Helge Årsheim

Making Religion and Human Rights at the United Nations

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Helge Årsheim

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Part I: **Making Religion**

Introduction

Among the few things that unite microstates like Andorra and Luxembourg with superpowers like China and India is their legal personality under international law, their complicated relationship with religion and their obligation to report on their human rights record to the United Nations (UN). This book tells the story of how these states—and virtually every other state in the world—have reported on their legal relationship with religion to four UN human rights committees from 1993 to 2013, and how the committees have responded to their reporting. While the committees under scrutiny are entities created under the rules and regulations of international law, this book offers an external view of their work, from outside law and the rules of legal interpretation: The selection of research questions, theoretical approaches, methods and data are not primarily guided by a concern with the legal scope of the recommendations issued by the committees, but with the fundamental ambiguity, at times disconnect, between approaches to religion among legal professionals, policymakers and scholars, and a conviction that examining the relations between these approaches could generate new and important insights.

Despite the strictly non-legal nature of this approach, the book has been written in order to be relevant to readers from both legal and non-legal backgrounds: how religion is approached, employed and negotiated legally is inextricably linked with its application in wider society, as the vocabulary and taxonomies of dominant social actors inevitably influence the legislative and legal process—and vice versa. What concepts, doctrines, practices and issues are recognized as "religious" in and around the legal process has wide-ranging effects for individuals, organizations and society at large. Hence, a non-legal examination of how religion is handled in the legal process concerns legal and non-legal readerships alike.

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1 The United Nations and Religion

Officially, the United Nations does not “do” religion: there is no formal legal instrument, specialized program or political entity within the organization that deals with religion as its primary objective. Nevertheless, when the UN Intellectual History Project (UNIHP) submitted its halfway report in 2005, the project leaders summarized a priority list for the issues where new thinking and research was urgently required and the United Nations should be encouraged to do “more creative work”. On the very top of that list, the authors placed “The growing divide between the Islamic world and the West—with attention to the political, cultural, religious, and development dimensions” (Jolly, Emmerij and Weiss 2005: 61).

Measured with the metrics of the UNIHP, under which international organizations should be evaluated according to “the quality and relevance of the policy ideas they put forward” (Emmerij 2007: 39), the efforts of the UN to deal with a perceived divide between the Islamic world and the West and its multidimensional origins and consequences has unequivocally failed, as the world organization has been unable to influence or mend this relationship in any meaningful manner. This shortcoming can, at least in part, be attributed to one of the other key findings of the project: The failure to distinguish between the different levels of the organization, and to what extent they are responsible for desirable outcomes (Weiss, Carayannis and Jolly 2009: 138). What is regularly called “the” United Nations is in reality an entity with at least three different organizational levels, consisting of (1) forums for decision-making, (2) international secretariats and specialized programs, and (3) a broad and increasingly influential group of independent experts and actors in international civil society.

Although individual agencies have slowly started crafting guidelines for their interaction with religious actors, none of these organizational levels have established procedures to deal comprehensively with religion/s or their influence on global governance.[1] Fashioned to respond to the primary objectives of the UN listed in the Charter—peace, development, human rights and self-determination —this organizational structure is ill-equipped to deal with challenges that transcend and depart from these objectives. This lack of attention to issues beyond the original motives of the organization also influenced the work of the UNIHP. While the project documented a variety of important contributions of

1 For examples of actors at the “second” UN who have started dealing more actively with religion, see chapter 3.3.2.

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the UN within its core objectives,[2] it left the influence of the world organization on other key issues in global governance, like religion, unexamined.

1.1 From Islam and the West to State, Law and Religion

This book examines the range of approaches to religion at one specific section of the UN from 1993 to 2013, thereby offering a response to the call from the team behind the UNIHP that the UN be encouraged to do more creative work on the "growing divide" between the Islamic world and the West. It seeks to provide such a response in four steps. First, this chapter interrogates the problem formulation offered by the UNIHP, arguing that challenges faced by the UN in relation to religion are not limited to a failure to engage the divide between the Islamic world and the West, but are indicative of larger systemic and pervasive challenges arising from the way religion is approached and governed at the international level. Second, it maps how the different organizational levels of the UN has approached the subject matter of religion more broadly over the course of their existence, including an appraisal of the approaches to religion inherited from precursors like the League of Nations. Third, and drawing on original archival research, it introduces and examines how four human rights committees located at the intersection between the three organizational levels of the UN have approached religion in their monitoring practice from 1993 to 2013, identifying patterns of similarity and difference.[3] Fourth, it examines these patterns in greater detail by contextualizing them within larger scholarly conversations on the relationship between law and religion.

Surveying the events of the first decade of the 2000s, the emphasis in the midway report from the UNIHP on a growing divide between "the Islamic world and the West" is understandable, as the tumultuous world events involving Islam, Muslims and "the West" during the project period could hardly fail to register on the radar of a project dedicated to an intellectual history of the UN. The "Global War on Terror" dominated the decade, as sanctions, wars, additional terror attacks and heated rhetoric about the incapability of Muslims to accept

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2 See the project website at http://www.unhistory.org/ (Accessed 31.08.2016).

3 Some of the archival material examined in chapters 4–7 have been subject to more limited analyses in two previous publications: Årsheim, Helge. 2016. "Secularist Suspicion and Legal Pluralism at the United Nations." *Religion and Human Rights* 11 (2): 166–188 and Årsheim, Helge. 2018 [in press]. "Legalities unbound? Assessing the role of religion and legal pluralism at four UN human rights committees." *Religion, State and Society* 46(3).

democratic values, whether at home or abroad, increasingly dominated news headlines and rose to the top of global political agendas.

In the midst of these controversies, the UN responded not with the "creative work" envisioned by the UNIHP, but by reifying and exacerbating the idea that there is indeed an existential divide between "the Islamic world" and "the West". Early in the decade, the World Conference against Racism (2001) in Durban descended into chaos as NGOs, bureaucrats and state representatives quarreled over the Palestinian question and anti-Semitism, with the leading diplomatic representative of the U.S. government describing statements at the conference as "the worst manifestations of anti-Semitism since World War II" (Petrova 2010: 130). According to the representative, "the (...) attitude that sought to turn Durban into an anti-Israeli carnival also led to the horrific terrorist attacks in New York and Washington only two days after the conference closed" (Lantos 2002: 50), intimating a direct link between anti-Semitism and terrorism conducted in the name of Islam. The controversial Durban Declaration and Programme of Action adopted at the conference has since reverberated in the work of the UN on the links between discrimination on racial and religious grounds.

In 2004, Spanish premier José Luis Rodríguez Zapatero used the UN General Assembly as his pulpit when he invoked the cultural diversity of Spanish history and the ability of the Spanish people to move on from the painful experiences of terrorism before proposing the creation of "an Alliance of Civilizations between the Western and the Arab and Muslim worlds", in order to "prevent hatred and incomprehension" from building a new wall reminiscent of the Cold War separation of Europe.[4] The Alliance of Civilizations (AoC) began work in 2006, and was swiftly taken hostage by the anti-terrorism agendas of the UN, the EU and the US, all of which cited the AoC as a "helpful instrument" in the fight against terrorism (Lachmann 2011: 191), reinforcing the idea that there is a civilizational war afoot.

Also in 2004, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance submitted a report to the Commission on Human Rights entitled Defamation of Religions and Global Efforts to Combat Racism: anti-Semitism, Christianophobia and Islamophobia.[5] In his recommendations, the rapporteur stressed

> the increasing intertwining of race, ethnicity, culture and religion and, in this context, the rise of anti-Semitism, Christianophobia and Islamophobia. The Commission is thus invited

4 The United Nations Webcasts: http://www.un.org/webcast/ga/59/statements/spaeng040921.pdf. (accessed 14.04.2016).

5 E/CN.4/2005/18/Add.4, 2004.

> to draw the urgent attention of member States to the dynamic of the clash of cultures, civilizations and religions generated by these developments, in particular in the current context of the predominance of efforts to combat terrorism.

Following the cartoon controversy of 2005/2006, the rapporteur released an additional report on the correlation between racism and religious intolerance, entitled Situation of Muslims and Arab peoples in various parts of the world.[6] In this follow-up report, the rapporteur observed that the central theme in discrimination and violence against Muslims and Arab people across the world was "hostility towards Islam—the religion itself and believers", perpetuating the idea of a widening chasm opening up between Islam and Muslims on the one side, and a less clearly defined "West" on the other.

While these scattered examples show how UN actors seem to have done little else than confirming the existence and seriousness of a perceived civilizational conflict between Islam and the West, they also amply illustrate the problems with assigning particular tasks to "the UN". No single entity can direct what happens at world conferences like the one in Durban, in subsidiary bodies created at the initiative of member states like the AoC or in the reports of individually appointed special rapporteurs. Indeed, by challenging the UN to do more creative work without assigning this task to any specific part of a multilevel organization with 193 member states, 40 specialized programs, 28 ongoing peace operations and 44 000 employees around the world,[7] the UNIHP team reproduced their own concern that one of the main challenges facing the UN is the frequent failure to distinguish between the different levels of the UN and their responsibility for desirable outcomes (see above). Adding insult to injury, the very idea that any organization could possibly take upon itself to address "[t]he growing divide between the Islamic world and the West—with attention to the political, cultural, religious, and development dimensions" seems to rest on an idealized vision of what the UN is and what it can accomplish.

1.2 The United Nations and World Peace

The idea that the United Nations, or some section of it, should take on the responsibility to heal an envisaged divide between different civilizational blocks is not a recent one, but hardwired into the DNA of the organization. Relying

6 E/CN.4/2006/17, 2006.

7 Figures retrieved from United Nations Careers, at https://careers.un.org/lbw/home.aspx?viewtype=VD, (accessed 14.04.2016).

on concepts and ideas derived from proposals for organizations maintaining "perpetual peace" spanning several centuries,[8] key actors in the foundation of the UN linked the mission of the world organization with eternal struggles to create robust structures that would secure peaceful planetary coexistence. Jan Smuts, South African premier and key architect behind the preamble to the UN Charter, observed that the creation of the UN came at a time when the hour had struck for the human race, and "[m]ankind has arrived at the crisis of its fate, the fate of its future as a civilized world" (Mazower 2009: 28). The fight against Nazism during the war had been in defense of "eternal values which sustain the spirit of man in its upward struggle toward the light" (Mazower 2009: 29).

Above all, this spiritual, civilizational struggle would be resolved by recourse to human rights, whose formulation in the preamble to the Universal Declaration on Human Rights (1948) was derived from the "inherent dignity" of all members of the human family. Proclaiming the rights in the declaration as "a common standard of achievement for all peoples and all nations", the preamble echoed earlier sentiments among statesmen and international lawyers relying on a more or less explicit "standard of civilization", a notoriously slippery requirement under which

> the European law of 'civilized' Christian nations was established as the guiding principle as to whether a nation was 'civilized', 'barbarous', or 'savage', thus determining its admissibility or exclusion from European international society. In order to meet the requisite 'standard of civilization' and be admitted to the family of international law-abiding nations, non-European societies were required to organise themselves in a manner that would be immediately recognisable by European states as reflecting their own standards of socio-political organisation. (Bowden 2005: 19)

According to this line of thinking, a stable international order under which different nations could engage in peaceful relationships depended on the implementation of a common standard of achievement to which all peoples should strive.

Among the items in the list of requirements for states to adhere to the standard, none were considered more important than law: As the primary tool of modern, enlightened statecraft, the redeeming qualities of the creation and implementation of a legal system modeled on European legal traditions could

8 The idea of a coalition of states coming together to create binding legal obligations on one another to secure friendly relations for all eternity was authoritatively hammered out by Immanuel Kant in the essay "Perpetual Peace: A Philosophical Sketch" (1795). For an overview of different models of such projects, see Archibugi 1992.

hardly be overestimated in an era when law increasingly came to be seen as a positive science furthering the development of mankind. While the main legal tool employed under the standard of civilization was the unequal treaty systems developed between European and non-European states during the 19th century, the standard was also faithfully reproduced as the legal basis for the decolonization overseen by the Covenant of the League of Nations, whose article 22 mandated that the tutelage of recently independent territories "inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world" should be offered to more advanced nations, seeing as the "well-being and development of such peoples form a sacred trust of civilization" (see chapter 2).

Although the idea that civilizations are hierarchically ordered was not as clearly stated at the foundation of the UN, the question of "trusteeship" was among the major tasks attributed to the world organization. Chapters XII and XIII of the UN Charter are dedicated in their entirety to the creation of this system, under which the UN Trusteeship Council was given the task of overseeing the gradual dismantling of the mandates established under the League. Among the key objectives of the system was the obligation in article 76 of the Charter, "to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world", establishing the clear correlation between the concepts of trusteeships and human rights.

While the Trusteeship Council was practically made obsolete with the independence of Palau in 1994 as the last territory under its oversight, discussions on the legitimacy and applicability of the human rights provisions enshrined in the UDHR as "a common standard of humankind" have been ongoing with varying degrees of intensity from 1948 and up to the present. Across these dispersed human rights debates, the possibility or desirability of civilizational rapprochement has been a recurring theme, as authors have questioned whether human rights can be considered a new standard of civilization (Donnelly 1998: 16), whether the "metaphor" and "grand narrative" of human rights ask states in the "Third World (…) to follow a particular script of history" (Mutua 2001: 243), or whether "Asian" (Myers 2011: 48–49) or "Islamic" (Mayer 1994: 402) values can be reconciled with the rules and provisions of the international system of human rights law.

Exceeding these other debates in prominence and after-effects, however, the publication of the essay "The Clash of Civilizations?" in *Foreign Affairs* in 1993 by Samuel P. Huntington offered a grand narrative for the conceptualization of civ-

ilizational conflict and strife as a potential outcome of the end of the Cold War stalemate.[9] Huntington's approach directly linked "civilizations" and "religions", as he divided the world into "seven or eight" major civilizations, whose most important dividing issue was religion (Huntington 1993: 25). Only a year later, José Casanova published his influential book *Public Religions in the Modern World*, whose central thesis was the "deprivatization" of religion, under which religious movements and organizations across the world were "refusing to accept the marginal and privatized role which theories of modernity as well as theories of secularization had reserved for them" (Casanova 1994: 5).

Both of these publications have been widely discussed and hotly contested. They tapped into and helped provide a vocabulary and a framework for the analysis of the much lauded re-emergence, comeback, resurgence, or simply return of religion to the public sphere, from a purported, yet rarely specifically defined exile or absence. Among the variety of indicators marshalled in the following years to sustain the claims of a decisive comeback, the terrorist attacks against the U.S. on September 11, 2001 is in a class of its own, after which Robert O. Keohane flatly observed that all theories of international relations were "relentlessly secular with respect to motivation", having ignored the impact of religion despite the role of "religious fervor" in "world-shaking political movements" (Keohane 2002: 272). The 9/11 event also contributed to the "religious turn" in the thinking of Jürgen Habermas, who one month after the attacks delivered the address "Faith and Knowledge", in which he observed that Western society, in order to avoid the specter of a clash of civilizations, must keep in mind that its own "dialectics of secularization" had not yet come to a close, in order to better understand the "miscarrying" of secularization in other parts of the world (Habermas 2005: 328).

1.3 The United Nations and the "Return" of Religion

Although religion has no place in the UN Charter beyond the principle of non-discrimination, the widely touted "return of religion" that has increasingly been diagnosed since at least the turn of the millennium has provided links between religion and most primary objectives of the UN listed in the Charter. According to proponents of different versions of the comeback narrative, religion

9 Although Huntington's essay was by far the most influential, the ideas underpinning it were formulated by Bernard Lewis in an article published in *The Atlantic* in 1990 with the ominous title "The Roots of Muslim Rage". http://www.theatlantic.com/magazine/archive/1990/09/the-roots-of-muslim-rage/304643/ (accessed 19.08.2016).

influences peace, human rights and development in unequal measures, influences that have allegedly been woefully under-researched in the "secularist" past of the social sciences. Religion, on this reading, is often implicated in conflicts because religious convictions contain "sources of danger", including but not limited to their focus on absolute and unconditional validity, which in turn can lead to intolerance, over-zealous proselytization, increased aggressiveness and the willingness to use violence and the legitimization of abuses of power and violations of human rights (Haynes 2009: 53). These challenges notwithstanding, other authors have pointed to the potential of religion/s and religious actors to contribute to peacebuilding, partly due to their important social role in many conflict zones around the world, partly due to aspects inherent to the central tenets of their doctrines (Hertog 2010: xvi).

The correlation between religion/s and human rights, while integral to the human rights enterprise from the very start of its modern inception, has particularly been highlighted in recent years. Authors have pointed to the necessity of a religious component for discussions on the morality of human rights (Perry 2007: 12), but have also cautioned that religion can be "a formidable force for and against human rights" (Juviler 1999: 3). This latter point has become the linchpin and battleground in much of the recent literature on the specific human right to religious freedom, whose promotion and contestation frequently relies on engagement with "good" religion and suppression of "bad" religion (Hurd 2015: 22–37). Echoing this concern with the ambivalence of religion as a social force, authors within development studies have called for the increased engagement of religious actors in development work (Deneulin and Rakodi 2011: 52), while others have questioned just what exactly sets religious actors apart from other, purportedly "secular" actors in development (Barnett 2012: 177).

Despite these recent linkages between the core objectives of the UN and the perceived "return" of religion, the literature on religion and the UN is still in its infancy. The research presented in this book was undertaken from 2010 to 2014, a timeframe under which the research landscape on religion and the UN was going through some of its first, hesitant steps. While several works on the role of the UN in the creation of a human right to the freedom of religion or belief have been written in earlier decades,[10] the role of religion in the work of the other sections of the UN has only gained traction in later years.

This incipient literature has so far largely revolved around the role of religious organizations. Recent studies have examined the increasingly assertive role of religious NGOs at the United Nations. Josef Boehle has stressed the

10 See Claydon 1972, Sullivan 1988 and Dickson 1995.

vital role of religious NGOs in promoting and realizing the Millennium Development Goals, pointing to the need to overcome the epistemic boundaries separating religious and secular communities in order to work together to reach common goals (Boehle 2010: 295). Marie Juul Petersen, in her assessment of religious NGOs working with the UN, has pointed to the relative underrepresentation of Muslim NGOs relative to those of other "world religions" and the complex interweaving of religious doctrines with the work of NGOs, while also stressing the importance of the progressive/conservative political axis as sometimes more important than the distinctions between religious and non-religious NGOs (Petersen 2010).

Jeremy Carrette, writing about the role of Quakers at the UN, has highlighted the "paradox of globalization", under which religious NGOs are caught in the general tension between the actual hegemony and apparent plurality driven by global actors like the UN. Viewed in this perspective, the proliferation of religious NGOs at the UN over the last decades has had little effect in terms of creating true pluralism, instead reproducing entrenched divisions in global civil society (Carrette 2013: 46–47). Karsten Lehmann, in providing a general overview of religion at the UN and religious NGOs in particular, has emphasized how these organizations have changed their internal structures to become more efficient at the UN, while also stressing the importance of different religious doctrines to the kinds of activism pursued by NGOs emanating from religious traditions (Lehmann 2015: 2937).

Taken together, these recent writings reflect the empirical reality of organized religions staking their claims on the world stage in a way not previously seen. While this increase may theoretically be related to the so-called "return" of religion to the public sphere, it is certainly also a subset of the increase in civil society engagement with the United Nations more generally, as documented in the UNIHP as the incipient "third UN" (see above). The increased engagement of religious NGOs with the UN has been characterized by Azza Karam as partnerships between the UN and the "world of religion" (Karam 2010: 462). According to Karam, these partnerships have become increasingly normalized both within religious organizations and within the UN itself, in particular through its specialized programs (Karam 2010: 463–4).

This book takes a different approach. Rather than examining the relationship between the UN and religion/s, either in overarching or more specific institutional terms, it examines how different actors within the UN system have identified and approached religion/s in the course of their work, whether in their doctrinal, social or organizational forms. As such, it adopts a conceptual approach that is methodologically related to works like *Human Rights at the UN. The Political History of Universal Justice* by Sarah Zaidi and Roger Normand

(2008) and published as part of the UNIHP, and *The United Nations Democracy Agenda—A Conceptual History* by Kirsten Haack (2011). Like human rights and democracy, I contend that religion in the international sphere in general and at the UN in particular constitutes an "essentially contested concept" (Haack 2011: 13), whose scope and content can only be accessed through a combination of etymological and genealogical investigation furnished with a reflexive engagement with empirical data (see chapter 2).[11]

The claim that religion constitutes an essentially contested concept at the UN does not undermine the veracity of the existing literature on religion at the UN. Rather, it represents a difference in the subject matter under scrutiny and the objective of the research effort. Whereas the existing literature primarily seeks to disentangle, map or influence the ways in which religious freedom is protected and how different types of religious organizations interact with the various levels of the UN, the present study examines the ways in which actors in the UN system generate concepts and definitions of religion in their work—how they do so, what patterns of religion these efforts create, and how these patterns correspond with the larger scholarly enterprise of law and religion. As such, under scrutiny here is not how religion/s and their institutions interact with the UN, but rather the approaches to religion within the United Nations. Similarly, the objective is not to influence how religion is construed, but to map its typical forms and connect them with the existing scholarly literature.

1.4 Making Religion at the United Nations

Despite recent attention to the UN and religion in the academic literature, there has been no concerted attempt to examine this relationship from a critical and constructivist perspective. More specifically, scholars have paid little attention to how different levels of the UN approach religion in the interpretation and execution of their mandates. Whether religion/s are conceived of as beliefs or prac-

11 This is a different approach to the original notion of essentially contested concepts, which was coined by Walter B. Gallie in a paper published in the *Proceedings of the Aristotelian Society* in 1956. According to Gallie, essentially contested concepts are recognized by seven distinctive features, all of which denote specific qualities inherent to such concepts, the main distinctive feature being criterion VI, that all participants in a conversation about essentially contested concepts recognize the authority of a more or less clearly enunciated archetype, whose replication is available through several different avenues. Among his key exemplars of essentially contested concepts, Gallie considered the participation in a particular religion to be satisfy most "nearly perfectly" his conditions (Gallie 1956: 180).

tices, clusters of formal or informal institutions or powerful social forces is often opaque and under-examined in the policies, programs and guidelines created by UN entities. This lack of attention is not only surprising given the tortuous interpretational history of the term and concept of "religion", but potentially damaging to the all-important translation and deployment of key concepts in the work of the UN on the ground.

As all the levels of the UN increasingly engage "the world of religion", it is more important than ever that the rationale and methodology driving this engagement is made openly and specifically. If UN specialized programs and agencies promote the increased collaboration with religious actors to achieve their goals, they should publicize their reasons for doing so, what actors are being targeted, and for what reasons. Likewise, if the UN General Assembly, the Human Rights Council or a Special Rapporteur advise greater interreligious dialogue, the protection of religious sites or increased religious education, they should be challenged to explicate which religious traditions that should be involved, through which religious organizations representing which constituencies in order to reach which specific, attainable goals. This level of precision is required for all other dominant concepts of international governance, from the fight against poverty and war and to the spread of democracy and the protection of the environment. There is no reason why religion should be treated otherwise. As such, demanding greater clarity and accountability from the ways in which UN actors approach religion does not amount to exoticization or differential treatment of religion as a "special case", but is rather a call for international actors to start re-examining and revisiting the claims and charges they make in the name of or in relation to religion/s.

The importance of demanding this precision through re-examination, translation or "vernacularization" of how terms are applied and understood at the global level in order to create a better fit with local conditions is obviously not exclusive to religion, and has also been examined for a range of other concepts. As documented in the work of legal anthropologist Sally Engle Merry, the conceptual journey from international conferences and seminars and down to the work of state agencies and NGOs trying to bring about changes in the lives of ordinary people can be an arduous one, involving heightened risks of distortion for less specific concepts created at the international level (Merry 2006: 219–220). Writing on the emergence of global and local discourses on women's rights, Merry has pointed to a range of different conceptions of the role of "culture" in these discourses, a concept that has consistently been demonized (Merry 2003a: 60). She has shown how this discussion has evolved through transactions between scholars from a pretended "outside", at intergovernmental and state levels

in powerful positions from "above", and among the marginalized and in grass-roots activist groups from "below", over the course of the last decades.

In this book, I examine how these processes play out in relation to religion, with a particular emphasis on how actors within the UN system approach the concept differently relative to their roles within the organization. Unlike some scholars of religion, notably Timothy Fitzgerald (2000; 2011), Russell T. McCutcheon (1997; 2001; 2014) and Daniel Dubuisson (2003), I contend that there is nothing special that sets religion apart as a topic of academic analysis, and that this general point can be expanded to numerous other topics; while there are obvious challenges to the translation of "folk categories" that have independent existences and modes of interpretation beyond the academy into analytical categories, as pointed out by Saler (2000), Clark (2003) and Murphy (2006), I see no reason why religion is distinct in this respect from other essentially contested concepts, like art, politics or law, all of which could and should be subjected to similar forms of investigation. Numerous academic disciplines engage religion as one of their central categories, and a broad and varied body of scholarship has proposed different approaches to establish the content and applicability of the term.

1.5 Religion at the United Nations Human Rights Treaty Bodies

Heeding the call of the UNIHP to appreciate and engage the distinctions between the different organizational levels of the United Nations, this book zooms in on one specific group of committees located at the intersection between the political, bureaucratic and activist levels of the UN. In operation since the early 1970s, the human rights treaty body system was created to monitor the implementation of the core human rights treaties negotiated under the auspices of the UN, from the adoption of the UDHR and up to the present. Monitoring treaties negotiated at the first, political level of the UN, serviced by international civil servants from the second UN and composed of independent experts drawn from the third, auxiliary level of the UN, their central location at the nexus between the different levels of the UN system and their frequent engagement with actors at the other levels make the treaty bodies ideal for an analysis of how different actors at the UN approach religion.

Treaty bodies entertain a broad engagement with legal provisions on religion, and religious doctrines, practices and organizations play key roles in their monitoring efforts. In their "concluding observations", issued after the review of states' reports, the treaty bodies offer comparable views of what religion

is and can be, and how states can and should handle religion in their domestic legal systems. The treaty bodies review numerous state reports on the implementation of their provisions every year, generating a large body of views of the nature and role of religion in society.

The production of written material under the treaty body system is considerable.[12] In order to make the analysis as comprehensive as possible in terms of geographical and chronological scope, the discourse under close examination is limited to the "concluding observations" issued by the committees, i.e. their published views of the implementation process described by each state party in their periodic reports. Furthermore, the examination is limited to observations issued between 1993 and 2013 by four human rights committees[13] that enjoy wide ratification[14] and frequently approach religion. Limiting the discourse under examination to concluding observations entails a reduction of textual material from the 100 000s to approximately 12 000 pages,[15] issued at the conclusion of 208 sessions.

12 The total output of the committees is beyond the scope of this volume. Although the Committee on the Elimination of Racial Discrimination reviewed its first report as early as 1970, it was not until the early 1990s that the treaty bodies consolidated their monitoring practice into a set format, with similar and comparable documentation emanating from each review. The committee monitoring the Convention on the Rights of the Child held its first review session in 1993, and the online documentation system of the United Nations is presently (2016) complete from 1993. Hence, in order to make a comparable analysis feasible, no treaty-related document from prior to 01.01.1993 has been reviewed, apart from their inclusion and assessment in secondary literature cited. In order to include all relevant material available at the time of completion, the final date for inclusion of treaty-related documents in the analysis has been set to 31.12.2013.

13 Although the Committee on Economic, Social and Cultural Rights occasionally considers religion in its practice, I have decided to leave it out of the present analysis because of a relative scarcity of data.

14 At present (2016), the number of states that have ratified the conventions in question are as follows: The International Convention on the Elimination of Racial Discrimination: 177; The International Covenant on Civil and Political Rights: 168; The Convention on the Elimination of All Forms of Discrimination against Women: 189; The Convention on the Rights of the Child: 196.

15 Sessions typically last for 2 to 3 weeks, and are convened two or three times a year, depending on the committee in question. Committees review different numbers of states in each session. The sessions covered in the analysis are for the HRC the 47th through the 109th session, for CERD the 42nd through the 83rd session, for the CEDAW committee the 12th through the 56th session, and for the CRC committee the 3rd through the 64th session. Page number totals for each committee vary dramatically, from approximately 1300 for the HRC, to more than 5700 for the committee monitoring the CRC. While the CRC committee has issued concluding observations from the start, the other committees switched gradually from a mixture of summary records and short observations to the full concluding observations format. The HRC switched at its

In order to compensate for this dramatic reduction, additional documentation has been consulted to shed light on particularly important review sessions. Reducing the scope of the analysis from virtually everything to the concluding observations weakens the potential for ethnographic thick description,[16] but sharpens the legal relevance of the analysis, as concluding observations are the only documents issued by the committees during the review process that can be said to impose anything resembling legal obligations on states (O'Flaherty 2006: 32–37). Concluding observations have initially been examined and sorted by searching for the frequency and patterns of application of "religion" and its derivatives,[17] and terms associated with religion in the legal instruments monitored by the committees. New search terms have been added incrementally as they have appeared in juxtaposition with the initially selected terms. The corpus has been reviewed using digital analytical tools,[18] in order to identify further trends and patterns of relevance.

While the dissertation upon which this book is based was organized according to cross-cutting themes that have occurred throughout the work of the treaty bodies,[19] this subdivision has been replaced by a committee-specific structure in the present volume.[20] Although a theme-based structure had the advantage of presenting each theme from a variety of perspectives and vantage points, it missed the many and pervasive overlaps and continuities with which each committee approaches different themes. A committee-based approach also has the added advantage of connecting more clearly to the distinct rights movements

50th session in 1994, and CERD at its 48th session in 1996. The CEDAW committee switched at its 13th session in 1994, but kept short summary records from the proceedings as part of its concluding observations until its 34th session in 2006.

16 Ponterotto identifies five essential components to "thick description", including (1) accurate descriptions and interpretations of social actors within the appropriate context for the social action under analysis; (2) capturing the thoughts, emotions and web of social interaction among observed participants in their operating context; (3) assigning motivations and intentions to participating social actors; (4) a description of the context that approaches verisimilitude [lit. the appearance of being real], and (5) the promotion of "thick interpretation" of the above actions, leading to "thick meaning" (Ponterotto 2006: 542–543). Of all these dimensions, only (1) and (4) would be applicable to the analysis performed in this dissertation.

17 "religions", "religious", "religiosity".

18 Primarily iAnnotate for iPad, Adobe Acrobat XI Pro and the online analysis tool voyant-tools.org.

19 These themes recur throughout chapters 4–7, and are also explored further in chapter 8.

20 This restructuring was met with important and constructive criticism from an anonymous reviewer, to which I am sincerely grateful. While I found the decision to keep the committee-based structure difficult, I believe and hope that the coherence and argument of each chapter is better preserved by this structure.

from which each committee has sprung and to which it is in constant conversation and contact, allowing a deeper engagement with each committee as an "epistemic community" of its own, developing its own institutional and conceptual horizon. Moreover, the sheer complexity and scale of the empirical data under analysis entails that the identification of coherent, cross-cutting themes that can be compared across all the committees will always be partial and incomplete, to the point where the themes risk becoming too general and overarching to say anything meaningful.

The in-depth analyses provided in chapters 4–7 follow a common structure: After a general introduction to the material provisions on religion and views of religion within the rights movements behind each human rights treaty and its monitoring body, the analysis proceeds to map the supplemental documentation published by each treaty body on religion. This documentation spans from their general recommendations on the interpretation of their provisions and the reporting guidelines issued to states, to their decisions on religion under their individual complaints mechanisms. Followed by a brief summary of how religion is approached in these surrounding documents, the patterns in how each treaty body has approached religion in its concluding observations from 1993 to 2013 are reviewed and examined. In chapter 8, the interconnections between these patterns are explored further.

While there is a rich body of scholarship on the origin, content, scope and dominant interpretations of the internationally recognized right to the freedom of religion or belief,[21] I do not attempt here to provide an assessment of the legal merits of this scholarship, or of any of the other ways in which religion is employed in the international human rights discourse or in domestic, statutory law. As such, I do not offer a perspective on the interpretation of what the law "actually says" (de lege lata), nor do I offer a recommendation of what the law should be (de lege ferenda). This puts great distance between my approach and the legal profession, but also from scholars composing, combining and assessing global surveys on the relation between law and religion, which tend to emphasize the scope and de facto efficiency of regulations of religion, but offer few reflections on their understanding of the term and concept of religion.[22]

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21 See in particular Ahdar and Leigh (2013), Lerner (2012), Hertzke (2012), Scolnicov (2010), Temperman (2010), Danchin (2008b), Plesner (2008), Langlaude (2007), Taylor (2005), Lindholm, Durham and Tahzib-Lie (2004), Gunn (2003), Evans (1997), Dickson (1995), Tahzib (1996), Sullivan (1988), Clark (1978), Neff (1977) and Claydon (1972).

22 The Religion and Public Life Project at the US Pew Research Centre is a case in point; in consecutive reports on restrictions of religion worldwide starting in 2009, the center has documented a yearly increase in social hostilities caused by restrictions on religion, identifying a "rising

tide of restrictions" in their 2012 report, announcing in the title of its 2014 report that "Religious Hostilities Reach Six-Year High". The definition of religion applied in the measurement of such restrictions is listed in Appendix 1 to the very first report, "Global Restrictions on Religion" (2009), which draws its methodology from the 2006 article "International Religion Indexes: Government Regulation, Government Favoritism, and Social Regulation of Religion" (Grim and Finke 2006), where the following definition of the term "religion" is offered, with no rationale, discussion or clarification for why it is apt for the measurement of restrictions on religion: "we define religion as explanations of existence based on supernatural assumptions that include statements about the nature and workings of the supernatural and about ultimate meaning (Grim and Finke 2006: 6). This definition is also reiterated in the later work of one of the authors (Finke 2013: 3) on the restrictions of religion worldwide. There is no way to assess how the authors operationalize this definition in their measurements of government or social restrictions or favoritism of religion because they offer no explanation, and because it is a definition of the term that is entirely focused on the minds of adherents, raising serious methodological questions concerning their identification. As such, it is not only far removed from my approach, but also from the definitions of religion employed by international monitoring bodies like the UN Human Rights Committee (see chapter 5). See Merry 2011 for a critical account of human rights indexes more generally.

