendship among peoples.'[1]

The Declaration then goes on to lay out the necessary protections for religious freedom, including the freedom to choose one's own religion and manifest it,[2] the right to be free from discrimination on the basis of religion, and the right of parents to organize their family life around the principles of their own religion,[3] including through the education of their children.[4]

The Declaration hints at what happens when the right to freedom of religion, as broadly defined in the Declaration, is not respected. It causes wars and interpersonal strife. It prevents people from living their lives according to how they understand their religion requires them to live. It leads to an absence of tolerance among people, communities, and countries. It hinders the achievement of world peace. The case for protecting and promoting religious freedom, both at the UN and by individual States, is therefore an obvious one.

However, that case seemingly has been forgotten. The UN and its various entities are supposed to be committed to the protection and promotion of human rights, including the right to freedom of religion.

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1 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, preamble, G.A. Res. 36/55, U.N. Doc. A/RES/36/55 (Nov. 25, 1981) [hereinafter 1981 Declaration].

2 *Id.*, art. 1.

3 *Id.*, arts. 2-4.

4 *Id.*, art. 5.

While no UN entity would admit to opposing this right, in practice the UN's actions—and inactions—have infringed on and impeded its exercise. Most alarmingly, the UN has failed to protect Christians and other religious minorities from being persecuted at the hands of the Islamic State. At the same time, its main human rights entity, the Human Rights Council (HRC), has resolved to prevent the expression of views that are critical of other religions, limiting people's freedom to assert their beliefs and to evaluate truth claims.

This white paper first outlines the framework for the international promotion and protection of the freedom of religion, providing context for why the UN must ensure its preservation. Next, it investigates how the UN has failed to help those most in need by sluggishly refusing to recognize as genocide the crimes committed against Christians and other religious minorities by the Islamic State in Iraq and Syria, which has left them in danger of further persecution, violence, and even death.

The paper considers how the HRC and its mechanisms have failed to protect religious freedom, particularly because the HRC includes many countries in which religious freedom is a myth. At the same time, the HRC's Universal Periodic Review (UPR) allows States with no concern for the freedom of religious minorities to pretend to protect human rights while continuing their abuses. The paper also shows how other UN entities, in particular the Office of the High Commissioner for Human Rights and the Human Rights Committee, fail to focus much attention on or are ineffective in their attention to religious freedom, despite their mandates to promote and protect fundamental rights.

Finally, the paper briefly examines how the UN's promotion of 'rights' that have no basis in international law have caused it to actively undermine the freedom of religion, especially with respect to the right to conscientious objection in the health-care field. At the end of each section, the paper provides a plan of action to combat the identified threats to religious freedom within the UN.

2) United Nations framework for the protection and promotion of religious freedom

The Charter of the United Nations identifies the four purposes of the UN, one of which is '[t]o achieve international co-operation in [. . .] promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.'[5] The UN is also supposed to be a forum for nations '[t]o develop friendly relations [. . .] based on respect for the principle of equal rights'[6] and 'a centre for harmonizing the actions of nations in the attainment of these common ends.'[7]

The human rights and fundamental freedoms to which the Charter alludes, including the right to freedom of religion, were later outlined in UN declarations and codified in international human rights treaties. A few years after the establishment of the UN in 1945, the General Assembly, an organ of the UN in which Member States have equal representation, agreed to the Universal Declaration of Human Rights (UDHR). Article 18 proclaims, '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.'[8]

This guarantee of the freedom of religion was codified and further elaborated in article 18 of the 1966 International Covenant on Civil and Political Rights (ICCPR). Article 18 emphasizes the primacy of the '[f]reedom to manifest one's religion or beliefs': it 'may be subject only to such limitations as are prescribed by law and are necessary to protect

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5 U.N. Charter art. 1(3).
6 *Id.* art. 1(2).
7 *Id.* art. 1(4).
8 Universal Declaration of Human Rights, G.A. Res. 217A, art. 18, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

public safety, order, health, or morals or the fundamental rights and freedoms of others.'[9] It also recognizes that parents must be able 'to ensure the religious and moral education of their children in conformity with their own convictions.'[10] Freedom of religion is a fundamental, non-derogable right under ICCPR article 4, meaning that even in a state of emergency States cannot ignore their obligations to protect it.[11]

In 1981, the GA's Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief recommitted the UN and its Member States to the guarantee of religious freedom. It highlighted justifications for ensuring religious freedom, as detailed above, and included several areas in which religious freedom must be allowed, such as in worship and the establishment of houses of worship, the establishment of charitable institutions, the publication and dissemination of religious materials, and the appointment and training of clergy.[12] The Declaration signified that the UN and its Member States would renew their dedication to the preservation of religious freedom.

The UN framework for religious freedom is thus strong and clear. It is a universally agreed, fundamental right that has been reasserted several times in the foremost international forum for human rights.

Moreover, the UN has established the mechanisms needed to promote freedom of religion worldwide, including the Human Rights Council, the Human Rights Committee, and the Office of the High Commissioner for Human Rights, to name a few. These entities—and their shortcomings—are discussed below. One entity, the Special Rapporteur on the freedom of religion or belief, appointed by the Human Rights Council, deserves credit for its devotion to its mandate. For example, in recent years, Special Rapporteur Heiner Bielefeldt issued reports on 'the

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[9] International Covenant on Civil and Political Rights (ICCPR) art. 18, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171.

[10] *Id.*

[11] *Id*., art. 4.

[12] 1981 Declaration, *supra* note 1, art. 6.

broad range of violations of freedom of religion or belief, their root causes and variables,'[13] 'preventing violence committed in the name of religion,'[14] 'tackling religious intolerance and discrimination in the workplace,'[15] and 'freedom of religion or belief of persons belonging to religious minorities.'[16] Over the years, the Special Rapporteur has completed several country visits, drawing attention to religious freedom issues and abuses in Bangladesh, Viet Nam, Jordan, Cyprus, and India, among other countries.[17] The Special Rapporteur also receives individual complaints about potential violations of the freedom of religion and may respond with requests to governments for responses on the alleged violations.[18]

However, despite the work of the Special Rapporteur on the freedom of religion or belief, in recent years the UN overall has failed to protect the rights of people of faith, with serious consequences.

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[13] U.N. Gen. Assembly (UNGA), *Elimination of all forms of religious intolerance: Interim report of the Special Rapporteur on the freedom of religion or belief*, U.N. Doc. A/71/269 (Aug. 2, 2016) (*prepared by* Heiner Bielefeldt).

[14] U.N. Human Rights Council (UNHRC), *Report of the Special Rapporteur on the freedom of religion or belief, Heiner Bielefeldt*, U.N. Doc. A/HRC/28/66 (Dec. 29, 2014) (*prepared by* Heiner Bielefeldt).

[15] UNGA, *Elimination of all forms of religious intolerance: Interim report of the Special Rapporteur on the freedom of religion or belief*, U.N. Doc. A/69/261 (Aug. 5, 2014) (*prepared by* Heiner Bielefeldt).

[16] UNHRC, *Report of the Special Rapporteur on the freedom of religion or belief, Heiner Bielefeldt*, U.N. Doc. A/HRC/22/51 (Dec. 24, 2012) (*prepared by* Heiner Bielefeldt).

[17] OHCHR, Country visits, http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Visits.aspx (last visited Jan. 12, 2017).

[18] OHCHR, Individual complaints, http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Complaints.aspx (last visited Jan. 12, 2017).

3) Failure to help those most in need

(a) Genocide of religious minorities at the hands of the Islamic State

More than 150 Heads of State and Government came together in 2005 and agreed on the World Summit Outcome, which was further adopted by the GA. The Outcome recognizes, 'The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.'[19] States acknowledged

> that we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.[20]

They further called on the GA 'to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law.'[21]

However, the UN has failed to maintain the responsibility to protect it recognized in the World Summit Outcome. Since 2014, the Islamic State

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[19] 2005 World Summit Outcome, G.A. Res. 60/1, ¶ 139, U.N. Doc. A/RES/60/1 (Oct. 24, 2005).
[20] *Id.*
[21] *Id.*

has killed over ten thousand people in Iraq and Syria.[22] Millions of refugees have fled Syria and Iraq or are internally displaced.[23] Populations of Christians, Yazidis, and other religious minorities have dwindled.[24]

The UN has failed to do enough to address what is happening to religious minorities in the Middle East. The Security Council has passed resolutions focusing on the atrocities that have occurred in Iraq and Syria, but it has not specifically identified persecution of Christians in any of its resolutions. It has, however, denounced violence against Christians in press statements,[25] which do not hold the same weight. Meanwhile, the Security Council held a special meeting in 2015 on ISIS' crimes against approximately 30 'lesbian, gay, bisexual, and transgender' (LGBT) individuals.[26] The lack of a special meeting on ISIS' violence against religious minorities is particularly glaring in light of the special LGBT meeting.

The GA has a yearly resolution on freedom of religion or belief, and for the past several years it has included language urging States to take action to combat discrimination and violence against religious minorities, but the vagueness and lack of specificity in the resolution hints that there is no distinction in severity between atrocities like those committed by

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[22] See INST. FOR ECONOMICS & PEACE, GLOBAL TERRORISM INDEX 2015 4, 20, 24 (2015), *available at* http://economicsandpeace.org/wp-content/uploads/ 2015/11/ Global-Terrorism-Index-2015.pdf.

[23] U.S. COMM'N ON INT'L RELIGIOUS FREEDOM (USCIRF), ANNUAL REPORT 2015 95, 116 (2015) [hereinafter USCIRF, 2015 REPORT], *available at* http://www.uscirf.gov/sites/ default/files/USCIRF%20Annual%20Report%202015%20%282%29.pdf.

