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UNITED NATIONS, HUMAN RIGHTS, FREEDOM OF RELIGION OR BELIEF

*The Tandem Project is a UN NGO in Special Consultative Status with the
Economic and Social Council of the United Nations*

Separation of Religion or Belief and State

HISTORY

These are highlights of the work of the United Nations on Freedom of Religion or Belief, taken from the Commentary, *Freedom of Religion or Belief: Ensuring Effective International Legal Protection*. Bahiyyih G. Tahzib, Kluwer Law International, The Hague, September 1995. The Tandem Project Update 1995-2010, and 2011.

1948: The First Preamble to the 1948 Universal Declaration of Human Rights (UDHR) declares: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” This is the core principle underlying international human rights norms and standards.

Article 18 of the 1948 UDHR reads: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

1952: In his address of October 7, 1952, before the fifth session of the Sub-Commission, Lewin, the representative of the Agudas Israel World Organization suggested that a world-wide study of discrimination in the matter of religious rights and practices be undertaken. This suggestion resulted in the Sub-Commission adding the area of religious discrimination to its series of projected studies of discrimination in various fields.”

1954: The Halpern Preliminary Study of Discrimination in the Matter of Religious Rights and Practices. Halpern was a member of the Sub-Commission. The Sub-Commission, with the approval of the Commission and ECOSOC decided to go ahead with a major study by one of its own members.

1960: “As instructed by the Sub-Commission, Special Rapporteur Arcot Krishnaswami of India initiated the work on his study by first collecting, analyzing, and then verifying material relating to discrimination in the matter of religious rights and practices. Krishnaswami presented the study to the Sub-Commission at its twelfth session (1960). In the Sub-Commission, the Special Rapporteur was praised for having successfully carried out, ‘with great skill and painstaking care, an exceptionally comprehensive and constructive study which probably would remain for many years as the classic work in an extremely delicate and controversial field, and which would serve as a guide for action by governments, non-governmental organizations and private individuals.’”

“In transmitting the sixteen draft principles with the Krishnaswami study to the Commission, the Sub-Commission expressed the belief that the adoption by the United Nations of recommendations to its Members, based upon these principles, would be a fitting culmination to its study.”

1962: “The General Assembly adopted a resolution requesting ECOSOC to ask the Commission to prepare a draft declaration and a draft convention on the elimination of racial discrimination. It also adopted a similarly worded resolution requesting ECOSOC to ask the Commission to prepare a draft declaration and a draft convention on the elimination of all forms of religious intolerance. Both resolutions referred in their respective preambles to the desire to ‘put into effect the principle of equality of all men and all peoples without distinction as to race, color or religion. The General Assembly set deadlines for submission of the special instruments on religious intolerance: its eighteenth session (1963) for the draft declaration and its twentieth session (1965) for the draft convention.”

1963: “The decision to separate the instruments on religious intolerance from those on racial discrimination constituted a compromise solution designed to satisfy a number of conflicting viewpoints. Western states insisted on addressing both matters in a joint instrument. Communist states were not anxious to deal with religious matters. African and Asian states considered the question of religious intolerance a minor matter compared with racial discrimination.” “In contrast to the religious intolerance matter, international instruments on the elimination of racial discrimination were adopted fairly swiftly, in 1963 and 1965 respectively.”

1964: “The Commission held a preliminary general debate on the General Assembly’s resolution regarding special instruments addressing religious intolerance. As the outcome of the debate the Commission asked the Sub-Commission to undertake a project on preparing instruments specifically pertaining to religious intolerance. The sequence of the draft declaration and the draft convention to be submitted to the General Assembly obviously prompted the Commission to request the Sub-Commission to accord priority to preparing a draft preliminary declaration.”

“While the Commission’s session working group was revising its original draft declaration, the Sub-Commission began to work on a draft convention on the elimination of all forms of religious intolerance. The Sub-Committee set up an informal open-ended working group to combine three suggested draft conventions into a single joint text to serve as a basis for further discussion.”

1965: “Rather than appointing a working group to consider the preliminary draft declaration, the Commission examined and revised the Sub-Commission’s draft convention during its twenty-first through twenty-third sessions. At its twenty-first session (1965), the Commission adopted the preamble and four articles of the draft convention.”