2 Making Religion

This is not a book about religion, but about religion-making. As such, it does not purport to say anything about the "real" substances, uses, roles or contents of religion/s, however one chooses to interpret that word, term or concept. Rather, it seeks to examine how a range of actors within a highly specialized segment of international law approach and apply religion and concepts commonly linked to it in order to achieve the specific tasks that have been assigned to them. The essentially contested nature of religion (see chapter 1), as long recognized within the academic study of religion, invalidates clear-cut definitions or solutions to what religion as such is or can be, beyond the scope of carefully limited case studies, such as the one presented in this book. This chapter explores in closer detail the notion of religion-making, which informs the specific approach to how religion is being "made" by actors at the UN in this book. This chapter briefly explains where the term and concept of religion-making comes from, what conundrums it seeks to answer, and what related approaches it relies on.

The idea that religion/s are constructed or "made" in discourse is derived from the "critical turn" in religious studies.[1] Drawing on insights from social anthropology, sociology, political science, postcolonial studies and literature studies, the critical approach is strongly heterogeneous, only held together by its shared dismissal of a simplified "religion-secular binary" and its attendant antagonism towards the broad variety of claims made inside and outside the academy in the name of "religion" as a unified and singular concept. Uniting this criticism is a refusal to accept "religion" and "the secular" as signifying stable concepts between which particular relations can be developed. Scholars within this approach have launched a variety of theoretical and methodological criticisms highlighting the instability of religion, the secular and, hence, their interrelationship. Central to this criticism is a set of epistemological challenges posed to the "religion-secular binary"

> It is a critique of the modern practice of classifying 'religious' as against 'secular' domains as though these categories are part of the order of things. It is a critique of the religion-secular binary and its function in sustaining the myths of modernity. It is a claim that such a classificatory practice is itself ideological. By classifying a specific range of theorized practices as religions, faiths or spiritualities, it thereby exiles them and simultaneously constructs the domain of the secular in accordance with natural reason. (Fitzgerald 2011: 8)

1 "Critique" and "criticism" are concepts that come with a lot of baggage (Koselleck 1988; Asad et.al 2009; Mas 2012). I use it here merely in a heuristic fashion, to distinguish it from the "phenomenological" approach frequently associated with Mircea Eliade.

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Although this programmatic statement by Timothy Fitzgerald would hardly be supported by all those who have launched critiques of the coherence of the religion-secular binary, many of which came before the "critical turn", it nevertheless encapsulates a number of important dimensions within this approach: First, it links present classifications of religion and secularity to what some scholars perceive as the "myth" of modernity, intimating a correlation between this myth and the ways in which modern nation states enforce order and compartmentalization more generally. This corresponds to the underlying premise of the increased "formatting" of religion by modern nation states identified by Olivier Roy (2010) and criticized by Talal Asad (1999), and the validity of an "evolutionary" perspective where "law" has gradually evolved from a "religious" origin.[2]

Second, Fitzgerald's statement emphasizes that classification is never neutral, but always serves one ideological need or other, inevitably charging the deployment of religion and secularity with dangers or benefits relative to the ideological formation in question. This criticism highlights the power relations and ideological dimensions that work to place different religions in broad, sweeping categories where they are perceived to be either "good" or "bad" (Hurd 2012: 947–948). Third, Fitzgerald points to the propensity of much theorizing on religion and secularity to equate the latter with natural reason, exiling the former to an outsider position, influenced by irrational superstition. This criticism engages the claims by secularists who tend to equate belief with irrationality and secularity with enlightened, rational common sense (Zucca 2012). Fitzgerald's broad-based criticism relies on a range of theoretical developments, from the rise of critical theory, post-structuralism and postmodernism, to deconstruction and

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2 An evolutionary perspective on law and religion posits law as the result of a continuous, linear secularization of essentially religious rules. According to this perspective, the resulting body of law relies on religious roots for its structure, key concepts and methods. The idea that law somehow still does, or should, contain a kernel of religious elements, enjoys considerable support. In the scholarly community, this support is particularly associated with the legacy of one of the first scholars to explicitly address the issue of law and religion in combination, Harold J. Berman of Emory University, Atlanta. Publishing extensively on the topic (see *The Interaction of Law and Religion* (1974), *Law and Revolution: The Formation of the Western Legal Tradition* (1983), *Faith and Order: The Reconciliation of Law and Religion* (1993), *Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition* (2006)), his main contribution to a further understanding of law and religion was to provide what John Witte Jr. and Frank Alexander have later called a *binocular* view of law and religion; one that takes into consideration not only the ways in which law approaches religion, but also how religion appropriates law (Witte and Alexander 2008: 1).

the linguistic turn in the human and social sciences (Clark 2004; Saler 2000; Flood 1999).

In order to move beyond the established binaries and knowledge regimes of modernity, under which religion and secularity are framed as structural opposites, Arvind-Pal S. Mandair and Markus Dressler have suggested that theorizing on religion cannot be resolved by recent appeals to "post-secularity":[3]

> ...the postsecular move as made by prominent philosophers, theologians and theorists of religion cannot be restricted to its identification of the mutually imbricated natures of religion and the secular but, more importantly, (...) it continues to bring into play one of the key aspects of the secularization thesis, namely, the concept of religion as a cultural universal—that religion exists everywhere (...) [U]nless it incorporates a move beyond the presumption that religion is a cultural universal, the very idea of a post- of secularism appears to be a chimera. It means little more than a return to Christian thought disguised as the postsecular. (Dressler and Mandair 2011: 11)

Exposing the foundational, but often unexamined claim underpinning large-scale theories on the secular, secularity, secularism and secularization—that religion, despite local variations, is essentially a cultural universal that exists everywhere—Dressler and Mandair seek to pull the rug from under the feet of the post-secular, exposing it as "disguised Christian thought". Hence their suggestion that the analysis of concepts like religion and the secular are not advanced by appeals to the post-secular, but can only be performed within a post-secular-religious frame of reference in which the shifting borders of religion and secularity are constantly re-examined. This is not to say that religion or the secular should or can be abandoned and jettisoned as analytical concepts. Rather, the call for a post-secular-religious frame stresses the need to move beyond approaches that do not sufficiently discuss these foundational concepts and how they interact with one another.

The proposal of Dressler and Mandair to move beyond the religion-secular binary by directing the attention to the means of their production is thoroughly

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3 While the term post-secular long predates 2001, Jürgen Habermas' inclusion of the term to diagnose the state of affairs in the Western world one month after the September 11 terrorist attacks on the U.S.A. instantly sparked a debate on the term in German, and later international sociology (Boy 2011). The immediate question in the ensuing debate concerned whether a "shift" from secularity to post-secularity had taken place, and if so, what the new condition entailed, a question that is still very much unresolved (Bader 2012: 5). Although the early debate was mainly limited to political philosophy, sociology and theology, it has since gained traction in numerous other fields that deal with the interface of law, religion and society, including but not limited to anthropology (Fountain 2013), law (Calo 2011), international relations (Rees 2014, Wilson 2014), educational studies (Hotam and Wexler 2014) and women's studies (Smiet 2014).

informed by postcolonial perspectives, emphasizing the impact of Western universalism in the ordering of different religions in a teleological, developmental schema derived from their degree of similarity to Western forms of gradually secularized religiosity (Dressler and Mandair 2011: 13). A particular strength of the approach is its outright dismissal of the world religions template implicit in most, if not all, conceptions of the post-secular, with the claim that these categories have been imposed and enforced upon a variety of local beliefs and practices as "religious" through the knowledge regimes of colonialism, a claim that has significant support in other research.[4]

Also unlike the majority of theorists contesting the viability of a religion-secular binary, Dressler and Mandair suggest a program for empirical research drawn from these critical perspectives and based on their notion of religion-making (Dressler and Mandair 2011: 21). Religion-making, conceived of as a heuristic tool to move beyond the confines of a taken-for-granted religion-secular binary in the analysis of how religion comes to be constituted in society, has three broad dimensions: one from above, from positions of power; another from below, from subgroups in society drawing on religionist discourses; and a third from a pretended outside, in the form of scholarly discourses that provide legitimacy for the former two by reproducing and normalizing the religion-secular binary (Dressler and Mandair 2011: 21).

By providing a deconstructive perspective that incorporates the processes of distinguishing religion and the secular at different levels in society, the notion of religion-making is sensitive towards power relations, underscoring the importance of incorporating the relative power matrix involved in any discursive act

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4 The claim that religion is a Western term and category that has been imposed on other traditions, beliefs and practices according to their degree of similarity with Abrahamic faiths is well documented in a number of works, notably Peter Almond's *The British Discovery of Buddhism* (1988), on how sentiments in Victorian England were responsible for the shaping of how we understand Buddhism today; Talal Asad's important historical work on the Western bias in anthropological theories of religion, *Genealogies of Religion* (1993); David Chidester's analysis of the concept of religion at the colonial frontier in southern Africa, where the concept shifted in content relative to the level of conflict between colonial administrations and the indigenous population in *Savage Systems* (1996); Richard King's study of how colonial administrators in India used the category to establish and maintain order, in *Orientalism and Religion. Postcolonial Theory, India and 'The Mystic East'* (1999), and Tomoko Masuzawa's *The Invention of World Religions: Or How European Universalism was Preserved in the Language of Pluralism* (2005), the defining overview of how the idea that there is such a class of things as world religions evolved gradually as the scientific study of religion came into being at the heyday of European colonial enterprises in the middle to late 19th century.

of "making" religion. Furthermore, religion-making adds a relational dimension to theorizing on religion and the secular by emphasizing the interconnectedness between religion-making from above, below and outside, exposing the mutually reinforcing bonds between powerful, institutionalized authorities, smaller subgroups in society and actors in the scholarly community that work to reinforce and reproduce distinctions between religion and secularity. Finally, religion-making contests the naturalness of the religion-secular binary by carefully examining where this distinction comes from within each specialized discourse. While neither of these analytical dimensions of religion-making are unique to Dressler and Mandair,[5] their juxtaposition provides a novel overview of how actors take part in religion-making processes relative to the power vested in their positions in society.

While religion-making represents a fruitful take on the specific problematic arising out of discussions of the post-secular, it also draws on a range of pre-existing theoretical approaches to the problems associated with religion and the secular as cultural universals and their constitution at the juncture of different discourses. Besides the obvious debt owed to the writings of Michel Foucault on genealogy and discourse, and, in particular, Talal Asad on the concept of religion and the development of distinct formations of the secular (debts which Dressler and Mandair concede), the concept of religion-making connects to more recent work that propose related approaches to the analysis of religion, but also to other social phenomena and their multidimensional constitution from above, below and outside positions of power.

Over the course of the last two decades, sociologist Peter Beyer has developed a theory of religion as a global social system modeled on a specifically Christian template. The key argument in Beyer's writings is that a global social system for religion based on the binary distinction between salvation and damnation central to Christian thought and practice has developed over the course of the last century. However, as the category has spread, it has also taken on localized meanings, amalgamating with embedded concepts in other languages and cultural systems, resulting in a myriad of "glocalized" religious sub-systems that relate in very different ways to the constituent binary distinction of the global system for religion (Beyer 1998, 2006). Hence, whereas the original conception of religion was disseminated from a privileged position of power, various proc-

5 For an additional call for the need for research on religion-making from above, see Hurd 2012; for religion-making from below, see Comaroff 2009, for religion-making from a pretended outside, see McCutcheon 1997.

esses of religion-making from below and outside have gradually evolved as responses to this imposition, drawing on local resources and surroundings.

These global and glocal systems for religion do not exist in isolation, however, but constantly interact with other social subsystems that view religion quite differently, relative to their respective binary codes. The different logics of these subsystems and their correspondingly different views of religion mirror the tripartite division of religion-making from above, below and outside:

> The different [scientific, and theological and 'official'] perspectives and their different rationales make it clear that, on the one hand, conceptions of religion are diverse and incapable of being reduced to a common denominator; and yet, on the other hand, any one of them can operate in a universally applicable fashion without representing any greater degree of distortion than anything else human societies count as knowledge. How we conceive of religion depends on the social context or purpose we have for doing this. (Beyer 2003: 157)

Hence, Beyer's theory incorporates the differences between religion-making both at a global level, where the content of religion is determined by geopolitical shifts in the balance of power, and at a local/glocal level where the religion-making conducted from below interacts with numerous other different social systems, providing entirely different borders and duties for religion.[6] Beyer's theory is strongly inspired by the systems theory developed by Niklas Luhmann, but is more sensitive to the role of power relations in shaping the content of the religious subsystem, for instance in colonial settings (Beyer 2006), a consideration mostly absent from Luhmann's post-humanist writings (Luhmann 1995, 2013).

In a different, but related vein, religious studies scholar Thomas Tweed (Tweed 2005, 2006) has pointed to the importance of situating and contextualizing the separation of religion from its surroundings, pointing to the fundamental differences between lexical distinctions, taking the ordinary usage of terms as a marker of differentiation; real definitions, offering sets of theoretical propositions about the nature of religion that can be empirically tested; and stipulative approaches, which more or less arbitrarily assign particular meanings to the concept of religion (Tweed 2005: 256–257).[7] This tripartite division of definitional strategies highlights the importance of recognizing not only the methods for distinguishing religion from its surroundings, but the purposes of such distinctions. Furthermore, it serves as an important reminder of the possibility of contradic-

6 For a more focused exploration of how this process plays out "on the ground", see Presler (1983).

7 Tweed's divisions are strongly inspired by Robert Baird's *Category Formation and the History of Religions* (1971).

tory, yet co-existing methods of identifying religion: While a lexical and a real approach to religion may reach very different conclusions on the form and content of religion, neither invalidates the other—rather, their differences point to the importance of the demanding exercise of clearly stating the origins and purposes of distinguishing religion from its surroundings (Tweed 2005: 263, see chapter 1).[8] Tweed's approach resonates with similar views on the contextual constraints to defining and approaching religion offered by Beckford (2003), Woodhead (2011) and Wilson (2014). Importantly, this process is not exclusive to religion, as other categories, including law, politics and the state are also under constant negotiation globally in ways that closely resemble that of religion-making, as actors from above, below or beyond positions of power wrestle for control of their contents and applications.[9]

Finally, religion-making is also akin to discourse theory, which is premised on the same ambiguous and reflexive relationship between practical analysis and the objects such analysis is set to investigate, in particular in the field of religious studies:

> ...for the study of religion as a specialized area of research discursive approaches have implications that need to be made explicit. To begin with, religion completely loses its status of being something *sui generis*. Rather, discursive approaches study the very claim that "religion is sui generis" as part of a discourse on religion that has formed under identifiable historical circumstances and that has materialized in university institutions and scholarly programs, in turn stabilizing and legitimizing the attributed meaning of religion as *sui generis*. (von Stuckrad 2013: 16; emphasis in the original)

Religion-making, then, can be considered one of several possible approaches to a discursive study of religion that share a basic dismissal of the *sui generis* nature of religion, the very invocation of which becomes part of the subject matter available for analysis. Religion-making seeks to destabilize the naturalness of religion

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8 This also connects to Jonathan Z. Smiths claim in the book chapter "Religion, Religions, Religious" (1998), quoted in Tweed's article, that the multiple available ways in which to define religion should be seen as a simple fact, not a problem (Smith 1998: 281).

9 In a similar vein, sociologists Bruce Carruthers and Terence Halliday have examined how actors on different levels of international society have handled the management of large-scale bankruptcies and their consequences: While the shape and content of insolvency rules are negotiated at the intergovernmental level, the impact of these rules on the creation and enforcement of domestic law depend on a variety of factors, ranging from the location of a country in a "global matrix of power", combined with its cultural and social distance from the norm-producing, intergovernmental center (Carruthers and Halliday 2006: 523).

in discourse, questioning the mechanisms and consequences of taken-for-granted applications of religion (Dressler and Mandair 2011: 21).

In this way, religion-making is epistemologically over-determined, in the sense that it questions the very viability of the constitutive category under analysis, emphasizing the examination of the forms and conditions under which the category comes into being (Andersen 2003: XII). As such, religion-making does not constitute a methodology, as it does not prescribe particular rules for its implementation, nor does it accept the pre-existence of a precise object for examination or claim that true knowledge about such an object can be achieved. Rather, it conforms more readily to what Niels Åkerstrøm Andersen has labeled an "analytical strategy", by turning the observations of others into the primary unit of analysis (Andersen 2003: XIII). The notion of religion-making stresses the incomplete nature of any discursive act of identifying and approaching religion, as the process of singling out *this*, rather than *that* as religion will be decisively affected by the observer's position above, below or outside power.

Although the application of religion-making as a discursive analytical approach does not constitute a methodology as such, it does impose several conditions on what research designs may be derived from it: Religion-making is a concept-driven approach, thus it requires a reflexive and critical engagement with the concept under analysis, with a particular emphasis on the gray zones between the concept and its surroundings (Goertz 2006: 35). Accordingly, identifying how religion is applied in discourse presupposes a conception of what religion is that goes beyond the mere term, necessitating the recognition of associated terms and concepts that are related to religion in discourse, and may be used interchangeably with it, in order to show "affinities and differences between representations in order to demonstrate whether they belong to the same discourse" (Neumann 2009: 62). Arriving at such a conception of religion, however, is premised on a secondary condition imposed by the application of religion-making: determining the scope of the discourse under analysis. Such a determination requires close scrutiny of the particular field at hand, in order to identify its particularities in terms of participants, addressees, intended readership, genres and relations to other discourses (Neumann 2009: 65–70). In the next chapter, I will address this last condition first, by tracing the religion-making of actors in international law throughout the 20th century, thereby gradually developing the scope of the discourse under further scrutiny in part II of this book.

3 Making Religion in International Law

The United Nations is many things, but it is first and foremost a creation of international law. Its origins, purposes and capacities are explicated in the UN Charter, negotiated in San Francisco in 1945, as the dust from the Second World War had just barely begun to settle. The inception of the UN, while historically significant, was not unprecedented in its magnitude, nor could it ignore developments within international law that preceded it. In order to better grasp the ways in which the UN has approached religion from its creation and up to the present, this chapter first provides a brief look at its major antecedents and their takes on religion in the history of international law, before moving on to the specific work of the UN from the 1940s and up to the present.

At the very basic level, international law implies "the existence of several independent entities, which meet each other on the level of equality and which are willing to engage in peaceful relations rather than being in a permanent state of war with each other" (Wolfrum 2006: 4).[1] The sources, content and application of rules regulating these relations have a long and complex history, as formalized relations between independent entities have been common since the beginning of recorded time (Neff 2010: 4). The historical trajectory of international law is commonly subdivided into the several epochs, starting with examinations of the relations between political entities in ancient times and the Middle Ages, moving on to the classical age of international law following the Westphalian settlements in 1648 and the post-Napoleonic Concert of Europe from 1815, concluding with the settlements following each of the two world wars of the 20th century.[2] Throughout these epochs, religion has primarily been approached in two ways: as a basic building block in the normative foundations of international legal regulation (Bederman 2002: 85), and, especially since the settlements of Augsburg and Westphalia, as an object to be regulated according to the dictates of sovereign political actors (Philpott 1999: 580 – 581). What united the religion-making of these widely dispersed epochs was the exclusive dictate of the terms

1 International law is commonly given very varied definitions. See Onuma 2000, Koskenniemi 2001, Evans and Janis 2004, Janis 2008, Bederman 2008 or Neff 2010 for a small selection of alternate definitions of international law. The debate is not new (see Williams 1945: 146), nor is it likely to subside.

2 While periodizations of this sort are necessarily reductionist and strongly Eurocentric, so is the entire vocabulary and most theories of international law, whose very creation and purpose can be viewed as instruments of colonial subjugation and suppression (Anghie 2006: 394), a situation historians of international law have only recently begun offering critical perspectives on (Koskenniemi 2011: 170). The periodization is drawn from Neff 2010.

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and procedures of international law from “above”, by elites in powerful positions.

The peace negotiations following the world wars changed the rigidity of this system fundamentally, as they inaugurated the recognition of non-state international organizations as prominent actors in international law, opening up the regulation of religion at the international level to new inputs, both from “below” and “outside” positions of power: The formation of the League of Nations in 1919 created an entirely new institutional framework and venue for the conduct of international affairs, where the input from scientific communities and civil society was actively solicited, although not always heeded (Charnovitz 2006: 357). Following the end of the Second World War, the formation of the United Nations expanded and formalized this triangulation through the multilayered structure of the organization, including the creation of specialized programs and increased points of contact for members of civil society. Additionally, the paramount role of human rights ascribed to the work of the world organization in the UN Charter, especially since the end of the Cold War and the collapse of the Soviet Union in 1991, has made the UN one of the primary manufacturers in the industry of religion-making at the international level, although not limited to the legal sphere (see chapter 3.3).[3]

The creation of the League and the UN are important antecedents to the present approaches to religion in international law because they offered two different approaches to religion and the legal management of religious pluralism: one collective, portraying religion primarily as a group identity marker, the other individualist, viewing religion as a matter of personal beliefs and convictions. In the following, I will go more in-depth on both of these approaches and their impact on how religion is approached at the UN today.

3.1 The League of Nations

The creation of the League of Nations was an extension of the foreign policy objectives of US president Woodrow Wilson, whose involvement in the “Great War” was driven by his desire to forge a new kind of world, “fit and safe to live in”, formulated in his Fourteen Points address in January 1918 (Neff 2005: 287). As a subset of its general peacekeeping purposes, the League sought to manage

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3 While the Cold War has commonly been construed as an ideological battle beyond religious allegiances, recent research suggests that religion played a major role in the bloc formations, particularly as a key component of the “American Way of Life” (Kirby 2013a; 2013b).

the perceived threats to stability and world order represented by religious pluralism. It did so by creating a set of treaties governing the treatment of minorities, and by establishing a "mandate system", to provide order and stability in states created as the successors to the German, Austro-Hungarian and Ottoman empires at the conclusion of the First World War (Matz 2005: 54).

The minority treaties were negotiated between the League and Eastern European successor states to the Ottoman Empire in order to prevent intergroup hostilities following the collapse of this multi-ethnic and multi-religious empire, thereby also encouraging the self-identification of minorities as minorities (Mazower 1997: 51). Whereas imperial administrations prior to the 19th century frequently accepted, even cherished the notion of religious and other differences between communities within their borders (Burbank and Cooper 2010: 12), the rise of the nation-state in the early 19th century fostered an evolutionary ideal of assimilating minorities into unified nation-states. While this process was considered to move smoothly on its own within the borders of the victors of the war, other, less civilized states were considered to be in need of assistance:

> ...the Great Powers were happy to interfere in the internal affairs of "new" states but allowed no meddling in their own affairs. This supremely paternalistic stance assumed that "civilized" states such as those in Western Europe had evolved procedures to facilitate the assimilation of minorities that did not yet exist in "immature states" (Mazower 1997: 53).

The underlying premise of this interference was that assimilation "into the civilized life of the nation" was not only possible, but also desirable; that minorities were disruptive to social order and should eventually be assimilated (ibid.).

Where the minority treaties only implied a certain hierarchy of states in the new world order through this paternalistic stance, the creation of a mandate system was explicitly founded on such a hierarchy, epitomized in the much cited article 22 of the Versailles treaty of 1919, where states and territories were included in the system because they were inhabited by "peoples not yet able to stand by themselves under the strenuous conditions of the modern world". The hierarchical notion was complete, with a subdivision of territories into A-, B- and C-mandates, where the scope of the tutelage of advanced nations differed relative to the territories' perceived level of development. The mandate system was an attempt by the League to come to terms with territories formerly under colonial administration by one of the three disbanded empires, while simultaneously treading carefully enough not to disrupt any of the still existing US, French and British imperial structures. The mandate system represents a curious bridge between colonialism and decolonization, employing the language of both, by providing

limited recognition in combination with trusteeship (Matz 2005: 89, Rajagopal 2003: 71).

Common to the minority treaties and the mandate system was the creation of extra-territorial protective measures for religious freedom: all states included in these schemes were required to create legal safeguards for religion in some form, although no such requirement was levelled by the League towards the victors of WWI, as this was considered a potential breach of the victor's sovereignty (Mazower 1997: 52, Mahmood 2012: 429), demonstrating the bonds between sovereignty and level of civilization in this period of time (Matz 2005: 60), significantly compromising the League's universalist pretentions. The extent of this imbalance was most strikingly illustrated upon the negotiations of the League Charter, when U.S. president Woodrow Wilson's proposal to include religious freedom in the document was amended by the Japanese delegate, Baron Makino, who suggested an expanded paragraph that would put all states on equal terms, resulting in the outright dismissal of the proposal (Fink 1995: 198).

The creation of the minority treaties and the mandate system were primarily instances of religion-making from above, where statesmen, diplomats and international civil servants came together in order to lay out the basic architecture of the international system for years to come, and worked out the role of religion as part of this process. Religion-making at the League was governed by the dubious concept of a "standard of civilization", which until the early 20th century had been co-extensive with the spread of Christianity, legitimizing colonial enterprises and foreign intervention, while simultaneously denying membership in the international community to non-civilized, i.e. non-Christian peoples (Gong 1984: 238; Matz 2005: 63).

The test for whether non-Christian states were considered worthy of some form of recognition according to this standard was their ability to grant autonomy and provide adequate protection of Westerners residing in their territories, under a system of "capitulations" (Danchin 2008b: 510, Bowden 2005: 20). In order to gain full membership in the Family of Nations, prospect states were forced to expand the capitulation offered to foreign nationals to encompass their entire populations, forcing major overhauls of their legal systems in order to safeguard "dignity, property, and freedom of travel, commerce, and religion, and (...) a court system that comprised codes, published laws, and legal guarantees" (Anghie 1999: 48), requirements that became institutionalized under the minority and mandate systems overseen by the League.

While the religion-making of the League was mainly conducted from above, it also received input from below and outside, i.e. from non-state actors and the academy. According to Steve Charnovitz, the Paris Peace Conference (PPC) in 1919 "should be recognized as the fount for the idea that state practice would

accept NGO participation in international organizations" (Charnovitz 2003: 60). As the first genuinely international conference, the five month PPC was an opportunity for a broad range of interest groups seeking to influence the assembled diplomatic missions at a venue that was considered more open to such influence than domestic political structures. While access to deliberations was severely limited, four pressure groups in particular influenced the proceedings: labor unions, Jewish and Zionist organizations, women's groups and the American Red Cross (Charnovitz 2003: 63). Of these groups, the Jewish and Zionist organizations were the best organized, and influenced the religion-making of the League directly by presenting the grievances of Jewish minority communities in European states and their need for protection under the minority treaties (Charnovitz 2003: 66, Mazower 1997: 50).

The influence of religion-making from the outside, i.e. the scientific community, also came into its own for the first time at this conference (Nielson 1992: 228). While scholarly fields dedicated to religion were largely in their infancy, other scientific fields contributed decisively to the formation of the minority treaties and the mandate system. This influence was chiefly wielded through the work of The Inquiry, an ad hoc committee established by U.S. president Woodrow Wilson in 1917 in order to determine policy issues at the forthcoming peace conference (Crampton 2007: 225).

The Inquiry was first and foremost a geographical research group, set with the task of creating clearly recognizable lines of nationality for the new states in Europe and beyond in order to avoid new conflicts. At the PPC, members of The Inquiry sat on territorial commissions deciding where to draw the lines on the new maps of Europe, Asia and Africa. While an important part of this boundary-making was to localize and consider the utility of natural, topographical boundaries such as rivers and mountains, a key part of the work of The Inquiry was to establish "ethnographic units" of territory, that could bring conflicts and territorial claims to an end (Crampton 2007: 234). In this process, religion and "the local sense of nationality" were key features in determining ideal borders, based on fieldwork conducted by Inquiry members (Crampton 2007: 235). Historians in The Inquiry supported the arguments of the Arab majority for a Syrian mandate including Palestine and Lebanon over Zionist claims derived from historic rights and religion (Nielson 1992: 248).

Accordingly, whereas post-war settlements prior to the League had exclusively been conducted from above, the terms of international treaties and the designations of new borders necessitated by the breakup of the old Empires after WW1 were decisively influenced by non-state actors below and outside the state level, effectively revolutionizing the conduct of international affairs. Despite this influence, the triangular relationship between different modes of reli-

gion-making at the League of Nations tilted strongly towards the impact of religion-making from above: States still exerted decisive influence on the broader construction of religion in the minority treaties and mandate system, confirming Saba Mahmood's contention that the international law on religious freedom from its inception has been informed by "the exercise of sovereign power, regional and national security, and the inequality of geopolitical power relations" (Mahmood 2012: 429), rather than the Wilsonian ideal of spreading tolerance. Despite the modest input from NGOs and academics, however, the negotiations at the PPC represent an important first demonstration of the increasingly triangular relationship between religion-making from above, below and outside: For the first time, the realpolitik formerly conducted by lawyers, statesmen and diplomats received input from an increasingly important scientific community and an incipient civil society forming around emerging issues of global concern.

While the religion promoted and protected under the mandate system was a modified extension of the constitutional ideal of freedom of individual conscience developed by Western states in the 19th century (McDougal, Lasswell and Chen 1976: 881), the religion of the minority treaties was more collective in nature, recognizing distinct religious communities and safeguarding their equality on par with majority populations. Put differently, the mandate system was created to bring underdeveloped territories into the family of civilized nations, where the protection of religious freedom was a basic requirement, while the minority treaties were more utilitarian, seeking to harmonize tensions between sub-state populations in already somewhat developed nations. While the long-term goals of the former barely got off from the ground before the system was dismantled, the failure of the latter was illustrated by its complete inability to protect minorities in the interwar years and during WWII (Mazower 2004: 387).

The resulting conceptions of religion in the legal instruments fashioned by the League of Nations mirror the key compromise at the heart of the organization, between the acceptance of the developed, homogenous nation-state as the norm in international relations on the one hand, and the acknowledgement that something had to be done with the underdeveloped territories and residual minorities that were left out of the myriad national projects emanating from the Great War on the other (Mazower 1997: 51). As a key ingredient, both in the idea of the enlightened, civilized nation-state and in the self-identification of minorities left out from national projects, religion became a concern both to the mandate system and the minority treaties.

3.2 The United Nations

With the formation of the United Nations in the wake of WWII, religion-making in international law changed considerably. The mandate system was abandoned in favor of the trusteeship system of the UN, where the importance of gradually attaining self-determination was more pronounced than at the League and the latter's emphasis on development and the sacred trust of civilization was somewhat downplayed (Matz 2005: 87). In the UN Charter and the Universal Declaration of Human Rights (UDHR), the rights of religious and other minorities were nowhere to be found, due to the resistance from Western states with sizeable colonial possessions and considerable problems with minorities in their own domestic politics, to recognize groups as rights-holders (Mazower 2004: 389; Lerner 2000: 910).

Compared to the Paris Peace Conference, the deliberations leading up to the creation of the UN featured more significant contributions from civil society and the scholarly community: NGOs and individual activists were the second largest contingent at the San Francisco conference where the UN was created, outnumbering state officials two to one (Normand and Zaidi 2008: 125). While their direct influence at the conference was limited by Great Power rivalry, Jewish and Christian groups in particular lobbied for an express recognition of human rights with considerable success (Normand and Zaidi 2008: 128). Decisively, the Charter of the new organization pledged the Economic and Social Council (ECOSOC) to make suitable arrangements for consultation with non-governmental organizations, starting a long-lasting and rapidly expanding consociation with international civil society, with the number of NGOs accorded consultative status by ECOSOC presently (2016) standing at 4189.[4]

During the negotiations on the UN Charter at the San Francisco conference in 1945, the demands from representatives from civil society that human rights should be a core part of the new organization were met, albeit in the form of vague and permissive, rather than clear and mandatory provisions on human rights in the Charter. Decisively, the Charter tasked the General Assembly with the initiation of studies and recommendations to promote international cooperation in the field of human rights in article 13,[5] and ECOSOC with the creation of

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4 The United Nations Department of Economic and Social Affairs, NGO Branch: *Basic Facts about NGO Status*, http://csonet.org/?menu=100 (accessed 27.07.2016).

5 Article 13 reads: "1. The General Assembly shall initiate studies and make recommendations for the purpose of: a. promoting international co-operation in the political field and encouraging the progressive development of international law and its codification; b. promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in

a commission for the promotion of human rights in article 68,[6] explicitly inviting input from the scientific community while delegating the business of standard-setting to a political body of state representatives. These articles prepared the institutional ground for the UN in the post-war era to formalize the triangular process of religion-making as a subset of the organization's human rights work, where studies commissioned from above by the UNGA and the activities of the Human Rights Commission and UN staffers working from outside the political process provided venues for input from the scholarly community and civil society below and outside the UN, particularly through major global conferences on pressing human rights issues.

The evolution of human rights as a major policy objective at the UN has been dominated by two parallel processes: the development of international standards, and monitoring and assistance in the implementation of these standards. While the former has been overseen by the exclusively state-run Commission (since 2006 Council) on Human Rights (CHR), the latter has mainly fallen to a string of committees of independent experts set to monitor the various human rights treaties adopted over the years. Additionally, the CHR and its Sub-Commission has commissioned a series of independent studies on pressing human rights issues, and appointed a rapidly increasing number of Special Rapporteurs and working groups mandated to report regularly on various themes.[7] Finally, with the creation of the post and office of a High Commissioner for Human Rights (OHCHR) in the wake of the Vienna World Conference on Human Rights in 1993, the UN received a center of gravity for its human rights activities, coordinating the erstwhile dispersed activities in the field. Parallel to the institutional development of human rights entities at the UN, a rising number of human rights NGOs have been granted consultative status, enabling them to influence decision-making at major conferences, directly to specialized agencies and rapporteurs, and by submitting supplementary shadow reports to the committees set to monitor human rights treaties (see below).

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the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. 2. The further responsibilities, functions and powers of the General Assembly with respect to matters mentioned in paragraph 1 (b) above are set forth in Chapters IX and X."

6 Article 68 reads: "The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions."

7 For an overview of the current special procedures of the Human Rights Council, see http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx (accessed 23.08.2016).