[24] *Id.* at 96, 115.

[25] Press Release, Security Council, Security Council Press Statement on Murder of Over 30 Ethiopian Christians, U.N. Doc. SC/11867-AFR/3118 (Apr. 20, 2015); Press Release, Security Council, Security Council Press Statement on Persecution of Minorities in Mosul, Iraq, U.N. Doc. SC/11484-IK/679 (July 21, 2014).

[26] *See* U.S. Mission to the U.N., Ambassador Samantha Power, Remarks at a UN Security Council Arria-Formula Meeting on ISIL's Targeting of LGBT Individuals (Aug. 24, 2015), http://usun.state.gov/ remarks/6799; Akbar Shahid Ahmed, *The U.S. and Chile Got the UN Security Council to Talk LGBT Rights*, HUFFINGTON POST, Aug. 24, 2015, http://www.huffingtonpost.com/entry/un-security-council-lgbt_us_55db6f4de4b08cd3 359cdde6.

ISIS and more minor incidents of 'derogatory stereotyping, negative profiling and stigmatization of persons based on their religion or belief.'[27] The HRC has recognized that Christians are particularly targeted by ISIS,[28] but, without accompanying action, this resolution has no effect on the Christians suffering persecution. The Secretary-General has also made some statements on the persecution of Christians,[29] but has not convened any special meetings on the subject.

Most notably, the UN has failed to officially classify ISIS' crimes against Christians, Yazidis, and other religious minorities as genocide. The High Commissioner for Human Rights, Prince Zeid Ra'ad al-Hussein, acknowledged in a 2015 report that crimes committed by ISIS against Yazidis 'may constitute genocide.'[30] The UN Assistance Mission for Iraq[31] and the Special Rapporteur on the promotion and protection of human

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[27] G.A. Res. 70/158, ¶ 13(c), U.N. Doc. A/RES/70/158 (Mar. 3, 2016); G.A. Res. 69/175, ¶ 13(c), U.N. Doc. A/RES/69/175 (Jan. 23, 2015).

[28] UNHRC Res. S-22/1, preamble, U.N. Doc. A/HRC/RES/S-22/1 (Sept. 3, 2014).

[29] UN News Centre, UN rights chief condemns murder of 21 Christians in Libya, urges rejection of 'takfiri groups' (Feb. 17, 2015), http://www.un.org/apps/news/story.asp?NewsID=50102#.VuwouxIrLoB; Secretary-General Ban Ki-Moon, Statement attributable to the Spokesman for the Secretary-General on the systematic persecution of minorities in Mosul (July 20, 2014), http://www.un.org/sg/statements/index.asp?nid=7880.

[30] UNHRC, *Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups*, ¶ 1, U.N. Doc. A/HRC/28/18 (Mar. 27, 2015) (*prepared by* OHCHR).

[31] OHCHR & U.N. Assistance Mission for Iraq – Human Rights Office (UNAMI), *Report on the Protection of Civilians in the Armed Conflict in Iraq: 1 May – 31 October 2015, 32, available at* http://www.ohchr.org/Documents/Countries/IQ/UNAMIReport1May31October2015.pdf; OHCHR & UNAMI, *Report on the Protection of Civilians in the Armed Conflict in Iraq: 11 December 2014 – 30 April 2015, 10, available at* http://www.ohchr.org/ Documents/Countries/IQ/UNAMI_OHCHR_4th_POCReport-11Dec2014-30April2015.pdf; OHCHR & UNAMI, *Report on the Protection of Civilians in the Armed Conflict in Iraq: 11 September to 10 December 2014, 27, available at* http://www.ohchr.org/Documents/ Countries/IQ/UNAMI_OHCHR_POC_Report_11Sep-10Dec2014_EN.pdf. The report covering September to December 2014 is the first UNAMI report to mention the possibility of genocide.

rights and fundamental freedoms while countering terrorism[32] also suggested the possibility that ISIS is committing genocide. Only the Independent International Commission of Inquiry on the Syrian Arab Republic, established by a resolution of the Human Rights Council,[33] has recognized ISIS crimes against Yazidis as genocide.[34] No other UN body or authority has officially recognized ISIS crimes as genocide.

The Convention on the Prevention and Punishment of the Crime of Genocide, which was adopted by the GA in 1948, entered into force in 1951, and has 147 Parties, defines genocide as:

> any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> (d) Imposing measures intended to prevent births within the group;
> (e) Forcibly transferring children of the group to another group.[35]

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[32] UNHRC, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson*, ¶¶ 11, 24, 25, U.N. Doc. A/HRC/29/51 (June 16, 2015) (*prepared by* Ben Emmerson).

[33] UNHRC, *Report of the Human Rights Council on its seventeenth special session*, U.N. Doc. A/HRC/S-17/2 (Oct. 18, 2011).

[34] UNHRC, *'They Came to Destroy': ISIS Crimes Against the Yazidis*, U.N. Doc.A/HRC/32/CRP.2 (June 15, 2016) (*prepared by* the Independent International Commission on the Syrian Arab Republic).

[35] Convention on the Prevention and Punishment of the Crime of Genocide art. 2, *entered into force* Jan. 12, 1951, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

Several religious freedom and international law experts have asserted that the crimes ISIS has committed against Christians meet some or even all of these criteria.[36] The International Association of Genocide Scholars asserts that 'ISIS mass murders of Chaldean, Assyrian, Melkite Greek, and Coptic Christians [. . .]meet even the strictest definition of genocide,' as well as the 'ISIS policy of mass rape.'[37] The 'acts typical of genocidal regimes' include 'beheadings of captives and people considered apostates, destruction of religious centers, such as churches and monasteries, and pillaging of ancient cultural sites that do not conform to the regime's religious orthodoxy.'[38]

ISIS' intent to destroy Christians as a group is evidenced by its online magazine, Dabiq, such as when it depicted the ISIS flag flying over the Vatican and declared it 'will conquer your Rome, break your crosses, and enslave your women.'[39] Although ISIS reportedly has given Christians a 'choice' to convert to Islam; pay a jizya, or tax; or be killed—a 'choice' that has led some to argue that crimes against Christians do not amount to genocide—this tax in reality has not been an option for Christians, as ISIS seeks to destroy any under its control.[40] Even if Christians are allowed to

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[36] *See, e.g.,* Press Release, USCIRF, USCIRF Statement on the Designation of Victims of Genocide, Persecution, and Crimes against Humanity in Syria and Iraq (Dec. 7, 2015), http://www.uscirf.gov/news-room/press-releases/uscirf-statement-the-designation-victims-genocide-persecution-and-crimes; Brian Pellott, *Do ISIS's atrocities against Christians, Yazidis and Shias really amount to genocide?,* RELIG. NEWS SERV., Aug. 6, 2015, http://brianpellot.religionnews.com/2015/08/06/genocide-isis-islamic-state-yazidi-christian-shia-muslim-persecution-religious-freedom/.

[37] Dr. Gregory Stanton, ISIS is Committing Genocide (Oct. 14, 2015), http://genocidewatch.net/2015/10/15/isis-is-committing-genocide-2/.

[38] *Id.*

[39] *Foreword*, DABIQ 'The Failed Crusade' (2014), 1435 Dhul-Hijjah, at 5, https://media.clarionproject.org/files/islamic-state/islamic-state-isis-magazine-Issue-4-the-failed-crusade.pdf.

[40] NINA SHEA, HUDSON INST., THE ISIS GENOCIDE OF MIDDLE EASTERN CHRISTIAN MINORITIES AND ITSJIZYA PROPAGANDA PLOY (2016), *available at* https://s3.amazonaws.com/media.hudson.org/files/publications/20160721TheISISGenocideofMiddleEasternChristianMinoritiesandItsJizyaPropagandaPloy.pdf.

pay a tax, it could qualify as genocide under the Convention as '[d]eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.'

Calling ISIS' actions genocide is more than semantic; the designation carries significant moral and legal weight. If ISIS atrocities are recognized as genocide, countries must commit to action in Syria and Iraq 'to prevent and punish'[41] the atrocities; calling them genocide makes it much likelier that States will use 'forceful action' to end them.[42] The Genocide Convention requires persons charged with genocide to 'be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.'[43]

(b) Plan of action

For the genocide to end, there must be real consequences for the Islamic State and its fighters. The initial step in this plan of action is clear: the UN must recognize the genocide. But there are various actions the UN can take, and Member States must put pressure on the UN to act. In particular, Member States must:

i. Recognize the genocide

As a first step, Member States must themselves recognize the genocide. As more States declare ISIS crimes genocide, it becomes more difficult for the UN and for other States to turn a blind eye to them. Widespread

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[41] Genocide Convention, *supra* note 35, art. 1. *See also* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.), 2007 I.C.J. 43 (Feb. 26) ('A State's obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.').

[42] Ann Corkery, *Call it genocide*, WASH. TIMES, Sept. 22, 2015, http://www.washingtontimes.com/news/2015/sep/22/religious-liberty-call-it-genocide/.

[43] Genocide Convention, *supra* note 35, art. 6.

consensus that genocide against Christians and other religious minorities is occurring in Iraq and Syria puts pressure on the UN to take action likewise.