1966: “At its twenty-second session (1966), five additional articles were adopted. The Commission adopted at its twenty-third session (1967) three additional articles.”

The International Covenant on Civil and Political Rights (ICCPR) is adopted. Article 18 of the legally binding ICCPR reads: ‘Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.’”

1967: “At the General Assembly’s twenty-second session, the Third Committee had an opening general debate and a line-by-line review of the text of the draft convention. The convention’s most fierce critics were the Soviet Union, other communist states, and several African and Asian States. Since the draft Convention’s definition of “religion or belief” included theistic, non-theistic and atheistic beliefs; there was strong opposition from Islamic states, the Catholic church, and other religious groups.” “At its

twenty-third session, the General Assembly decided to defer consideration of the draft convention.

1968-1972: From 1968 to 1972 the General Assembly annually postponed discussion of the agenda item “Elimination of All Forms of Religious Intolerance” In 1972, Homer Jack observed that as a result of almost two decades of major differences over drafting international instruments pertaining to freedom of religion or belief, the political confusion was so great that some states, and some non-governmental organizations – some most interested in completing these instruments – began to have second thoughts. Would the final results be worth the effort? Would religious freedom be set back, or at least not appreciably advanced by the effort? How could there be a new beginning?”

1972: “There was a breakthrough when a core group of non-governmental organizations in New York determined to bring about change in the lingering effort to elaborate a special international instrument on freedom of religion or belief.” “The issue was taken up by the Ad Hoc Committee on Human Rights of the CONGO. A broad cross-section of NGOs was informed of the ‘sorry history’ of the issue and the impasse. It was agreed to send a communication to the President of the 27th General Assembly session signed by as many NGOs as possible. A total of 35 NGOs signed the letter which the sub-committee presented to the President on September 21, 1972.”

1973: “The General Assembly determined that the ‘preparation of a draft declaration’ required ‘additional study.’ It invited ECOSOC to request the Commission to consider ‘as a matter of priority’ the elaboration of a draft declaration and to ‘submit’ if possible, a single draft declaration to the Assembly at its twenty-ninth session.”

1974: “The Commission set up an informal working group open to all members of the Commission. The informal open-ended working group was established by the Commission at each of its sessions from 1974 on in order to speed up the work. The working group considered the draft declaration on the basis of the text prepared by the working group which the Commission constituted in 1964.” “At its first session (1974), the new working group provisionally agreed that the title for the draft declaration should be: Draft Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. It felt the term ‘religious intolerance’ in the proposed title was too vague in that it referred to subjective attitudes rather than determinable activities, and that it also did not cover discrimination on the ground of religion or belief.”

1977: “The working group finally completed the draft preamble to the declaration. However not a single operative article had been agreed upon.”

1978: “With the involvement of more Islamic states, the working group began the preliminary discussion of the substantive portion of the declaration. The working group was not able to approve, not even tentatively and despite the fact that it had met during three weeks, one additional word to the draft declaration.”

“Except for a few Western governments, only a core group of non-governmental organizations kept insisting on the need for accelerate action to adopt a declaration. The General Assembly noted ‘with regret’ that the Commission had so far adopted only the title and preamble of a draft declaration. Unlike progress by the United Nations in other fields of human rights, the working group had not even reached agreement on basic guidelines. Sixteen years after drafting commenced, no agreement could be reached on using Article 18 of the ICCPR as the basis for Article 1 of the draft declaration. This demonstrates the complexity of the issues involved including the critical problem of defining the limits of the freedom.”

1979: “The working group achieved sweeping agreement on several substantive aspects of the first three

articles of the draft convention. It was, however, unable to reach consensus on the question of submission of draft articles to the Commission for adoption. The Commission decided at that point to depart from its custom that decisions are made by consensus only. In doing so, a filibuster was prevented that might have blocked the whole undertaking.”

1980: “The working group tentatively adopted the fourth article and the first paragraph of the fifth article. In that same year, the working group was able to report to the Commission that it had completed the draft declaration, consisting of the title, the preamble, and seven articles.”

1981: “The 1981 Declaration was passed by the United Nations General Assembly on November 25, 1981. It is not a convention and does not retain the same legal effect of a convention. Yet, it still has legal effect. This is mainly due to the content and language of the 1981 Declaration as well as the evolution it has gone through since its adoption.”