3.2.1 Standard-Setting

The concepts of religion in the international legal framework created by the United Nations depart significantly from those of the League in several respects: First, article 18 of the UDHR expanded and generalized the provisions of the mandate system concerning the freedom of religion, thought, belief and conscience to be valid for all members of the UN. Hence, whereas the mandate system only required the protection of the freedom of religion or belief in less developed states, the UN universalized the concept to become valid for all regardless of developmental level. The notion of the freedom of religion or belief is not only protected in article 18 of the UDHR,[8] but also in article 18 of the ICCPR,[9] the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and numerous other legal instruments.[10] As such, it is by far the most developed and far-reaching concept of

8 Article 18 of the UDHR reads in full: "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."

9 Article 18 of the ICCPR reads in full: "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

10 A/RES/36/55. Parallel to the process of creating binding provisions from the UDHR, several of the numerous treaties adopted by the international community in the early post-war decades contained provisions on religion. Most prominent among these are the Genocide Convention (1948) article 2, protecting religious groups, the Geneva Convention III (1949) articles 34–37 on the religious rights and status of chaplains among prisoners of war, the Geneva Convention IV (1949) article 27 (1), which safeguards the respect for civilians' religious convictions and practices in times of war, the Refugee Convention (1951) articles 1, 2, 4 and 33, on religious grounds of persecution, non-discrimination on religious grounds among refugees, their practice of religion and their right to non-refoulement if at risk for their religious origin, ILO Convention no. 111 on discrimination in employment and occupation (1958) on non-discrimination in the labour market, and the UNESCO Convention against Discrimination in Education (1960) articles 1, 2 and 5, dealing with non-discrimination in education, the purpose of interreligious friendship in education and the role of parents' religious and moral convictions. Neither of these are among the core

religion developed by any UN entity. The protection offered by the right is not limited to traditional definitions of religion, and does not require legal systems, whether international or domestic, to decide on the merits of one religion over another.[11]

The expansive nature of the norm thus provides an unequivocal answer in the negative to the overarching question in all dealings with religion in political or legal contexts: whether religion is a special, set apart, *sui generis* concept that requires particular attention and protection over other concerns.[12] Religion, according to this norm, is just one subset of an expansive range of protected beliefs that can be subjectively held without any form of state interference (Lerner 2012: 5, Taylor 2005: 204). While the inclusion of terms like manifestation, observance, belief and conscience are drawn from, and therefore clearly favor certain religious traditions to the exclusion of others, the body set with the task of monitoring the right, the Human Rights Committee, has long maintained and protected an expansive understanding of "belief", as outlined in its 22nd general comment,[13] as has the Special Rapporteur on the freedom of religion or belief.[14] Although article 18 has been interpreted to create certain limited collective rights

human rights treaties as defined by the OHCHR and international scholarship, and most have drafting histories and instruments of implementation and monitoring distinct from the treaties adopted to give effect to the provisions of the UDHR, and an examination of these instruments would be beyond the scope of the present analysis. See Lerner 2012 for an overview of these instruments and their limited engagement with the core human rights treaties.

11 This is not limited to the international level, but is also evident in the practice of the European Court of Human Rights (ECtHR), where religion was expanded to include non-religious beliefs long ago (Taylor 2005). Article 9 of the European Convention on Human Rights (ECHR) is modeled on article 18 of the UDHR, with only minor differences, confronting the court with a conception of religion that is so wide it risks challenging virtually every area of law (Pearson 2013: 580). This potential for conflict has led the court to develop a cautious practice, where states are allowed a considerable margin of appreciation, i.e. autonomy, in article 9 cases (ibid.).

12 There is a vibrant discussion of this issue in domestic law, in particular in the US, see Sullivan 2005, Eisgruber and Sager 2010 and Schwartzman 2013. This discussion is paralleled by a strikingly similar debate internal to religious studies, concerning the applicability of religion as an analytical term. While the latter debate has been simmering since the early 1900s, it reached a temporary climax around the turn of the millennium, when authors like Timothy Fitzgerald (2000) and Daniel Dubuisson (2003) called for a complete abandonment of the term for scholarly purposes. See also chapter 1.

13 CCPR/C/21/Rev.1/Add.4, 1993.

14 From the inception of the Special Rapporteur mandate in 1986, every consecutive rapporteur has supported and reiterated an expansive understanding of the content of "religion or belief" See the website of the Special Rapporteur for more information on the office and the interpretation of its mandate: http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FreedomReligionIndex.aspx (accessed 23.08.2016).

for religious groups and communities (Taylor 2005), the identification of religion remains tied to the nexus between a *forum internum*, composed of certain sincerely held beliefs, and a *forum externum*, enumerating the potential manifestations inspired by these beliefs that can be accepted in the public sphere.[15]

Second, the UDHR abandoned religious and other minorities as rights-bearing entities, whose protections under the minority treaties were replaced by a general clause in article 2[16] on non-discrimination, valid for all regardless of group affiliation. This turn was not specific to religion, but part of the general individualization of international law represented by the UDHR (Slaughter and Burke-White 2002: 13). The departure from the League conception of religion as a potential identity marker at the UN was illustrated when the General Assembly discussed how to respond to a series of Anti-Semitic incidents in Europe in the late 1950s. Starting as an effort to adopt a binding treaty that would prohibit both racial and religious intolerance, negotiations were quickly deadlocked over the issue of religious discrimination, leading to new negotiations over separate instruments, one covering racial discrimination, the other religious discrimination. Whereas support for the fight against racial discrimination was massive, ensuring the rapid adoption of the ICERD (1965), the infighting over religious discrimination brought the process to a grinding halt, with the non-binding 1981 Declaration as the hitherto only material result.

Following the adoption (1966) and entry into force (1976) of the twin Covenants on Social and Political and Economic, Social and Cultural rights that turned the majority of the provisions of the UDHR into binding legal obligations,[17] the notion of religion as a feature of the identity of minorities was reintroduced to the international legal framework through article 27 of the ICCPR, which required that:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their

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15 The nexus between the *forum internum* and the *forum externum* is largely taken for granted in present theorizing on the freedom of religion or belief. However, see Evans 2014 for a problematization of this nexus.

16 Article 2 of the UDHR reads: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

17 For the drafting history of the ICCPR and the ICESCR, see Normand and Zaidi 2008.

> group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Nevertheless, research by Nazila Ghanea indicates that religious minorities have largely been excluded from this reintroduction, because they fail to be covered by the general mechanisms and procedures offered by the minority framework, as the "30 year question mark" over minority rights that elapsed at the UN between the UDHR and the ICCPR made all questions concerning discrimination against religious minorities part of the freedom of religion or belief umbrella in international human rights work, a tendency she contends is still in force, despite the adoption of later instruments like the 1992 declaration on the rights of minorities (Ghanea 2012: 61).[18] Hence, although the recognition of religion as an identity marker was tangentially reintroduced through the inclusion of minority rights in the ICCPR and later instruments, the conception of religion as a legal category recognized by the identification of personally held beliefs and their manifestations remains dominant in international law. Despite scattered discussions on the possibility of resuscitating the draft convention on religious discrimination that was developed in the 1960s, and the botched attempt to adopt "complementary standards" to the ICERD in order to prevent the "defamation of religions" (see chapter 4), there is little evidence that any further instruments will be adopted in the foreseeable future.

Following the adoption of the non-binding 1981 declaration on religious intolerance, international standard-setting in the field of human rights on religion has largely come to a halt. While religion features in the 1992 declaration on minorities and the programs of action from the world conferences on human rights (Vienna 1993), for gender equality and the empowerment of women (Beijing 1995) and against racism (Durban 2001), these documents are not binding, and have done little to affect the ways in which religion is approached at the UN.

3.2.2 Implementation and Monitoring

Compared to the dominance of states at the Paris Peace Conference, religion-making within the UN has evolved into a truly multidimensional process, as actors from above, below and outside have become vital and necessary partners, both to the political entities negotiating binding legal instruments, and to the

18 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (A/RES/47/135), 1992.

numerous committees set to monitor their implementation. With the advent of the UN, the League conception of religion as a domestic concern with varying degrees of international regulation was replaced by a universalist conception of religion that eschewed minorities as rights holders, but sought to disseminate the narrower concept of religion as primarily constituted by beliefs at a global scale. The idea of universal standards applicable everywhere opened up a new space for the participation of actors beyond the state level to participate in the global conversation on the freedom of religion or belief, as NGOs, consultancies, research centers and individual experts have increasingly taken their places at the tables of UN entities dealing with the standard-setting, implementation and monitoring of religious freedom.

Whereas the League recognized considerable local differences in the regulation of religion, the UN conception of religion was explicitly founded on the idea that religion is a "cultural universal that exist everywhere" (see chapter 2), and eligible for the same level of protection regardless of local conditions, generating vibrant discussions on the perceived fit between a universalist, norm-creating center and local levels set with the task of implementation. Hence, whereas the substantive content of religion in international law seems to be somewhat clarified, its realization in state practice on the ground has always been controversial and contested, and the increasing involvement of non-state actors has served to further complicate the role of religion in the monitoring and implementation of international law. Increasingly, turning the principles of international law into realities on the ground is a cooperative effort where international organizations and institutions, NGOs and individual experts and academics participate, offering alternative visions and correctives to state practice. The principal arena for the interaction between these different international actors is the United Nations and its extensive institutional framework for the protection of human rights, notably the Human Rights Council (formerly the Commission on Human Rights) and the human rights treaty body system.

3.2.2.1 The Human Rights Council

Although human rights have increasingly become "mainstreamed" as a universal concern to all entities across the UN system, the primary actor set to monitor the practical implementation of the international legal framework on human rights is the Human Rights Council and its Special Procedures, in particular, but not limited to the role of the Special Rapporteur on the Freedom of Religion or Be-

lief,[19] whose mandate was created by CHR resolution in 1986.[20] The system with special procedures to which the rapporteur belongs is the successor to the string of ad hoc rapporteurs appointed by the CHR's Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, the lowest tier of the UN human rights hierarchy, created to fill some of the gaps in the protection of minorities in the UDHR (Normand and Zaidi 2008: 249; Weissbrodt 1986: 695). The special rapporteurs have been characterized variously as the crown jewels, frontline human rights troops or hands of the CHR by commentators; acting simultaneously as human rights activists, rallying points for human rights, international diplomats, academics and government advisers (Subedi 2011: 203, 212), mandate holders face enormous challenges in their work.

Among the ad hoc rapporteurs appointed by the CHR, two early mandate-holders have been important both to the interpretation of the mandate as special rapporteur and to the conceptualization of the freedom of religion or belief as a foundational human right. First, Arcot Krishnaswami submitted his Study of Discrimination in the Matter of Religious Rights and Practices to the Sub-Commission in 1960.[21] The comprehensive study, based on a review of the legislation on religion in 86 country monographs assembled by Krishnaswami and his secretariat, includes a list of 16 principles for legislation on the topic of religion and belief, especially on the topic of acceptable manifestations, which would later become the backbone of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (van Boven 1991: 438). Significantly, whereas the Krishnaswami study was primarily dedicated to religious discrimination, his approach to the matter was thoroughly infused by the individual conception of religion introduced by the UDHR article 18, as he observed that "each religion or belief makes different demands on

19 In particular, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/RES/1993/20, 1993) has engaged religion as a feature of racial discrimination on numerous occasions, including through a joint report with the then Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, on the "defamation of religions" (A/HRC/2/3, 2006). Additionally, the special rapporteurs on minority rights, indigenous peoples, violence against women, terrorism, freedom of opinion and expression and cultural rights have engaged religion to some degree.

20 The mandate was originally entitled Special Rapporteur on religious intolerance (E/CN.4/RES/1986/20, 1986), but the title was changed by the CHR in 2000 (E/CN.4/RES/2000/33). For a consideration of the origin and significance of the mandate, see Weissbrodt 1986. For a broader assessment of the ways in which the different mandate-holders have approached religion, see Årsheim 2016a.

21 E/CN.4/Sub.2/200/Rev.1, 1960.

its followers", advising against a mechanic application of the principle of equality that does not recognize the nature of these demands.[22]

In his study, Krishnswami observed at the very outset: "In view of the difficulty of defining 'religion', the term 'religion or belief' is used in this study to include, in addition to various theistic creeds, such other beliefs as agnosticism, free thought, atheism and rationalism".[23] Despite this broad-based assertion, the study is primarily dedicated to the various interactions of states with a small handful of "world religions"—i. e., Buddhism, Hinduism, Judaism, Islam, and Christianity, the latter intermittently subdivided into Protestantism, Orthodoxy, and Catholicism. The study briefly summarizes the history of legal regulations of religion or belief at domestic and international levels before explicating the different dimensions of the freedom of religion or belief protected by the UDHR, providing numerous examples of how states and world religions have interacted across the different dimensions outlined in this right.

Concluding his study, Krishnaswami observed that it was "relatively easy" to analyze the situation in the world today, which was characterized by a more favorable trend towards equality of treatment of religions and beliefs, and their followers. This change of affairs was due in no small part to "a change in attitude" among the followers of a number of religions or beliefs, which were less inclined than in earlier times to consider themselves to hold the only repositories of truth.[24] Hence, while Krishnaswami embraced a broad concept of religion at the beginning of his study, the brunt of his work chronicled the development of a fairly narrow selection of world religions towards increased acceptance of other religions or beliefs, effectively attributing the tolerant attitudes he identified to internal changes within religious traditions.

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22 E/CN.4/Sub.2/200/Rev.1: 15, 1960. The split between religious discrimination and minority protection was reaffirmed in 1971, when the Sub-Commission, in the wake of the adoption of the ICCPR, found it necessary to appoint Francesco Capotorti as special rapporteur set to prepare his *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* to complement Krishnaswami's work. Capotorti's work was submitted in 1979 (E/CN.4/Sub.2/384/Rev.1), and is widely considered to have provided the authoritative interpretation of the scope of article 27 of the ICCPR, defining minorities as "A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language" (E/CN.4/Sub.2/384/Rev.1: 568, 1979) (Yupsanis 2009: 249).

23 E/CN.4/Sub.2/200/Rev.1: 1, 1960.

24 E/CN.4/Sub.2/200/Rev.1: 55, 1960.

Second, Elizabeth Odio Benito completed her Study on current dimensions of the problems of intolerance and of discrimination on the grounds of religion or belief in 1986.[25] Benito stressed that the addition of "intolerance" to her mandate implied a broader approach to religious discrimination than that covered by Krishnaswami, encompassing discrimination within or between religions, between individuals or groups, and between the state and religious groups.[26] On the nature of religion, she observed that

> Like Mr. Krishnaswami, she has refrained from attempting to define "religion", since the meaning of the word is generally well understood by all. Nevertheless, it is perhaps useful to point out that "religion" can be described as "an explanation of the meaning of life and how to live accordingly". Every religion has at least a creed, a code of action, and a cult. Further, she has avoided any attempt to describe or evaluate any particular religion or belief or any religious institution. Where she has used the term "Church", it is not intended to refer to a particular religion or belief, but only to a stable and institutionalized organization or community of believers having an administration, a clerical hierarchy, a fixed body of beliefs and practices and an established form of ritual.[27]

Hence, although her mandate significantly expanded the scope of discriminatory actions, she maintained a view of religion that was mainly intellectual, firmly anchored in the nexus between a *forum internum* (a creed) and the *forum externum* (a cult), indicating its continued isolation from the minority approach to religion as a feature of identity outlined by special rapporteur on minority rights Francesco Capotorti nearly ten years earlier.[28]

Whereas Krishnaswami ended his study on a positive note, observing an increasing trend towards tolerance and reconciliation among the largest religions in the world, Benito pointed out that this hope had been shattered while her predecessor finished his report, as "serious manifestations of intolerance" swept over Europe in 1960,[29] preparing the ground for the adoption of the International Convention on the Elimination of Racial Discrimination in 1965. Moving on to the present situation, Benito painted a no less worrying picture of present manifestations of intolerance on the grounds of religion or belief, ending her report with a recommendation that work on a binding convention on the freedom of religion or belief should be a priority for the CHR, and that the topic should

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25 E/CN.4/Sub.2/1987/26, 1986.

26 E/CN.4/Sub.2/1987/26: 18, 1986.

27 E/CN.4/Sub.2/1987/26: 19, 1986.

28 See Francesco Capotorti: *Study of the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities* (E/CN.4/Sub.2/384/Rev.1), 1979.

29 E/CN.4/Sub.2/1987/26: 8, 1986.

become a regular agenda item for the commission, featuring information on the protection of this right gathered from all over the world.

The resulting mandate adopted in 1986 drew on the work of Krishnaswami and Benito, and set the rapporteur with the task to monitor the implementation of the 1981 declaration. While the original mandate was fairly narrow, the activities of successive mandate-holders have helped expand its scope gradually, as the CHR (replaced in 2006 by the Human Rights Council) has approved new working methods and more clearly formulated recommendations to states. Mandate-holders are typically lawyers, academics or former human rights activists, and as such represent a perspective from the outside, situated at the third, auxiliary level of the UN. Drawing on information from governments, non-governmental and other sources, the rapporteur makes country visits and composes thematic and annual reports on the state of the freedom of religion and belief, complete with recommendations to state parties (Evans 2006: 78).

The broad, thematic scope of the mandate was laid out in full in the Special Rapporteur's Digest of Freedom of Religion or Belief,[30] a document compiled by then rapporteur Asma Jahangir in order to aid individual petitioners in structuring their complaints to her office regarding violations of their freedom of religion or belief. The framework for communications in the Digest features a five-tier subdivision of religious freedom and surrounding issues (fig. 1), and is a useful source to identify the reigning understanding of the right as it has been developed by successive mandate-holders.

The first tier covers the combination of the internal and external dimensions of religious freedom, i.e. the right to adopt or change one's belief and the right not to be coerced on the one hand, and the scope of acceptable manifestations of religion on the other hand, minutely described according to the 1981 declaration and general comment no. 22 of the Human Rights Committee,[31] which is the authoritative interpretation of the ICCPR article 18 (see chapter 5). The second tier covers discrimination based on religion or belief, which also covers the issue of state religions, in cases where such arrangements result in the discrimination of other religions. The right to non-discrimination frequently interacts with the exercise of religious freedom, and is derived from the combined provisions of the ICCPR, the International Convention on the Elimination of Racial Discrimination (ICERD), and the Convention on the Rights of the Child (CRC). Unlike the right to freedom of religion or belief, the right to non-discrimination primarily construes religion as a dimension to identity.

30 E/CN.4/2006/5, Annex, 2006.
31 CCPR/C/21/Rev.1/Add.4, 1993.

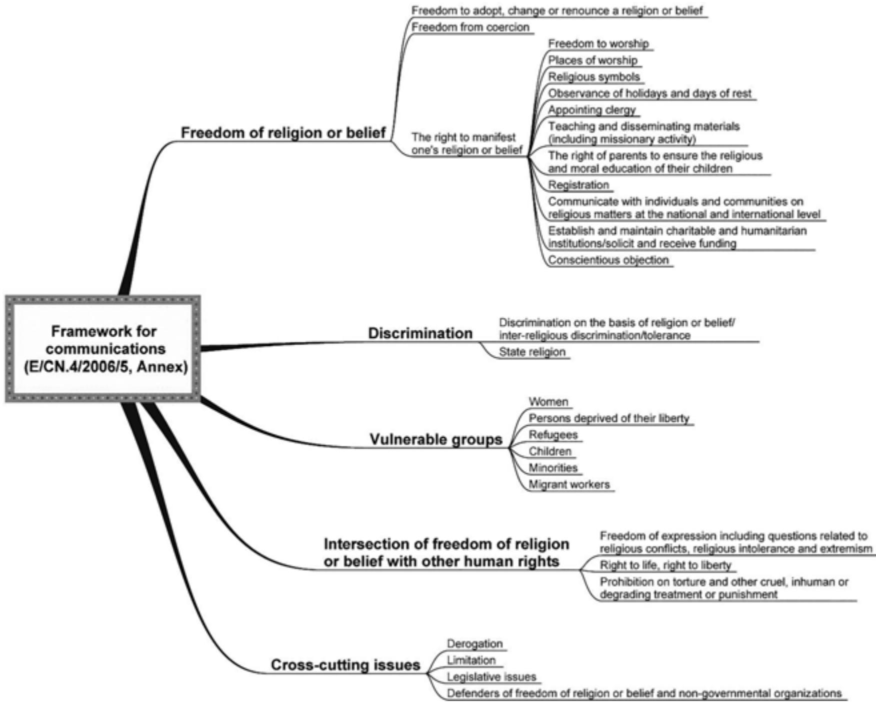

Figure 1 (Image: Office of the High Commissioner for Human Rights)

The third tier of the framework covers vulnerable groups and draws on provisions from the ICCPR, the CRC, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and numerous other international instruments. Vulnerable groups, in particular women, children, minorities, refugees and prisoners, are first and foremost relevant to the freedom of religion or belief because of the prevalence of issues reported to the special rapporteur where religious doctrines, concepts or practices are invoked to the detriment of these groups and their rights. Like the right to non-discrimination, the precarious situation of vulnerable groups is only rarely tied to individual freedom of belief and its manifestations.

The fourth tier is strongly related to the third, and concerns the intersection of the freedom of religion and belief with other human rights, i. e. issues where the invocation of religious freedom can result in the violation of the civil and political rights of others, such as the right to the freedom of expression, the right to life and the right not to be tortured, all of which are derived from provisions in the ICCPR, with smaller contributions from CEDAW and other instruments. The intersection of religious freedom with other rights draws a clear line between ac-

ceptable and unacceptable manifestations. Finally, the fifth tier concerns cross-cutting issues, such as the range of acceptable limitations to religious freedom, derogation and technical legislative issues drawn from the ICCPR, the CRC and CEDAW.

The present mandate of the special rapporteur[32] situates the mandate-holder at a vantage point at the intersection between different levels of religion-making, tasked with the interpretation of international norms, the compatibility of state behavior with such norms, and a variety of different sources weighing in on the nature of that compatibility. While different mandate-holders have emphasized different aspects of religious freedom (Evans 2006: 85), all have drawn upon a variety of sources, from state officials and civil servants, to specialized UN programs, NGOs and academics.

In a thematic report on the protection of religious minorities, the former special rapporteur Heiner Bielefeldt confirmed the split between religious belief and identity in his observation on the special nature of religious minorities viz. other minorities due to the dominance of article 18 of the ICCPR:

> In the context of human rights, the identity of a person or a group must always be defined in respect of the self-understanding of the human beings concerned, which can be very diverse and may also change over time. While generally applying to different (ethnic, linguistic, etc.) categories of identity, this principle of respecting every person's self-understanding is even more pronounced when it comes to defining religious or belief identities, since the development of such identities relates to the human right to freedom of thought, conscience, religion or belief.
> (...)
> Measures used to promote the identity of a specific religious minority always presuppose respect for the freedom of religion or belief of all of its members. Thus, the question of how they wish to exercise their human rights remains the personal decision of each individual. Strictly speaking, this means that the State cannot "guarantee" the long-term development or identity of a particular religious minority. Instead, what the State can and should do is create favourable conditions for persons belonging to religious minorities to ensure that they can take their faith-related affairs in their own hands in order to preserve and further develop their religious community life and identity.[33]

Hence, the obligation on states to perpetuate the existence of religious minorities required by article 27 of the ICCPR[34] and the solidarity criterion in Capotorti's

32 A/HRC/RES/22/20, 2013.
33 A/HRC/22/51: 23 – 24, 2012.
34 With his observation on the lacking obligation on states to guarantee the long-term survival of religious minorities, Bielefeldt comes close to directly contradicting the Human Rights Committee, which observes in its general comment no. 23 on the interpretation of article 27 that "The

definition of minorities[35] were both effectively overturned by Bielefeldt, whose approach to the notion of religious minorities required that the primary task of the state is to ensure respect for the freedom of religion or belief of each individual member to freely choose whether he or she wishes to self-identify with the minority in question.[36]

This view reflects the dominant approach by academic commentators on the freedom of religion or belief, which is commonly construed separately from the consideration of religion as an identity trait of minorities: Dickson (1995), Tahzib (1996), Taylor (2005), Scolnicov (2010) and Lerner (2000; 2012) all consider the freedom of religion or belief to be synonymous with the mandate of the special rapporteur, with issues like non-discrimination, vulnerable groups and intersecting rights introduced only as secondary concerns. Major international human rights NGOs like Amnesty International[37] adopt similar views, as do the NGO Committee on Freedom of Religion or Belief,[38] and smaller, issue-specific organizations like Forum18[39] and The Tandem Project,[40] signaling a strong international consensus on what the right to freedom of religion or belief is meant to cover among actors from below, at the third level of the UN.

In addition to its special procedures, the Human Rights Council also oversees the Universal Periodic Review (UPR), a peer-review mechanism under which the complete human rights record of every member state of the UN is re-

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Committee concludes that article 27 relates to rights whose protection imposes specific obligations on States parties. The protection of these rights is directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole. Accordingly, the Committee observes that these rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant" (CCPR/C/21/Rev.1/Add.5: 9, 1994).

35 See above.

36 The embeddedness of Bielefeldt's conception of minorities as self-determined by their beliefs is displayed in his conclusion, where he repeatedly refers to "religious or belief minorities" (A/HRC/22/51: 58–59, 2012).

37 Amnesty International was founded in the newspaper article *The Forgotten Prisoners*, published in The Observer on May 28th 1961, where Peter Berenson launched the "Appeal for Amnesty 1961" campaign, explicitly targeting prisoners of conscience, drawing upon articles 18 and 19 of the UDHR and ICCPR http://www.amnesty.org/en/who-we-are/history, (accessed 31.08.2016) http://www.theguardian.com/uk/1961/may/28/fromthearchive.theguardian (accessed 31.08.2016).

38 The Committee has been active since 1991, works to promote the freedom of religion and belief at the United Nations, and currently (2016) has 32 member organizations, mainly drawn from religious groups. http://unforb.wordpress.com/resources/ (accessed 31.08.2016).

39 http://www.forum18.org/forum18.php (accessed 31.08.2016).

40 http://www.tandemproject.com/ (accessed 31.08.2016).

viewed by the 47 member states of the council in an interactive process where all UN member states can take part in the discussions. Each review is based on reports submitted by the state in question, by NGOs and by the specialized agencies of the UN. Following an interactive dialogue, the council issues a report on the outcome of the review, listing issues raised by members of the council and responses from the state under review. Under the system, every state is reviewed every fourth year, and at the time of writing (2016), the system, which was started in 2008, has just finished its second cycle of reviews. While issues relating to religion, religious discrimination and the freedom of religion or belief have seen significant increases from the first to the second cycle of reviews, they still constitute a very small proportion of the issues raised during the reviews, trailing significantly behind larger issues like international law, gender equality and the rights of children (Årsheim 2016b).

3.2.2.2 The Treaty Body System

In addition to the role of the Human Rights Council and its different mechanisms, the other major system for the monitoring of human rights implementation at the United Nations is the treaty body system, under which committees of individually appointed experts review periodic state reports on the implementation of a broad array of legal instruments.

The practice of reviewing periodic state reports to monitor compliance with the obligations of human rights treaties appeared first in the constitution of the International Labor Organization in 1919, and was later picked up by the Economic and Social Council (ECOSOC) of the UN in the 1950s, before it became the bedrock of monitoring human rights treaties when ICERD was adopted in 1965 (Kretzmer 2008). After a cautious start in the 1970s, when recommendations and criticism were largely absent and committees interpreted their duties quite differently, the reporting procedures have matured into a coherent system, and since the early 1990s, when the UN went through a major institutional overhaul, the procedures of the treaty bodies have become more or less uniform (Stoll 2008).

Treaty bodies decide their own rules of procedure, issue their own separate guidelines for how states should report on the implementation of their obligations, and regularly issue "general comments" on their own interpretation of the provisions in their instruments Within this system (see fig. 2),[41] reports are

41 Unless otherwise indicated, the information on the reporting system is derived from the

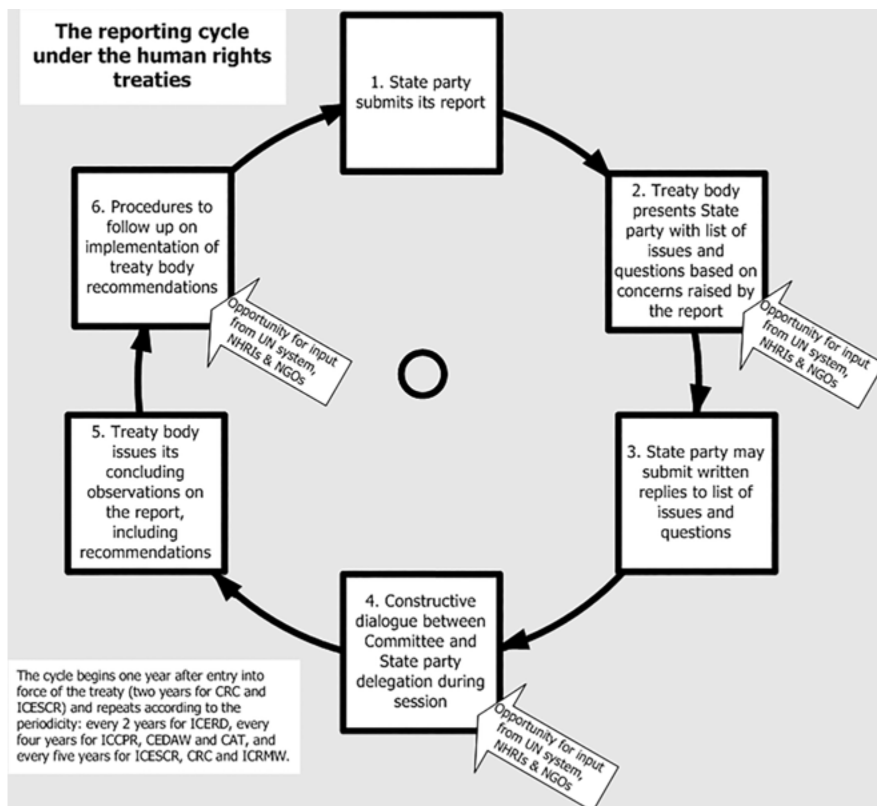

Figure 2 (Image: Office of the High Commissioner for Human Rights)

submitted at a periodicity set by the treaty in question, and are reviewed in meetings open to the public where state delegations interact with committee members. Prior to the meeting, committees present states with lists of issues of particular concern to be dealt with in the meeting. States have the opportunity to submit replies to the lists beforehand. Several treaty bodies host preparatory meetings where NGOs can present particular issues. Additionally, all treaty bodies receive numerous shadow reports written by NGOs on state compliance with the provisions in question, and, increasingly, they receive information from UN agencies working in the country. Individual committee members are also free to seek out independent information on their own. Committee members are elected

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OHCHR's fact sheet on the treaty system (Fact Sheet No. 30/Rev.1) http://www.ohchr.org/Documents/Publications/FactSheet30Rev1.pdf (accessed 31.08.2016).

among state parties, who nominate their own nationals to serve as independent experts. Rules and criteria for membership vary for each committee, and are specified in the instrument each committee is set to monitor.[42] While the background of committee members varies, the majority tend to have a legal background (Mechlem 2009: 917).

During the meeting with the state party, the conversation between committee members and the state delegation is directed by the committee's elected chairperson for the session. Following an introduction from the state delegation, the conversation is structured according to the list of issues, and the different clusters of rights that represent particular difficulties in the implementation of the treaty in question. Following the meeting, the committee holds a closed session where it discusses the issues raised, before drafting and adopting a text containing concluding observations, with views and recommendations on positive and negative aspects, and recommendations to the state party. In particularly problematic cases, committees have various follow-up procedures to monitor that states comply with their recommendations.

Treaty bodies are compromises that illustrate the core paradox at the foundation of international human rights law, caught in the deadlock between the dissemination of universal rules and the parochialisms of domestic jurisdiction. Incapable of delivering binding decisions and verdicts, treaty bodies are left with issuing stern suggestions and recommendations on domestic legal arrangements. The legal effect of their recommendations is disputed (Keller and Ulfstein 2012: 3, Mechlem 2009: 909), and elements of their practice have been labelled "quasi-judicial" (Henrard 2011: 392, Pejic 1997: 684), although their legal significance has been confirmed by references to their opinions in international and domestic legal decisions (Buergenthal 2006: 789).

Several studies have been instigated to review the process and suggest improvements, both procedurally and substantively. Studies by long-time human rights scholar Philip Alston in 1989,[43] 1993[44] and 1997[45] concluded that the system would ultimately need to be reformed and streamlined, suggestions that were reinforced by the findings of Anne Bayefsky, who in her 2001 report[46] claimed the system was in urgent and permanent crisis. Since then, a large number of meetings have been held and concept papers created at the bureaucratic and

42 See ICERD article 8, the ICCPR article 28, CEDAW article 17 and the CRC article 43.
43 A/44/668, 1993.
44 A/CONF.157/PC/62/Add.11/Rev.1, 1993.
45 E/CN.4/1997/74, 1997.
46 *The UN Human Rights System: Universality at the Crossroads* (2001).

NGO levels of the UN, with no substantial changes appearing on the horizon.[47] Several new treaty bodies have been created, increasing reporting burdens and overlapping monitoring activities.[48]

Despite the problems attendant to the monitoring procedure, there are indications that the existence and increased ratification of human rights treaties have a real and concrete impact on state behavior. In a study commissioned parallel to Bayefsky's scathing critique, Heyns and Viljoen (2001) found strong indications that states alter legal frameworks and policies to come in line with treaty provisions, although motivations for ratifying were found to be utterly pragmatic: Such alterations did not primarily happen due to the recommendations issued by treaty bodies, but were rather based on states' impressions of the need to show commitment to human rights at the international arena to secure their own standing on other issues (Heyns and Viljoen 2001: 535).

The vagueness of treaty obligations, which tend to leave considerable room for interpretation, has led each treaty body to develop its own interpretative practice. Over the course of their history, human rights committees have approached the concept of religion differently, relative to the categories of rights they have been set to monitor, the political climate that shaped their competence and powers, their connections with the scholarly and NGO community and their standing in international law more generally.