Other intergovernmental bodies have labeled Islamic State crimes genocide and have called on the UN to take action. The European Parliament passed a resolution in February 2016 'stress[ing] that the so-called 'ISIS/Daesh' is committing genocide against Christians and Yazidis, and other religious and ethnic minorities, who do not agree with the so-called 'ISIS/Daesh' interpretation of Islam, and that this therefore entails action under the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide.'[44] The resolution further'[u]rges the members of the UN Security Council to support a referral by the Security Council to the International Criminal Court in order to investigate violations committed in Iraq and Syria by the so-called 'ISIS/Daesh' against Christians, Yazidis and religious and ethnic minorities.'[45] Previously, in January 2016, the Parliamentary Assembly of the Council of Europe recognized that ISIS has committed genocide.[46]

ii. Urge the Security Council to refer the situation in Iraq and Syria to the International Criminal Court for prosecution

Considering there is no competent tribunal in Iraq or Syria to prosecute ISIS criminals, an international tribunal must try them instead. Iraq and Syria are not parties to the Rome Statute of the International Criminal Court,[47] which confers jurisdiction to the International Criminal Court (ICC) over the international crimes of genocide, crimes against humanity, and

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[44] European Parliament resolution of 4 February 2016 on the systematic mass murder of religious minorities by the so-called 'ISIS/Daesh,' ¶ 2 (2016).

[45] *Id.*, ¶ 4.

[46] Eur. Parl. Ass., *Resolution 2091: Foreign fighters in Syria and Iraq*, ¶ 2 (2016).

[47] Int'l Criminal Court, The States Parties to the Rome Statute, https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx (last visited Dec. 12, 2016).

war crimes committed in States Parties to the Rome Statute or committed by nationals of States Parties.[48] Because Iraq and Syria have not agreed to ICC jurisdiction, the ICC cannot prosecute crimes committed in their territories or by their nationals unless the Security Council refers them to the ICC[49] or Iraq and Syria consent to jurisdiction in this instance,[50] which is unlikely. That means the Security Council has the important responsibility of referring the situation to the ICC, a court that is independent from the UN.

Given the structure of the Security Council, any of the five permanent members can veto any action.[51] Russia already vetoed referral of the conflict in Syria in May 2014 because it would subject Syrian President Bashar al-Assad to jurisdiction.[52] However, it may be more willing to allow ICC referral in the case of atrocities committed in Iraq,[53] and Russia's prior veto does not preclude a later successful referral of the situation in Syria to the ICC.

iii. Urge the Security Council to establish commissions of experts to investigate the situation in Iraq and Syria

Alternatively, the Security Council can pass resolutions creating Commissions of Experts on genocide in Iraq and in Syria, the approach it took in the cases of the former Yugoslavia in 1992[54] and Rwanda in 1994.[55] The establishment of such commissions does not guarantee that they will make a determination of genocide, but they would certainly be provided with abundant evidence of ISIS' crimes and intent to destroy

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[48] Rome Statute of the International Criminal Court art. 5, *entered into force* July 1, 2002, 2187 U.N.T.S. 90 [hereinafter Rome Statute].
[49] *Id.*, art. 13(b).
[50] Id., art. 12.2.
[51] United Nations Security Council, Voting System and Records, http://www.un.org/en/sc/meetings/voting.shtml (last visited Dec. 12, 2016).
[52] *Russia and China veto UN move to refer Syria to ICC*, BBC, May 22, 2014, http://www.bbc.com/news/world-middle-east-27514256.
[53] John B. Bellinger III, Op-Ed., *Make ISIS' Leaders Face Justice*, N.Y. TIMES, Apr. 2, 2015, http://www.nytimes.com/2015/04/03/opinion/make-isis-leaders-face-justice.html.
[54] *See* S.C. Res. 780, ¶ 2, U.N. Doc. S/RES/780 (Oct. 6, 1992).
[55] *See* S.C. Res. 935, ¶ 1, U.N. Doc. S/RES/935 (July 1, 1994).

religious minorities, and as more States recognize genocide, the commissions will be under more pressure to determine the same. The commissions must be urged to act quickly given that the atrocities are ongoing.

iv. Urge the Security Council to create ad-hoc tribunals to prosecute these crimes

The establishment of commissions is only a first step. If the commissions recognize the atrocities as genocide, the Security Council should establish appropriate tribunals for the prosecution of genocide and other crimes against humanity, just as it established the International Criminal Tribunal for the former Yugoslavia[56] (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).[57] Through these tribunals, suspected ISIS leaders and fighters can be apprehended, charged, prosecuted, and sentenced for their commission of crimes. One criticism of this approach, however, is the financial expense of creating and sustaining ad hoc tribunals. The countries who have taken on the responsibility of financing the ICTY and ICTR are concerned that the initially agreed budgets for such tribunals tend to mushroom over time. For example, since the creation of the ICTY in 1993, its budget has increased 500-fold.[58]

v. Urge the ICC prosecutor to investigate the crimes committed by foreign fighters in Iraq and Syria

The Rome Statute also confers jurisdiction over individuals from States that are parties to the Rome Statute.[59] Thus, the ICC Prosecutor has the ability to decide to prosecute foreign fighters in Iraq and Syria who are from States Parties and have participated in the genocide. The ICC

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[56] *See* S.C. Res. 827, ¶ 2, U.N. Doc. S/RES/827 (May 25, 1993).
[57] *See* S.C. Res. 955, ¶ 1, U.N. Doc. S/RES/955 (Nov. 8, 1994).
[58] Jon Silverman, *Ten years, $900m, one verdict: Does the ICC cost too much?*, BBC NEWS, Mar. 14, 2012, http://www.bbc.com/news/magazine-17351946.
[59] Rome Statute, *supra* note 48, art. 12(2)(b).

Prosecutor announced in 2015 that the basis was too narrow 'at this stage' for exercising such personal jurisdiction over individual fighters; although several thousand foreign fighters have joined ISIS recently, most ISIS leaders are from Iraq and Syria.[60] The Prosecutor also emphasized that the main responsibility lies with national courts to prosecute their own nationals.[61] However, this does not preclude the possibility of finding sufficient evidence in the future to pursue foreign fighters. The UN and the Security Council must ensure that the ICC keeps this option on the table, especially if national courts continue to fail to prosecute their own nationals.

In the meantime, the failure of the UN to call the ISIS atrocities genocide and to refer crimes of genocide to the ICC means that religious minorities in Iraq and Syria are left virtually completely unprotected. Even UN-run refugee camps fail to protect Christians from other violence perpetrated by other camp residents, sometimes ISIS members masquerading as refugees, causing Christians to avoid such camps and therefore not qualify for refugee visas to immigrate to other countries.[62]

This has resulted in calls to improve security in camps, create separate camps for minorities, hire more staff, and create an alternative system for Christians to get visas.[63] The UN must be vigilant in protecting religious minorities in all possible ways.

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[60] Fatou Bensouda, on the alleged crimes committed by ISIS (Apr. 8, 2015), https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/pages/otp-stat-08-04-2015-1.aspx.

[61] *Id.*

[62] Nick Gutteridge, Heading for Britain: ISIS sends ASSASSINS into UN refugee camps to murder Christians, EXPRESS, Oct. 24, 2015, http://www.express.co.uk/news/world/614249/ISIS-sends-ASSASSINS-UN-refugee-camps-could-come-Britain.

[63] *See, e.g.*, *Fulfilling the Humanitarian Imperative: Assisting Victims of ISIS Violence Before the Subcomm. on Africa, Global Health, Global Human Rights and International Organizations, House Foreign Affairs Comm.*, 114th Cong. (2015) (testimony of Carl A. Anderson, Knights of Columbus), *available at* http://www.kofc.org/en/news/releases/detail/testimony-carl-anderson-human-rights.html; *Saving Vulnerable Middle Eastern Christians*, NAT'L REV., Nov. 24, 2015, http://www.nationalreview.com/article/427530/saving-vulnerable-middle-eastern-christians-nr-interview.

4) Human Rights Council shortcomings

The Human Rights Council, which 'shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner,'[64] is a subsidiary body of the GA.[65] The HRC replaced the failed Commission on Human Rights in 2006 largely because the older body was ineffective due to politicization and membership that included States that were serious human rights violators and used the mechanism to avoid criticism.[66] However, the newer body has not escaped the same criticism, and the membership still includes States that perpetuate human rights abuses, including abuses of the right to freedom of religion. Various mechanisms of the HRC, including the UPR and the special rapporteurs, have failed to secure religious freedom and in fact often promote values and ideas contrary to such freedom.

(a) Composition

The GA elects the 47 State members to serve staggered three-year terms with each regional bloc allotted a certain number of seats.[67] In some cases the number of candidates within a regional bloc is the same as the number of slots, called offering a 'clean slate,' so the GA is essentially forced to choose all applicants, no matter how qualified they are.[68]

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[64] G.A. Res. 60/251, ¶ 2, U.N. Doc. A/RES/60/251 (Apr. 3, 2006).

[65] OHCHR, Welcome to the Human Rights Council, http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx (last visited Dec. 12, 2016) [hereinafter UNHRC About Page].

[66] Press Release, UNGA, General Assembly Establishes New Human Rights Council by Vote of 170 in Favour to 4 Against, with 3 Abstentions, U.N. Doc. GA/10449 (Mar. 15, 2006).

[67] UNHRC About Page, *supra* note 65.