“Both in the Third Committee and in the plenary session of the General Assembly, a number of states, from the former Communist bloc and the Islamic group, declared oral explanations of their votes after the adoption of the 1981 Declaration. Post vote explanations have been classified into the following three groups.” “According to Romania, Poland, Bulgaria, Czechoslovakia, and the U.S.S.R., the 1981 Declaration gave a one-sided version of freedom of thought, conscience and religion; it did not take sufficient account of atheistic beliefs. In their opinion, the 1981 Declaration disregarded the rights of persons who did not profess any religion or belief. They considered the 1981 Declaration unnecessarily incomplete. This was particularly clear in Article 6 which concentrated one-sidedly on various rights and freedoms that had no importance for a person who had no religion or belief. Article 6 did not contain a complete and systematic list of freedoms. It omitted freedom of thought and conscience, which were mentioned in the first sentence of Article 6.”

“Romania, Syria, Czechoslovakia and the U.S.S.R. made a general reservation regarding the applicability of any provisions of the 1981 Declaration which were not in accordance with the provisions of their national legislations. Iraq entered a collective reservation on behalf of the Organization of the Islamic Conference as to the applicability of ‘any provision or wording in the Declaration which might be contrary to Islamic law (Shari’a) or to any legislation or act based on Islamic law. Syria and Iran endorsed Iraq’s collective reservation.”

1984: The Seminar on the Encouragement of Understanding, Tolerance and Respect in Matters Relating to Freedom of Religion or Belief. Two week seminar in Geneva, Switzerland; called by the United Nations Secretariat. The NGO Committees on Freedom of Religion or Belief created in Geneva and New York.

1987: Sub-Commission Study by Ms. Odio Benito; Current Dimensions of the Problems of Intolerance and Discrimination on Grounds of Religion or Belief.

1986: The Commission appoints a Special Rapporteur on Religious Intolerance, to report to them annually on the mandate to implement the 1981 U.N. Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief. Since 1986 the Commission has heard annual reports by three Special Rapporteurs: Vidal d’Almedia Ribeiro, Portugal; Abdellfatah Amor, Tunisia; Asma Jahangir, Pakistan.

1988: The Van Boven Working Paper on Issues and Factors to be considered before drafting a Legally Binding Instrument. At its forty-fourth session the Commission requested the Sub-Commission to prepare a compilation of provisions relevant to the elimination of intolerance and discrimination based on religion or belief, and examine relevant issues and factors which should be considered before

drafting a special legally binding international instrument on freedom of religion or belief. Theo Van Boven, international legal expert, who subsequently became a United Nations Special Rapporteur on Torture, undertook the task.

1998: The Oslo Conference on Freedom of Religion or Belief recommended a change to the title from United Nations Special Rapporteur on Religious Intolerance, to Special Rapporteur on Freedom of Religion or Belief, to reflect the inclusive nature of religion or belief. This was present by the Special Rapporteur to the Commission, and approved by ECOSOC and General Assembly the following year (E/CN.4/1999/58).

2001: Twenty year Commemoration, 1981 U.N. Declaration, Madrid, Spain.

2006: Twenty-Five year Commemoration, 1981 U.N. Declaration, Prague, Czech Republic.

2007: On 14 December 2007 the United Nations Human Rights Council voted 29 in favor, 0 against and 18 abstentions in the sixth session for a three year extension of the mandate on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief (A/HRC/6/L.15/Rev.1). There are 47 members of the Human Rights Council. Those voting to abstain included: Azerbaijan, Bangladesh, Cameroon, China, Djibouti, Egypt, Gabon, Indonesia, Jordan, Malaysia, Nigeria, Pakistan, Qatar, Saudi Arabia, Senegal, South Africa and Sri Lanka. The 18 country abstentions were based on the objections from Pakistan, spoken on behalf of the 57 country Organization of the Islamic Conference (OIC) that norms in Muslim countries prohibit leaving Islam as a religion, and were not being honored in the draft resolution. Portugal, speaking on behalf of the European Union (EU) said over 40 paragraphs in the draft resolution was eliminated in an attempt at consensus with the abstaining states, but consensus over the right to leave one's religion or belief was inviolable and could not be compromised.