The ways in which the treaty bodies approach religion is strongly influenced by their location within the UN system. Treaty bodies are situated at the juncture between the first, political UN that has decided their membership and negotiated the treaties they monitor, the second, bureaucratic UN that staffs their meetings, drafts their reports and provides background information on the states under review, and the third, activist UN that lobbies their meetings, hosts side events on the rights they monitor and provide shadow reports for their reviews. From these very different actors, the treaty bodies receive inputs and suggestions on how to deal with religion from above, outside and below. Before moving on to the ways

47 For a recent update on the reform process and earlier reports and proposals, see *Strengthening the United Nations human rights treaty body system. A report by the United Nations High Commissioner for Human Rights* (A/66/860, 2012). For continuous updates on this comprehensive process, see the OHCHR website: http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx (accessed 31.08.2016).

48 Since the turn of the century, The Committee on Migrant Workers (2004), The Committee on the Rights of Persons with Disabilities (2009) and The Committee on Enforced Disappearances (2011) have been added to the roster. Additionally, the optional protocol on the Convention against Torture created a Subcommittee on the Prevention of Torture, which started work in 2007, bringing the total number of enforcement mechanisms to 10.

in which the treaty bodies have balanced these inputs in their review efforts, I will take a closer look at the dominant approaches to religion within each of the different levels of the organization.

3.3 Religion at the Three Levels of the United Nations

As the UN Intellectual History Project documented (see chapter 1), the United Nations has grown to become a multidimensional organization that has decisively influenced research, policymaking, development efforts, scientific cooperation and disaster relief through an increasingly complex institutional evolution with unique, global reach. Significantly, the UNIHP documented how the UN has been influential not only in material, measurable terms, but also in more indirect and implicit ways, by framing global concerns in new and instructive ways: In its final report, the project team identified the increased tendency to see peace, development and human rights[49] as interconnected issues that have to be addressed together as one of the most important conceptual innovations of the UN (Jolly, Emmerij and Weiss 2005: 7–11).

Additionally, the project documented how numerous shortcomings at the traditional (political and bureaucratic) levels of the UN were increasingly addressed and engaged by non-governmental actors, to the point where it has become possible to distinguish between three different levels of decision-making at the UN (Weiss 2009: 8–9): The first level is composed of the political arenas for states, more concretely bodies created by the UN Charter like the UN General Assembly, the Economic and Social Council, and the Security Council. This is the "original" UN; a society of states joined together to work for world peace. The second level contains specialized agencies, which, although they are directed by UN member states, are staffed by specialists according to the technical requirements of the agency. Agencies at this level include the Bretton Woods organizations (the IMF and the World Bank), the World Health Organization (WHO), the United Nations Development Program (UNDP), the United Nations Populations Fund (UNFPA), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and many others, which have been the operational

49 These are three of the four "pillars" of the UN. The fourth pillar, the independence and self-determination of states, was largely considered a success with the rapid decolonization of the 1960s, but has since descended into relative chaos, as issues concerning the exact nature of sovereignty and the scope of the doctrine of the responsibility to protect have increasingly become contentious political issues, in particular in the decades following the end of the Cold War (Jolly, Emmerij and Weiss 2005: 12).

arms of the UN since the early years. The third level, which has become gradually more important over the last decades, consists of non-governmental organizations, independent experts, consultants and others who are commissioned by the UN or seek to influence its operations. Examples of actors within the third UN are human rights organizations like Amnesty International and Human Rights Watch, independent experts appointed by the Secretary General or other offices within the UN, and special task forces and commissions established to meet particular challenges, such as the Intergovernmental Panel on Climate Change (IPCC).

The organizational levels of the UN enjoy expansive interchanges in the creation and maintenance of ideas, programs and policies to promote the core objectives of the organization. In these interchanges, the three levels of the UN resemble the three levels of religion-making identified by Dressler and Mandair (2011, see chapter 2); the political level of the first UN largely conducts its operations, whether relating to religion or to other concepts, from above, from positions of power and authority. At the second UN, however, actors largely see their role as outside power relations, performing technical tasks that frame categories like religion in instrumental and heuristic terms. At the third UN, NGOs, independent experts and working groups tend to represent the marginalized from below, framing issues in terms of justice and reparations, approaching religion and other issues as part of their struggles for increased equality. In the following, I will go more in-depth on these different levels of the UN, and how they have approached religion, and thereby become engaged in their very own modes of religion-making.

3.3.1 Religion-Making at the First UN

At the first, political level of the UN, where states negotiate the future direction of the organization and its specialized branches, religion is primarily approached as a universal, yet unspecified human value worthy of protection. Debates in the General Assembly and the Human Rights Council tend to turn religions into parts of our universal, shared heritage, and whenever states present agendas relating to religion at political organs, it is in the shape of resolutions calling for the protection of religious sites,[50] the promotion of religious and cultural understanding, harmony and cooperation,[51] combating the "defamation" of reli-

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50 A/RES/55/254, 2001 and A/HRC/RES/6/19, 2007.
51 A/RES/58/128, 2003 and A/RES/65/5, 2011.

gions[52] (see also below) and promoting human rights through a "better understanding of traditional values of humankind",[53] in a specialized language that has evolved into something resembling a United Nations civil religion, composed of a generic cross-section of features drawn from major religious traditions.[54] The terms of reference and ways in which state representatives at the UN talk about religion as a generalized, universal and entirely abstract concept resembles the traits identified by Robert Bellah in US American presidential inaugural addresses in his seminal 1967 article "Civil Religion in America", where he also entertained the possibility of such an international conception of civil religion to emanate from the UN (1967: 18).

However, the civil religion of the first UN, much in the same way as the civil religion of the U.S.A. identified by Bellah, "is being used and has been used as a cloak for petty interests and ugly passions" (Bellah 1967: 18–19), as states dress up utilitarian political claims in the language of serene, peaceful religiosity. Resolutions on religious sites conveniently leave out conflicting views of the ownership and custodianship of particular places (Levi and Kocher 2012); resolutions on the protection against the defamation of religions suppress the freedom of opinion and expression (Langer 2010), while resolutions promoting the traditional values of humankind discredit the status of LGBT rights (Wilkinson 2014). Situated at the helm of the world organization, the religion-making at the first UN is decisively conducted from above, from states in positions of power that emphasize the harmonizing and conciliatory aspects of religion, largely in order to further their own political agendas.

3.3.2 Religion-Making at the Second UN

The bureaucratic, intermediate level of the UN, on the other hand, is set with the difficult task of converting the lofty targets set by states at the political level into concrete policy measures on the ground. Relative to their area of work, virtually every part of the UN bureaucracy encounters and deals with religion in some shape or form. To international civil servants working at the UN secretariat, the specialized programs and agencies, however, the religion in question only becomes visible and relevant whenever it interferes with the primary objectives

52 A/RES/60/150, 2005 and A/HRC/RES/4/9, 2007.

53 A/HRC/16/L.6, 2011.

54 Incidentally, activists have proposed that the normative instruments of the UN itself, as a force for the creation of global peace, could and should be construed as a form of civil religion (Porsdam 2012).

of each agency. Hence, whereas a debate on whether or not female genital mutilation (FGM) is religious, and how this may affect its abolition would be highly controversial at the political level of the UN, the World Health Organization (WHO) flatly informs that "Though no religious scripts prescribe the practice, practitioners often believe the practice has religious support".[55]

Having severed religious connotations to FGM, the fact sheet goes on to identify its cultural origins, begging the question of where to draw the line between these concepts, a line the WHO seems to be confident drawing from the outside, despite practitioners' belief that the practice has religious support. Engaging the issue of mental health in emergencies, on the other hand, the WHO has stressed the significance of creating "religious places" in refugee camps in order to re-establish normal cultural and religious events like grieving rituals.[56] In yet another context, the WHO encourages and praises the decisive influence of faith-based organizations in fighting the HIV/AIDS pandemic.[57] Religion, in the work of the WHO, comes in many shapes and forms, and its identification cannot be separated from the primary objectives of the organization in the field of health care.

Another major UN agency, The United Nations Development Program (UNDP), has shown a similarly pragmatic and instrumentalist approach to religion through its collaboration with the Alliance of Religions and Conservation (ARC) since 2009. After regular events dedicated to the potential of religious organizations to help realizing the Millennium Development Goals (MDGs) and their successors, the Sustainable Development Goals (SDGs), the ARC and the UNDP have overseen the commitment of more than 50 "faith action plans", under which a broad range of religious organizations have pledged to work towards long-term environmental aims, drawing on the key tenets of their faiths.[58] The religion-related work of the agency has grown to the point where it has found the need for a dedicated publication with Guidelines on Engaging with Faith-based Organizations and Religious Leaders (2014).[59] The guidelines stress the social importance and near universal presence of faith-based organizations (FBOs) and religious leaders, and the potential to improve the implementation

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55 *WHO Fact sheet No 241* (February 2012).

56 *Mental Health in Emergencies* (WHO/MSD/MER/03.01), 2003.

57 Press release 08.02.2007 following the launch of the report *Appreciating assets: mapping, understanding, translating and engaging religious health assets in Zambia and Lesotho.*

58 Alliance of Religions and Conservation. *Projects: ARC-UN: Long Term Commitments for a Living Planet.* http://www.arcworld.org/projects.asp?projectID=47 (accessed 01.08.2016).

59 United Nations Development Program. http://www.undp.org/content/dam/undp/documents/partners/2014_UNDP_Guidelines-on-Engaging-with-FBOs-and-Religious-Leaders_EN.pdf (accessed 01.08.2016).

of development projects through the careful and considered engagement with religious communities. To the UNDP, the role of religion seems mostly to be strategic and instrumental, as it seeks to utilize the strong social role of religious communities in order to implement its provisions in the area of development. Similar initiatives to engage FBOs have been launched by the World Bank.[60]

The United Nations Educational, Scientific and Cultural Organization (UNESCO), for its part, has engaged extensively with religious actors for decades. In 1994, the organization organized a meeting entitled The Contribution by Religions to the Culture of Peace, whose participants adopted a declaration on the conference topic, stressing the need for religious co-operation in order to fight increasing armed conflicts and violence, poverty, social injustice and structures of oppression.[61] The organization also runs its own interreligious dialogue initiative,

> …stressing the reciprocal interactions and influences between, on the one hand, religions, spiritual and humanistic traditions, and on the other, the need to promote understanding between them in order to challenge ignorance and prejudices and foster mutual respect.[62]

Increasingly, UNESCO has also engaged with the growing concern for the preservation of religious and sacred sites, as part of its overall cultural conservation work. This effort was initiated during the 2010 United Nations year for the rapprochement of cultures, which led to the adoption of a Statement on the Protection of Religious Properties within the Framework of the World Heritage Convention, a legal instrument overseen by UNESCO. To appreciate the particular characteristics of these sites, the organization has launched a UNESCO Initiative on Heritage of Religious Interest, in order to better appreciate the specific conservation challenges represented by structures and areas considered to be reli-

60 See the comprehensive online conference materials from the 2015 World Bank conference on *Religion and Sustainable Development*, http://jliflc.com/conferences/religion-sustainable-development-building-partnerships-to-end-extreme-poverty/ (accessed 01.08.2016). See also Marshall and van Saanen 2007.

61 United Nations Educational, Scientific and Cultural Organization. *Declaration on the Role of Religion in the Promotion of a Culture of Peace.* http://www.unesco.org/cpp/uk/declarations/religion.pdf (accessed 31.08.2016).

62 Website: Interreligious Dialogue | United Nations Educational, Scientific and Cultural Organization http://www.unesco.org/new/en/culture/themes/dialogue/intercultural-dialogue/interreligious-dialogue/ (accessed 31.08.2016).

giously or otherwise spiritually significant.[63] Unlike the pragmatic approaches to religion favored by the World Bank and the UNDP, UNESCO has approached religion largely from a civilizational, holistic and doctrinal perspective, drawing on its broad engagement with different aspects of culture to better grasp the role of religion to its work.

Combining these different approaches, the United Nations Population Fund (UNFPA) has also started working with religious actors, with a particular emphasis on the role of religious doctrines and the social power of religious actors in the provision of birth control and other issues relevant to women's health.[64] Like the UNDP, the organization has developed its own guidelines for how to deal with FBOs as "cultural agents", in order to create "conducive sociocultural environments" and to consolidate partnerships for population and development.[65] Additionally, the agency hosts the UN Inter-Agency Task Force on Engaging Faith-based Organizations for Development, co-ordinating the work with FBOs across the UN agencies working with development-related issues, mapping out the terrain for interactions between development work and religious actors.[66]

Across the specialized programs and agencies of the UN, religion-making takes place from self-proclaimed outsider positions, a good distance away from the lofty targets of the political level. Unbridled by the constraints of international diplomacy and policymaking, actors at the second level of the UN have developed a strongly contextual approach to religion, under which the aspects, content and role of religions, their doctrines, adherents and organizations are relied upon and engaged in unequal measures. The various agencies have developed their approaches in concert with their surrounding fields of operation, rather than their immediate UN context: whereas the WHO has approached reli-

63 United Nations Educational, Scientific and Cultural Organization. *UNESCO Initiative on Heritage of Religious Interest*. http://whc.unesco.org/en/religious-sacred-heritage/ (accessed 01.08.2016).

64 See in particular United Nations Population Fund: Publications. *Religion, Women's Health and Rights: Points of Contention and Paths of Opportunities* (2015). http://www.unfpa.org/publications/religion-womens-health-and-rights?page=8 (accessed 01.08.2016) and United Nations Population Fund: Publications. *Women, Faith and Human Rights* (2016), http://www.unfpa.org/publications/women-faith-and-human-rights (accessed 01.08.2016).

65 United Nations Population Fund. *Guidelines for Engaging Faith-Based Organisations (FBOs) as Agents of Change*. http://www.unfpa.org/sites/default/files/resource-pdf/fbo_engagement.pdf (accessed 01.08.2016).

66 See United Nations Population Fund: Publications. *Realizing the Faith Dividend* (2015). http://www.unfpa.org/publications/realizing-faith-dividend (accessed 01.08.2016) and United Nations Population Fund: Publications. *Religion and Development post-2015* (2015). http://www.unfpa.org/publications/religion-and-development-post-2015 (accessed 01.08.2016).

gion much in the same way as others in the field of healthcare, the UNDP has developed its approach to religion in close relationship with other international organizations working for development and capacity-building. As such, their common location at the second level of the UN is no guarantee for a similar approach to religion—to some extent, the ways in which the agencies deal with religion displays an opposite trend, as they develop their work in relationships well beyond the world organization.

3.3.3 Religion-Making at the Third UN

At the recently identified third level of the UN, non-governmental organizations and individual experts have had a significant impact on the other levels, from the inclusion of human rights in the UN Charter via the creation of the High Commissioner for Human Rights (1993) and to the continuous review of human rights at all levels of the organization (Gaer 1995). International movements working with a broad range of issues have a long history of evolution outside state control (Charnovitz 1997), and continue to push their agendas through to the conclusion of major international agreements.[67] Representing perspectives free from state control, a strong and increasing role for the third UN represents a vital input to the state-centric organization, and an alternative route for grassroots activism to be heard. Standing on the outside looking in, actors at the third level work from below and are free to handle the issue of religion as they see fit in their interactions with UN agencies and political branches.

Actors at the third level of the UN engage in "advocacy, research, policy analysis and idea mongering" (Weiss, Carayannis and Jolly 2009: 123). Working from a contextual approach to religion akin to that of the second level, actors at the third UN develop their work in close interaction with the rights movements, constituencies and fields of expertise they seek to represent. As such, the third level acts as a conduit between the UN and the world outside it, providing the organization with much needed input from below the levels of political and bureaucratic discourse.

Unlike the first and second levels, whose composition and competencies are closely circumscribed by international treaties and rules of procedure, the third UN is a "free-flowing network", whose membership, strategies, goals and modes of interaction with the other levels shifts continuously, thereby evading clear-cut

67 A particularly strong case in point is the 1997 convention on the ban on landmines, which was pushed through by the NGO umbrella International Campaign to Ban Landmines.

examination and analysis (Weiss, Carayannis and Jolly 2009: 125). Nevertheless, the influence of a third UN composed of actors clearly distinct from the political and bureaucratic levels of the organization can be discerned upon closer scrutiny of specific, recurring themes like religion-making. Some of the most influential ideas of and approaches to religion within the organization have been developed by actors from below the formal structures of the UN. These inputs range from the reports submitted by special rapporteurs on religious discrimination and the freedom of religion or belief from the early 1960s and up to the present (see above) and the shadow reports provided by NGOs to the human rights monitoring overseen by the Human Rights Council and the UN treaty bodies (see below), and to the participation of NGOs and individual experts in conferences on pressing global issues, in particular the landmark conferences on human rights (Vienna 1993), women's rights (Beijing 1995) and racism (Durban 2001).

Given the large number of actors from different backgrounds working at the third UN, no singular approach to religion has been developed at this level. Rather, the third UN brings the sheer variety of available approaches to religion to bear on the operations of the other levels by presenting additional, alternative or conflicting views to the table. The evolution of the UN into three institutional levels and modes of operation has created a complex, multi-dimensional mode of religion-making at the organization, where the content of the term is relative to the author and surroundings of its deployment: what delegates at the General Assembly mean when they speak about religion is simply something different from the religion facing the ground operations of specialized agencies, the campaigns launched by NGOs or the reports written by independent academics.

The rise of a third level where NGOs and individual experts can influence policy and bureaucracy is not exclusive to the UN, nor is it particularly recent: from the 18th century onwards, private individuals and organizations have had gradually more audible voices in the shaping and execution of rules and policies at different levels of governance. Similar influences are legion in domestic politics, can be traced at other international bodies like the EU, the OSCE and ASEAN, and have only accelerated over the last decades as a byproduct of the communications revolution. Where petitions to local, regional and global political bodies and agencies used to be a cumbersome, specialized affair only available to very limited segments of the population with the requisite know-how and resources at their disposal, the last decades have seen a dramatic lowering of the bar for participation and a subsequent mushrooming of participation from civil society.

The rise of the third level of the UN, while fully in line with the intentions of the founders of the UN, who admitted wide participation of NGOs within the framework of the organization, is not without ambiguities or paradoxes. Individ-

uals serving as experts or within NGOs seeking to influence the UN frequently have backgrounds from the political or bureaucratic levels of the organization or from higher echelons of politics or bureaucracies in member states or other powerful interest groups with vested political interests in shaping the work of the organization. This background, while sometimes necessary due to the level of technical specialization on global issues, blurs the lines between policymaking, bureaucracy and activism in civil society.

Adding to the complexity of the notion of a third UN, some NGOs have unclear ties to their domestic governments, spawning the notion of the "Government NGO", or GONGO. The rise of GONGOs has mainly been detected at the Human Rights Council, where the aggressive posture of some states towards criticism against their human rights record has been complemented by a set of NGOs whose agendas and views are indistinguishable from that of their home state. Among the many challenges facing the problem with GONGOs, the composition of the committee that reviews applications for accreditation for NGOs is among the most pressing: The ECOSOC Committee on NGOs is composed of representatives from 19 member states elected on the basis of equitable geographical representation, a composition that prepares the ground for repeated infighting along the same lines as the other political levels of the UN. While this problem has been pointed out in the past (de Frouville 2008: 114–115), it is unlikely to go away any time soon, as reform of the political bodies of the UN has proved exceptionally complex.

3.4 Multi-Dimensional Religion-Making in International Law

After more than a century of international political organization premised on the participation of actors above, outside and below positions of power, the multidimensional nature of international governance has become commonplace. While the final say in the process of standard-setting in human rights is still firmly in the hands of political actors working from above, the monitoring and implementation of these standards has increasingly become a collaborative process featuring participants from different positions of governance and all the organizational levels of the United Nations.

Approaching religion has not commonly been among the regular features of actors involved in international governance, which have been more focused on the traditional topics of international law, ranging from questions of sovereignty, peace and security, to trade, the provision of development aid, concerns for the environment and the promotion of the rule of law. Although numerous religious organizations have long provided strong and vocal involvement across many of

these issues, the ways in which actors in international governance have approached religion more generally—what dimensions of the concept they emphasize and what modes of interaction they prescribe—has not received sufficient attention. With the rise of human rights as the “lingua franca of global moral thought” (Ignatieff 2000: 320) and the concurrent claims concerning the “return” of religion (see chapter 1), the ways in which international human rights actors approach religion should become subject to greater scrutiny. Although a handful of studies on the notion of religion in the jurisprudence of the European Court of Human Rights have appeared over the last decades,[68] actors at the universal level have so far received little attention,[69] with most studies favoring a rights-based approach rather than a more conceptually sensitive analysis.[70]

While these studies provide crucial insights into the protection offered for the freedom of religion or belief and other related rights, they provide little information about how the different institutions involved in the monitoring of human rights approach religion in more general terms: whether they see religion as a positive or negative social force, whether they are more concerned with the doctrinal, ritual or legal aspects of religious traditions, or the organizations and entities based on a more or less clearly established religious ethos. Whether these entities favor the non-committal approach to religion at the first UN, the utilitarian approaches at the second UN or the plethora of approaches present at the third UN, or a mixture of all of the above has so far not been properly examined. Put differently, the present scholarship on the approaches to religion within international human rights monitoring bodies generally does not examine how these bodies deal with the multiple concepts of religion in their work beyond strictly defined legal norms—in particular the notion of “lived religion”—how people live out their religious identities beyond the scripts laid down for them by international law.

Elsewhere, I have examined the approaches to religion at the procedures established by the Human Rights Council (Årsheim 2016a, Årsheim 2016b), documenting how consecutive special rapporteurs on the freedom of religion or belief and NGOs petitioning the UPR process on the freedom of religion or belief have approached the concept of religion in their work. The special rapporteurs have

68 See Bhuta 2014, Moyn 2014, Peroni 2014.

69 Notable exceptions include José Lindgren Alves on religion at CERD (2008), Martin Scheinin on the freedom of religion or belief at the Human Rights Committee, Doudou Diéne on the freedom of religion or belief at UNESCO, Theo van Boven on the freedom of religion or belief at the Human Rights Commisssion (all in Lindholm *et al* 2004) and Michael Addo on religion and culture at the committee monitoring CEDAW (2010).

70 See note 20.

chafed at the narrowness of their mandate and the complexities of disentangling religious discrimination from other types of discrimination (Årsheim 2016a: 313), demonstrating the translational difficulties experienced by individual experts from below or outside the UN working to "vernacularize" the rules and provisions developed by political actors at the first UN. NGOs petitioning the UPR, on the other hand, have struggled to establish the necessary fit between the plight of groups and individuals they document on the ground and the international normative framework, frequently failing to escape the tendencies of faith-based groups to emphasize the misery experienced of their own and to portray their agonies in theological categories as martyrs or heroes (Årsheim 2016b: 88).

The remainder of this book examines the approaches to religion at the other major human rights monitoring system overseen by the UN: the treaty body system. The work of four treaty bodies will be explored from a variety of perspectives: After a brief introduction to their legislative history, I move on to discuss the legal provisions on religion of each treaty, and how religion has been approached by the treaty bodies in their general comments, their individual complaints procedures and their reporting guidelines. After a brief summary of which approaches to religion dominate in these documents, I assess how each treaty body has approached religion in the concluding observations they have issued following their reviews of state reports from 1993 to 2013. In order to paint a more detailed picture of the ways in which the reviews are conducted, summary records from the interactive meetings between treaty bodies and states parties are also examined for the most dominant themes of each treaty body. In chapter 8, I explore cross-cutting themes and connect them with different scholarly perspectives on religion.

Part II: **Monitoring Religion**

Introduction

Like the special rapporteurs and the NGOs petitioning the UPR, human rights treaty bodies are parts of the third UN. Like special rapporteurs, members of the treaty bodies are appointed in their individual capacities by UN member states in order to oversee the successful implementation of legal norms developed at the political level. Also like special rapporteurs, the treaty bodies are frequently petitioned by NGOs and approached by specialized agencies and programs from the second UN seeking to monitor and influence how they do their work. Despite these similarities, there are some important differences as well. Treaty bodies are not created by resolutions negotiated at the political bodies of the UN, but by the ratification of binding international treaties. As such, they are part of a large system of international bodies set to interpret treaties under international law, and are bound to follow the principles of treaty interpretation laid down in the 1969 Vienna Convention on the Law of Treaties (Mechlem 2009: 909). Their terms of operation are not limited in time, and their competences are strictly defined in the treaties they are set to monitor. The provisions of their treaties vary considerably, from the handful of substantive articles outlined in the International Convention on the Elimination of Racial Discrimination (1965) to the broad number of rights listed in the Convention on the Rights of the Child (1989), as does the level of engagement from states parties and civil society.

Concluding observations issued by treaty bodies constitute a complex subject matter. In his review of the treaty body system in 1997, Philip Alston recommended that the quality of concluding observations should be improved in terms of "clarity, degree of detail, level of accuracy and specificity".[1] Michael O'Flaherty has pointed to the tendency among treaty bodies to issue observations that do not sufficiently reflect the meetings with states parties, include excessive non-treaty-related recommendations, do not provide sufficient connections between concerns and recommendations, and do not sufficiently prioritize between different recommendations, nor dedicate enough attention to the follow-up of previous observations (O'Flaherty 2006: 51–52). Additionally, treaty bodies frequently issue concluding observations with no reference to specific treaty provisions, bundle several different provisions together, and recommend vague and imprecise measures to bring domestic practices in line with the instruments they are set to monitor. On some themes, the committees monitoring the CRC and

1 E/CN.4/1997/74: 109, 1997. Cited in O'Flaherty 2006.

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CEDAW have created standardized responses that are issued verbatim to several states (see chapters 6 and 7).

Taken together, these factors complicate the systematic examination of concluding observations, which tend to evade simple and clear-cut categorizations. Starting from the assumption that any application of "religion" or related terms can shed light on how each committee approaches religion, I have identified all uses of these terms for each committee, before parsing the assembled data into larger themes and subthemes. Along the way, observations that merely list the terms as parts of legal obligations or mention the terms in passing have been left out from the final analysis. Likewise, themes that are only mentioned sporadically have not been included in the overall assessments presented below, except in instances where they directly influence larger themes. Some concluding observations that contain particularly lengthy discussions of religion and associated terms have been included several times in the examination of different themes. Both the top-level collection of data and their later subdivisions have been guided by the specific analytical interests and perspectives laid out in chapters 1–3. Other subdivisions could undoubtedly have been used on the same material, generating different themes and perspectives. Nevertheless, I maintain that chapters 4–7 represent broader trends in how the treaty bodies have approached religion in their monitoring practice from 1993 to 2013.

Recognizing that committees and states frequently use the term "religion" interchangeably with other terms, I have expanded the number of terms associated with the concept of religion in the analysis, including the names of distinct traditions like Islam, Christianity, Buddhism and Hinduism, and a range of phenomena that have been identified as "religious" in the discourse, like rituals, temples, mosques, churches, gods and spirits, and particular political or legal issues that engage religion, like secularism, theocracy, Sharia and Canon law. This expansion has been applied selectively, drawing on my pre-existing background knowledge and familiarity with the discourse: For example, documentation concerning Thailand is more likely to feature terms like Buddhism and monastery than secularism or Baha'i, whereas the situation is exactly the reverse in documentation concerning Tunisia. The systematization of the resulting data has been conducted manually, using digitized searches for terms associated with the concept of religion. Over the course of the analysis, I have gradually assembled a list of terms that has been expanded incrementally in order to help identify the different deployments of the concept of religion in the discourse.[2]

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2 The list is divided between terms that are applied interchangeably or in relation to religion or any of its derivatives (religions, religious, religiosity) within the discourse, i. e. in legal materials,

The frequency with which the selected terms have been used by the committees during the time period in question does not in itself indicate anything about the patterns in their religion-making: Singular concluding observations can mention religion numerous times without adding much information about how the committees view the concept, whereas concluding observations that only employ the term once may offer several insights into the rationale behind the religion-making of the committees. Hence, I do not examine the prevalence with which "religion" or any other term on the list appears.[3] Similarly, I do not review the prevalence of singular states, because their inclusion in the discourse is relative to the number of instruments they have ratified and the frequency of their reporting, which is highly erratic.[4] To the extent that I quantify findings, I do so in terms of highlighting the prevalence of particular, broad themes in specific geographical regions or over fairly distinct periods of time.

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and terms that have been added incrementally. The former includes article 18 of the International Covenant on Civil and Political Rights (1966), which associates religion with belief, thought, conscience, worship, observance, practice, teaching and moral. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) additionally associates religion with the terms conviction, profess, tolerance, spirit, rites, customs, ceremony and precept. General comment no. 22 of the HRC on article 18 (CCPR/C/21/Rev.1/Add.4, 1993) additionally associates religion with adherence, ritual, dietary, priests, seminaries, atheistic, congregations, convert, non-religious, ethics, traditions, faiths, blasphemous and conscientious objection. Terms that have been added incrementally include: secular, sacred, holy, god, deity, ancestral, venerate, denomination, divine, theological, celestial, theist, monastery, monk, nun, myth, pray, sect, cult, saint, creed, church, Christian, Catholic, Protestant, Lutheran, Orthodox, Bible, canon, Jew, Jehova, Judaism, Muslim, Islam, headscarf, mosque, Koran, talibé, madras, Sharia, veil, burka, niqab, Buddhism, Hinduism, temple, Zoroastrian, shaman, animist, Baha'i, sorcery, witchcraft. All terms have been asterisked in order to capture their derivative terms, e. g. the term secular has been searched for as secul*, in order to capture secularity, secularism, secularization and secularized as well.

3 Such a consideration would entail an acceptance that every deployment of religion or any of the associated terms in the discourse would be equally important in mapping the religion-making of the committees. Such an acceptance runs counter to the theoretical framework that informs this book, as it would not problematize the underpinnings of the religion-secular binary.

4 Most states have several reports pending, and most committees have a considerable backlog of unexamined reports. At the time of writing, the number of overdue reports for each committee run to 66 for the HRC, 100 for CERD, 54 for the committee monitoring CEDAW, and 51 for the CRC. Approximately half of these reports are overdue by five years or more. See http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/LateReporting.aspx for an updated overview. (accessed 31.08.2016).

4 The Committee on the Elimination of Racial Discrimination

4.1 Introduction

Cradled from protracted drafting debates in the Commission on Human Rights (CHR), the ECOSOC and the GA in the early 1960s over whether recent outbreaks of Anti-Semitism in Eastern Europe were to be met with a convention against intolerance based on race, religion, or both (see chapter 3), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the treaty establishing CERD, was adopted on the 21st of December 1965.[1] CERD started work on the 19th of January, 1970, thereby inaugurating the monitoring mechanism. The treaty dedicates articles 8–25 to the structure, procedures and competences of the committee and the interpretation of these measures by the committee have been authoritative for most treaty bodies following in the wake of CERD. Although there are differences between treaty measures governing the structure of the other treaty bodies, the main framework and precedents set by CERD have largely given direction to the entire monitoring machinery.

The text of the convention mentions religion twice. The preamble reiterates that the UN Charter pledges every member to take joint and separate action

> …for the achievement of one of the purposes of the Organization, which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinctions as to race, sex, language or religion

While the preamble faithfully reproduces the language of articles 1(3),[2] 13(1), 55[3] and 76[4] of the UN Charter in enumerating disallowed distinctions, it is consider-

1 After years of failed proposals, a related declaration on the elimination of intolerance and discrimination based on religion was finally adopted in 1981. A convention on the issue has yet to appear, and presently does not seem likely in the near future. See Tahzib 1996 for a thorough review on the legislative issues pertaining to this declaration, and arguments for why a binding convention seems unlikely.

2 Article 1(3) reads in full: "To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

3 Article 55 reads in full: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

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ably more narrow than article 2 of the Universal Declaration of Human Rights (UDHR), in which political or other opinion, national or social origin, property, birth or other status were also included. In articles 1–7 of the convention, in which substantial provisions are enumerated, sex and language do not appear, while the right to freedom of thought, conscience and religion is listed in article 5 (d) (vii) as one of 12 civil rights that should be guaranteed to everyone, without distinction as to race, color, or national or ethnic origin.[5]

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higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

4 Article 76 reads in full: "The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be: to further international peace and security; to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement; to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80."

5 Article 5 reads in full: "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice; (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service; (d) Other civil rights, in particular: (i) The right to freedom of movement and residence within the border of the State; (ii) The right to leave any country, including one's own, and to return to one's country; (iii) The right to nationality; (iv) The right to marriage and choice of spouse; (v) The right to own property alone as well as in association with others; (vi) The right to inherit; (vii) The right to freedom of thought, conscience and religion; (viii) The right to freedom of opinion and expression; (ix) The right to freedom of peaceful assembly and association; (e) Economic, social and cultural rights, in particular: (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; (ii) The right to form and join trade unions; (iii)

All the material provisions of ICERD, articles 1–7, are dedicated to the elimination of discrimination. Additionally, the committee has published general comments on the rights of indigenous peoples and Roma[6] signaling its understanding of ICERD as an instrument that can be applied to promote the rights of specific minority communities that have historically experienced abuse and differential treatment, despite their omission from the instrument (see below).[7] ICERD features a far more restrictive catalogue of prohibited grounds for discrimination than the other committees. The prohibited grounds are listed in article 1 (1): "In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin".

Despite the intentional omission of religion from the list of prohibited grounds in the convention, the committee has increasingly engaged religion in its monitoring practice, a development that can be traced in part to the influence of the program of action from the Durban World Conference Against Racism (2001) and its insistence on the interrelationship between different identities in discrimination.[8] Additionally, the terrorist attacks against the United States

The right to housing; (iv) The right to public health, medical care, social security and social services; (v) The right to education and training; (vi) The right to equal participation in cultural activities (f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks."

6 See General recommendation XXIII on the rights of indigenous peoples (1997), General recommendation XXVII on discrimination against Roma (2000).

7 Additionally, the committee has specified the scope of its provisions by publishing General recommendation XI on non-citizens (1993), General recommendation XXV on gender-related dimensions of racial discrimination (2000), General recommendation XXX on discrimination against non-citizens (2005) and General recommendation No. 34 on Racial discrimination against people of African descent (CERD/C/GC/34, 2011). None of these recommendations concern specific minorities.