[68] For example, in 2013, only China, the Maldives, Saudi Arabia, and Viet Nam were candidates for the four open Asia-Pacific slots, so all four States won seats, despite their poor human rights records. Likewise, only Russia and Macedonia ran for the two open Eastern Europe slots. *See* UNGA, Elections and Appointments, http://www.un.org/en/ ga/68/meetings/elections/hrc.shtml (last visited Dec. 12, 2016);

HRC members are supposed to 'uphold the highest standards in the promotion and protection of human rights.'[69] Yet thirteen of the 47 current members are on the 2017 World Watch List, the top 50 countries where Christians are most persecuted.[70] Although the list measures social and familial pressure and not only government persecution, membership on the list indicates to some extent failure on the part of the government to protect Christians from discrimination and harm. Five countries are also classified 'Tier 1 Countries of Particular Concern' (CPCs) by the U.S. Commission on International Religious Freedom for their violations freedom of religion.[71] Three are Tier 2 countries.[72]

For example, USCIRF states that in China, the continued push for authoritarian control 'has meant unprecedented violations against Uighur Muslims, Tibetan Buddhists, Catholics, Protestants, and Falun Gong practitioners. People of faith continue to face arrests, fines, denials of justice, lengthy prison sentences, and in some cases, the closing or bulldozing of places of worship.'[73] In Saudi Arabia,

> [t]he government privileges its own interpretation of Sunni

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Human Rights Voices, Election Results 2013, http://www.humanrightsvoices.org/EYEontheUN/mechanisms/ hrc/?p=2507 (last visited Dec. 12, 2016).

[69] G.A. Res. 60/251, *supra* note 64, ¶ 9.

[70] Iraq, Nigeria, Saudi Arabia, India, Kenya, Qatar, Egypt, Ethiopia, Bangladesh, Tunisia, China, United Arab Emirates, and Indonesia. OHCHR, Current Membership of the Human Rights Council, 1 January - 31 December 2017, http://www.ohchr.org/EN/HRBodies/HRC/Pages/CurrentMembers.aspx (last visited Jan. 11, 2017) [hereinafter OHCHR, Current Membership]; Open Doors, World Watch List 2017, https://www.opendoorsusa.org/christian-persecution/world-watch-list/ (last visited Jan. 11, 2017).

[71] China, Egypt, Iraq, Nigeria, and Saudi Arabia. OHCHR, Current Membership, *supra* note 70; USCIRF, Tier 1 Countries of Particular Concern, http://www.uscirf.gov/all-countries/countries-of-particular-concern-tier-1 (last visited Jan. 11, 2017) [hereinafter USCIRF, Tier 1 Countries].

[72] Cuba, India, and Indonesia. OHCHR, Current Membership, *supra* note 70; USCIRF, Tier 2, http://www.uscirf.gov/all-countries/countries-of-particular-concern-tier-2 (last visited Jan. 11, 2017).

[73] USCIRF, 2015 REPORT, *supra* note 23, at 33.

> Islam over all other interpretations and prohibits any non-Muslim public places of worship in the country. It continues to prosecute and imprison individuals for dissent, apostasy, blasphemy, and sorcery, and a new 2014 law classifies blasphemy and advocating atheism as terrorism. In addition, authorities continue to repress and discriminate against dissident clerics and members of the Shi'a community.[74]

(b) Resolutions

Two prominent religious freedom proponents, USCIRF Commissioners Katrina Lantos Swett and Mary Ann Glendon, explained the problem with having HRC members who have abysmal human rights records:

> For those abused on account of their faith, nothing could be more demoralizing than failing to hold violators responsible. Their presence on the UNHRC makes a mockery of its mission and these states can use the council to oppose the kinds of human rights resolutions that normally would address their misconduct.[75]

Resolutions, which can be introduced by Member or non-Member States, must receive support by a simple majority of Member States to pass.[76] Calling a special session requires the support of one-third of Member States.[77] Usually the outcome

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[74] *Id*. at 57.

[75] Katrina Swett & Mary Ann Glendon, *My View: UN Human Rights Council includes religious freedom abusers*, DESERET NEWS, June 18, 2014, http://www.deseretnews.com/article/ 865605367/UN-Human-Rights-Council-includes-religious-freedom-abusers.html?pg=all.

[76] Human Rights Watch, HRC Q&A, http://votescount.hrw.org/page/questions%20and%20answers (last visited Dec. 12, 2016).

[77] *Id.*

> of resolution votes and the occurrence of special sessions are determined by politics based on regional blocs,[78] which UN Secretary-General Ban Ki-Moon has criticized: 'This Council can have a tremendous impact. But you, its members, must rise above partisan posturing and regional divides. [. . .] The Council must address human rights abuses wherever they occur.'[79] However, the HRC has continued to be involved in partisan posturing, as indicated by the resolutions it has passed.

In combatting human rights violations around the world, from 2006 to mid-2015 the HRC passed fifteen resolutions against Syria, twelve against Myanmar, eight against North Korea, and five against Iran.[80] It held four special sessions on Syria, one on Central African Republic, one on Libya, one on Cote d'Ivoire, one on Democratic Republic of Congo, one on Myanmar, and one on Sudan.[81] Over the same time period, it passed 61 resolutions on Israel and held seven special sessions on Israel, indicating a focus of resources away from serious human rights violators.[82]

Although the HRC has focused more on the Syrian conflict in recent years, it has failed to appropriately cover significant human rights abuses in the world, particularly where religious minorities suffer. At the same time, the HRC passes resolutions that call into question the Member

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[78] *Id.*

[79] Secretary-General Ban Ki-Moon, Secretary-General's Remarks to Human Rights Council (Dec. 12, 2008), http://www.un.org/sg/statements/?nid=3609.

[80] UN Watch, Report: In 9 Years' Existence, UNHRC Condemned Israel More Times Than Rest of World Combined (June 25, 2015), http://secure.unwatch.org/site/apps/nlnet/content2.aspx?c=bdKKIS NqEmG&b=1316871&ct=14736147.

[81] *Id.*

[82] *Id.* Likewise, in its 70th session in 2015, the General Assembly passed 20 resolutions on Israel and only one each on Syria, Iran, and North Korea. UN Watch, UN adopts 20 resolutions against Israel, 3 on rest of the world (Nov. 25, 2015), http://www.unwatch.org/un-to-adopt-20-resolutions-against-israel-3-on-rest-of-the-world/.

States' commitment to protecting and promoting religious freedom, such as the series of defamation of religions resolutions and Resolution 16/18.

i. Resolution 16/18

The idea that criticism of certain religious beliefs should be criminalized was endorsed at the UN from 1999 to 2010 through HRC resolutions on the defamation of religions. These resolutions express concern at the 'incite[ment of] acts of violence, xenophobia or related intolerance and discrimination towards Islam and any other religion.'[83] The GA also passed a resolution on defamation of religions from 2005 to 2010.[84] In 2011, the GA passed an alleged improvement on Resolution 16/18. Yet Resolution 16/18 and the prior 'defamation of religions' resolutions at the HRC represent significant threats to religious freedom because they are ambiguous and can be used as justification for oppressive blasphemy laws and state-sanctioned restrictions on speech and exercise of religion. Further, efforts to ban incitement to hatred through laws like blasphemy laws may draw attention away from such human rights violations as the persecution of religious minorities.

The Organization of Islamic States (OIC), led by Pakistan, was the driving force behind the introduction of these resolutions.

The intent was clear, as the very first draft in 1999 was titled 'defamation of Islam'[85]—protecting Islam from criticism. Although the resolutions passed for several years, this movement to pass defamation of religions resolutions at the UN was heavily criticized.[86]

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[83] Comm'n on Human Rights Res. 1999/82, ¶ 3, U.N. Doc. E/CN.4/RES/1999/82 (Apr. 30, 1999).

[84] *See* G.A. Res. 65/224, U.N. Doc. A/RES/65/224 (Dec. 21, 2010); G.A. Res. 64/156, U.N. Doc. A/RES/64/156 (Dec. 18, 2009); G.A. Res. 63/171, U.N. Doc. A/RES/63/171 (Dec. 18, 2008); G.A. Res. 62/154, U.N. Doc. A/RES/62/154 (Dec. 18, 2007); G.A. Res. 61/164, U.N. Doc. A/RES/61/164 (Dec. 19, 2006); G.A. Res. 60/150, U.N. Doc. A/RES/60/150 (Dec. 16, 2005).

[85] U.N. ESCOR, Comm'n on Human Rights, 55th Sess., U.N. Doc. E/CN.4/1999/L.40 (Apr. 20, 1999) (draft resolution).

[86] *See, e.g.*, Press Release, ARTICLE 19, UN HRC: Over 100 Organisations Urge Council to

Due to growing disapproval of the defamation of religions language, the OIC, through Pakistan, introduced a new resolution to the HRC in March 2011.[87] Adopted without a vote, Resolution 16/18, Combating Intolerance, Negative Stereotyping and Stigmatization of, and Discrimination, Incitement to Violence and Violence Against, Persons Based on Religion or Belief, states that the HRC

> 3. Condemns any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, whether it involves the use of print, audio-visual or electronic media or any other means;
> [. . .]
> 5. Notes the speech given by Secretary-General of the Organization of the Islamic Conference at the fifteenth session of the Human Rights Council, and draws on his call on States to take the following actions to foster a domestic environment of religious tolerance, peace and respect, by:
> [. . .]
> (e) Speaking out against intolerance, including advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence;
> (f) Adopting measures to criminalize incitement to imminent violence based on religion or belief[.][88]

Resolution 16/18, which has birthed an annual GA resolution of the same name,[89] has been called a positive improvement on the language of the resolutions on defamation of religions because it focuses on the promotion of the rights to freedom of religion and freedom of expression

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Reject 'Defamation of Religions' and Protect Freedom of Expression (Mar. 10, 2011), https://www.article19.org/resources.php/resource/1733/en/un-hrc:-over-100-organisations-urge-council-to-reject-%E2%80%9Cdefamation-of-religions%E2%80%9D-and-protect-freedom-of-expression.

[87] *See* UNHRC Res. 16/L.38, U.N. Doc. A/HRC/RES/16/L.38 (Mar. 21, 2011).

[88] UNHRC Res. 16/18, U.N. Doc. A/HRC/RES/16/18 (Mar. 24, 2011).