2008: Votes in the United Nations Human Rights Council continued the split between the countries listed in the 2007 vote over a lack of consensus on the mandate on freedom of religion or belief based on cultural norms against the right to leave a religion or belief, what constitutes defamation of religion and what is the relationship between Freedom of Opinion and Expression and Freedom of Religion or Belief.

2009: Votes in the United Nations Human Rights Council included support for a follow-up to the Durban Review Conference including work by an Ad-Hoc Committee on Complementary Standards between racism and religion. The trend has been away from a core international human rights treaty on freedom of religion or belief, and work to incorporate complementary standards in international human rights instruments that relate to both racial and religious discrimination.

2010: Consensus reached on the mandate on freedom of religion or belief. New Special Rapporteur on Freedom of Religion or Belief named. Mandate extended for three years. Spain on behalf of the European Union introduced (A/HRC/14/L.5) Freedom of Religion or Belief: Mandate of the Special Rapporteur on freedom of religion or belief. There were three UN Human Rights Council general comments and explanations before the vote. Pakistan on behalf of the Organization of the Islamic Conference (OIC) called the resolution by its correct title and withdrew an amendment objecting to parts of the resolution.

2011: The UN General Assembly resolution on human rights and freedom of religion or belief: 12 (a) *Urges* States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end:

(a) To ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience and religion or belief to all without distinction, inter alia, by the provision of access to justice and effective remedies in cases where the right to freedom of thought, conscience and religion or belief, or the right to freely practice one's religion, including the right to change one's religion or belief, is violated;

“ The representative of Belgium, the main sponsor, on behalf of the European Union, recalled that similar resolutions had been adopted by consensus in previous years. This year's draft had been the subject of many rounds of open and transparent informal consultations. It was regretted that, once again, it had not been possible to explicitly state in the resolution that the freedom of religion and belief included **the right not only not to have, but also to change or abandon one's religion or belief**; such language had been let go for the sake of a highly valued consensus. The representative of Morocco, on behalf of the Organization of the Islamic Conference said **it had not been possible to resolve differences on respect for national laws and religious norms regarding changing one's religion**. Despite such divergences, it had been decided by the Organization not to oppose the draft; such resolutions ought to be adopted by consensus.”

The Tandem Project believes until a core International Human Rights Treaty on Freedom of Religion or Belief is adopted these issues will be harder to resolve. The original intent of the United Nations in 1960 was to draft two core legally binding human rights treaties on religion and race. The decision to separate the instruments on religious intolerance from those on racial discrimination constituted a compromise solution designed to satisfy a number of conflicting viewpoints.

12 (a) would be a **significant** *step forward* to resolve the question of universality vs. cultural relativity on the issue of the right to change one's religion. This right is an *inviolable* principle of the Universal Declaration of Human Rights, democracy, governments, religious and non-religious beliefs and all members of the human family. It demands the highest respect, sensitivity and dialogue to resolve differences between the European Union and Organization of the Islamic Conference, regarding national laws and religious norms to leave a religion.

At the General Assembly's twenty-second session in 1966, the Third Committee had an opening general debate and a line-by-line review of the text of the draft convention. The convention's most fierce critics were the Soviet Union, other communist states, and several African and Asian States. Since the draft Convention's definition of "religion or belief" included theistic, non-theistic and atheistic beliefs; there was strong opposition from Islamic states, the Catholic church, and other religious groups. At its twenty-third session, the General Assembly decided to defer consideration of the draft convention.

In 1968, the United Nations deferred work on a legally-binding treaty on religious intolerance as too complex and sensitive and passed a non-binding declaration in its place. The Tandem Project believes until a core legally-binding *Convention on Freedom of Religion or Belief* is adopted international human rights law will be incomplete.

The Tandem Project a non-governmental organization (NGO) founded in 1986 to build understanding, tolerance, and respect for diversity of religion or belief, and to prevent discrimination in matters relating to freedom of religion or belief. The Tandem Project has sponsored multiple conferences, curricula, reference material and programs on Article 18 of the International Covenant on Civil and Political Rights- Everyone shall have the right to freedom of thought, conscience and religion – and the 1981 United

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