8 See A/CONF.189/12: 59, 60, 67, 2002. The increased attention towards religion at the Durban conference and its successor, the Durban Review Conference (2009), must be considered against the backdrop of the various attempts by member states from the Organization of Islamic Cooperation (OIC) to prevent "defamation of religion", first presented to the UN Commission on Human Rights in a resolution drafted by Pakistan in 1999 under the title "defamation of Islam" (E/CN.4/1999/L.40), then expanded to cover "religion" more generally, and annually floored at different UN fora with increasing support, culminating in its adoption at the Human Rights Council in 2007 (A/HRC/RES/4/9), before waning in support in successive years (Leo, Gaer and Cassidy 2010: 771). The concept of defamation has been met with considerable resistance from actors at the second and third levels of the UN, arguing that the concept has no clear addressee, that it can serve as a front for blasphemy laws, and could prevent legitimate critique of religious traditions, with the report by High Commissioner on Human Rights

in September 2001 sparked increased acts of intolerance against Muslims, and allegations of such acts, or "Islamophobia", on a global scale (Sheridan 2006: 330), highlighting the nexus between different grounds of discrimination, and the troublesome lacuna in ICERD since its separation from religion as a prohibited ground for discrimination during the drafting process in the 1960s.

The process to implement the Durban program can be seen as an attempt to rejoin racial and religious discrimination as parts of the same problematic, and led to the establishment by the Human Rights Council of an "Ad Hoc Committee" on the possibility of creating "complementary standards" to cover all related grounds for discrimination.[9] The committee paid special attention to the nexus between racial and religious discrimination, an issue it found presently "not adequately addressed" under international law, recommending that CERD dedicate a general recommendation on the issue,[10] but stopping short of recommending the creation of a new legal instrument on the subject (Berry 2011: 437). Since the establishment of the Ad Hoc Committee, CERD has commented far more frequently on the nexus between religion and race, gradually expanding its mandate to keep abreast with the changing nature of discrimination.

This engagement with religion has led to increased attention toward the potential for multiple or "intersectional" discrimination that conjoins the material provisions of the convention with religion. The concluding observations of the committee on religion have primarily been based on an expansive reading of article 1(1), pointing to the intersectionality of race, ethnicity and religion. In this way, the committee has increasingly blurred the spurious borders between racial, ethnic and religious identity, to the point where it has effectively expanded the scope of article 1(1) of ICERD to cover virtually every form of religious discrimination, because such discrimination by its very nature is considered to be inseparable from racial or ethnic dimensions.

By emphasizing the complex relationship between religious, racial and ethnic grounds for discrimination, the committee has fortified its view of religion as primarily an issue of identity, signaling its distance from an approach to religion as an individual elective. Additionally, however, the committee has also addressed religion with reference to article 5(d) (vii), which prohibits racial discrimination in the enjoyment of the freedom of thought, conscience and religion. One of the key questions for the committee, then, is how to distinguish between in-

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(A/HRC/9/7, 2008) and a joint statement by the special rapporteurs for religious freedom, for freedom of opinion and expression and for racism in 2009 as high-water marks (Berry 2011: 438).

9 A/HRC/RES/1/5, 2006. See also chapter 1.

10 A/HRC/AC.1/1/CRP.4, 2008.

stances of discrimination based on religion that violate article 1(1) and instances that violate article 5(d) (vii) (see below).

In much the same way as the other committees, CERD has increasingly been brought into contact with the role of religious organizations and the influence of non-state forms of law, including religious law. The committee has also engaged with the role of the doctrines and practices of minorities and indigenous peoples, including the expression of their spiritual and religious identities. CERD approaches the social impact of religion on the implementation of ICERD in line with its more general view of religion in society, as a marker for identity and group membership, a view that has led the committee to a somewhat different approach than that of the other committees. In particular, the committee has consistently promoted the rights of indigenous peoples to enjoy their cultural and religious traditions, and has shown considerable willingness to recognize non-state forms of law in order to achieve “substantive equality” for minority and indigenous groups.

4.2 General Recommendations

CERD has issued 35 general recommendations (GR). While more than half of these statements deal with procedural issues, the rest provide authoritative interpretations of single articles and crosscutting themes. Of these, most are brief, reiterating treaty articles and urging states to include more substantial information in their reporting. In GR 20,[11] CERD specified that the civil rights enumerated in article 5, including the freedom of religion, do not constitute an exhaustive list, and that the article in itself does not create these rights, but assumes their existence and recognition. Furthermore, it called upon states parties to report on the 12 listed rights one by one, a request that has been mostly ignored by states. During the same session, the committee also adopted GR 21 on the right to self-determination,[12] although this right is not part of the convention.[13] The rationale for the recommendation is laid out in the first paragraph, in which it is stated that “The Committee notes that ethnic or religious groups or minorities frequently refer to the right to self-determination as a basis for an alleged right to secession.” In paragraph 5, the committee points out that all governments, as part

11 A/51/18, Annex VIII, 1996.
12 A/51/18, Annex VIII, 1996.
13 The question of self-determination has been a concern for the human rights movement since its inception. See Moyn 2010 for a critical account of the relation between the anti-colonial movement pressing for increased self-determination, and the larger human rights enterprise.

of their recognition of the principle of self-determination, must respect the fundamental human rights of peoples, hinting at an expansion of the distinctions prohibited by the convention:

> In order to respect fully the rights of all peoples within a State, Governments are again called upon to adhere to and implement fully the international human rights instruments and in particular the International Convention on the Elimination of All Forms of Racial Discrimination. Concern for the protection of individual rights without discrimination on racial, ethnic, tribal, religious or other grounds must guide the policies of Governments.

Followed by a reiteration of the contents of article 2[14] of the convention, outlining policies and legislative efforts states parties must put into effect, the above passage suggests that religion may also be included in the list of prohibited distinctions outlined in article 1(1) of the convention.

In GR 32 (2009) on the meaning of special measures, the committee elaborated on this position, observing that the grounds of discrimination in article 1 "are extended in practice by the notion of "intersectionality" whereby the Committee addresses situations of double or multiple discrimination—such as discrimination on grounds of gender or religion—when discrimination on such a ground appears to exist in combination with a ground or grounds listed in article

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14 Article 2 reads in full: "1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations; (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists; (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization; (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division. 2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case en tail as a con sequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

1 of the Convention".[15] While this observation established the relevance of religion to the interpretation of article 1 of ICERD, it did nothing to alter the ambiguity of religion as a ground for discrimination, as it affirmed the necessity of a combination with grounds listed in the convention in order for religion to fall within the remit of the convention. The content and application of intersectionality, coined in the literature on violence against minority women in the early 1990s (Crenshaw 1991), is contested (Davis 2008), and its introduction into the vocabulary of CERD has unclear consequences (see below).

In GR 35 on hate speech (2013),[16] the committee confirmed this expansive approach to article 1 in its comment on the nexus between race and religion:

> In the light of the principle of intersectionality, and bearing in mind that "criticism of religious leaders or commentary on religious doctrine or tenets of faith" should not be prohibited or punished, the Committee's attention has also been engaged by hate speech targeting persons belonging to certain ethnic groups who profess or practice a religion different from the majority, including expressions of Islamophobia, anti-Semitism and other similar manifestations of hatred against ethno-religious groups.

This passage represents a departure from former recommendations issued by the committee on the interpretation of hate speech in article 4.[17] The recommendation entails that the definition of racist hate speech, which states are obliged to prohibit by legislation, may not be limited to the criteria listed in the convention, but should also include persons belonging to certain ethnic minority groups who profess a religion different from the majority. The passage also expands the applicability of "intersectionality" as a principle in the interpretation of the treaty from article 1 to article 4. Finally, the singling out of two specific "ethno-religious groups" as particularly exposed to hate speech begs the question of what constitutes such groups, and whether the list is exhaustive (see below).

4.3 Individual Communications

Upon declarations by states parties, the committee is competent under article 14[18] to receive and consider communications from individuals or groups of indi-

15 CERD/C/GC/32: 7, 2009.
16 CERD/C/GC/35: 6, 2013.
17 See GR 7, A/40/18: 120, 1985 and GR 15, A/48/18: 114, 1993.
18 Article 14 reads in full: "A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of

viduals claiming to be victims of a violation of any of the rights of the convention, and to make suggestions and recommendations on the issues raised. In communications 36 and 37 against Denmark,[19] the committee explicitly commented on the scope of religious discrimination under the convention. Although the facts of the cases were different, the arguments of the state party, the petitioners and the committee were largely identical: Both communications were lodged by Muslims who claimed that statements by Danish politicians constituted Islamophobia, which had manifested itself as a form of racism in many Euro-

any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. 2. Any State Party which makes a declaration as provided for in paragraph I of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies. 3. A declaration made in accordance with paragraph 1 of this article and the name of anybody established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee. 4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed. 5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months. 6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications; (b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State. 7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged; (b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner; 8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations. 9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph I of this article.

19 CERD/C/71/D/36/2006 and CERD/C/71/D/37/2006, 2007.

pean countries, including Denmark. While the state party claimed that neither communication fell within the scope of the convention, as the statements did not concern persons of a particular "race, colour, descent, or national or ethnic origin" within the meaning of article 1 of the convention, it simultaneously conceded that communication 36 could possibly fall "to some degree" within the scope of the convention, as it set up a conflict between "the Danes" and immigrants more generally.

In identical decisions, the committee found both communications inadmissible on the grounds that no specific national or ethnic groups were directly targeted. After noting the heterogeneity of Danish Muslims, the decisions clarified the interrelationship of religion and race, as viewed by the committee:

> The Committee recognizes the importance of the interface between race and religion and considers that it would be competent to consider a claim of "double" discrimination on the basis of religion and another ground specifically provided for in article 1 of the Convention, including national or ethnic origin. However, this is not the case in the current petition, which exclusively relates to discrimination on religious grounds. The Committee recalls that the Convention does not cover discrimination based on religion alone, and that Islam is not a religion practiced solely by a particular group, which could otherwise be identified by its "race, color, descent, or national or ethnic origin."[20]

The committee quoted the preparatory works of the convention, and pointed out that the Third Committee of the General Assembly had explicitly rejected the proposal to combine racial and religious intolerance in a single instrument.

4.4 Reporting Guidelines

In its treaty-specific reporting guidelines,[21] CERD emphasizes the general need for information on the nature and scope of adopted legislation for each article, supplied with information on mechanisms monitoring the implementation of the right, disaggregated data relevant to the particular right, and specific, detailed information on particular problems and factors preventing full implementation. These general requirements are followed by article-specific requirements.

Under the reporting requirements for article 5(d) (vii), the guidelines stress the possible intersectionality of racial and religious discrimination, particularly the possibly discriminatory consequences for members of religious communities

20 CERD/C/71/D/36 & CERD/C/71/D/37: 6.3, 2006.
21 CERD/C/2007/1, 2008.

resulting from anti-terrorism measures.[22] The guidelines urge states to be particularly attentive to complex forms of disadvantage in which racial discrimination is mixed with other causes, including religion.

For participation in the CERD reporting process, the International Movement against All Forms of Discrimination and Racism (IMADR)[23] has published extensive guidelines for NGOs (IMADR 2011). These guidelines fill in the picture of each article with references to the comments published by the committee. Additionally, the IMADR provides references to concluding observations issued by the committee, giving an up to date view of where the committee stands on specific issues. Under article 1 (racial discrimination), the guide lists the numerous forms of multiple discrimination addressed by the committee, commenting on the "not always simple task" of drawing the line between ethnic/national origin and religion (IMADR 2011: 7), but stopping short of recommending a particular approach to this problem for NGOs.

4.5 The Religion of CERD

Taken together, the general recommendations, jurisprudence and reporting guidelines issued by CERD indicate an increased willingness to incorporate religion into its practice as a recognized ground for discrimination. However, the tenor of the preparatory works and the wording of the substantial articles of ICERD in which religion is expressly left out, effectively prevents the committee from considering religion unless it has an ethnic or racial component (Ghanea 2013: 947; Thornberry 2010: 114). Consequently, the religion of CERD is decidedly different from the individual conception of religion as primarily recognized by belief that has dominated international law since the adoption of the UDHR and still colonizes the international protection of religious minorities (Ghanea 2012: 61).

The religion of CERD is not primarily an individual elective (although it can also be this according to article 5(d) (vii)), but an identity marker that may converge with racial or ethnic characteristics of individuals or groups, composing an "ethno-religious" identity that can be particularly vulnerable to various forms of discrimination. In this way, the religion of CERD has commonalities with the religion of the League minority treaties and the interpretation of the minority con-

22 CERD/C/2007/1: 10, 2008.

23 The IMADR was founded in 1988, and is a global network of individuals and minority groups with a broad mandate stretching well beyond the influence of the UN. http://imadr.org/about/ (accessed 23.05.2016).

cept suggested by minority rights rapporteur Francesco Capotorti, in which the primary emphasis is to prevent discrimination and differential treatment of particular groups in society for their shared identity, origins or traditions.

The relevance and prevalence of religion in the monitoring practice of CERD has been noted by several authors, albeit from different approaches. To José Lindgren Alves, a Brazilian former diplomat and member of the committee, the main takeaway from the "religious turn" in the monitoring practice of CERD is that in a "world of growing entanglement of people and phenomena", it is vital for the committee to address "the aggravated, mixed nature of racism and racial discrimination", while being watchful of "misuses" of religious beliefs and the freedom of religion to violate "other equally fundamental human rights" (Alves 2008: 977), the latter primarily exemplified by the freedom of expression. Patrick Thornberry, a law professor and former member of the committee, has stressed the "ethnic" component necessary for CERD to address religious discrimination, and the inadequacy of construing religion as a "choice" and therefore distinct from race and other "natural" inheritances in cases of discrimination (Thornberry 2010: 102, 114–15). The importance of seeing the interconnection between racial and religious discrimination was also emphasized by Thornberry in the meeting with Iran during its 2010 review (see below).

In a related vein, human rights scholar Nazila Ghanea has emphasized the "profound implications" of an "intersectional" approach to experiences of discrimination, where the "other status" of victims of discrimination must be considered, despite not being covered by ICERD (2013: 944) (see below). However, Ghanea dismisses the much stronger claim by fellow human rights scholar Stephanie Berry, who maintains that for Muslims in Western Europe, all discrimination constitutes indirect racial discrimination, as it is "not possible to derive where an ethnic practice ends and a religious one begins" (Berry 2011: 444). According to Ghanea, this would be overstating the case, as no such general view can be derived without sufficient attention to each individual case of discrimination (Ghanea 2013: 951).

Somewhat surprisingly, there has been fairly little focus in the literature on how CERD views the relationship between religion and its mandate in the actual monitoring practice of the committee, with authors focusing primarily on the policy processes, the convention text, the individual communications procedure and the general recommendations issued by the committee. This is particularly surprising given the considerable attention dedicated by the committee to a broad variety of interactions between race and religion, including but not limited to all the issues addressed in the earlier literature on the subject.

4.6 Approaches to Religion in the Monitoring Practice of CERD, 1993 – 2013

4.6.1 Minorities and Discrimination

The by far most frequently recurring theme in the practice of CERD on the relevance of religion to its mandate is the interconnected issue of minority rights and discrimination, both of which incorporate a racial or other component covered by ICERD, but also frequently involving religion in some way or form. CERD first addressed these issues in a series of observations issued to states with sizeable indigenous communities starting with the review of Ecuador in 1993. During this review, one committee member pointed to inconsistencies between the civil rights of indigenous populations, which were limited to conscience and religion, whereas international instruments, including ICERD, also safeguarded beliefs, questioning whether indigenous people in Ecuador had freedom of belief, or only of conscience and religion.[24] Another member followed up this line of argument, commenting on the relocation of indigenous peoples due to industrial development more generally, and observing that he had been in contact with Hopi Indians who had refused to allow subsoil exploration of their reservation because "their religion prohibited such exploration", preferring to stay poor rather than contravene that prohibition.[25] A third member of the committee pointed to the "mystical link" between indigenous groups and their land, a link that should be preserved by positive discrimination.[26]

Ironing out these fairly different approaches to the religious rights of indigenous peoples in Ecuador in its concluding observations, the committee recommended that any economic exploitation in the Amazon region of Ecuador should be undertaken only after considering the interests of the indigenous communities, "in the preservation of their identity", thereby evading the issue of religious discrimination and the scope of article 5 entirely, opting for an article 1(1) analysis instead.[27]

Reviewing Mexico in 1995, a different aspect of the religious rights of minorities arose, as a member of the state delegation explained that gathering data on the composition of the population asked for by the committee was complex, because it would be discriminatory to classify people on account of race, ethnicity

24 CERD/C/SR.971: 96 – 97 Garvalov, 1993.
25 CERD/C/SR.972: 18 Wolfrum, 1993.
26 CERD/C/SR.972: 28 Shahi, 1993.
27 A/48/18: 145, 1993.

or religion.[28] By way of response, one member of the committee observed that criteria for classification did not necessarily exclude one another, as group cohesion could easily be both ethnic and religious, observing that many people who identified as Muslim could be atheists, something that also applied to Sikhs and Jews.[29] Reiterating the refusal of Mexican authorities to subdivide its population on the basis of minority traits, the state delegate explained that indigenous peoples in Mexico were not considered to be minorities, but rather “formed the whole basis and essence of the nation”, as most Mexicans were of mixed race.[30] Ignoring these protests, which arguably struck at the core of the committee’s monitoring task, the concluding observations of the committee expressed its “serious concerns” with the marginalization of the indigenous populations in Mexico stemming from “the impact of the civilizational encounter”, and the unwillingness of Mexican authorities to recognize that such marginalization could be categorized as racial discrimination covered by the convention. To amend the situation, the committee recommended the “harmonization [of] indigenous customs with the positive legal order”, and the development of indicators to evaluate the policies enacted to help indigenous communities.[31]

Reviewing Guatemala in 1997 and Costa Rica in 1999, members of the committee reiterated their concerns with the fundamental attachment to land among indigenous populations. During the meeting with Guatemala, members of the committee stressed the entrenched nature of this attachment, which constituted “an essential part of their identity”,[32] and was their sole means and source of existence, “unknown to the population of European origin”.[33] Similarly, during the meeting with Costa Rica, members of the committee emphasized the importance of land for the subsistence and cultural identity of the indigenous population.[34] Both states received concluding observations that stressed “the importance that land holds for indigenous peoples and their spiritual and cultural identity”, and were urged to ensure a fair and equitable distribution of land.[35]

The committee’s official stance on indigenous populations was further spelled out in its general recommendation no. 23 (1997), where it emphasized the im-

28 CERD/C/SR.1104: 7, 1995 (translation from the French original).
29 CERD/C/SR.1104: 48 Banton, 1995 (translation from the French original).
30 CERD/C/SR.1105: 30, 1995.
31 A/50/18: 380, 382, 388, 389, 1995.
32 CERD/C/SR.1191: 22 Wolfrum, 1997.
33 CERD/C/SR.1191: 24 Chigovera, 1997.
34 CERD/C/SR.1321: 48 Yutzis, 1999.
35 See A/52/18: 93, 1997 & A/54/18: 202, 1999. These concerns were reiterated in the concluding observations following the 2006 review of Guatemala (CERD/C/GTM/CO/11: 18, 2006).

portance of indigenous peoples' right to "practice and revitalize their cultural traditions and customs" and "own, develop, control and use their communal lands, territories and resources".[36] In its review of Chile in 1999, the committee drew explicitly on this perspective, commending the setting up of a judicial system for the trial of members of indigenous communities that recognized custom as a mode of proof. Responding to a question from the committee on what exactly this entailed,[37] the state delegation explained that custom could be used as an "excusing or attenuating circumstance" in criminal cases and a means of conciliation for the resolution of land disputes.[38] Following the review, the committee published a set of concluding observations where it applauded "the setting up of a special judicial system for the indigenous population which recognizes custom as a mode of proof and which allows for legal conciliation of, in particular, land disputes".[39] To CERD, the establishment of a "special judicial system" was not only acceptable, but actively welcomed as a tool to accommodate the needs of the indigenous population—needs that "in particular", but not exclusively, relate to land disputes. Similar views of the necessity of legal acknowledgment of traditional indigenous authorities has been repeatedly expressed to Guatemala,[40] Mexico,[41] Ecuador,[42] Namibia,[43] Fiji,[44] Colombia,[45] Australia[46] and Cameroon.[47]

The views on indigeneity expressed by the committee in these observations indicate that the committee considered indigenous peoples to be minority groups with specific rights derived from their "mythical" relation to their land, which was constitutive to their identity, a view also expressed in its general recommendation on indigenous peoples. These views have been repeatedly reiterated over the course of the 2000s.[48] Additionally, however, the early observations

36 A/52/18, annex V, 1997.
37 CERD/C/SR.1346: 25 Ferrero Costa, 1999.
38 CERD/C/SR.1347: 19, 1999.
39 A/54/18: 369, 1999.
40 CERD/C/GTM/CO/12 – 13: 8, 2010.
41 CERD/C/MEX/CO/15: 8, 2006.
42 CERD/C/ECU/CO/19: 12, 2008 and CERD/C/ECU/CO/20 – 22: 19, 2012.
43 The observations issued to Namibia also expressed concern with the potential for ethnic discrimination inherent to customary law (CERD/C/NAM/CO/12: 11, 18, 2008).
44 CERD/C/FJI/CO/17: 10, 2008.
45 CERD/C/COL/CO/14: 21, 2009.
46 CERD/C/AUS/CO/15 – 17: 20, 2010.
47 CERD/C/CMR/CO/15 – 18: 17, 2010.
48 See the concluding observations issued to Argentina (CERD/C/65/CO/1: 16, 2004), Saint Lucia (A/59/18: 450, 2004), Laos (CERD/C/LAO/CO/15: 17 – 18, 2005), United States of America (CERD/C/USA/CO/6: 29, 2008) and The Philippines (CERD/C/PHL/CO/20: 25, 2009).

issued by the committee also give indications of the unclear borders between the different grounds for discrimination monitored by the committee, as individual members problematized the relation between racial discrimination and religion during the meetings with Ecuador and Mexico.

Parallel to its focus on the conditions for indigenous peoples, the committee directed its attention in the latter half of the 1990s towards the borderlines between its provisions on non-discrimination and religion in more general terms: Reviewing Cyprus in 1995, one member of the committee warned the state party against anti-discrimination legislation that related to instances of discrimination that were based on either racial, ethnic or religious grounds, as it could be hard to prove that only one of these grounds caused the discriminatory act, which were often motivated by different issues.[49] Several members of the committee also questioned the origins and effects of the subdivision of religions in the report submitted by the state party, where the population had been parsed into Orthodox and Muslim communities, in addition to Maronite, Armenian and "Latin" communities.[50]

Responding to these questions, the Cypriot delegation referred to the "imposed constitution" of the Zurich-London Agreements of 1960, which was a condition for the independence of the state party, and which mandated the recognition of the religious communities in question.[51] In its concluding observations, the committee expressed its views on the subdivision of the Cypriot population into religious communities:

> The Committee has taken note of the information provided in paragraphs 21 to 24 of the report which make reference to religious groups and the rights accorded to them by the Constitution. Although the Committee would have preferred to refer to them as ethnic groups, it is fully aware that the respective constitutional provisions of Cyprus are based upon international agreement which are not within the power of the Cyprus Government to amend.[52]

Issuing this observation, the committee effectively challenged the viability of the provisions on religious communities in the Cypriot constitution, suggesting that the communities recognized as "religious" by the state party could, in fact, equally well be defined by their shared ethnicity, whose differential treatment would therefore be within the scope of ICERD. Similar concerns with the rigidity

49 CERD/C/SR.1077: 29 Rechetov, 53 Banton, 64 Yutzis, 1995.
50 CERD/C/SR.1077: 33 Rechetov, 39 Aboul Nasr, 45 de Gouttes, 49 Chigovera, 52 Lechuga Hevia, 57 Shahi, 1995.
51 CERD/C/SR.1077: 42, 1995.
52 A/50/18: 75, 1995.

of religious markers imposed by colonial powers and peace treaties as the sole criterion for the recognition of minorities have been expressed by the committee following the reviews of Lebanon,[53] Greece[54] and Turkey,[55] all of whose legal recognition of different religious communities date back to the settlements following World War 1.

Reviewing China in 1996, the committee encountered a different approach to the role of history in the determination of religious rights. During the meeting with the state party, members of the committee invoked article 5(d) (vii) to address the issue of minorities that were effectively prohibited from exercising their rights to the freedom of thought, conscience and religion, accusing the state party of interfering with the election of the Panchen Lama[56] in Tibet, and suppressing the freedom of religion among ethnic Uighurs in Xinjiang province.[57] The state delegation observed that the election of the Panchen Lama, in which Chinese authorities had recently participated, had taken place as part of an ancient ritual dating back to the 13th century, and the governmental representation at the ceremony was merely a historical convention, not a political act.[58] Furthermore, the Chinese delegation observed that it was "not acceptable" that China should be urged to reverse its policies on the basis of information gathered by the committee, as some of that information was provided by groups financed to conduct separatist activities.[59]

In its concluding observations, the committee pointed out that "a distinctive religion is essential to the identity of several minority nationalities", and expressed its concern with the right to freedom of religion of ethnic minorities in the Muslim parts of Xinjang and in Tibet.[60] Similar concerns were expressed following the 2001[61] and 2009 reviews of China, although the latter set of concluding observations framed the issue of the freedom of religion for ethnic minorities

53 A/53/18: 172, 180, 1998. Concerns with this system were also expressed following the 2004 review of the state party (CERD/C/64/CO/3: 10, 2004).
54 CERD/C/GRC/CO/16 – 19: 8 – 9, 2009.
55 CERD/C/TUR/CO/3: 12, 2009.
56 According to the *Encyclopedia of Buddhism*, the institution of the Panchen Lamas are 'the second most powerful religious and secular figures in Tibet, after the Dalai Lamas. The word pan is a short form of the Sanskrit word paṇḍita (scholar), and chen is a Tibetan word that means "great" (Sparham 2003: 629).
57 CERD/C/SR.1163: 56 Garvalov, 62/65 Sadiq Ali, CERD/C/SR.1164: 7 de Gouttes, 31 van Boven, 1996.
58 CERD/C/SR.1164: 48, 1996.
59 CERD/C/SR.1164: 55, 1996.
60 A/51/18: 404, 1996.
61 A/56/18: 244, 2001.

somewhat differently, urging the state party to take into account the "intersectionality" between ethnicity and religion (see below).[62] Similar observations regarding racial or ethnic discrimination that violates the right to freedom of religion or belief of minority ethnic groups under article 5(d) (vii) have been issued to Saudi Arabia[63] and Viet Nam.[64]

Reviewing Pakistan in 1997, the committee was faced by a state delegation offering active resistance to its growing interest in questions relating to religious discrimination:

> Although it had been noted from previous discussions with the Committee that the question of religious minorities was not considered to be strictly within the purview of the Convention, information had been provided on religious minorities since they were the only "minorities" in Pakistan.[65]

Committee members questioned the viability of legal regulations that only recognized religious minorities, observing the strong links between religion and ethnicity.[66] The Pakistani response re-rehearsed a variation of the historical argument employed by Cyprus above, as the delegation observed that the tribal areas were a remnant from British colonial rule, where the inhabitants were not ethnically or linguistically different, leaving religion as the distinctive marker.[67] Concluding the session, one committee member alluded to the challenges of distinguishing between religious and ethnic minorities, observing that the drafters of the convention "had been unable to foresee all the problems which might arise from its implementation", but the review of Pakistan had been valuable in defining the area of responsibility further.[68]

In its concluding observations, the committee conceded that religious minorities "as such" did not fall under the scope of the convention, but noted that "religious differences may coincide with ethnic differences", and therefore appreciated the various measures adopted by the state party for the promotion and

62 CERD/C/CHN/CO/10 – 13: 20, 2009.
63 CERD/C/62/CO/8: 15, 2003.
64 A/56/18: 420, 2001. Similar concerns were expressed following the 2012 review of Viet Nam (CERD/C/VNM/CO/10 – 14: 16, 2012).
65 CERD/C/SR.1198: 3, 1997.
66 CERD/C/SR.1198: 35/36 Zou Deci, 52 van Boven, 1997.
67 CERD/C/SR.1199: 16, 1997.
68 CERD/C/SR.1199: 31 Banton, 1997. These recommendations were reiterated and linked to "intersectionality" and expanded with references to the lacking protection of religious freedom under article 5(d) (vii) of the ICERD in the subsequent review of Pakistan in 2009 (CERD/C/PAK/CO/20: 10, 18, 19, 2009).

protection of religious minority rights. Additionally, however, it expressed its worries over ethnic, linguistic or racial groups that remained unprotected, suggesting that they should also be recognized as minorities,[69] concerns that have later been expressed in concluding observations to Lebanon[70] and the United Arab Emirates, both of which primarily protect religious minorities.[71]

Following the review of Pakistan, CERD has issued numerous concluding observations that address the plight of religious minorities,[72] alternating between the precarious situation of specific religious minority groups and the narrow categories of minorities recognized in the legal framework, or a combination of both.[73] In these observations, the committee has stuck to the rule it established for itself in the concluding observations issued to Georgia in 2007, when it proclaimed that "Religious questions are of relevance to the Committee when they are linked with issues of ethnicity and racial discrimination".[74]

Throughout these observations, the committee has called upon states to address the interrelationship between the criteria recognized by the convention, as well as surrounding criteria like religious affiliation in the fight against stereotypes, the prevention of hate speech, the recognition of "ethno-religious" minor-

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69 A/52/18: 181, 187, 200, 1997.

70 A/53/18: 172, 1998.

71 CERD/C/ARE/CO/17: 12, 2009.

72 Prior to the Pakistan review, the eligibility of religious groups for protection under the convention was not discussed in any greater depth—nevertheless, the committee issued observations on the protection of vulnerable religious minorities to Croatia (A/50/18: 176, 1995), Hungary (A/51/18: 116, 1996) and the United Kingdom (A/51/18: 230, 1996) in the middle of the 1990s.

73 Such observations have been issued to The Philippines (A/52/18: 428 – 429, 1997), Denmark (CERD/C/60/CO/5: 16, 2002), Canada (A/57/18: 338, 2002), Switzerland (CERD/C/60/CO/14: 9, 2002), Belgium (CERD/C/60/CO/2: 20, 2002), Fiji (CERD/C/62/CO/3: 23, 2003), Iran (A/58/18: 428, 2003), Poland (CERD/C/62/CO/6: 10, 2003, similar concerns were raised following the 2009 review of Poland, CERD/C/POL/CO/19: 7, 2009), The Netherlands (CERD/C/64/CO/7: 10, 2004), Spain (CERD/C/ESP/CO/18 – 20: 14, 2011), Luxembourg (CERD/C/LUX/CO/13: 13, 2005), Australia (CERD/C/AUS/CO/14: 13, 2005, these concerns were reiterated by the committee following the 2010 review of Australia CERD/C/AUS/CO/15 – 17: 14, 2010), Ukraine (CERD/C/UKR/CO/18: 8, 2007), Russia (CERD/C/RUS/CO/19: 16, 2008, related concerns were expressed by the committee following the 2013 review of Russia CERD/C/RUS/CO/20 – 22: 14, 2013), Germany (CERD/C/DEU/CO/18: 18, 2008), The United States of America (CERD/C/USA/CO/6: 14, 2008), Greece (CERD/C/GRC/CO/16 – 19: 14, 2009), Tunisia (CERD/C/TUN/CO/19: 13, 2009), Turkey (CERD/C/TUR/CO/3: 13, 2009), The Maldives (CERD/C/MDV/CO/5 – 12: 10, 2011), Moldova (CERD/C/MDA/CO/8 – 9: 14, 2011), Italy (CERD/C/ITA/CO/16 – 18: 19, 2012), Turkmenistan (CERD/C/TKM/CO/6 – 7: 10, 2012), Lao People's Republic (CERD/C/LAO/CO/16 – 18: 14, 2012), Israel (CERD/C/ISR/CO/14 – 16: 14, 2012), Thailand (CERD/C/THA/CO/1 – 3: 20, 2012) and New Zealand (CERD/C/NZL/CO/18 – 20: 10, 2013).

74 CERD/C/GEO/CO/3: 18, 2007.

ities, and the preservation of the "religious specificities" of minorities. What constitutes "religion" as an additional criterion in the identification and prevention of discrimination is, however, uncertain: Whereas the intersections between the convention and the rights of indigenous peoples, Roma, non-citizens, people of African descent and the gender dimensions of racial discrimination have been clarified through the adoption of general recommendations (see above), the role of religion in racial discrimination has not been the topic of such a recommendation to date, rendering the criteria for its recognition and the scope of its protection obscure.