[89] *See, e.g.*, G.A. Res. 70/157, U.N. Doc. A/RES/70/157 (Mar. 3, 2016); G.A. Res. 69/174, ¶ 13(c), U.N. Doc. A/RES/69/175 (Feb. 4, 2015); G.A. Res. 68/169, U.N. Doc. A/RES/68/169 (Jan. 16, 2014).

and emphasizes preventing harm done to people rather than to ideas or beliefs. However, Resolution 16/18 and subsequent resolutions nevertheless threaten the related freedoms of expression and religion.

Any restriction on speech must be limited. The right to freedom of expression, recognized in ICCPR article 19, is the default. Limitations on the freedom of speech must be well-defined so that it is clear what constitutes a violation, and so the limitations cannot be so broadly interpreted that they subsume the freedom. Likewise, limitations on freedom of expression protect people, not ideas or beliefs. Attempts to protect religions from criticism, like the defamation of religions movement, are not valid. People also do not have a right to protection from criticism or offense.

The language of Resolution 16/18 is ambiguous, with no definitions and no parameters. The title of Resolution 16/18 is 'Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief.' Intolerance is not defined. Negative stereotyping and stigmatization are not defined. Incitement to violence is not defined. In operative paragraph 3 the HRC 'condemns any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence,' yet does not clarify what this would entail. Operative paragraph 5, which recognizes the OIC's call for States 'to criminalize incitement to imminent violence based on religion or belief,' likewise has no description of what speech or conduct must be criminalized.

Because it lacks specificity, Resolution 16/18 allows States to determine what constitutes 'incitement to imminent violence based on religion or belief.' This determination is entirely subjective, and could be used as justification for quashing views that dissent from majority or government-held positions. This power put in the hands of the States is contrary to the purpose of the human rights project, which is to protect the person and his or her inherent dignity.

Also problematic is that operative paragraph 5(e & f) recognize the OIC's calls for States to speak out against 'advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence' and to prohibit 'incitement to imminent violence based on religion or belief.' Given

that the OIC supports prohibiting the defamation of religions, in particular Islam, paragraphs 5(e & f) could be understood as endorsing, or at least tolerating, the OIC's understanding of advocacy of religious hatred and incitement to imminent violence, and could be used as justification for oppressive speech laws.

ii. Resolution on freedom of religion

HRC Member States also have posed threats to religious freedom by blocking language that emphasizes the need to protect the right to religious freedom. A small bloc of Islamic countries has been able to keep out language meant to strengthen these protections.

The HRC passes by consensus, rather than by vote, an annual EU-sponsored resolution on the individual right to freedom of religion or belief. In 2015, informal consultations on the draft resolution involved opposition to key components, particularly by OIC States, including Pakistan, Egypt, Jordan, Maldives, Morocco, Qatar, and Saudi Arabia.[90] They asked for the deletion of new language calling on States 'to provide protection to persons at risk of violent attack on the grounds of religion or belief' because, in their understanding, violence against religious groups frequently is not grounded in religion, and also because it is unclear what governments should do when violence occurs between religious groups.[91] Both objections were dismissed, and the United Kingdom asserted that governments still have an obligation to protect all people, regardless of whether violence occurs between religious groups.[92] However, this language does not appear in the final resolution.[93]

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[90] Michael De Dora, Ctr. for Inquiry, Inside Look: UN Human Rights Council Resolutions on Freedom of Religion, Belief, and Expression (Mar. 26, 2015), http://www.centerforinquiry.net/blogs/entry/inside_look_un_human_rights_council_resolutions_on_freedom_of_religion_comb/.

[91] *Id.*

[92] *Id.*

[93] *Id.*

The OIC coalition then tried to add 'hate speech' as an act of violence that governments must condemn, but Member States indicated the term is too vague and is not on par with actual violence.[94] Fortunately, 'hate speech' does not appear in the final resolution.[95] The OIC also opposed wording that would 'welcome' an annual report by Special Rapporteur on freedom of religion or belief Heiner Bielefeldt, 'Preventing violence committed in the name of religion,' given that they believe the report is not culturally sensitive[96]; the OIC did not succeed in removing 'welcomes.'[97]

(c) Universal Periodic Review

The HRC also oversees the UPR, which was created at the same time as the HRC. The UPR is intended to be a review of the human rights records of all 193 UN Member States and allows States to make direct recommendations to other States on improvements to their laws, policies, and practices. Its website claims, 'The UPR is one of the key elements of the Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur.'[98] However, the description is optimistic at best, considering how the structure of the UPR mechanism allows States to portray themselves as human rights champions while continuing their abuse of human rights, including religious freedom. It is easy to see how the mechanism is ineffective through the example of a State that routinely violates religious freedom.

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[94] *Id.* 'Hate speech' laws are often used to punish Christians for their speech. *See, e.g.*, PAUL B. COLEMAN, CENSORED: HOW EUROPEAN 'HATE SPEECH' LAWS ARE THREATENING FREEDOM OF SPEECH (2012).

[95] *See* UNHRC Res. 28/18, U.N. Doc. A/HRC/RES/28/18 (Mar. 20, 2015).

[96] De Dora, *supra* note 90.

[97] *See* UNHRC Res. 28/18, *supra* note 95, ¶ 13.

[98] OHCHR, Universal Periodic Review, http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx (last visited Dec. 12, 2016).

Myanmar's participation in the UPR is just one example of many of how the process can be manipulated. In the national report it submitted to the UPR mechanism in 2015, Myanmar claimed, 'In Myanmar, the Constitution guarantees every citizen's right to freedom of conscience and to freely profess and practice religion in accordance with the customs, culture, and traditions.'[99] After its UPR review, Myanmar accepted the recommendation of Ethiopia to '[c]ontinue peace talks among the people to avoid ethnic and religious conflicts and scale up national reconciliation process in the country,'[100] along with similar recommendations by Russia[101] and the Holy See.[102] However, Myanmar rejected more specific recommendations in the area of freedom of religion, including several to review, revise, or repeal the package of four 'race and religion' laws passed in 2015,[103] which allow officials to impose birth spacing for a Muslim ethnic minority; outlaw polygamy; require any Buddhist woman who marries a non-Buddhist man to register the marriage with the government in advance; and regulate religious conversions.[104]

Myanmar stated its reasoning for rejecting recommendations to end religious discrimination, 'Myanmar never exercise discriminatory practices based on race, religion or gender. The State Constitution guarantees the freedom of religion[.] This constitutional right is enjoyed by different communities in law and practice as their religious buildings

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[99] UNHRC, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Myanmar,* ¶ 144, ¶U.N. Doc. A/HRC/WG.6/23/MMR/1 (Aug. 5, 2015).

[100] UNHRC, *Report of the Working Group on the Universal Periodic Review: Myanmar*, ¶ 143.27, U.N. Doc. A/HRC/31/13 (Dec. 23, 2015).

[101] *Id.*, ¶ 143.23.

[102] *Id.*, ¶ 143.25.

[103] *Id.*, ¶¶ 145.13-.21.

[104] Michael Caster, *The Truth About Myanmar's New Discriminatory Laws*, THE DIPLOMAT, Aug. 26, 2015, http://thediplomat.com/2015/08/the-truth-about-myanmars-new-discriminatory-laws/.

lie side by side [. . .] across the country demonstrating peaceful co-existence, tolerance and harmony.'[105]

Myanmar's response to other States' UPR recommendations is essentially the final word on the matter of its human rights record within the UPR mechanism. There is no follow-up and no mechanism by which the international community can require Myanmar to uphold its international human rights obligations. Countries must report on their progress at their next UPR review, but again, there is no way to force countries to uphold their obligations. Therefore, Myanmar is able to proclaim that it participates in the UPR mechanism and that it upholds human rights, including the freedom of religion of all people.

Meanwhile, Myanmar continues to be one of the most serious violators of religious freedom. In 2016 USCIRF once again included Myanmar on its list of 'countries of particular concern,'[106] as in 2015, '[i]nstead of protecting those most in need, like the Rohingya, Burma's government intensified its isolation and marginalization of vulnerable groups, leaving hundreds of thousands internally displaced and without basic necessities,' and 'allowed expressions of hatred and intolerance toward religious and ethnic minorities to continue unchecked.'[107] Myanmar is also number 23 on the World Watch List.[108]

It is not just Myanmar who is able to participate in the UPR mechanism and walk away with a clean conscience and no repercussions for its violations of religious freedom. For example, China rejected a recommendation to stop prosecuting and persecuting Catholics and

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[105] UNHRC, Report of the Working Group on the Universal Periodic Review: Myanmar, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, ¶ 14, U.N. Doc. A/HRC/31/13/Add.1 (Mar. 10, 2016).

[106] USCIRF, Tier 1 Countries, *supra* note 71.

[107] USCIRF, ANNUAL REPORT 2016 27 (2016), *available at* http://www.uscirf.gov/sites/default/files/USCIRF%202016%20Annual%20Report.pdf.

[108] Open Doors, *supra* note 70.

other Christians,[109] Indonesia rejected recommendations to amend or revoke its conversion and blasphemy laws,[110] Malaysia rejected a recommendation to allow the right to change one's religion,[111] and Pakistan rejected several recommendations calling for the repeal of its blasphemy laws.[112] In a general debate on the UPR mechanism in March 2015, Bahrain spoke on behalf of the Arab Group in emphasizing that recommendations must consider the State's cultural, political, and religious characteristics as well as its national sovereignty,[113] hinting at the Arab Group's desire to maintain its blasphemy and apostasy laws and to follow Islamic sharia law.