Illustrating the entrenched nature of the interconnections between race and religion in its practice, particularly from the 2000s onwards, the committee has issued several concluding observations where it has addressed this connection as the "intersectionality" of religion and ethnicity, a concept it has also included in its reporting guidelines (see above). The committee first employed this term following the review of the United Kingdom in 2003, where it noted that the state party recognized the intersectionality of racial and religious discrimination illustrated by the prohibition of discrimination on ethnic grounds against Sikh and Jewish communities, recommending the expansion of this prohibition to cover other immigrant religious communities.[75] Following the consecutive review of the United Kingdom in 2011, the committee recommended a further expansion of the concept in order to address the intersectionality of sectarianism and racism in Northern Ireland, indicating that it viewed the applicability of the term to go well beyond the concerns of immigrant communities.[76]

Reviewing Nigeria in 2005, one committee member observed that the state party experienced "intersections of race, ethnicity, regional diversity, religion, class, language, gender, size, and indigenous and settler communities [that] made the problems encountered by other countries pale into insignificance", requesting further explanation of the government's reasons for not disaggregating its population statistics by religion and ethnicity,[77] despite the apparent insufficiency of these categories to capture the complexity of Nigerian society. The state delegation explained that the government avoided religious and ethnic disaggregation of statistical data because it ran counter to the "inclusive philosophy" pursued by Nigerian authorities to avoid ethnic conflicts.[78]

Following the review, the concerns of the delegation regarding national disunity were noted by the committee, which nevertheless asked the state party to

75 A/58/18: 539, 2003.
76 CERD/C/GBR/CO/18 – 20: 20, 2011.
77 CERD/C/SR.1720: 25/17 January-Bardill, 2005.
78 CERD/C/SR.1722: 3, 2005.

report on the composition of its population providing indicators disaggregated by "ethnicity, religion and gender on the basis of voluntary self-identification, which will make it possible to determine the situation of groups falling within the definition of article 1 of the Convention", indicating a clear-cut inclusion of religion under the scope of article 1 of ICERD. Additionally, however, the committee invoked the intersectionality of ethnic and religious discrimination, expressing its concern that members of the Muslim faith, in particular women, could be subjected to harsher sentences than other Nigerians under the plural legal system in place in Nigeria.[79]

The committee revisited the complex intersections between race and religion in its review of Iran in 2010. Reminding the Iranian delegation that, although the Baha'i was a religious group, one committee member observed that religion and ethnicity often "interlocked", making it difficult to separate the two,[80] a claim that was extensively elaborated by another committee member

> Mr. Thornberry noted that article 1 of the Convention defined racial discrimination as discrimination on one of five grounds: race, colour, descent, or national or ethnic origin. The ground of religion had been removed from that article during the negotiation and subsequent adoption of the draft convention by the United Nations General Assembly, but the reference to the right to freedom of religion in article 5 had been retained, and it was considered as a protected right. The Committee had determined in the past that if it noted a convergence of religion and ethnicity it was competent to look into possible racial discrimination against members of certain religious minorities in such cases. As the Country Rapporteur had said, the issue of religion was in fact often intrinsically linked to ethnicity and thus fell within the Committee's mandate.[81]

Thus, according to these members of the committee, despite the explicit exclusion of religion from the discrimination grounds of ICERD, the retention of the freedom of religion in article 5 allowed the committee to look into possible racial discrimination against members of "certain religious minorities" in such cases. While this assertion stopped short of an outright claim that religion was part of the grounds covered by article 1 as indicated in the concluding observations to Nigeria in 2005 (see above) and general recommendation no. 32, it left no doubt that if the committee noted "a convergence of religion and ethnicity", it would be competent to review alleged racial discrimination against religious minorities.

Reiterating the position of the Pakistani delegation in 1997 (see above), the Iranian delegation expressed its dissatisfaction with the way the committee in-

79 CERD/C/NGA/CO/18: 10, 20, 2005.
80 CERD/C/SR.2016: 43 Lindgren Alves, 2010.
81 CERD/C/SR.2016: 52, 2010.

terpreted its mandate, observing that the convention covered religious issues related to ethnicity, not religious issues "as such", and, hence, not the situation of the Baha'i or similar cases.[82] In its concluding observations, the committee expressed its concern with religious freedom and with the low level of public participation among several minority communities, citing article 5 of the convention.[83] The discussion that erupted during the meeting with the state party on the competence of the committee to review cases where it noted the "convergence of religion and ethnicity", however, was nowhere to be found in the concluding observations, which recommended Iranian authorities to "take into account the possible intersection of racial and religious discrimination" in its promotion of understanding, tolerance and friendship, under reference to article 4 of the convention.[84]

In its more recent practice, the committee has continued to apply the concept of intersectionality interchangeably to legitimize its expansive reading of the scope of article 1 in line with general recommendation no. 32, and as a rationale for its observations on racial discrimination violating the freedom of religion of racial and ethnic minorities protected under article 5(d) (vii). These issues have been interlinked in the observations issued to Fiji[85] and Cyprus,[86] but were particularly emphasized in the review of Mauritius, where the state delegation stressed the necessity to fashion policies that secured the promotion of the respective cultures of the different communities in Mauritius, which were differentiated according to their religious identity, whereas the legislation on discrimination primarily covered religious belief.[87] In its concluding observations, the committee pointed to the intersectionality between religion and ethnicity in Mauritius, observing that "insofar as the population of the State party affirms identity through religious affiliation, the Committee encourages the State party to guarantee the right of everyone to freedom of religion without distinction as to race, colour, descent, or national or ethnic origin".[88]

The turn to religion in the monitoring practice of CERD is deep and pervasive, mirroring the concern with the intersections between religion and race from "above", at the political, first level of the UN, and gathering speed after the turn of the millennium. While the committee has continued to stress the im-

82 CERD/C/SR.2017: 2, 34, 50, 2010.
83 CERD/C/IRN/CO/18–19: 15–17, 2010.
84 CERD/C/IRN/CO/18–19: 10, 2010.
85 CERD/C/FJI/CO/18: 15, 2012.
86 CERD/C/CYP/CO/17–22: 14–15, 2013.
87 CERD/C/SR.2219: 39, 2013 & CERD/C/SR.2220: 3, 2013.
88 CERD/C/MUS/CO/15–19: 20, 2013.

portance of an ethnic or racial component for the convention to be applicable in the fight against religious discrimination, its continued expansion of the fields to which it perceives the convention to be applicable indicates an increased willingness to see connections between racial and religious discrimination. The numerous recommendations to states with specific prohibitions of religious discrimination that the prohibited criteria should also address racial discrimination makes it increasingly unlikely that the committee will repeat its views under the individual communications procedure about the inapplicability of the convention for "pure" forms of discrimination (see above), as such forms seem less and less likely to be identified by the committee.

Indeed, the increased use of intersectionality by the committee challenges the possibility to distinguish between "purely" racial, religious or other forms of discrimination, as the notion is commonly used to stress the inapplicability of singular identity traits as determinants of different forms of discrimination. Rather, the very purpose behind the deployment of "intersectionality" is to emphasize the numerous intersections between overlapping identities, generating specific forms of differential treatment that escape the simplifications of earlier attempts to discuss the connections between different forms of discrimination, like "double" or "multiple" discrimination. As such, the ways in which CERD has approached the intersectionality of race and religion would seem to confirm Stephanie Berry's claim that discrimination against Muslims will inevitably fall within the ambit of what CERD perceives as indirect discrimination (2011: 447). Although Nazila Ghanea has stressed the need to approach each case with due attention to its specific context (Ghanea 2013: 951), it is hard to imagine a case involving religious discrimination that would be sufficiently clear-cut as to make it inapplicable to the committee, given its current level of scrutiny, where states are cursorily recommended to "take into account" the intersections between race and religion without further discussion or specification.

In this way, the monitoring practice of CERD seems to replicate the essence of the problematic identified by Kimberlé Crenshaw, who coined the notion of intersectionality in 1989: By simply "adding on" an additional criteria (religion) to an authoritative one that the system has been finely tuned to address (race), the appreciation of the specific consequences of the intersection is lost, and the additional criteria is inevitably subordinated to the logic driving the application of the original concept (Crenshaw 1989: 140). To combat this subordination, Aisha Davis has stressed the need to apply intersectionality as an interpretative principle, while turning away from "paradigmatic notions" like race or religion (Davis 2015: 242, se more below), an option that presently is not available to CERD under its mandate.

4.6.2 Organizations

The turn to religion at CERD is not limited to discrimination and minorities, but has increasingly found its way into new legal areas that have previously not been addressed by the committee. In 2002, the committee started taking an interest in the ways in which states register and interact with religious organizations: Reviewing Belgium, Turkmenistan and Armenia, the committee engaged the full spectrum of procedures for the establishment of official relations between state parties and the organizations of religious communities.

Reviewing Belgium, one committee member expressed his appreciation with the state-driven election of a body to represent the Muslim community, requesting more information on whether this body had been useful in dealing with the problems of the Muslim community.[89] The state party explained that the representative body had become increasingly important after the terrorist attacks against the United States in September 2001, that it was responsible for the decision of numerous religious issues like ritual slaughter, that it trained imams and religious leaders, and organized the registration of new Muslim communities.[90] In its concluding observations, the committee expressed its appreciation with the election of the representative body with a view to maintaining and developing dialogue between the Muslim community and the public authorities.[91] Similar praise was offered in 2008 for the parallel German initiative to establish a representative body for the Muslim communities in Germany,[92] indicating the importance attached by the committee to the creation of representative organs for Muslims in European countries.

In the review of Turkmenistan, the committee linked article 5(d) (vii) on the freedom of religion or belief explicitly to the registration of religious organizations. Having reviewed the state party in the absence of a report, the committee expressed its deep concern with the denial of registration for all religions apart from the Russian Orthodox Church and the Sunni branch of Islam, and the numerous human rights violations against other religious communities, including the disruption of religious services, the prohibition of literature, detentions and ill-treatment of religious leaders, and destruction of places of worship.[93] In the following review of Turkmenistan in 2005, the committee again expressed its

89 CERD/C/SR.1509: 26 Diaconu, 2002.
90 CERD/C/SR.1510: 16, 2002.
91 CERD/C/60/CO/2: 9, 2002.
92 CERD/C/DEU/CO/18: 13, 2008.
93 CERD/C/60/CO/15: 5, 2002.

concern with the registration procedure, but this time, it stressed "the complex relationship between ethnicity and religion" in the state party, establishing an explicit, yet elusive, connection to article 5.[94]

Reviewing Armenia in 2002, the committee questioned the Armenian delegation extensively on its registration practices, asking why the established Armenian Apostolic church was charged with the responsibility of registering new religious communities,[95] and why paganism had received official recognition in Armenia, while no Muslim community was currently recognized.[96] The delegation from Armenia responded that a new law had been enacted that would protect non-traditional religions in particular.[97] In its concluding observations, the committee expressed its concern with the obstacles imposed on other religious organizations than the Armenian Apostolic Church, but without any reference to the ethnic or racial component to these obstacles.[98]

By 2007 the topic of religious organizations had been sufficiently covered by the committee to be included in the list of questions sent to Indonesia prior to its review. The committee requested more information on the impact of the distinction between recognized and non-recognized religions on the rights of "persons belonging to ethnic groups", thereby explicitly identifying an "ethno-religious" dimension to the topic at the earliest possible stage.[99] During the review, the committee requested more information on non-recognized religions, in particular whether such status affected individual members holding non-recognized religious beliefs.[100] Acknowledging that members of non-recognized religions could be marginalized socially and could face difficulties from regional authorities in registering marriages and children, the state delegation stressed that the government was taking steps to remedy the situation.[101] Adding that the state was doing its best to register as many religions as possible, the delegation observed that these efforts were often met by suspicion among local communities who associated registration with the favoritism shown to Christianity in the col-

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94 CERD/C/TKM/CO/5: 17, 2007 [observations reissued in 2007 for technical reasons].
95 CERD/C/SR.1529: 20 Yutzis, 2002 (translation from the French original).
96 CERD/C/SR.1529: 36 Shahi, 2002 (translation from the French original).
97 CERD/C/SR.1530: 11, 2002.
98 A/57/18: 282, 2002.
99 Questions put by the Rapporteur in Connection with the Consideration of the Initial to Third Periodic Reports of Indonesia: 17, 2007.
100 CERD/C/SR.1831: 38 Thornberry, 39 Lindgren Alves, 49 Yutzis, 2007.
101 CERD/C/SR.1832: 12, 2007.

onial era,[102] adding yet another layer to the historical resonance of earlier legal regulations of religion on present-day arrangements (see above).

In its concluding observations, the committee criticized the differential treatment of members of non-recognized and recognized religions, due to the “adverse impacts” of this treatment for the rights to freedom of thought, conscience and religion of “persons belonging to ethnic groups and indigenous peoples”, potentially violating articles 2 and 5 of the convention. In particular, the committee expressed its concern with the practice of the state party to allow only recognized religious allegiance on ID cards, and the problems experienced by members of minority religions trying to register their marriages, urging the state party to treat all religions equally, remove religious allegiance from ID cards, and adopt civil marriage legislation.[103] In this way, the committee firmly established the links between its provisions and the states’ legal practice, unlike its earlier engagements with religious organizations.

The committee returned to the issue of the registration of religious organizations in its review of Moldova in 2008. During the meeting, the committee questioned whether the recent denial of registration of the Tatar Muslim community meant that there were separate rules for Islam in Moldova, despite the constitutional guarantee of the freedom of religion or belief.[104] The state delegation responded that a court case filed by a Muslim organization denied registration was pending, but that several “ethno-cultural” Islamic organizations were recognized.[105] In its concluding observations, the committee expressed its concern with the denial of registration of “Muslim ethnic minorities” on purely formal grounds.[106] Revisiting Moldova in 2011, the committee reiterated its concerns for the “persistent registration difficulties faced by Muslim ethnic minorities”, requesting more information from the state party on what it was doing to facilitate the registration of such minorities.[107] Following a protracted discussion during the meeting on the requirements for registration, the committee expressed its deep concern with the restrictions experienced by “persons belonging to ethnic minorities” who wished to exercise their freedom of religion or belief. These restrictions, according to the committee, may be in violation of the convention due to the intersectionality between ethnicity and religion, more specifically articles

102 CERD/C/SR.1832: 22, 2007.
103 CERD/C/IDN/CO/3: 21, 2007.
104 CERD/C/SR.1861: 33 Amir, 66 Peter, 2007 (translation from the French original).
105 CERD/C/SR.1862: 8, 48, 2008.
106 CERD/C/MDA/CO/7: 14, 2008.
107 CERD/C/MDA/Q/8 – 9: 3(b), 2011.

2 and 5(d).[108] Similar concerns were expressed in the concluding observations issued by the committee following the 2012 review of Kuwait, where "ethnic minorities" were denied establishing places of worship.[109]

Reviewing Monaco in 2010, the committee approached the subject of religious organizations in relation to the role of Roman Catholicism as the state religion, observing that Islam was not recognized, and requesting information on the access to worship for Muslims in the state party.[110] A member of the state delegation explained that there was no collective or regular practice of the Muslim faith, but that various private premises were set aside for that purpose.[111] In its concluding observations, the committee recommended that the state party officially recognize "all religions, including Islam, in order to meet the needs of all persons of a different ethnic origin or of non-nationals", in accordance with article 5.[112]

Finally, upon its review of Serbia in 2011, the committee added yet another layer to its views of the nature of the relationship between religion and the provisions of ICERD. The list of issues requested more information on the law governing the registration of religious organizations in the state party, as some religious communities were experiencing problems with gaining official registration,[113] a question that was reiterated during the meeting with the Serbian delegation.[114] The state delegation explained that registration was not compulsory, and that some religious communities had been denied registration because they did not fulfil the legal requirements.[115] In its concluding observations, the committee expressed its concerns with the registration regime:

> The Committee recalls the possible intersectionality of racial and religious discrimination and urges the State party to take all necessary measures to ensure the equal right to freedom of religion for all, without preferential treatment, including through a review of laws or practices that perpetuate an intermingling of the secular and religious spheres, which may impede the full implementation of the Convention. It also encourages the State party to ensure that the process of property restitution is carried out without further delay and without discrimination.[116]

108 CERD/C/MDA/CO/8 – 9: 14, 2011.
109 CERD/C/KWT/CO/15 – 20: 15, 2012.
110 CERD/C/SR.1973: 27, 29 Amir, 2010.
111 CERD/C/SR.1974: 2, 2010.
112 CERD/C/MCO/CO/6: 13, 2010.
113 CERD/C/SRB/Q/1: 1(c), 2011.
114 CERD/C/SR.2067: 72 de Gouttes, 2012.
115 CERD/C/SR.2068: 25, 2012.
116 CERD/C/SRB/CO/1: 18, 201.

This observation is notable for two reasons: first, there is no indication anywhere in the review that any ethnic group suffered discrimination due to the registration regime maintained by Serbian authorities, begging the question of the relevance of intersectionality to this legislation. Second, it is unclear what "laws that perpetuate an intermingling of the secular and religious spheres" the observation is referring to, what "intermingling" means, and the impediments represented by such laws to the full implementation of the convention.

Taken together, the practice of CERD on the formalization of relations between state parties and religious organizations confirms the overall approach to religion at the committee, where the interrelationship between religious and racial discrimination has become increasingly important, despite the lack of provisions on religion in the instrument. However, the practice on religious organizations is more focused on the nexus between racial discrimination and the freedom of thought, conscience and religion and therefore eligible for protection under article 5(d) (vii). In the early observations, the committee seemed simply to assume that the differential treatment of religious organizations would have an ethnic or racial component, and therefore fall under the scope of article 5(d) (vii) of ICERD, despite no specific indications of this in the review, suggesting a very expansive reading of the article which seems to run counter to the purpose of ICERD as an instrument dedicated explicitly to racial and ethnic discrimination. In its more recent practice, the committee has become more insistent in its claims that the denial of registration for religious organizations risks violating the rights of persons belonging to ethnic groups to the freedom of religion or belief.

4.6.3 Religious Law

While the newfound interest in religious organizations dovetails the more general turn of the committee towards religion, CERD addressed the relationship between ICERD and religious law already in its review of Qatar in 1993. During the review, one member of the committee lamented that the dialogue with the state party had reached an "impasse":

> …[a]lthough the fact that Qatar maintained its dialogue with the Committee was to be welcomed, it had to be noted that the eighth report reiterated the concept that the hadith (tradition) of the Prophet ruled out acts of discrimination. It was also stated in the report that the Shari'a was the principal source of legislation. Apparently, the Qatari Government con-

> tinued to think that the principles and provisions of the [ICERD] and of the [ICSPCA],[117] which had been incorporated into domestic law, sufficed to prevent and punish any act of discrimination. (…) Qatar should appreciate, however, that, pursuant to article 9 of the [ICERD], states parties had to report on the legislative, judicial, administrative or other measures which they had adopted to give effect to that instrument.[118]

The committee also questioned the juristic reasoning of judges in Islamic courts that could not find the answers in the Koran, the Sunna or previous judgements;[119] the limits of "Islamic customs and traditions", which could be invoked to limit certain rights in the state party,[120] and the exact role of the Sharia; its sphere of competence, and its role as a source both for the legislative process and for the interpretation of laws.[121] These questions received no response from the state party, and were carried over to the concluding observations, where the committee expressed its concern about the criteria by which Sharia courts could determine appropriate punishments, and queried the necessity of separate proceedings in the civil court for the victim to obtain compensation in accordance with article 6 of the Convention.[122] Unlike the role of religion in discrimination, minority rights and the registration of organizations, then, the issue of religious law was primarily approached from a procedural perspective, as the committee stressed the need for judicial transparency and access to effective remedies.

The committee revisited this critical approach during its review of Lebanon in 1998, questioning the coherence of the periodic report and noting a conflict between the description of Lebanon as a "unitary State" and the claim that the Lebanese people was made up of various religious communities with "enormous powers", including the power to settle family matters in religious courts,[123] requesting more information on how all in Lebanon could be equal before the law if important issues like family matters were settled according to the different laws of religious communities.[124] The committee also questioned the require-

117 International Convention on the Suppression and Punishment of the Crime of Apartheid (1973).
118 CERD/C/SR.964: 10 – 11, 1993.
119 CERD/C/SR.964: 18 Song, 1993.
120 CERD/C/SR.964: 21 Song, 1993.
121 CERD/C/SR.964: 52 Diaconu, 60 Garvalov, 62 Valencia Rodriguez, 1993.
122 A/48/18: 99, 1993.
123 CERD/C/SR.1258: 8 Garvalov, 1998.
124 CERD/C/SR.1258: 16 Garvalov, 1998.

ment under the Lebanese confessional system to disclose descent, ethnic origin and religious faith in order to participate in public life.[125]

Responding to these charges, the delegation stressed that the intention of the confessional system was to protect the interests of all; that it made it possible for all the communities to take part in public life, and that people could switch communities freely, as membership did not rely on faith.[126] While individual members of the committee disagreed on the desirability of this system,[127] the concluding observations expressed its concern with the system of confessionalism, the unclear boundaries of ethnic and religious communities, and the competence of religious courts to pass judgements on family issues, all of which may lead to racial discrimination because of the differential treatment of "ethnic communities" (see also above).[128] To amend the situation, the committee suggested the gradual elimination of confessionalism, and advised the state to take all appropriate measures to ensure that people from different communities were equal before the law.[129] Hence, while the committee stuck to its emphasis on procedural fairness, it also expanded its criticism of religiously based legislation by stressing its potentially discriminatory consequences.

Revisiting Qatar in 2002, one member of the committee expressed his appreciation with the role of the Sharia in the state party, as different laws for Muslims and non-Muslims were "desirable, natural and necessary", because Muslim laws on inheritance, marriage and divorce were "irreconcilable" with other laws,[130] whereas other members primarily sought clarification on the relationship between the Sharia and civil laws.[131] Echoing its previous review, the concluding observations of the committee requested more information on the possibility to invoke the convention before the Sharia courts, and the exact difference in rules of inheritance between Muslims and non-Muslims.[132] While the issue of religious law and its compatibility with the convention was raised again during the 2012 review of Qatar,[133] the concluding observations of the committee evaded the issue entirely.[134]

125 CERD/C/SR.1258: 29 Valencia Rodriguez, 33 de Gouttes, 1998.
126 CERD/C/SR.1258: 13, 15, 10, 1998.
127 CERD/C/SR.1259: 25 Yutzis, 26 Abou Nasr, 1998.
128 A/53/18: 170, 172, 174, 1998.
129 A/53/18: 180, 183, 1998.
130 CERD/C/SR.1503: 37 Aboul Nasr, 2002.
131 CERD/C/SR.1503: de Gouttes 16, 32 Yutzis, 38 Tang Chengyuan, 43 Bossuyt, 44 Thornberry, 49 Shahi, 2002.
132 A/57/18: 192, 197, 2002.
133 CERD/C/SR.2151: 8 Cali Tzay, 21 Lindgren Alves, 24 Avtonomov, 2012.
134 CERD/C/QAT/CO/13–16, 2012.

Despite indications of internal disagreement, the practice of the committee on the role of religious laws in the implementation of the convention in the 1990s and early 2000s displayed a fairly consistent approach in which the general tenor was one of watchful caution and skepticism when faced with the practice of allowing different communities to be ruled by different sets of laws. Throughout the 2000s, the committee has largely followed its earlier approach to religious law, expressing its concern with the possibility that recognizing different laws for different communities could lead to ethnic discrimination, and/or violations of the various civil rights enshrined in article 5 of the convention.

Reviewing Nigeria in 2005 (see above), the committee expressed its concern "that members of ethnic communities of the Muslim faith", in particular Muslim women, could be subjected to harsher sentences than other Nigerians due to the influence of religious law, but refrained from advising particular actions, reminding the state party of its obligations under the convention.[135] Similarly, Ethiopia received criticism in the reviews of two consecutive reports, for the potential ethnic discrimination resulting from the application of religious laws.[136] In its more recent practice, the committee has largely maintained its view of religious legal rules as potentially discriminatory in concluding observations to Yemen (2011),[137] Israel (2012)[138] and Mauritius (2013).[139]

For CERD, then, the presence of religious law is primarily a question of non-discrimination: Whenever the committee decides to include a concluding observation on the issue, it is sparked by a concern for the potentially discriminatory side-effects of applying different legal rules to communities differentiated by religious allegiance. As such, the committee appears to have no particular opinion on the material provisions of legal rules outside of state control as such. This view sets CERD apart from the other committees, which tend to highlight both material conflicts between the provisions of religious legal systems and the pro-

135 CERD/C/NGA/CO/18: 20, 2005.

136 CERD/C/ETH/CO/15: 14, 2007 & CERD/C/ETH/CO/7–16: 12, 2009.

137 The committee recommended the state party to ensure that the application of the Sharia is consistent with the obligations of the state party under international law, and that the state party should take active measures to ensure that Sharia law is not applied to foreigners and non-Muslims without their consent. (CERD/C/YEM/CO/17–18: 10, 2011).

138 The committee expressed its concern with discrimination targeting women from Jewish minorities in relation to the implementation of religious laws (CERD/C/ISR/CO/14–16: 21, 2012).

139 The committee expressed its concern with the exception from non-discrimination measures regarding the application of personal laws, which may affect women of certain ethnic groups because of their religious affiliation, requesting the state party to abrogate such exceptions. (CERD/C/MUS/CO/15–19: 23, 2013).

visions of their instruments, but also challenges arising from the very nature of non-state law in terms of procedure and transparency (see below).

To CERD, recognition of religious law is primarily problematic if and when it becomes an obstacle to equality, under which all citizens should have access to the same legal remedies regardless of religious allegiance. As in the cases of minority rights, discrimination and religious organizations, however, the link established between the committee's observations on religious laws and the provisions of ICERD is tenuous at the best of times, as it has struggled to point to the specific articles of the convention violated by legal systems that differentiate on the basis of religion. As such, the tendency of CERD to criticize religious law for its harmful effects on equality in more general terms can be construed as an expansive reading of article 1(1) that also incorporates religion when the link to ethnicity is less than clear.

4.6.4 The Impact of Religion

Also preceding its more recent "turn" to religion, the committee has long been concerned with the social role of religious communities, both as potentially inspiring conflict and human rights violations, and as a vital partner in the global struggle for equal rights. The committee first addressed this topic in its review of the Holy See in 1993. Recognizing the unique nature of the state party, the committee highlighted the "religious component" of many ethnic conflicts and encouraged the Holy See to take further measures to promote inter-religious dialogue in such conflict settings, and to use its "moral force" to assist the fight against racism worldwide.[140] In its following review of the Holy See in 2000, the committee praised the work of the Church in the field of dialogue and conflict resolution, but stressed that the state party should cooperate fully with national and international judicial authorities in the prosecution of ecclesiastics who took part in the genocide in Rwanda, acts that were "against the precepts of the Catholic Church".[141]

Similarly, reviewing Sudan in 1994, the committee emphasized the importance of harmonious relations between religious communities in order to prevent the destructive potential of conflicts sparked by religious differences, suggesting that the origins of the conflict in Sudan could be found in ethnic differences, "ag-

140 A/48/18: 299, 304, 305, 1993.
141 A/55/18: 394, 398, 2000.

gravated by political, cultural and religious factors",[142] stressing that the importance of efforts to find common ground between different religious groups could help ameliorate the situation.[143] In its concluding observations, the committee praised the state party's assurance that Sudan was a multiracial, multireligious and multicultural society. The committee also commended the efforts of Sudanese authorities towards building the legislative structures and institutions necessary for implementing a policy of non-discrimination and the breaking down of barriers that had historically limited contacts between Muslim and non-Muslim communities.[144] Reviewing the consecutive periodic report of Sudan in 2001, the committee signaled its continued concern with the religious dimensions to inter-group hostilities, as it expressed its concern with the long-lasting and ongoing civil war, "fueled by a complexity of issues relating to ethnicity, race, religion and culture".[145]

The committee also emphasized the role of religion in fomenting conflict during its review of Nigeria in 1995, stressing that the association of religious differences with ethnic differences could lead to a greater risk of disorder,[146] while appreciating the policy of the government to defuse ethnic and religious tensions through "ethnic integration" and "religious harmony".[147] In its concluding observations, the committee expressed its concern that "in circumstances such as those of Nigeria, in which political and religious differences may easily be associated with ethnic differences, any breakdown in law and order can exacerbate ethnic tension",[148] suggesting that the challenge lay neither in ethnic, nor in religious differences, but in situations where the two were mixed up. In its following review of Nigeria in 2005 (see above), the committee praised the state party for its initiatives in the field of interreligious dialogue, encouraging Nigerian authorities to continue its work for national unity and non-discrimination in close concert with religious and community leaders.[149] Taken together, these early views of religious differences in society were cautiously optimistic, applauding efforts to settle interreligious differences. Simultaneously, however, they were

142 CERD/C/SR.1052: 27 Valencia Rodriguez, 1996.
143 CERD/C/SR.1052: 32 Chigovera, 1996.
144 A/49/18: 466, 1994.
145 A/56/18: 208, 2001.
146 CERD/C/SR.1114: 39 Banton, 1995.
147 CERD/C/SR.1116: 17 Sherifis, 1995.
148 A/50/18: 624, 1995.
149 CERD/C/NGA/CO/18: 14 – 15, 2005. Similar praise has been bestowed on the interreligious dialogue efforts of Tunisia (CERD/C/TUN/CO/19: 7, 2009).

void of particular references to ICERD, rendering their relevance to treaty interpretation unclear.

Over the course of the 2000s, CERD continued its support for the resolution of human rights conflicts through the increased participation of religious leaders. Reviewing Ghana in 2003, several committee members expressed their appreciation for the role played by religious and traditional leaders in promoting human rights in the state party,[150] an enthusiasm that was also carried over to the concluding observations, where the committee noted the important role of religious leaders in the resolution of conflicts relating to land and chieftaincy, or involving customary law.[151] The concluding observations to Ghana also raised the issue of female genital mutilation (FGM) for the first time, referring the state party to general comment no. 25 on gender dimensions to racial discrimination.[152] Unlike the other committees, which have tended to view FGM as a cultural and/or religious practice (see below), CERD has consistently referred to FGM as a procedure that happens within the context of "ethnic" and/or minority communities.[153] In its most recent practice, the committee has shown signs of recognizing the potential influence of religious leaders more specifically in the implementation of the convention, as both Chad[154] and Burkina Faso[155] have been asked to involve religious and community leaders in their efforts to eradicate racial discrimination and harmful traditional practices like FGM.

Approaching the impact of religion on the implementation of the provisions of ICERD, the committee has developed a practice that is distinct from the other committees due to the idiosyncratic way in which the committee approaches religion, as a topic that can only be relevant to its work when it interacts with ethnicity, race, national origin or any of the other material provisions of ICERD. Hence, the committee has interpreted the role of religious doctrines and practices differently relative to its perceived relation to issues covered by the convention: In its observations on the role of religion in aggravating conflicts, the committee has approached religion as a factor that can lead to ethnic or racial

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150 CERD/C/SR.1574: 33 de Gouttes, 44 Thornberry, 2003.

151 A/58/18: 112, 2003. The role of religious leaders was also recognized in observations issued by the committee following the 2004 review of Mauritania, which was asked to involve religious leaders in the abolition of slavery (CERD/C/65/CO/5: 15, 2004).

152 A/55/18, annex V, 2000.

153 Mauritania (CERD/C/65/CO/5: 19, 2004), Tanzania (CERD/C/TZA/CO/16: 13, 2005 (reissued in 2007 for technical reasons), Ethiopia (CERD/C/ETH/CO/15: 21, 2007 & CERD/C/ETH/CO/7–16: 16, 2009) and Norway (CERD/C/NOR/CO/19–20: 15, 2011).

154 CERD/C/TCD/CO/16–18: 12–13, 2013.

155 CERD/C/BFA/CO/12–19: 8–9, 2013.

discrimination, recommending that states reform or harmonize their legal frameworks to ensure compatibility with the convention. In observations on harmful traditional practices, on the other hand, religious leaders are called upon to assist in their eradication, while the potential of religious doctrines or beliefs in generating these practices in the first place are left unaddressed.

4.7 Summary

The monitoring practice of CERD from 1993 to 2013 displays the increasing efforts to engage religion taken by members of a committee struggling with the narrowness of its original mandate. Throughout the period, the challenges presented by an international instrument negotiated by actors at the first UN and singling out some parts of the general ban on discrimination in the UDHR while leaving religion out of the picture has significantly impaired the development of a consistent monitoring practice. While no international instrument can pretend to accurately cover the numerous overlapping categories that play out in the intentions and consequences of differential treatment "on the ground", the centrality of religion to racial identity and discrimination in surrounding domestic, regional and international law has all but forced the hand of CERD to engage with religion despite its express mission not to do so.

The engagement of CERD with religion has played out in different waves relative to the matter at hand, forcing the committee to emulate the ad hoc nature with which actors at the third UN tend to approach religion: Encountering states that offer tailor-made protections to specific religious minorities, the committee has been adamant that such provisions should incorporate racial and ethnic elements as well. In these observations, the committee has kept within the boundaries set for its work by article 1(1) of ICERD, as it has observed lacunae in the legislation of states parties on racial and ethnic discrimination, which is the primary focus of the instrument. However, while the legal basis of these observations seems clear enough, their applicability on the ground is more complicated. In particular, the committee has repeatedly expressed its wish that states recognize "ethnic" elements in their laws and policies on religious communities, even in cases where the recognition of religious communities is hardwired into their constitutional frameworks, as in Cyprus and Lebanon, and in international treaties, as the Lausanne treaty, binding both Turkey and Greece. In these cases, the committee has stressed the right to self-identification for individuals outlined in

its general recommendation no. 8,[156] arguing for a broader legal conception of identities available to provide protection against discrimination.

In its observations on how states should better protect specific groups experiencing discrimination, on the other hand, the committee has repeatedly ascribed ethnic identities to religious groups. This is particularly the case with Muslims, whose experiences of discrimination are commonly listed alongside hostility towards Arabs and/or Jews as evidence of violations of ICERD. This approach appears to contradict the recommendation of the committee to recognize the rights of individuals to self-identification, as it "ethnicizes" Muslim identity, collapsing the distinctions between racial and religious self-understandings among Muslims. These observations are commonly linked to articles 2, 4 and 5 of ICERD, although only rarely to a specific part of these articles, obscuring the precise nature and scope of the recommendations. In its observations on discrimination against indigenous peoples, the committee has worked in the opposite direction, "religionizing" the identities of indigenous communities by highlighting the importance of their sacred and mystical links to their traditional lands. These links are used to create obligations upon states to accommodate indigenous land rights, and necessarily conflate the different issues at play among indigenous peoples across the world.

While there is little reason to doubt the statement by committee member Patrick Thornberry during the review of Iran in 2010 that "the issue of religion was in fact often intrinsically linked to ethnicity and thus fell within the Committee's mandate" (see above), the lack of a clear-cut methodology with which to establish the existence of such links and their relevance to different parts of the legal framework of states parties has rendered the practice of the committee on this issue opaque. In the observations to Cyprus in 1995, the committee maintained that it would have "preferred" to refer to the recognized religious communities in the state party as "ethnic communities"; in observations issued to Pakistan in 1997, it held that religious differences "may" coincide with ethnic differences, while Lebanon was told in 1998 that the lacking recognition of the "different ethnic origins" of some of the religious communities in the country might result in their differential treatment.

The increasing use of intersectionality as a tool to capture the intricate relationship between race and religion in the 2000s appears to indicate a dawning realization within the committee of the indeterminate nature of its practice on religion. Where the committee would earlier point to a more or less explicit relationship between religion and ethnicity, the use of intersectionality has gradual-

156 A/45/18, part VII (1), 1991.

ly taken over. Hence, while China was told in 1996 to secure the freedom of religion or belief of its ethnic minorities because "a distinctive religion is essential to the identity of several minority nationalities", an observation that was repeated verbatim in 2001 (see above),[157] the observations following the 2009 review urged the Chinese government to take into account "the intersectionality between ethnicity and religion".[158]

Whether or not the latter observations should be seen as different or similar to the ones issued in 1996 and 2001 is not entirely clear: Intersectionality, originally used by Kimberlé Crenshaw (see above) as a term to approach the convergence of different identities among black American women subjected to violence, can be conceptualized on (at least) three different levels: structural intersectionality, "the ways in which the location of women of color at the intersection of race and gender make our actual experience (…) qualitatively different from that of white women", political intersectionality, "how both feminist and antiracist politics have (…) helped to marginalize the issue", and representational intersectionality, "the cultural construction of women of color" (Crenshaw 1991: 1245). Following Crenshaw's work, the application of the term has mushroomed, to the point where it has earned the questionable reputation of attaining the status of a "buzzword", due to its open-endedness, lack of precision and "myriad missing pieces" (Davis 2008: 78).

Hence, while the increasing use of intersectionality may superficially serve to unify and streamline the practice of the committee on religion, its inherent vagueness and multiple levels of interpretation could also have the opposite effect. For instance, when the committee asked Iran following its 2010 review to "take into account the possible intersection of racial and religious discrimination" in its work to "combat manifestations in the media, as well as in everyday life, of racial prejudice that could lead to racial discrimination" (see above), this observation could be interpreted in (at least) all the different meanings of intersectionality identified by Crenshaw, all of which could give rise to different legal and policy measures: First, it could be understood as a suggestion at the structural level, in which case it would ask Iranian authorities to be sensitive to the qualitatively different experience of ethno-religious minorities experiencing discrimination, compared to that of "merely" religious or ethnic minorities.

Second, if it was directed towards the political level, it would have asked Iran to ensure its policies on anti-discrimination did not inadvertently marginalize the political agendas sparked by the differential treatment experienced by ra-

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157 A/51/18: 404, 1996 and A/56/18: 244, 2001.
158 CERD/C/CHN/CO/10–13: 20, 2009.

cial and religious minorities respectively. This would imply a particular emphasis on the extent to which these agendas could serve to delegitimize one another by being blind to the different causes of discrimination experienced by each community. Third, the observation could be construed as representational intersectionality, which would oblige Iran to challenge prevalent narratives of religion and race, including the recognition of how contemporary critiques of religious and racial discrimination could serve to further marginalize those individuals or groups in society whose allegiance was split between the different communities. While the committee may very well have meant that Iran should have taken into account all of these possible interpretations, the lack of further contextualization and specificity in the observation renders it fuzzy and indeterminate.

The pattern under which the committee has "ethnicized" Muslims and vaguely connected ethnic and religious issues to violations of ICERD is also evident in the observations issued by the committee on religious organizations. In the majority of cases where the committee has addressed the registration of religious communities, it has done so by reference to specific Muslim communities succeeding or failing to gain legal recognition by state authorities. Observations issued by the committee on religious organizations have interpreted the lacking access to registration experienced by some ethnic minorities as a violation of their right to the freedom of religion or belief under article 5(d) (vii). Unlike its practice on minorities and discrimination, then, the committee has been more successful in the case of religious organizations in terms of clarity and precision.

In its approach to religious law and the more general impact of religious doctrines and practices on the implementation of ICERD, the committee has taken a cautious, but critical approach. In particular, the committee has been wary of the potentially discriminatory effects of applying different laws for different communities, and the ways in which religious differences may feed into and exacerbate conflicts among ethnic groups. In the latter cases, however, religion is also seen as a potential force for good, as the committee has advised states to seek reconciliation among ethnic groups with the help of religious leaders.

With the benefit of hindsight, the monitoring practice of CERD on religion could hardly have played out differently. As soon as the ink had dried on the signatures on the document that turned the convention into a legal reality in 1965, the committee and the states parties were faced with an impaired instrument whose categories of protection resonated poorly with situations of discrimination and marginalization, both "on the ground", in other international and regional treaties, and in domestic legal frameworks. In this mismatch, the concept of religion developed by CERD is primarily recognized by its continuous coupling with ethnicity. While this coupling is sure to have merit in a significant number of cases, the tendency of the committee to establish this relationship in general,

non-specific terms has rendered its pronunciations on the scope of ICERD relative to religion vague and imprecise.

5 The Human Rights Committee

5.1 Introduction

Following the adoption of the UDHR in 1948, the Commission on Human Rights (CHR) produced several drafts for a single binding instrument, creating formal, legal obligations from the non-binding provisions of the declaration.[1] Caught in a deadlock between the political blocks of the General Assembly (GA), the CHR was instructed in resolution 543 (1952) to draft two separate instruments, while simultaneously ensuring that they have as many similar provisions as possible, particularly concerning reports to be submitted by states on implementation measures.[2] Although drafts for two covenants, one on civil and political rights, the other on economic, social and cultural rights, were presented to the assembly in 1954, they were not finally adopted until 1966, after protracted negotiations, particularly over the question of implementation and monitoring (Normand and Zaidi 2008: 241).

Administrative structures and substantial competences of the HRC are listed in articles 28–45 of the International Covenant on Civil and Political Rights (ICCPR), creating an independent body with the authority to make general comments upon their review of states parties.[3] This is a far cry from its twin, the International Covenant on Economic, Social and Cultural Rights (ICESCR), which authorizes The Economic and Social Council (ECOSOC) in articles 16–22 to receive reports from states parties, but effectively bars it from issuing any kind of comments to be communicated back to states.[4]

1 Although declarations are conventionally not considered binding, several authors claim that the UDHR for all means and purposes is considered *jus cogens* and therefore binding upon all members of the international community of states. See Morsink 1999, Taylor 2005.

2 A/RES/543 (VI), 1952.

3 Article 40(4) reads in full: "4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant."

4 The CESCR is an anomaly in the monitoring mechanism: it is the only committee that has been created after the adoption of the instrument it is set to monitor. When the ICESCR entered into force in 1976, the ECOSOC appointed a working group to take care of the reporting procedure created by the Covenant. With an unclear mandate and no formal rules of procedure, the working group failed to deliver any consistent review effort (Alston 1987). To amend the situation, the ECOSOC adopted resolution 1985/17, in which the CESCR was established along similar lines as

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The HRC does not have the competence to review individual communications under the Covenant.[5] Nor is it authorized to make recommendations or suggestions, only comments of a general nature. While the committee in the early years interpreted this provision strictly, issuing only general viewpoints in annual reports to the GA and comments on the interpretation of particular treaty provisions, later years have seen a shift towards the procedure of adopting concluding observations, in which states parties receive concrete, substantial feedback on their implementation measures.

The ICCPR mentions religion in articles 2 (non-discrimination),[6] 4 (non-derogation),[7] 18 (freedom of religion or belief),[8] 20 (prohibition of hate speech),[9] 24

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those already established for CERD, allowing both suggestions and recommendations of a general nature.

5 The access to file individual complaints was differentiated into a separate instrument, the Optional Protocol to the International Covenant on Civil and Political Rights, which was ratified and entered into force at the same time as the Covenant. The protocol currently has 115 parties, and the committee has presently (2016) reviewed more than 2000 such cases.

6 Article 2 reads in full: "1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant. 3. Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted."

7 Article 4 reads in full: "1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. 2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision. 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation."

(the rights of the child),[10] 26 (equal protection before the law)[11] and 27 (the rights of minorities).[12] As such, the Covenant has by far the largest interface with religion of any international human rights treaty. Articles 2 and 26 expand the scope of non-discrimination established in the UDHR, listing "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". While article 2 lists these issues related to the enjoyment of the rights outlined in the Covenant, article 26 reproduces the same list related to the more general requirement of equality before the law. Article 4 prohibits derogation (exemption) for rights in the Covenant during times of crisis, if this is based "solely on race, color, sex, language, religion or social origin", and lists article 18 on the freedom of religion or belief as an example of a right that is non-derogable.

Article 24 on the rights of children modifies the list of non-discrimination further, prohibiting discrimination in the enjoyment of this right based on "race, color, sex, language, religion, national or social origin, property or birth". Articles 20 and 27 reduce the list to "national, racial or religious", and "ethnic, religious or linguistic" grounds, disallowing advocacy of hatred and protecting aspects of minorities, respectively. The scope of non-discrimination naturally devolves from general to more specific protections, but religion remains across the board as the single common denominator of the above mentioned articles, indicating the intent of the framers of the instrument to safeguard rights that were circumvented when a joint convention on racial and religious intolerance was abandoned in the early 1960s (see above).

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8 See chapter 3.

9 Article 20 reads in full: "1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

10 Article 24 reads in full: "1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. 2. Every child shall be registered immediately after birth and shall have a name. 3. Every child has the right to acquire a nationality."

11 Article 26 reads in full: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

12 Article 27 reads in full "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

Of all the provisions in the ICCPR, article 18 is the singularly most important norm on religion, arguably not only in the Covenant, but in international law more generally as well. It enshrines the freedom of thought, conscience and religion, and reproduces article 18 of the UDHR, but with two important differences. First, the article replaces the word “change” with “have or adopt a religion or belief of his choice”, a modification that was made during the drafting process at the request of several Muslim countries in which conversion was prohibited (Taylor 2005: 29). Second, the article outlines possible restrictions on the “manifestation” of religion or belief, and safeguards the liberty of parents and legal guardians to ensure the religious and moral education of their children, both of which are near identical to related provisions in the European Convention on Human Rights (1950), article 9.[13] The phrasing of the limitation clause, that manifestations of the freedom of religion or belief may only be limited if “prescribed by law and (…) necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”,[14] is indicative of the broad interface between religion and society, providing a taxonomy of potential conflicts that can arise when “private” beliefs are translated into “public” acts.

The requirement that limitations must be prescribed by law and necessary for any of the listed reasons protects against the potential for abuse of the legal process against particular manifestations of religion, and the necessity of clarity and precision in formulating limitations (Danchin 2008a: 264). However, it also provides an opportunity for states to pass substantive legal judgements on religious manifestations relative to their perceived potential to destabilize any of the limitation grounds (Mahmood and Danchin 2014: 140).[15] In particular, allowing limitations based on public safety and order opens up a broad avenue for state authorities “to consolidate and expand the state’s sovereign authority to decide what counts as religious, and what scope it should have in social life” (Agrama 2010: 505), asking the contentious question of where to draw the limits between law, religion and politics.

13 Article 9(2) of the ECHR reads in full: “2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

14 While these limitations are not identical in the UDHR, the ICCPR and the 1981 Declaration, these are only superficial differences that have no significant bearing on the acceptable scope of limitations, which are also largely identical in the ECHR article 9(2) (Taylor 2005: 293).

15 While Mahmood and Danchin primarily address the practice of the ECtHR, I consider their observation to be relevant to the universal level as well, since the normative architecture of the ECHR is largely identical to the UDHR and the ICCPR.

While limitations on health grounds are fairly unambiguous (Taylor 2005: 322), what constitutes acceptable limitations based on morals is more unclear, as such limitations, according to the HRC, “must be based on principles not deriving exclusively from a single tradition”, a clarification that is intended to prevent public morality from being dictated by a single majority religion (Taylor 2005: 327). However, it simultaneously issues a stamp of approval to lawmakers and the judiciary to decide what such public morality may look like, and in what ways manifestations of religion or belief may threaten it. Considering the complex interrelationship between law, religion and morals as co-dependent and co-constitutive (Kirsch and Turner 2009: 3) and the corresponding tendency of modern state-made law to displace religion as the arbiter and enforcer of morality (Sullivan 2005: 39), the approval of limitations based on morality gives state authorities ample space to limit manifestations of religion or belief according to a domestic hierarchy of morality.

Finally, the inclusion of limitations based on the protection of “fundamental rights and freedoms of others” highlights the potential for manifestations of religion or belief to collide with other rights, a potential that increases proportionally with the growing number of international treaties recognized by the international community (Milanovic 2009: 69). There are no established criteria for distinguishing between “fundamental” and more “ordinary” rights, leaving the latter with an implicit second-rate status (Meron 1986: 22). Furthermore, the assertion in the ICCPR article 4(2) that the freedom of religion or belief is among the category of rights that cannot be derogated from, i. e. set aside, even in times of war, national disasters or other emergency situations,[16] further fortifies the right from state-imposed limitations based on the protection of other rights.

Taken together, the nature and scope of the acceptable grounds for limitation of the manifestation of religion or belief in article 18(3) illustrates the considerable inner tension that is the hallmark of numerous human rights norms: that they can be called upon to legitimize both the interference and the non-interference of states in situations of conflict (Danchin 2008a: 277). As all the acceptable grounds for limitations are vague and underdetermined, the potential for manifestations of religion or belief to influence other human rights is strongly dependent on the context for their implementation and monitoring: What consti-

16 Additionally, the preamble of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief insists that “the practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development”, and acknowledges the harm that can be caused by religion when used as a means of “foreign intervention in the affairs of other States”, or in a manner inconsistent with the Charter (Evans and Whiting 2006: 13).

tutes morals, public order or the fundamental rights and freedoms of others ultimately comes down to the legal, political and religious arrangements of each state party.

Whereas article 18 enumerates the rights of individuals and communities to have and manifest a broad scope of deeply held beliefs, the remaining provisions on religion in the ICCPR, articles 2, 4, 20, 24 and 27, approach religion as a question of equal treatment, discrimination and religious identity. The prevalence of religion across the many equality provisions of the Covenant attest to the profound importance assigned to religious identity and belonging in issues ranging from the rights of children, the access to due process and equality before the law, and to the specific discriminatory experiences of religious minorities and hate speech targeting people because of their religious orientation.

5.2 General Comments

The HRC has issued 35 general comments, largely dedicated to single articles and cross-cutting themes, with only a small number dealing with procedural issues. The comments dedicated to single articles favored by the HRC commonly contextualize their meaning within the larger human rights framework, effectively emulating the theme-based approach. Apart from article 26 (equality before the law), every article in the Covenant that deals with religion has been subject to at least one general comment. Typically, general comments indicate the scope of specific articles, and clarify the legal obligations of states parties viz. particularly troublesome issues without elaborating upon the content of specific terms and concepts.

In 1993, the HRC issued its 22nd general comment,[17] which is the most substantial and authoritative comment on religion to date. The comment outlined the basics of article 18 of the ICCPR, on the extent of freedom of religion and the nature of permissible restrictions on the exercise thereof. Observing the "far-reaching and profound" importance of the freedom of religion, the comment elaborated on the broad ways in which the terms religion and belief were to be construed in state reporting, exemplified by their extension beyond "traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions". In perhaps the most controversial clarification in the comment, the committee pointed out that the freedom to have or adopt a religion "necessarily" entails the freedom to choose, replace

17 CCPR/C/21/Rev.1/Add.4, 1993.

or retain one's belief, effectively eradicating any ambiguity stemming from the drafting process leading up to the adoption of article 18.

The comment also drew a distinction between the "inner" and "outer" aspects of religious freedom, observing that the inner dimension protected under article 18(1), akin to the right to hold opinions under article 19(1), cannot be limited whatsoever, and that "no one can be compelled to reveal his thoughts or adherence to a religion or belief". Moving on to the outer aspect of the right, the committee elaborated on examples of acceptable "manifestations" under article 18(1), covering customs, rituals, language and teaching. Commenting on the meaning of education in 18(4), the committee pointed out that public school instruction in the general history of religions and ethics was permissible, if given in an objective and neutral way.

On the topic of possible and legitimate restrictions to article 18, the HRC observed that the right may not be exercised in a way that could conflict with article 20, i.e. if such exercise could amount to propaganda for war or advocacy of national, racial or religious hatred that incited discrimination, hostility or violence. Concerning the grounds for limitation in article 18(3), the committee pointed out that the requirement that any limitations should be prescribed by law and necessary to protect public safety, order, health or morals or the rights of others should be strictly interpreted. In general, the comment was careful to point out that all limitations must be implemented in a non-discriminatory way, with due respect for pluralism in society.

The comment observed that the status of recognized religions and beliefs treated as official ideology did not conflict with article 18 in themselves, only if such recognition positively resulted in the discrimination of others, begging the question, recently put by a former Special Rapporteur, of what forms, if any, of state religion could possibly be non-discriminatory.[18] Finally, the comment stressed that a right to conscientious objection against military service can be derived from article 18, but the committee pointed out that the access to this right should not be determined on the basis of particular beliefs.

In 1994, the committee issued its general comment no. 23 on the meaning of article 27 on minority rights.[19] Introducing the comment, the committee pointed out that minority rights under article 27 were to be additional to all the other rights contained in the Covenant. Furthermore, lack of reported discrimination against a minority was not sufficient rationale for states to claim that they did

18 A/HRC/19/60: 72, 2011. Also ambiguously, the committee asks states to "include in their reports" information on practices considered to be punishable as blasphemous, without explicitly commenting on the desirability of blasphemy legislation.
19 CCPR/C/21/Rev.1/Add.5, 1994.

not have minorities: Rather, the existence of minorities, and the corollary legal obligation to protect these, was not to be decided by the state party, but by "objective criteria", a concept the committee did not elaborate further. In states where minorities existed according to such criteria, the committee clarified that due to the enrichment of the fabric of society as a whole that minorities brought, a positive obligation to protect "their identity and their enjoyment and development of culture and language and to practice their religion" arose from article 27. The comment pointed out that minority rights, while individual in nature, presuppose the ability of groups to maintain their culture, language and religion, and stressed that positive measures set in motion to protect article 27 may constitute "legitimate differentiation", but should nevertheless be considered against the protection against discrimination offered in articles 2 and 26.[20]

In 2000, the HRC released general comment no. 28 on article 3 on the equality of rights between men and women.[21] The comment elaborated extensively on the scope and gravity of the article, and pointed out that the rights and freedoms listed in other parts of the Covenant, notably articles 18 and 27, did not mitigate or allow for any kind of inequality between the sexes. Turning to preventive actions by states parties, the committee pointed out that inequality was deeply embedded in "traditional, historical, cultural or religious attitudes". States parties were thus obliged, not only to ensure that such attitudes were not used to justify inequalities, but to

> ...furnish appropriate information on those aspects of tradition, history, cultural practices and religious attitudes which jeopardize, or may jeopardize, compliance with article 3, and indicate what measures they have taken or intend to take to overcome such factors.[22]

Specific requests that states report on attitudes which "may jeopardize" compliance with article 3 complicate the reporting procedure by diluting the criteria for what kind of information is sought from states parties, in particular if read in conjunction with a later claim in the comment, that cultural or religious practices that jeopardize the freedom and well-being of female children should be "eradicated" by states parties.[23]

20 CCPR/C/21/Rev.1/Add.5: 6.2, 1994. The acceptability of positive measures like affirmative action and other forms of preferential treatment was also confirmed in the general comment published by the committee on non-discrimination in 1989 (General comment No. 18: Non-discrimination).

21 CCPR/C/21/Rev.1/Add.10, 2000.

22 CCPR/C/21/Rev.1/Add.10: 6, 2000.

23 CCPR/C/21/Rev.1/Add.10: 28, 2000.

In 2011, the committee released its 34th general comment on article 19,[24] on the freedom of opinion and expression. The comment expressly linked the content of article 19(1) on the right to hold opinions to the freedom of beliefs, thoughts and conscience in article 18(1), pointing to their common non-derogable, unlimited nature. “Religious discourse” is counted among the protected expressions that may be given to this right. Concerning the limitation clause in article 18(3), the committee stressed that prohibitions of “displays of lack of respect for a religion or other belief system, including blasphemy laws” were incompatible with the Covenant, unless they fell under the criteria of hate speech under article 20.[25] Elaborating on this incompatibility, the committee pointed out that such prohibitions would be unlawful if they discriminated between different religious beliefs, or between religious and non-religious beliefs, and that it would not be permissible to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith, significantly expanding the earlier requirement in GC 22 on states simply to report on the existence of blasphemy legislation.

5.3 Individual Communications

Under the Optional Protocol to the ICCPR,[26] the committee has reviewed numerous individual communications claiming violations against the freedom of religion or belief. In general, the jurisprudence of the committee on religion is more accommodating than that of the comparable practice of the European Court of

24 CCPR/C/GC/34, 2011. Article 19 reads in full: “1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

25 Parallels between the freedom of opinion and expression and the freedom of religion or belief have frequently been observed in the literature, particularly in connection with the prohibition of hate speech under article 20 see Lerner 2010, Eltayeb 2010, Ghanea 2010 and Evans 2009.

26 International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, (A/RES/2200 (XXI) (1966)

Human Rights (ECtHR), which monitors largely similarly worded provisions. While the latter has tended towards a requirement that manifestations of religion or belief should be necessary to the belief in question, the HRC has been content with manifestations that are integral (Conte and Burchill 2009: 78 – 79). Likewise, where the ECtHR seems willing to allow considerable state interference with religious freedom, the HRC has been unwilling to grant such latitude, generally siding with plaintiffs over states (Taylor 2005: 344).

The committee has been critical of state-sponsored religious indoctrination in school education,[27] prohibitions of religious headgear,[28] the refusal to grant conscientious objector status,[29] the lack of alternative service for conscientious objectors[30] or the granting of conscientious objector status to only one group,[31] prohibitions against religious teaching materials during incarceration,[32] prohibitions of the invitation of foreign clerics and the establishment of places of worship,[33] and the denial to register a religious order to protect the majority religion.[34] However, the committee has not always sided with plaintiffs, pointing to the incompatibility of article 18 with the use of prohibited drugs,[35] and finding no ground in the exercise of religious freedom not to pay taxes.[36]

27 *Hartikainen v. Finland*, Communication no. 40/1978 (CCPR/C/12/D740/1978) (1981), *Leirvåg and others v. Norway*, Communication no. 1155/2003 (CCPR/C/82/D/1155/2003) (2004).
28 *Singh v. France*, Communication no. 1876/2000 (CCPR/C/102/D/1876/2009) (2011), *Riley et al v. Canada*, Communication no. 1048/2002 (CCPR/C/74/D/1048/2002) (2002), *Hudoyberganova v. Uzbekistan*, Communication no. 931/2000 (CCPR/C/82/D/931/2000) (2005).
29 *Atasoy and Sarkut v. Turkey*, Communication no. 1853 – 1854/2008 (CCPR/C/104/D/1853 – 1854/2008) (2012).
30 *Yoon and Choi v. Republic of Korea*, Communication no. 1321 & 1322/2004 (CCPR/C/88/D/1321 – 1322/2004) (2007), *Jung et al. v. Republic of Korea*, Communication no. 1593 – 1603/2007 (CCPR/C/98/D/1593 – 1603/2007) (2010), *Min-Kyu Jeong et al. v. Republic of Korea*, Communication no. 1642 – 1741/2007 (CCPR/C/101/D/1642 – 1741/2007) (2011).
31 *Brinkhof v. The Netherlands*, Communication no. 402/1990 (CCPR/C/48/D/402/1990) (1993).
32 *Boodoo v. Trinidad and Tobago*, Communication no. 721/1996 (CCPR/C/74/D/721/1996) (2002).
33 *Malakhovsky and Pikul v. Belarus*, Communication no. 1207/2003 (CCPR/C/84/D/1207/2003) (2005).
34 *Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka v. Sri Lanka*, Communication no. 1294/2004 (CCPR/C/85/D/1249/2004) (2005).
35 *M.A.B., W.A.T. and J.-A.Y.T. v Canada*, Communication no. 570/1993 (CCPR/C/50/D/570/1993) (1994), *Prince v. South Africa*, Communication no. 1474/2006 (CCPR/C/91/D/1474/2006) (2007).
36 *J v K and CMG v K.S v The Netherlands*, Communication no. 483/1991 (CCPR/C/45/D/483/1991) (1992).

5.4 Reporting Guidelines

In its treaty-specific reporting guidelines, the HRC,[37] like CERD, emphasizes the general need for information on the nature and scope of legislation for each article, supplied with information on domestic mechanisms established to monitor the implementation of the right, disaggregated data relevant to the particular right, and specific, detailed information on particular problems and factors preventing full implementation. These general requirements are followed by article-specific requirements.

On the topic of religion, the HRC requests comprehensive information under article 18, on the existence of different religions within the state party's jurisdiction, the publication and circulation of religious materials, measures taken to prevent and punish offences against the free exercise of religion, in cases of State religions, information on how this affects a person's freedom to practice another religion, procedures that must be followed for the legal recognition and authorization of various religious denominations, the main status difference between the dominant religion and other religions, the legal regulation of religious education, fiscal provisions applicable to religions, the status and legal position of conscientious objectors, the number of such objectors, and reasons considered to justify such status.[38] Under article 14 on the right to equality before the courts, the HRC requests information from states on the existence, competencies and practices of customary and religious courts.[39] For articles 2, 20 and 27, which all regulate religion (see above), the committee does not elaborate beyond the material provisions of the treaty.

For participation in the HRC process, the Centre for Civil and Political Rights[40] has published guidelines for NGOs (CCPR 2010). Unlike the committee's own guidelines, these guidelines emphasize the importance of the general comments published by the committee for the reporting process, pointing out the importance of the requirement in general comment 28, on the need to "consider traditional, historical, religious and cultural attitudes which may jeopardise the equality of the sexes" in reporting on article 3 on gender equality (CCPR 2010: 40, see above). The guidelines also establish links between reporting on article 2 (non-discrimination) and general comment 23 on article 27 (the rights of minor-

37 CCPR/C/2009/1.
38 CCPR/C/2009/1: 83.
39 CCPR/C/2009/1: 14.
40 The Centre has been in operation since 2008, and is dedicated to the promotion of the role of NGOs in the reporting procedure of the HRC, and capacity-building among NGOs reporting to the committee. http://www.ccprcentre.org/about-us/ (accessed 31.08.2016).

ities), in which the non-existence of minorities is no excuse for not legislating on the issue (CCPR 2010: 37). On article 18, the guidelines largely reproduce those published by the HRC, but with an extensive excerpt from general comment 22, and the relations between this article and the general comments on privacy, equality and the family (CCPR 2010: 71). This interconnection between the freedom of religion or belief and other rights is also emphasized in the concrete reporting guidelines for article 23 (right to a family) and article 26 (equality before the law), where the nexus between religious and civil law in particular is emphasized (CCPR 2010: 78, 85).

5.5 The Religion of the HRC

The material provisions, general comments, individual communications and reporting guidelines of the Human Rights Committee constitute the authoritative model of religion in international law. According to this model, whose outline is also the basis for the work of the Special Rapporteur on the Freedom of Religion or Belief,[41] religion is a concept that is primarily located in a privately held set of convictions that are absolutely protected and beyond the grasp of legal regulation, akin to the "opinions" protected under article 19(1). Secondarily, however, these private convictions can be transformed into public acts by giving rise to a broad variety of external "manifestations". Upon leaving the absolute protection of privately held beliefs within the "citadel of the mind" (Evans 2014: 4), religion enters the domain of public authorities and civil law, preparing the ground for encounters across numerous legal domains that require the careful balancing between different sets of rights.

In addition to the protection of privately held beliefs and their public manifestations in article 18, however, the HRC is also required by the ICCPR to consider the role of religion as a determinant of identity, with religion as the single common denominator across the numerous non-discrimination provisions that it monitors. Stressing the potential for discrimination at the hands of a majority religion, general comments no. 22 and 23 of the committee point to the need for robust legal protection of religious minorities, who should be given ample space to enjoy, profess and practice their religion. This view of potential discrim-

41 While the special rapporteurs that have been active to date have shown certain differences in their interpretation of the mandate, particularly on the topic of prevention vs. protection (Evans 2006: 85), none have expressed reservations towards the HRC's interpretation of article 18.

ination also influences the view of the committee of preferential treatment of religious traditions more generally, which it has warned strongly against.

Finally, however, there is some indication that the committee also views religion in a third sense, as a potential negative influence on the enjoyment of other rights in the convention, most significantly gender equality. Unlike the first two conceptions of religion above, however, this third approach to religion has so far been limited to a request that states report on "religious attitudes" which "jeopardize or may jeopardize" compliance with article 3.

5.6 Approaches to Religion in the Monitoring Practice of the HRC, 1993–2013

5.6.1 The Freedom of Religion or Belief

The freedom of religion or belief outlined in article 18 of the ICCPR (see above) is the most elaborate and widely cited provision on religion in international human rights law. It is a vital backdrop for any domestic and international discussion on the notion of religious freedom, and constitutes a roadmap for states parties to the ICCPR on how to deal with religion and belief in society. As the framework for communications developed by Special Rapporteur on the Freedom of Religion or Belief Asma Jahangir in 2006 (see chapter 3) attests to, the freedom of religion or belief enjoys a broad interface with numerous other rights.

Although the Human Rights Committee has decided a number of individual complaints on the freedom of religion or belief and dedicated a general comment to the scope of the right, it is not frequently addressed by the committee in its monitoring practice. Partly, this is due to the broad interface of article 18 with other rights, in particular the right to non-discrimination, which leaves the committee with the option to address issues involving religion under articles 2, 20, 26, or in the case of minorities, article 27 (see below). Another possible explanation for the low number of observations on the issue is the structure of interactive meetings with states parties, which tend to start from the top of the treaty and move its way down the list, risking the exclusion of considerations under article 18 because of its high number (Taylor 2005: 11–12).

The monitoring practice of the HRC on the freedom of religion or belief from 1993 to 2013 can roughly be divided between recommendations on conscientious objection to military service one the one hand, and limitations on the right to change and/or manifest a religion or belief on the other. On conscientious objection, the HRC has long held an interest in the subject, evident already in its general comment no. 22, where it observed that the right can be derived from article

18 of the ICCPR, stopping short of asserting that it is part of the right to freedom of religion or belief. This caution notwithstanding, the committee observed already in 1994 following its review of the report from Libya that "The lack of provision for conscientious objection to military service is [a] concern".[42] Similar observations have been issued throughout the 1990s and 2000s and up to the present, as the committee developed a standardized recommendation, observing that "The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination".[43] Recommendations that states should adopt legislation allowing for conscientious objection have been issued regularly and repeatedly to states from many parts of the world, indicating the continued concern of the committee with the limited access to object to military service for conscientious reasons.[44]

Additional to observations on the lack of legal provisions securing access to conscientious objection, the committee has frequently addressed how the right should be implemented in domestic law: In 1994, the committee criticized Cyprus for its "unfair treatment" of conscientious objectors, which were subject to excessive periods of service compared to military personnel.[45] Although the state delegation stressed the need for sufficient troops for the national guard in order to resist a further invasion by Turkey,[46] the committee remained unconvinced, stressing the discriminatory nature of extended service for conscientious objectors. These concerns were reiterated following the consecutive review of Cyprus in 1998.[47] Similar observations have been issued to numerous states, mainly in Eastern Europe,[48] but also to Greece[49] and The Republic of Korea.[50]

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42 A/50/40: 135, 1995.

43 The same recommendation, with only minimal differences, has been issued to Venezuela (CCPR/CO/71/VEN: 26, 2001), The Dominican Republic (CCPR/CO/71/DOM: 21, 2001), Azerbaijan (A/57/40 (I): p. 51: 21, 2002) and Viet Nam (CCPR/CO/75/VNM: 17, 2002).

44 Such observations have been made to Russia (A/50/40: 382, 1995), Armenia (CCPR/C/79/Add.100: 18, 1998), Mexico (A/54/40 (I): 332, 1999 and CCPR/C/MEX/CO/5: 18, 2010), Romania (A/54/40 (I): 376, 1999), Kuwait (A/55/40 (I): 495, 2000 and CCPR/C/KWT/CO/2: 22, 2011), Tajikistan (CCPR/CO/84/TJK: 20, 2005 and CCPR/C/TJK/CO/2: 21, 2013), Colombia (CCPR/CO/80/COL: 17, 2004 and CCPR/C/COL/CO/6: 22, 2010), Serbia and Montenegro (CCPR/CO/81/SEMO: 21, 2004), Syria (CCPR/CO/84/SYR: 11, 2005), Chile (CCPR/C/CHL/CO/5: 13, 2007), San Marino (CCPR/C/SMR/CO/2: 15, 2008), Mongolia (CCPR/C/MNG/CO/5: 23, 2011), Turkmenistan (CCPR/C/TKM/CO/1: 16, 2012), Turkey (CCPR/C/TUR/CO/1: 23, 2012) and Bolivia (CCPR/C/BOL/CO/3: 21, 2013).

45 A/49/40 (I): 321, 1994.

46 CCPR/C/SR.1334: 9, [1994], 1996.

47 A/53/40 (I): 197, 1998.

Another recurring criticism in the practice of the committee on conscientious objectors has been directed towards the tendency of states to favor some categories of objectors over others, as the consistent preference for objectors belonging to the Jehovah's Witnesses in Finland,[51] the requirements for objectors to belong to religions on an official, government-sanctioned list in Ukraine[52] or registered religious communities in Uzbekistan,[53] and the requirement that objectors belong to clearly pacifist sects in Kyrgyzstan,[54] or have pledged a holy vow in Kazakhstan.[55] Finally, the committee has criticized states for not allowing conscientious objection once the duration of military service is underway,[56] and for not implementing the right fully in practice.[57]

Throughout these observations, the committee has stressed the non-discriminatory nature of the procedure to ensure compliance with article 18, urging states to recognize conscientious objectors, not only from all religions, but also from people with deeply held non-religious beliefs. As such, the practice of the HRC on conscientious objection constitutes perhaps the most clear-cut case possible of a belief-centered conception of the freedom of religion, where the power of states to force individuals to act against their conscience is clearly limited in one specific area.