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[109] For the State recommendations, see UNHRC, *Report of the Working Group on the Universal Periodic Review: China (including Hong Kong, China and Macao, China)*, ¶ 186.142, U.N. Doc. A/HRC/25/5 (Dec. 4, 2013). For China's response, see UNHRC, *Report of the Working Group on the Universal Periodic Review: China, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N. Doc. A/HRC/21/7/Add.1 (Feb. 27, 2014).

[110] For the State recommendations, see UNHRC, *Report of the Working Group on the Universal Periodic Review: Indonesia*, ¶ 109.31, U.N. Doc. A/HRC/21/7 (July 5, 2012). For Indonesia's response, see UNHRC, *Report of the Working Group on the Universal Periodic Review: Indonesia, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, ¶ 6.12, U.N. Doc. A/HRC/21/7/Add.1 (Sept. 5, 2012).

[111] For the State recommendations, see UNHRC, *Report of the Working Group on the Universal Periodic Review: Malaysia*, ¶ 146.156, U.N. Doc. A/HRC/25/10 (Dec. 4, 2013). For Malaysia's response, see UNHRC, *Report of the Working Group on the Universal Periodic Review: Malaysia, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, ¶ 9, U.N. Doc. A/HRC/22/12/Add.1 (Mar. 4, 2014).

[112] For the State recommendations, see UNHRC, *Report of the Working Group on the Universal Periodic Review: Pakistan*, ¶¶ 122.28, 122.30, 122.31, 122.32, 122.33, U.N. Doc. A/HRC/22/12 (Dec. 26, 2012). For Pakistan's response, see UNHRC, *Report of the Working Group on the Universal Periodic Review: Pakistan, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, ¶ 4, U.N. Doc. A/HRC/22/12/Add.1 (Mar. 13, 2013).

[113] OHCHR, Human Rights Council holds a general debate on the Universal Periodic Review (Mar. 20, 2015), http://www.ohchr.org/EN/newsEvents/Pages/DisplayNews.aspx?NewsID=15736&LangID=E#sthash.5LMXKPcW.dpuf.

The UPR mechanism has been criticized for its many shortcomings, including that States can simply 'note' or reject recommendations and that human rights violators get the opportunity to direct other States to limit the freedom of religion.[114] Roland Chauville of the NGO UPR Info says, 'The UPR mechanism therefore runs the risk of becoming an exercise in ritualism, with states travelling to Geneva every four and a half years to tell the international community how much they have improved human rights, but with limited opportunity for other countries to challenge them and put their information into perspective.'[115] Further criticism is that there are too many recommendations, such that States are unable to pursue all of them and thus can devote attention to the easiest ones to implement and then say they do not have the time or resources to pursue the remaining ones.[116]

(d) Plan of action

Improving the promotion of religious freedom at the HRC requires significant reform, but even within the current structure, there are opportunities for improvement, especially related to encouraging Member States to ensure appropriate protection for human rights:

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[114] For example, North Korea told the U.S. to '[t]ake legislative and administrative measures to end defamation of religion.' UNHRC, *Report of the Working Group on the Universal Periodic Review: United States of America*, ¶ 92.69, U.N. Doc. A/HRC/16/11 (Jan. 4, 2011). Libya told France to '[m]ake efforts to adopt legislation to prevent incitement to religious and racial hatred.' UNHRC, *Report of the Working Group on the Universal Periodic Review: France*, ¶ 120.132, U.N. Doc. A/HRC/23/3 (Mar. 21, 2013).

[115] Roland Chauville, *The Universal Periodic Review's First Cycle: Successes and Failures*, *in* HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW 87, 96 (Hilary Charlesworth & Emma Larking eds., 2015).

[116] *Id.* at 97.

i. In future resolutions, reaffirm key language protecting religious freedom.

In the development of future HRC (and GA) resolutions on religious intolerance, Member States must include specific provisions that:

- reaffirm that the purpose of the human rights project is to protect the person and his or her inherent dignity, not to protect ideas and beliefs;
- reaffirm the rights to freedom of religion, thought, conscience, belief, speech, and expression outlined in the ICCPR and UDHR;
- reaffirm that these rights are fundamental to the enjoyment of other rights;
- explicitly reject existing resolutions on defamation of religions so that they can no longer be used as evidence of soft law and lead to the creation of customary international law;
- call for the repeal of blasphemy laws and for the passage of laws guaranteeing freedom of religion and freedom of expression;
- remove any language calling for legal prohibitions on religious speech;
- call on States to protect against persecution of and discrimination against religious minorities;
- and promote educational efforts to discourage speech that incites hatred toward people of other religious beliefs.

ii. Demand that the UPR process focus exclusively on universally agreed, fundamental rights.

Serious religious freedom violators are able to skirt their obligations with claims that there are too many recommendations to implement. The number of recommendations will only grow as Western States seek to impose their own invented human rights standards on other countries. Limiting recommendations to fundamental rights, such as freedom of religion, will render States powerless to use the number of recommendations as an excuse for avoiding improving their human rights records. Further, clearly categorizing or grouping the recommendations, since many are similar, especially on religious freedom, will prevent States from simply counting the total number of recommendations and claiming there are too many to implement. At the very least, fundamental rights should be marked as the highest priority for implementation.

5) Failure and ineffectiveness of other entities with respect to religious freedom

In addition to the Human Rights Council, two other UN entities are supposed to emphasize religious freedom in their work: the Office of the High Commissioner for Human Rights and the Human Rights Committee. However, both have significant shortcomings.

(a) Office of the High Commissioner for Human Rights

The Office of the Human Commissioner for Human Rights (OHCHR) is part of the Secretariat.[117] According to its website, '[t]he High Commissioner for Human Rights is the principal human rights official of the United Nations [. . .] and spearheads the United Nations' human rights efforts.'[118] It has incredible resources, with '1085 staff (as of 31 December 2013) based in Geneva, New York and in 13 country offices and 13 regional offices or centers around the world, as well as a workforce of 689 international human rights officers serving in UN peace missions or political offices.'

However, the OHCHR has neglected to focus its resources on violations of freedom of religion, one of the fundamental rights explicitly recognized in the ICCPR and, therefore, a right that the OHCHR is tasked with promoting and protecting. Its website lists the activities of the OHCHR in combating discrimination on the grounds of religion. This religious discrimination list is short and shows OHCHR's minimal effort in this area: writing only one report every year and supporting the work of the Special Rapporteur on freedom of religion or belief, the Human Rights Committee, and the Committee on Economic, Social and Cultural Rights, none of whom is overseen by the OHCHR.[119] There are no special fact

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[117] OHCHR, Who We Are, http://ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx (last visited Jan. 9, 2017).

[118] *Id.*

[119] OHCHR, Combating discrimination based on religion or belief,

sheets or speeches focusing on religious freedom. In fact, among its listed publications, none focuses on religious freedom.[120] In contrast, its page on 'combatting discrimination based on sexual orientation and gender identity' (SOGI) is robust, listing numerous OHCHR activities,[121] and it has created a special SOGI initiative called Free & Equal,[122] which is opposed by many Member States.[123]

(b) Human Rights Committee

The Human Rights Committee is charged with protecting the right to freedom of religion due to its mandate to monitor implementation of the ICCPR. It has highlighted the primacy of freedom of religion in its General Comment 22.[124] It also reminds States of their ICCPR obligations through its review process, through which it reviews States' human rights records and issues concluding observations on successes, failures, and areas for improvement. This review process has not succeeded in improving States' protection of freedom of religion.

For example, the Committee expressed concern about Indonesia's blasphemy law in 2013:

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http://www.ohchr.org/EN/ Issues/Discrimination/Pages/discrimination_religious.aspx (last visited Jan. 9, 2017).

120 *See* OHCHR, Publications, http://www.ohchr.org/EN/PUBLICATIONSRESOURCES/Pages/Publications.aspx (last visited Jan. 9, 2017).

121 OHCHR, Combatting discrimination based on sexual orientation and gender identity, http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx (last visited Jan. 9, 2017).

122 Free & Equal, https://www.unfe.org/.

123 *See* Meghan Grizzle Fischer, *The Rise of Faux Rights: How the UN went from Recognizing Inherent Freedoms to Creating its own Rights*, ADF INT'L, 2017. [hereinafter Fischer, *The Rise of Faux Rights*], *available at* https://adflegal.blob.core.windows.net/international-content/docs/default-source/default-document-library/legal-documents/united-nations/2017-02-02-un-religious-freedom-white-paper-final.pdf (last visited Nov.5, 2017).

124 U.N. Human Rights Comm. (HRC), *General Comment No. 22: Article 18: Freedom of Thought, Conscience or Religion*, U.N. Doc. CCPR/C/21/Rev.1/Add.4, (July 30, 1993).

> The Committee regrets that Law No. 1 of 1965 on defamation of religion, which prohibits the interpretations of religious doctrines considered divergent from the teachings of protected and recognized religions, the 2005 edicts by the Indonesian Ulema Council and the 2008 Joint Decree by the Minister for Religious Affairs and others, unduly restrict the freedom of religion and expression of religious minorities, such as the Ahmadiyya.
> The Committee is also concerned at reports of the persecution of other religious minorities, such as Shia and Christians, who are subjected to violence by other religious groups and law enforcement personnel (arts. 18, 19, 21 and 22).[125]

The Committee then explicitly stated that Indonesia's blasphemy law 'is inconsistent with the provisions of the Covenant and that it should be repealed forthwith.'[126]

Indonesia issued a follow-up report in 2015, more than 1.5 years after the Committee's initial concluding observations. As is common of countries that violate fundamental human rights and desire to continue to do so, it dismissed the Committee's concerns about the blasphemy law outright by explaining how it considers the law fits within the ICCPR:

> As stated in the Constitution, freedom of religion is a basic and non-derogable human rights. This freedom shall be respected and protected by the state, government, and individuals. The Government is committed to this cause.
>
> The Government is also of the view that the practise one's religion or belief must be carried out responsibly and with respect of the rights of others. As stipulated in the ICCPR, exercise of freedom to worship, the freedom to have or adopt a religion or belief of one's choice, and the freedom of expression may be subjected to limitations as prescribed by law when it is

[125] HRC, *Concluding observations on the initial report of Indonesia*, ¶ 25, U.N. Doc. CCPR/C/IDN/CO/1 (Aug. 21, 2013).
[126] *Id.*

> necessary to protect public safety, order, health, moral values and the fundamental rights and freedoms of others.
>
> It is in this above context that the Law No. 1 PNPS of 1965 should be understood. The Committee's recommendation to repeal Law No. 1 PNPS Year 1965 on the Abuse and/ or Blasphemy of Religion is constrained by the Constitutional Court's decision, which is final and binding, that affirms the Law does not contradict the Constitution and therefore does not need to be revoked.[127]

Although this interpretation is clearly erroneous—and self-serving—there will not be any consequences to this explicit violation of the ICCPR. Indonesia will continue asserting, 'The Government is fully committed to maintaining pluralism, diversity, and multiculturalism in the country, which is the fact of life since its inception.'[128] Meanwhile, in May 2017, an Indonesian court sentenced the Christian governor of Jakarta to two years in prison for 'blasphemy.'[129]

Further, although it has told religious freedom violators that blasphemy laws, anti-conversion laws, and other laws and practices blatantly prohibiting the free exercise of religion violate the ICCPR,[130] the Committee's work has focused increasingly on promoting 'rights' that are not universally agreed,[131] which has a negative impact on people of faith

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[127] HRC, *Concluding observations on the initial report of Indonesia, Addendum: Information received from Indonesia on follow-up to concluding observations*, ¶¶ 18-20, U.N. Doc. CCPR/C/IDN/CO/1/Add.1 (Mar. 9, 2015).

[128] *Id.*, ¶ 22.

[129] Fergus Jensen & Fransiska Nangoy, REUTERS, May 8, 2017, *available at* https://www.reuters.com/article/us-indonesia-politics/jakartas-christian-governor-jailed-for-blasphemy-against-islam-idUSKBN1842GE.

[130] *See, e.g.*, HRC, *Concluding observations on the seventh periodic report of the Russian Federation*, ¶¶ 20, 23, U.N. Doc. CCPR/C/RUS/CO/7 (Apr. 28, 2015); HRC, *Concluding observations of the Human Rights Committee: Islamic Republic of Iran*, ¶¶ 23-26, 29-30, U.N. Doc. CCPR/C/IRN/CO/3 (Nov. 29, 2011); HRC, *Concluding observations of the Human Rights Committee: Jordan*, ¶ 13, U.N. Doc. CCPR/C/JOR/CO/4 (Nov. 18, 2010).

[131] See Fischer, *The Rise of Faux Rights, supra* note 123.

who are then not allowed to live according to the dictates of their consciences, such as health-care professionals who do not want to participate in life-ending procedures.[132]

Finally, the Committee has the power to adjudicate individual violations of the ICCPR under the Optional Protocol. Although freedom of religion is obviously one of the central rights of the ICCPR, the Committee has heard a limited number of religious freedom cases, and has found even fewer violations thereof.[133]

A Committee more committed to religious freedom would deliberately solicit and facilitate more religious freedom cases.

(c) Plan of action

i. Ensure that the Human Rights Committee, OHCHR, and all UN entities focus exclusively on universally agreed, fundamental rights

The High Commissioner for Human Rights and the OHCHR have strayed from their roles as promoters of universally agreed, fundamental human rights. For example, freedom of religion is readily identifiable as a fundamental, non-derogable right in ICCPR articles 4 and 18, yet the OHCHR has chosen to focus massive resources instead on 'rights' that are not recognized by most Member States and are not found in international law. States must demand transparency from OHCHR on its funding, and cease funding its initiatives until it returns to its core obligations.

Likewise, the Human Rights Committee has drifted from the protection of freedom of religion to the promotion of unrecognized 'rights.' Member States must insist that it return to its original role as safekeeper of fundamental human rights, as agreed in ICCPR. It also must investigate and adjudicate more cases related to religion.

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[132] *See* Meghan Grizzle Fischer, *The United Nations and the Right to Conscientious Objection in the Health-Care Field*, 21 TEX. REV. L. &Pol. 187 (2017).

[133] *See* CCPR Centre, Database and Case-Law Briefs, http://ccprcentre.org/database-decisions/ (last visited Dec. 12, 2016).

ii. Increase Accountability for Violations of Religious Freedom

Currently, States ignore the religious freedom recommendations the Human Rights Committee makes. If the Committee returns to focusing solely on fundamental human rights, it will have greater capacity to raise awareness of violations of religious freedom and to hold countries accountable for these violations, including through launching investigations into specific allegations. The Committee's focus must reflect the seriousness of these violations, especially in countries where the government and other actors persecute people of faith or restrict freedom of religion with impunity.

6) UN entities actively undermining religious freedom

While the UN has failed to promote freedom of religion through the entities specifically set up for this purpose, such as the Human Rights Council, the OHCHR, and the Human Rights Committee, it is also actively undermining freedom of religion through the work of other UN bodies whose mandates do not include freedom of religion, such as in its disparagement of the right to conscientious objection in the health-care field.

(a) The right to conscientious objection

As UN entities aggressively promote 'reproductive rights,' they threaten religious freedom through their criticism of the exercise of conscientious objection, particularly in the health-care field.[134] Although the right to freedom of conscience is recognized in article 18(1) of the ICCPR[135] and the right to conscientious objection in health care is acknowledged by organizations like the Center for Reproductive Rights,[136] Amnesty International, and Human Rights Watch,[137] the UN has failed to promote it.

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[134] *See* Meghan Grizzle Fischer, *The United Nations and the right to conscientious objection in the health-care field*, *supra* note 132.

[135] ICCPR, *supra* note 9, art. 18.

[136] CRR, CONSCIENTIOUS OBJECTION AND REPRODUCTIVE RIGHTS: INTERNATIONAL HUMAN RIGHTS STANDARDS 1 (2013), *available at* http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/_Conscientious_FS_Intro_English_FINAL.pdf ('The right to conscientiously object to providing health services means that health care professionals may legitimately be able to refuse to provide certain services because they are contrary to their personal convictions.').

[137] Human Rights Watch, Statement by Amnesty International and Human Rights Watch: comprehensive approach to regulating conscientious objection in the health care field needed, https://www.hrw.org/sites/default/files/related_material/Statement%20by%20Amnesty%20International%20and%20Human%20Rights%20Watch%20-%20Comprehensive%20approach%20to%20regulating%20conscientious%20objection.pdf ('International standards recognize the importance of conscientious objection to the exercise of an individual's fundamental right to freedom of thought, conscience, and

Instead, the focus among UN entities, from treaty bodies to special rapporteurs to UN agencies, is limiting the exercise of conscientious objection. CEDAW, the committee charged with monitoring the Convention on the Elimination of All Forms of Discrimination against Women,[138] and the CRC, the committee charged with monitoring the Convention on the Rights of the Child,[139] issued general recommendations on the right to health urging countries to organize their health systems so that they do not allow the exercise of conscientious objection to impede access to reproductive health services.

Treaty bodies' concluding observations are especially dangerous because they directly challenge individual countries' laws and practices. CEDAW in particular has extensively used its State review process to call into question States' allowing health-care providers to exercise conscientious objection. For example, it expressed concern about 'the increasing resort to conscientious objection by health professionals in the absence of an adequate regulatory framework'[140] in Hungary and called on the government to '[e]stablish an adequate regulatory framework and

religion.').

[138] CEDAW, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, Chap. I, ¶ 11, U.N. Doc. A/54/38/Rev.1 (1999) ('[I]f health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.'). *See also* CEDAW, *Report of the Committee on the Elimination of Discrimination against Women, Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review,* Annex 2, U.N. Doc. CEDAW/C/2014/I/CRP (2014) ('States parties should further organize health services so that the exercise of conscientious objection does not impede their effective access to reproductive health care services, including abortion and post-abortion care.').

[139] CRC, *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24),* ¶ 69, U.N. Doc. CRC/C/GC/15 (Apr. 17, 2013) ('States should ensure that adolescents are not deprived of any sexual and reproductive health information or services due to providers' conscientious objections.').

[140] CEDAW, *Concluding observations on the combined seventh and eighth periodic reports of Hungary*, ¶ 30. U.N. Doc. CEDAW/C/HUN/CO/7-8 (Mar. 26, 2013).

a mechanism for monitoring of the practice of conscientious objection by health professionals.'[141]

Some special rapporteurs and working groups of the HRC have also denounced the exercise of conscientious objection. Paul Hunt, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health from 2002 to 2008, lamented that health professionals' personal views get in the way of patients' rights, saying this causes them to be 'complicit in human rights violations.'[142] He continued, 'For example, in some countries, health professionals [. . .] make decisions based on their own views and conscience [to] deny sexual and reproductive health information to women or adolescents.'[143] The next Special Rapporteur on the right to health, Anand Grover, agreed that States must strongly regulate the practice of conscientious objection to overcome barriers to abortion access.[144] The UN Working Group on the issue of discrimination against women in law and in practice chastised the U.S.[145] and Spain[146] for allowing conscientious objection to get in the way of women's access to abortion.

The United Nations Population Fund (UNFPA) even went so far as praising the U.S. Department of Health and Human Services mandate

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[141] *Id.*, ¶ 31(d).

[142] UNGA, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, ¶ 9, U.N. Doc. A/60/348 (Sept. 12, 2005) (*prepared by* Paul Hunt).

[143] *Id.*

[144] UNGA, *Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, ¶ 65(m), U.N. Doc. A/66/254 (Aug. 3, 2011) (*prepared by* Anand Grover).

[145] OHCHR, UN Working Group on the issue of discrimination against women in law and in practice finalizes country mission to the United States (Dec. 11, 2015), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16872&LangID=E.

[146] UNHRC, *Report of the Working Group on the issue of discrimination against women in law and in practice: Mission to Spain*, ¶ 103, U.N. Doc. A/HRC/29/40/Add.3 (June 17, 2015) (*prepared by* the Working Group on the issue of discrimination against women in law and practice).

requiring employers' group health insurance plans to cover contraception and sterilization, including emergency contraception.[147] Many individual and institutional employers in the U.S. object to this requirement on grounds of conscience. In 2014, the U.S. Supreme Court sided with the exercise of conscience, ruling in *Burwell v. Hobby Lobby* in favour of employers who object on the grounds of conscience to providing insurance coverage for drugs and services they view as potentially life-ending.[148]

The World Health Organization (WHO) issued a report in 2012, 'Safe abortion: technical and policy guidance for health systems,' with guidelines on conscientious objection.[149] The guidelines require referral by conscientious objectors, 'in accordance with national law,'[150] and if no other provider is available for the patient, the objector 'must provide safe abortion to save the woman's life and to prevent serious injury to her health.'[151] A 2015 WHO report, 'Sexual health, human rights and the law,' says that the exercise of conscientious objection puts 'people's health [. . .] in jeopardy.'[152]

The most common recommendation by UN bodies for regulating conscientious objection is requiring a referral process within the health-care system. Referral is problematic to many conscientious objectors because it still requires them to participate in the objectionable

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[147] UNFPA, BY CHOICE, NOT BY CHANCE: FAMILY PLANNING, HUMAN RIGHTS AND DEVELOPMENT, STATE OF WORLD POPULATION 2012 11-12 (2012), *available at* http://www.unfpa.org/sites/default/files/pub-pdf/EN_SWOP2012_Report.pdf.

[148] *See* Burwell v. Hobby Lobby, 573 U.S. ____ (2014).

[149] WHO, SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS (2d ed. 2012) [hereinafter WHO, SAFE ABORTION 2012], *available at* http://apps.who.int/iris/bitstream/10665/70914/1/ 9789241548434_eng.pdf?ua=1.

[150] *Id.* at 69.

[151] *Id.*

[152] WHO, SEXUAL HEALTH, HUMAN RIGHTS AND THE LAW 15 (2015), *available at* http://apps.who.int/iris/bitstream/10665/175556/1/9789241564984_eng.pdf?ua=1 footnote omitted).

procedure.[153] This requirement, if implemented by States, essentially would eliminate the right to conscientious objection. Special Rapporteur Anand Grover[154] and the WHO[155] recommend direct participation in abortion in the event of an emergency. For the conscientious objector, this violates her commitment to do everything possible to save the lives of both the woman and the fetus, and while the result of treating the woman may result in the death of the fetus, the goal is never to take the life of the fetus deliberately.[156]

(b) Negativity toward religion and religious autonomy

UN entities often openly display negativity toward traditional religious views that refuse to follow the UN's recognition of false rights. This negativity contravenes the 1994 Programme of Action of the International Conference on Population and Development (ICPD), which directs the work of the UNFPA and is a foundational document on reproductive

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[153] *See, e.g.*, News Release, American Ass'n of Pro-life Obstetricians & Gynecologists (AAPLOG), Statement on ACOG Letter Urging U.S. Senators to Violate the Rights of Conscience of Physicians (Sept. 14, 2005), http://www.aaplog.org/physician-conscience-rights/news-release-statement-on-acog-letter-urging-u-s-senators-to-violate-the-rights-of-conscience-of-physicians/ ('Those who morally object to abortion usually do so because they understand abortion as the taking of innocent life. To require a physician who believes this to refer someone for an abortion would force him or her to be complicit in that act.').

[154] UNHRC, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, Addendum: Mission to Poland*, ¶ 50, U.N. Doc. A/HRC/14/20/Add.3 (*prepared by* Anand Grover) (May 20, 2010) ('In short, health service providers who conscientiously object to a procedure have the responsibility to treat an individual whose life or health is immediately affected, and otherwise to refer the patient to another provider who will perform the required procedure.').

[155] WHO, SAFE ABORTION 2012, *supra* note 149, at 69.

[156] *See, e.g.*, AAPLOG, Our Mission Statement, http://www.aaplog.org/about-2/our-mission-statement/ (last visited Dec. 12, 2016); AAPLOG, Premature Delivery is Not Induced Abortion, http://www.aaplog.org/position-and-papers/premature-delivery-not-induced-abortion/ (last visited Dec. 12, 2016); Dublin Declaration on Maternal Healthcare, http://www.dublindeclaration.com/ (last visited Dec. 12, 2016).

health, and which says there must be 'full respect for the various religious and ethical values and cultural backgrounds of [the] people.'[157]

One of the most egregious displays of disdain for religious freedom is found in the Committee of the Rights of the Child's attacks on the Holy See in its 2014 concluding observations. The Committee instructed the Holy See to review and amend Canon Law[158] and to change its teachings and practices related to abortion[159] and contraception.[160] The Holy See's strong response asserted its right to religious freedom, 'with specific reference to the exclusive power of faith communities to organize and govern their internal affairs,'[161] and called out the CRC for infringing its religious freedom, 'in particular regard to the autonomy of religious communities to express their doctrine, manifest their faith and worship.'[162]

(c) Plan of action

i. Ensure that UN entities do not exceed their mandates and hold them accountable when they do

Just as the Human Rights Committee and the OHCHR have strayed from their roles as promoters of universally agreed, fundamental human rights, so have other UN entities that disparage freedom of religion. When Member States hold these entities accountable to their original, limited

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[157] International Conference on Population and Development, Sept. 5-13, 1994, *Report of the International Conference on Population and Development*, Ch. I, Res, 1, Annex, Ch. II, Principles, U.N. Doc. A/CONF.171/13/Rev.1 (Oct. 18, 1994).

[158] Comm. on the Rights of the Child (CRC), *Concluding observations on the second periodic report of the Holy See*, ¶ 14, U.N. Doc. CRC/C/VAT/CO/2 (Feb. 25, 2014).

[159] *Id.*, ¶ 55.

[160] *Id.*, ¶ 57.

[161] Comments of the Holy See on the Concluding Observations of the Committee on the Rights of the Child, ¶ 8, http://www.vatican.va/roman_curia/secretariat_state/2014/documents/rc-seg-st-20140205_ concluding-observations-rights-child_en.html (last visited Dec. 12, 2016).

[162] *Id.*, ¶ 19.

mandates, they should expect them to focus exclusively on fundamental rights.

An important component of this is ensuring that UN entities adhere to their limited mandates and authority, which will necessarily prevent them from disparaging religious freedom, as there is no room in their mandates for this. To that end, Member States should consider withholding funding from agencies that exceed their mandates. UN agencies depend on this funding,[163] yet agencies often ignore the sovereignty of States and try to weaken religious freedom protections. Cutting funding will force agencies to reconsider their activities. At the same time, Member States need to consistently demand transparency from agencies on how funding is used and the sources of additional funding.

[163] *See, e.g.*, UNFPA, Funds and funding, http://www.unfpa.org/funds-and-funding (last visited Dec. 12, 2016).

7) Conclusion

As the UN has expanded its web of agencies, commissions, councils, and experts, it has strayed from its original mission of promoting and protecting universal human rights, and not without consequence. People around the world have the UN in part to thank for growing encroachments on their freedom to practice their faith, such as religious converts who want to live openly in their new faith but are unable to worship freely due to blasphemy laws. For the religious minorities whose lives are literally at stake—those who face death at the hands of ISIS every day—the UN's failure to act is particularly palpable.

These threats have arisen partly because of the paucity of civil society organizations at the UN who prioritize the promotion of religious freedom. NGO voices for religious freedom are urgently needed at the UN to refocus it on its core foundational goals, preeminent among which is the right to freedom of religion. In addition to submitting reports to treaty bodies and the UPR that highlight religious freedom abuses in individual States, NGOs can be well-positioned to provide direct support to Member States to promote and defend religious freedom language in negotiations and demand that the UN increase its attention to this fundamental right.

There is still hope. For the persecuted Christians, Yazidis, and religious minorities of Iraq and Syria, growing consensus around the world that ISIS is committing genocide against them may spur the UN to accept its responsibility to protect them and act to end the genocide. But until the UN undergoes serious reform, it can no longer be taken seriously as the global forum for human rights, in particular religious freedom. It is time for change.

ADF INTERNATIONAL

ADF International is an alliance-building human rights organization that advocates for the right of people to freely live out their faith. With headquarters in Vienna, and offices in Brussels, Geneva, Strasbourg, London, New York City, Washington DC, and Mexico City, we are at the forefront of defending religious freedom, the sanctity of life, and marriage and family worldwide.

We operate at institutions of strategic international importance—the United Nations, the European Union, the Council of Europe, the Organization of Security and Cooperation in Europe, the European Court of Human Rights, and the Organization of American States—while also working alongside Member States to protect the fundamental values that these organizations were founded to uphold. ADF International's influence at these key institutions means we are instrumental in shaping policy around the world.

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