Similarly, a cluster of observations issued by the committee from 1994 and up to the present has dealt with the controversial and vexing question of conversion, an issue that is no less concerned with the contents of belief than the issue of conscientious objection. The right to "have or adopt" a religion is clearly laid out by the committee in general comment no. 22 as a central part of article 18 (see above). In its review of Morocco in 1994, the state delegation responded ex-

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48 Slovakia (A/52/40 (I): 373, 1997), Lithuania (A/53/40 (I): 176, 1998 and CCPR/CO/80/LTU: 17, 2004), Georgia (A/57/40 (I): p. 56: 18, 2002), Estonia (A/58/40 (I): p. 44: 15, 2003), Latvia (CCPR/CO/79/LVA: 15, 2003) and Russia (CCPR/CO/79/RUS: 17, 2003 and CCPR/C/RUS/CO/6: 23, 2009).

49 CCPR/CO/83/GRC: 15, 2005.

50 CCPR/C/KOR/CO/3: 17, 2006.

51 A/53/40 (I): 271, 1998, A/60/40 (I): p. 24: 14, 2004 and CCPR/C/FIN/CO/6: 14 2013.

52 A/57/40 (I): p. 35: 20, 2002, CCPR/C/UKR/CO/6: 12, 2006 and CCPR/C/UKR/CO/7: 19, 2013.

53 CCPR/C/UZB/CO/3: 26, 2010.

54 CCPR/CO/69/KGZ: 18, 2000.

55 CCPR/C/KAZ/CO/1: 23, 2011.

56 Spain (A/51/40: 186, 1996), France (A/52/40 (I): 406, 1997) and Slovakia (CCPR/C/SVK/CO/3: 15, 2011).

57 Israel (A/58/40 (I): p. 69: 24, 2003 and CCPR/C/ISR/CO/3: 19, 2010) and Paraguay (CCPR/C/PRY/CO/2: 18, 2006).

tensively to a question on the difference in status between Islam and other religions in Morocco:

> A Moroccan Muslim woman could marry a Jewish or Christian man only if he converted to Islam; by contrast, a Moroccan Muslim man could marry a Jewish or Christian woman even if she did not convert. Since the rules for inheritance were different depending on whether Muslims, Jews or Christians were involved, the religious statutes prohibited inheritance between Muslims and non-believers. Moroccan consulates and embassies abroad disseminated information to foreign women who wished to marry Moroccan men about the problems of inheritance that could arise if a woman did not convert to Islam.[58]

In its concluding observations, the committee stopped short of declaring the rules in violation of article 18, expressing its "concern" at the impediment placed upon the freedom to change religion.[59] Following its next review of Morocco in 2000, the committee hardened its approach, observing that "the Covenant requires religious freedom to be respected in regard to persons of all religious convictions and not restricted to monotheistic religions, and that the right to change religion should not be restricted, directly or indirectly".[60] This stance was followed up in 2004, when the committee flatly observed that "article 18 of the Covenant protects all religions and all beliefs, ancient and less ancient, major and minor, and includes the right to adopt the religion or belief of one's choice".[61] Hence, over the course of ten years, the committee moved from considering prohibitions on conversion an "impediment" to article 18 and to declaring such prohibitions to be outright violations.

A similar change in language can be detected for other countries as well: While the committee noted with concern the prohibition against conversion in Nepal in 1994,[62] the observations issued to Mauritania in 2013 declared that "The State party should remove the crime of apostasy from its legislation and authorize Mauritanians to fully enjoy their freedom of religion, including by changing religion".[63] Similar observations have been issued to Iran,[64] Tunisia,[65] Libya,[66] Kuwait,[67] Yemen,[68] Algeria,[69] Sudan,[70] Jordan[71] and the Maldives.[72]

58 CCPR/C/SR.1365: 62, 1994.
59 A/50/40: 112, 1995.
60 A/55/40 (I): 117, 2000.
61 CCPR/CO/82/MAR: 21, 2004.
62 A/50/40: 70, 1995.
63 CCPR/C/MRT/CO/1: 21, 2013.
64 A/48/40 (I): 263, 1993 and CCPR/C/IRN/CO/3: 23, 2012.
65 A/50/40: 112, 1995.
66 A/50/40: 135, 1995 and A/54/40 (I): 136, 1999.

Taken together, the observations of the committee on prohibitions of conversion have dovetailed the practice of the committee on conscientious objections in its development from a position of watchful skepticism to one of unequivocal dismissal. In a small handful of cases, the committee has criticized states for requiring religious knowledge,[73] for prohibiting members of specific religious organizations of taking government work,[74] and for the requirement that judges pledge a religious oath in order to take office. In the latter case, the committee has criticized Ireland in three consecutive sets of observations, once more moving from a measured concern in 1993 to a fully-fledged recommendation that the state party "allow for a choice of a non-religious declaration" in 2008.[75]

Parallel to these belief-centered topics, the committee has issued a handful of observations on the limits of religious manifestations and practice, ranging from the singling out of specific groups that have incomplete protections (see below),[76] and to more specific charges of practices that violate the right. Among the latter, the committee has criticized the ban on conspicuous religious symbols in French schools,[77] the requirement in Norway that individuals professing the Evangelical-Lutheran religion should raise their children in the same faith,[78] and the limited or non-existent access to places of worship for some religions in Iran,[79] Kuwait[80] and the Maldives.[81] Finally, a small selection of observations have focused on the nature of religious education, ranging from a general encouragement to bring practices in line with the Covenant to Slovenia,[82] via concerns with the role of religious majorities in education in Greece[83] and Ire-

67 A/55/40 (I): 483, 2000.
68 A/57/40 (I), p. 75: 20, 2002 and CCPR/CO/84/YEM: 18, 2005.
69 CCPR/C/DZA/CO/3: 23, 2007.
70 CCPR/C/SDN/CO/3: 26, 2007.
71 A/49/40 (I): 235, 1994 and CCPR/C/JOR/CO/4: 13, 2010.
72 CCPR/C/MDV/CO/1: 24, 2012.
73 Indonesia, (CCPR/C/IDN/CO/1: 6, 2013).
74 Germany (CCPR/CO/80/DEU: 19, 2004).
75 A/48/40 (I): 607, 1993, A/55/40 (I): 450, 2000 and CCPR/C/IRL/CO/3: 21, 2008.
76 Baha'is in Tunisia (A/50/40: 112, 1995) and Egypt (CCPR/CO/76/EGY: 17, 2002), Sunni Muslims in Iran, (CCPR/C/IRN/CO/3: 25, 2012) and Non-Muslims in the Maldives (CCPR/C/MDV/CO/1: 24, 2012).
77 CCPR/C/FRA/CO/4: 23, 2008.
78 A/49/40 (I): 93, 1994, A/55/40 (I): 78, 2000 and CCPR/C/NOR/CO/5: 15, 2006.
79 CCPR/C/IRN/CO/3: 24–25, 2012.
80 CCPR/C/KWT/CO/2: 23, 2011.
81 CCPR/C/MDV/CO/1: 24, 2012.
82 A/49/40 (I): 351, 1994.
83 CCPR/CO/83/GRC: 14, 2005.

land,[84] and to the suggestion that Indonesia reform its educational curricula in order to promote religious diversity.[85]

Taken together, the monitoring practice of the Human Rights Committee on article 18 does little in terms of clarifying how the committee approaches religion. Partly, this is due to the open-ended nature of the right, particularly as it is laid out in general comment no. 22: deciding whether the right has been violated does not necessarily involve a determination of what constitutes religion. Rather, the monitoring practice of the HRC attests to the centrality of belief in deciding whether states have implemented the right properly—throughout its observations on conscientious objection and the right to change religion, the committee has been adamant that non-religious beliefs are no less important or enjoy less protection than religious beliefs: On the contrary, the role of religion in these observations is frequently portrayed as problematic or potentially harmful to the realization of the right, as states are criticized for their preferences for certain religious organizations or beliefs. Likewise, in its more limited observations on the manifestation or practice of religion, the main threat identified by the committee is the preferential treatment extended to other religious communities. As such, the monitoring practice of the committee on article 18 tends to construe religion/s, and in particular their state preferences, as one of the main challenges to the realization of the right. Emphasizing the detrimental input from "bad", intolerant religion in this way, the approach of the committee largely resembles the pragmatic, utilitarian approach to religion favored at the second UN, where the role of religion is always relative to the specific context in which it is deployed.

5.6.2 Minorities and Discrimination

The Human Rights Committee monitors a comprehensive legal framework on discrimination and minority rights (see above). Articles 2 and 26 of the ICCPR prohibit discrimination in the enjoyment of the rights of the Covenant, and in equality before the law, respectively (see above). Additionally, article 27 brought back the concept of minority rights to the international legal framework after its exclusion from the drafting of the UDHR, providing that

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their

84 CCPR/C/IRL/CO/3: 22, 2008.
85 CCPR/C/IDN/CO/1: 26, 2013.

group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Hence, the HRC monitors the legal framework of states parties, both as they relate to discrimination on religious and other grounds, and their regulation of the rights of ethnic, religious or linguistic minorities. Additionally, the monitoring of provisions on religious discrimination and on the rights of religious minorities constantly rub shoulders with the views of the committee on the protection of the freedom of religion or belief in article 18 of the ICCPR (see above). Unlike CERD, then, the HRC is obliged to put religion at the heart and center of its monitoring of laws and policies on discrimination and equality.

The HRC first commented on the topic of religious minorities in its review of Egypt in 1993, questioning the claim of the state party that there were "no minorities" on Egyptian territory and reminding the delegation of its obligation to protect minorities under article 27, while also requesting more information on the treatment of the Copts.[86] Several members of the committee questioned the Egyptian constitutional ban on the manifestation of other religions than Islam, intimating that such a ban both entailed discrimination against other religions and violatied article 18 of the ICCPR.[87] The state delegation maintained that there were no minorities in Egypt, "[w]ithin the meaning of the relevant international provisions and criteria", because everyone was equal before the law.[88] In its concluding observations, the committee expressed its concern for the numerous restrictions on religious manifestations violating article 18, and the denial by Egyptian authorities of the existence in the country of religious and other minorities.[89] Following the consecutive review of Egypt in 2002, the committee expressed its concern with the continued repression of Baha'is, but did not repeat its concerns with the Egyptian claim to have no minorities, despite the claim being reiterated in the state report.[90]

In its review of Tunisia in 1994, the committee also brought up the issue of religious minorities, questioning the state delegation extensively on its position relative to the situation of the Baha'is, whose beliefs were not considered by the

86 CCPR/C/SR.1246: 36–37 Herndl, 1993.
87 CCPR/C/SR.1246: 49 Mavrommatis, 53 Higgins, 59 Fodor, 60 Aguilar Urbina, 1993.
88 CCPR/C/SR.1247: 14, 1993.
89 A/48/40 (I): 709, 1993.
90 CCPR/CO/76/EGY: 17–18, 2002. The assertion in the state report was that "the different communities, sectors and groupings of the Egyptian nation are woven together into a single fabric" (CCPR/C/EGY/2001/3: 675, 2001).

authorities to be a religious tradition, but rather a "deviation" from Islam.[91] These questions were entirely dismissed by the state delegation, who assumed that Baha'is had the same freedom of religion as everyone else in Tunisia, and did not experience persecution.[92] The committee was not assured by this statement, expressing its concern in its concluding observations that the right to freedom of religion or belief, while "generally well-protected", was not made available to all beliefs, advising the state party to take its recent general comment on article 18 into account.[93]

Reviewing Italy, also in 1994, the committee questioned the Italian constitutional provision that recognizes several linguistic minorities as eligible for special protection, but none of the other minority groups covered by article 27.[94] Several members questioned the treatment of religious minorities, their access to register denominations and to observe days of rest.[95] The state delegation explained that the constitutional minority provision referred to "all minorities present in Italy after the Second World War, provided they met the language criterion". Additionally, separate minorities in the regions of Valle d'Aosta and Alto Adige were specially protected due to "historical factors" from almost a century before.[96] Although the implementation of article 18 was widely discussed during the session as members questioned the state delegation extensively on the traditional favoritism towards the Catholic Church across numerous areas,[97] this issue was not linked to the role of religious minorities and their lacking protection under article 27. In its concluding observations, the committee expressed its concern with the restrictive definition of minorities in Italy, which may lead to lacking protection of other minorities.[98]

The early practice of the HRC on religious minorities featured several topics that have dominated its approach to the issue in the following years: In particular, the claim by Egypt to have no minorities has been reiterated by numerous state parties, and consistently dismissed by the HRC. These dismissals have been based both on factual grounds, as the committee has expressed its doubt as to

91 CCPR/C/SR.1362: 10 Higgins, 20 Mavrommatis, 24 Evatt, 1994 (translation from the French original).

92 CCPR/C/SR.1362: 28, 35, 1994 (translation from the French original).

93 A/50/40: 91, 98, 1995. None of these concerns were reiterated in the consecutive review of Tunisia in 2008 (CCPR/C/TUN/CO/5, 2008).

94 CCPR/C/SR.1329: 28 Evatt, 43 Aguilar Urbina, 53 Ndiaye, 1994.

95 CCPR/C/SR.1329: 50 Sadi, 52 Francis, 1994.

96 CCPR/C/SR.1330: 5, 1995.

97 CCPR/C/SR.1331: 16 – 63, 1995.

98 A/49/40 (I): 281, 1994.

whether the information has been accurate, and on legal grounds, as the committee has argued that the factual existence of minorities would be principally irrelevant to the legal obligation on states parties to adopt legislation that would implement the protections of minorities enumerated in article 27 of the ICCPR. The legal dimension of this issue was also addressed by the committee in its general comment on article 27 (see above).

States that have claimed to have no minorities include France,[99] Senegal,[100] Libya,[101] Kuwait,[102] The Dominican Republic,[103] Gambia[104] and San Marino.[105] The explanation for this non-existence varies: During the review of France in 1997, the delegation insisted that the French constitution was based on the dual principles of equal rights for all citizens and the unity of the nation, upholding the rights of all citizens to belong or refuse to belong to any group.[106] The committee questioned how this policy, which had given rise to a declaration on article 27,[107] affected the special protective measures available for distinct native populations in Breton and the Overseas Territories, the Basque and more recently arrived immigrant groups.[108] In its concluding observations, the committee took note of the declaration on article 27, but did not accept the claim that no ethnic, religious or linguistic minorities existed on French territory, recalling that the mere fact that everyone has equal rights before the law excludes neither the existence, nor the entitlements of minorities under article 27.[109] Following the examination of the consecutive report of France in 2008, this view was reiterated and expanded to concerns with the access of individuals from minorities to join the workforce and representative bodies.[110]

Reviewing Senegal in 1997, the committee heard a different account of why the state party had no minorities: Following questions from several members of

99 See below.
100 See below.
101 See below.
102 A/55/40 (I): 475, 2000. This concern was reiterated following the 2011 review of Kuwait (CCPR/C/KWT/CO/2: 31, 2011).
103 See below.
104 The state party was considered without a report (CCPR/CO/75/GMB: 24, 2004)
105 CCPR/C/SMR/CO/2: 16, 2008.
106 CCPR/C/SR.1599: 50, 1997.
107 "In the light of article 2 of the Constitution of the French Republic, the French Government declares that article 27 is not applicable so far as the Republic is concerned" (United Nations Treaty Collection, https://treaties.un.org/ (31.08.2016)
108 CCPR/C/SR.1599: 67 Yalden, 1997.
109 A/52/40 (I): 411, 1997.
110 CCPR/C/FRA/CO/4: 11, 25–26, 2008.

the committee on claims in the state report that there were no minorities in the state party,[111] members of the state delegation insisted that there were numerous minority groups "of all kinds" in Senegal, but they intermingled widely, so there was no discrimination between them,[112] a claim one member of the committee described as "unacceptable", reminding the delegation of the obligations arising from article 27.[113] These concerns were also reiterated in the concluding observations issued after the review.[114] Similar claims as to the non-existence of minorities due to their close integration with the majority culture were dismissed by the committee following the review of The Dominican Republic.[115]

Yet another different line of reasoning on the non-existence of minorities was employed by Libya in 1998: Questioned on the protection offered to minorities, the delegation cited anthropological and geographical studies that showed that all the peoples of North Africa formed a single family, and that any argument for the existence of minorities was used as "a device to provoke the 'Balkanization' or fragmentation" of Libya.[116] Expanding on this claim, the state delegation warned against "the selective use of the minorities issue by the forces of globalization to provoke the fragmentation of sovereign States",[117] sparking concluding observations that expressed concern with the lacking recognition of minorities in the state party.[118]

Additional to the claim of no minorities, the committee has been critical of incomplete minority protections, whereby states offer different measures of protections to different types of minorities, undermining the comprehensive, equal protection provided for minorities in article 27 of the ICCPR. Such differentiated protections are commonly explained by reference to historical factors, as in the case of Italy (see above). Similar differentiated protections have been criticized by the committee following the reviews of Ukraine,[119] Russia,[120] Switzerland[121],

111 CCPR/C/SR.1619: 42 Klein, 45 Yalden, 49 Pocar, 1997.
112 CCPR/C/SR.1619: 51 – 52, 1997.
113 CCPR/C/SR.1619: 63 Klein, 1997.
114 A/53/40 (I): 66, 1998.
115 CCPR/CO/71/DOM: 20, 2001.
116 CCPR/C/SR.1713: 78, 1998.
117 CCPR/C/SR.1713: 88, 1998.
118 A/54/40 (I): 139, 1999. The issue was not reiterated in the concluding observations following the consecutive review of Libya in 2007 (CCPR/C/LBY/CO/4).
119 A/50/40: 322, 1995. Similar concerns were expressed by the committee following the review of the state party in 2002 (A/57/40 (I): p. 36: 23, 2002), and expanded to a concern with increasing assaults on members of Muslim and Jewish minorities following the review in 2006 (CCPR/C/UKR/CO/6: 16, 2006).

Germany[122] and Serbia and Montenegro[123] for their more robust protection of "national" over other minorities, whereas Mongolia[124] has been criticized for its recognition of only one ethnic minority, and Greece[125] for its refusal to recognize minorities beyond the Muslims protected under the provisions of the Lausanne treaty.

In these differentiations, the historical argument was particularly emphasized by the German state delegation during the 1996 review: Following numerous critical questions on the difference in treatment between the special status and privileges bestowed on the Danish minority to the north of the country and the refusal of such privileges to the numerically far more significant Turkish community, a member of the state delegation explained that a difference had to be made between

> ...minorities created as a result of shifting State borders and those consisting of people who had freely chosen to immigrate. In the latter case, Germany was less concerned to promote the use of the native language, the objective being to achieve the integration of the immigrants into German society.[126]

Hence, according to the German state delegation, "new" minorities were not eligible for the same protection as "old" minorities with a historical presence on a specific territory. While no member of the committee commented on this during the session, the concluding observations expressed the committee's concern

120 A/50/40: 401, 1995. In the consecutive concluding observations on Russia, the HRC did not address the issue in 2003 (CCPR/CO/79/RUS), but expressed its concern with increasing hate crimes and attacks against minorities in 2009, although without addressing the definition of minorities in the state party (CCPR/C/RUS/CO/6: 11, 2009). See also below.

121 CCPR/C/79/Add.70: 20, 1996. Following the consecutive report of Switzerland, no similar observation was issued (CCPR/CO/73/CH, 2001), but in 2009, the committee expressed its concern with increasing threats of violence against religious minorities in the state party (CCPR/C/CHE/CO/3: 9, 2009).

122 See below.

123 CCPR/CO/81/SEMO: 23, 2004. In consecutive reviews of the successor states to Serbia and Montenegro, Kosovo in 2006 and The Republic of Serbia in 2011, the committee has not repeated its assertion that the legislative framework for minority protection is insufficient, but emphasized the discrimination experienced in practice by various minorities (CCPR/C/UNK/CO/1: 21–22, 2006 & CCPR/C/SRB/CO/2: 23, 2011).

124 A/55/40 (I): 341–342, 2000. Following the consecutive review of Mongolia in 2011, the committee did not address the lacking implementation of article 27, but expressed its concern with the protection offered for the linguistic unity of this singular minority (CCPR/C/MNG/CO/5: 27, 2011).

125 See below.

126 CCPR/C/SR.1552: 42, 1996.

with the German definition of minorities in relation to traditional areas of settlement in particular regions, suggesting that the protection offered by article 27 was intended to cover all minorities, whether they were immigrants or refugees.[127] Following the consecutive review of Germany in 2004, the committee did not reiterate its concerns with the preference for some minorities over others, focusing instead on the ill treatment of some minority groups by the police, and the challenges faced by the Roma community in housing and employment.[128] Following the latest review of Germany in 2012, however, the committee entirely ignored the provisions of article 27, expressing its concern with the problems faced by immigrant communities in housing under articles 2 and 26 on non-discrimination, and the racism experienced by members of the Jewish, Sinti and Roma communities under articles 2, 18, 20 and 26.[129]

During the review of Greece in 2005, the committee was also presented with an historical argument for the differential treatment of minorities presented during the review of the state party by CERD (see above). Explaining why Greece offered particular protection to the Muslim minority in Thrace, the state delegation invoked the specific provisions on this minority in the 1923 Lausanne Treaty and explained which criteria would be applicable for the recognition of other minorities:

> Such criteria referred to the size of the group, its distinct linguistic and cultural characteristics and its wish to be treated as a minority. Furthermore, States had a certain margin of appreciation when it came to the official recognition of a certain group of persons as a minority. Special circumstances prevailing in a specific State were also taken into account.[130]

The issue was particularly sensitive to the state party because of the desires of a population in Northern Greece to be recognized as a "Macedonian" minority, which all Greek governments had refused because they considered these claims to be "politically motivated and having nothing to do with human rights".[131] Groups like the Roma, on the other hand, did not qualify as minorities because they had "repeatedly expressed" their wish not to be considered minorities in Greek society.[132] In its concluding observations, the committee expressed its concern with the restrictive definition of minorities in Greece, in particular the ban

127 A/52/40 (I): 183, 1997.
128 CCPR/CO/80/DEU: 16/21, 2004.
129 CCPR/C/DEU/CO/6: 7/17, 2012.
130 CCPR/C/SR.2268: 35, 2005.
131 CCPR/C/SR.2268: 32, 36, 2005 & CCPR/C/SR.2269: 39, 2005.
132 CCPR/C/SR.2268: 37, 2005.

maintained by the state party on associations using "Turk" or "Macedonian" appellations in their names.[133]

As displayed by the early reviews of Egypt and Tunisia, the HRC has consistently expressed its concern with the interface between the recognition and protection of religious minorities and other rights covered by the Covenant, in particular legislative frameworks on the freedom of religion or belief that favor one religious tradition to the detriment of others, and states where religious minorities are harassed, persecuted or otherwise abused, either by state officials or by others. The nexus between minority rights and the freedom of religion has been explicitly emphasized by the committee following its reviews of Sudan,[134] Morocco[135] Israel,[136] Jordan,[137] and Iran.[138]

States have provided different reasons for their differentiation between religious minorities and their access to other rights in the Covenant: According to the Moroccan delegation in 1994, the Baha'i faith was not a "revealed" religion, and therefore constituted a heresy to Islam, the public exercise of which could result in public disorder and foment anarchy (see above).[139] Additionally, the delegation from Morocco also claimed to have no minorities in the sense implied by the Covenant, as no groups in society were deprived of their rights due to the domination of a majority.[140] Members of the committee were not convinced by this answer, citing the requirements under article 18 that states should recognize all religions, whether they were "revealed" or not.[141] In its concluding observations, the committee refrained from linking the issue to article 27, requesting instead that the protection offered to the freedom of religion or belief in article 18 be extended to cover the Baha'i community as well.[142] Following up on this issue, the committee included a question in its list of issues prior to the subsequent review of Morocco in 2000 on the recognition given to minorities including the Berber and the Tuareg in accordance with article 27 of the Covenant.[143] How-

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133 CCPR/CO/83/GRC: 20, 2005.
134 A/53/40 (I): 131, 134, 1998. The issue was not raised following the consecutive review of Sudan in 2007 (CCPR/C/SDN/CO/3, 2007).
135 See below.
136 CCPR/C/ISR/CO/3: 20, 2010.
137 A/49/40 (I): 235, 1994 and CCPR/C/JOR/CO/4: 13, 2010.
138 See below.
139 CCPR/C/SR.1365: 63, 1994.
140 CCPR/C/SR.1365: 67, 1994.
141 CCPR/C/SR.1365: 72 Higgins, 1994.
142 A/50/40:112, 1995.
143 CCPR/C/SR.1788: 7(18), 2000. The list of issues is not available online, but is reproduced in the summary records from the 1788th meeting of the HRC.

ever, the question remained unanswered, and the committee once more focused its concluding observations on the implementation of article 18 and the excessive restrictions against other religions than Islam in Morocco.

During the review of Iran in 2011, the state delegation explained that there were no restrictions on religious minorities, although it was "no secret" that there were conflicts between members of the Baha'i faith and local communities, often because of the proselytization of the former, which forced the Government to "intervene and restore order".[144] Baha'is who complained about religious persecution were mainly individuals "involved in crime".[145] The committee found these answers insufficient,[146] expressing numerous concerns with the treatment of religious minorities in Iran, in particular the Baha'i community and the Christian community, but also the Kurds, Arabs, Azeris and Baluch "in schools, and publication of journals and newspapers in minority languages", violating numerous articles of the Covenant, including articles 18, 19, 20 and 27.[147]

On the topic of other rights violations suffered by religious minorities, the committee has issued concluding observations on a sliding scale, from their "inadequate protection" in the Dominican Republic,[148] their denial of rights in social and economic fields in Croatia[149] and Yemen,[150] xenophobia and intolerance in Liechtenstein,[151] Belgium[152] and Lithuania[153] to more structurally oriented differential treatment in Bulgaria,[154] Iraq[155] and Thailand,[156] outright violence, attacks and hate crimes in Romania,[157] The United Kingdom,[158] Russia,[159] Poland,[160] Austria,[161] Georgia,[162] Ukraine,[163] Armenia[164] and Turkey.[165]

144 CCPR/C/SR.2836: 6, 2011.
145 CCPR/C/SR.2836: 9, 2011.
146 CCPR/C/SR.2836: 13 Motoc, 14 – 15 Amor, 2011.
147 CCPR/C/IRN/CO/3: 23 – 24/30, 2012.
148 A/48/40 (I): 462/466, 1993.
149 CCPR/CO/71/HRV: 22, 2001. Similar concerns, but limited to the plight of the Roma and Serb minorities, were expressed by the committee following the 2009 review of Croatia (CCPR/C/HRV/CO/2: 18 – 19, 2009).
150 CCPR/C/YEM/CO/5: 12, 2012.
151 CCPR/CO/81/LIE: 9, 2004.
152 CCPR/CO/81/BEL: 27, 2004. These concerns were reiterated and expanded by the committee following the 2010 review of the state party (CCPR/C/BEL/CO/5: 22, 2010).
153 CCPR/C/LTU/CO/3: 15, 2012.
154 A/48/40 (I): 746, 755, 1993. These concerns were reiterated following the consecutive review of Bulgaria in 2011 (CCPR/C/BGR/CO/3: 9, 2011).
155 CCPR/C/79/Add.84: 20, 1997.
156 CCPR/CO/84/THA: 24, 2005.
157 A/49/40 (I): 145, 1994.

Taken together, the practice of the HRC on religious minorities indicates the long and troubled history of the minority concept in international law, as numerous states have drawn upon historical arguments to explain their refusal to recognize specific rights for minority groups. While few have been as critical as the Libyan delegation, claiming that the recognition of minority rights would represent an effort to "Balkanize" Libya, many have referred to the importance of deep historical entanglements to the recognition and protection offered to religious minorities. This has been particularly entrenched in European states like Germany, Greece and Italy, where "old" minorities enjoy more expansive protections than more recently arrived communities.

Furthermore, although the HRC has evaded the concept of intersectionality, the committee has been alert to the interface between minority rights, discrimination and other provisions of the ICCPR, including hate speech, the freedom of opinion and expression, and particularly the freedom of religion or belief. While the majority of these observations link the rights of religious minorities to their rights to hold and maintain their beliefs, observations issued to countries like Yemen, Croatia and Ukraine do not, suggesting that the committee recognizes that religious minorities may be eligible for particular protection beyond a fortified protection of their freedom of religion or belief. Similarly, in its numerous observations on lacunae on religion in the legal protection of all the minorities listed in article 27 of the ICCPR, the committee has consistently appealed to the necessity of providing protection for people who belong to such minorities, not to their rights under article 18. Consequently, the lacking attention to article 27 in the practice of the individual communications procedure (Ghanea 2012: 73) seems to be less prevalent in the concluding observations issued by the committee. The religion-making of the HRC on religious discrimination and religious mi-

158 CCPR/CO/73/UK: 14, 2001. These concerns were reiterated following the 2008 review of the UK (CCPR/C/GBR/CO/6: 16, 2008).
159 CCPR/CO/79/RUS: 24, 2003. These concerns were reiterated following the 2009 review of Russia (CCPR/C/RUS/CO/6: 11, 2009).
160 CCPR/CO/82/POL: 19, 2004. These concerns were reiterated following the 2010 review of Poland (CCPR/C/POL/CO/6: 6, 2010).
161 CCPR/C/AUT/CO/4: 20, 2007.
162 A/57/40 (I): p. 56: 17, 19, 2002. The issue of differential treatment of minorities was raised by the committee again in the concluding observations following the 2007 review of Georgia, but this time in relation to the preferential treatment of the Georgian Orthodox church, under reference to article 18, not article 27 (CCPR/C/GEO/CO/3: 15, 2007).
163 CCPR/C/UKR/CO/6: 16, 2006. Similar concerns were expressed by the committee following the 2013 review of Ukraine (CCPR/C/UKR/CO/7: 11, 2013).
164 CCPR/C/ARM/CO/2: 6, 2012.

norities seems to suggest that the committee is able to recognize religion both as belief and identity. Compared with the practice of CERD, the observations issued by the HRC are more explicit about which dimension is at play, referring issues pertaining primarily to belief to article 18 and minority issues on identity to article 27, with occasional pointers to other rights as well.

5.6.3 Organizations

The HRC monitors a broad normative framework that regulates the boundaries of recognizing and registering religious communities and organizations. Among these regulations, the most elaborate is general comment no. 22 of the HRC on the interpretation of article 18 of the ICCPR:

> The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers.
>
> If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.[166]

Recognition only violates the ICCPR if it impairs the enjoyment of any rights under the Covenant, or if it discriminates against the adherents to other religions or non-believers. Hence, the recognition of a state religion or the establishment of its status as official or traditional as such does not entail a violation of the Covenant.[167]

Whereas the recognition of particular religions is closely circumscribed, registration of religious institutions and organizations is not explicitly regulated at the international level. However, given the broad nature of the rights ascribed to religious collectives, organizations and institutions in the ICCPR article 18(1), in the practice of the Special Rapporteur, and particularly in the 1981 declaration

165 CCPR/C/TUR/CO/1: 22, 2012.

166 CCPR/C/21/Rev.1/Add.4: 9 – 10, 1993.

167 While the former special rapporteur on the freedom of religion or belief, Heiner Bielefeldt, has stopped short of directly contradicting this moderate stamp of approval for the recognition of particular religions, he has significantly sharpened the conditions for such arrangements spelled out by the HRC, practically suggesting the outright disapproval of any form of state, or official religion (A/HRC/19/60: 71 – 73, 2011).

article 6,[168] access of religious communities to some mechanism to register and attain legal personality can clearly be inferred as a vital part of the normative framework of religious freedom.

Although the legal framework on recognition is more expansive and explicit, registration occupies a much more central position in the literature and legal practice on the relationship between state power and religious institutions and organizations. While recognition is rarely problematized by norm-setting bodies, registration of religious communities is a vital component of the literature on the freedom of religion or belief (see Lerner 2012, Taylor 2005, Durham 2004, Tahzib 1996). The key insight to be gleaned from this literature is that states have a legal obligation under article 18 of the ICCPR to accommodate the registration of religious organizations: Such accommodation should be non-discriminatory and transparent, and ensure access for religious organizations to collectively manifest their religion or belief.

The HRC first commented on the recognition of religious communities in 1993. During its review of Iran, immediately following its adoption of general comment no. 22, the committee observed that members of “non-recognized” religions were experiencing “serious difficulties” in the enjoyment of their rights under article 18.[169] The committee directed the state party’s attention to its recently adopted comment, suggesting that restrictions on the practice of other faiths than those that were recognized by the state party constituted a violation of article 26 (non-discrimination), and should be discontinued.[170]

In this early phase, the committee did not distinguish clearly between the recognition and the registration of religious communities: Reviewing Jordan in 1994, the concluding observations of the committee noted with concern the restrictions affecting the enjoyment by “non-recognized or non-registered” reli-

168 Article 6 declares that the right to freedom of thought, conscience, religion or belief shall include “(a) To worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes; (b) To establish and maintain appropriate charitable or humanitarian institutions; (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief; (d) To write, issue and disseminate relevant publications in these areas; (e) To teach a religion or belief in places suitable for these purposes; (f) To solicit and receive voluntary financial and other contributions from individuals and institutions; (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief; (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief; (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.”

169 A/48/40 (I): 245, 1993.

170 A/48/40 (I): 269, 1993.

gious denominations of their right to freedom of religion or belief, indicating that the material consequences of potential restrictions were more important than the nature and criteria of recognition or registration in itself.[171]

Reviewing Costa Rica, also in 1994, the committee expressed its concern with the pre-eminent position of the Catholic Church, particularly the power of the National Episcopal Conference to effectively impede the teaching of other religions than Catholicism in public schools,[172] a concern that was reiterated in the consecutive review of Costa Rica in 1999.[173] Similar views were expressed in the review of Slovenia, where several members of the committee expressed their dissatisfaction with the role of the Church as provider of religious education, referring the state party to its recent general comment on the issue,[174] concerns that were also carried over to the concluding observations of the committee.[175] In these early observations, the committee concentrated its efforts on practical restrictions on the freedom of religion or belief arising from state favoritism of one religious tradition or institution.

During its meeting with the delegation from Paraguay in 1995, however, the committee displayed signs of a more critical attitude towards state-religion relations, as numerous committee members requested additional information on the Paraguayan constitutional provision proclaiming the Catholic Church the "leading" religion of the nation.[176] Despite assertions by the state delegation that the provision was merely declaratory with no detrimental effect on the position of other religions,[177] the committee remained unconvinced, as one member linked the dominant role of Catholicism to the lack of gender equality in the Paraguayan legal framework,[178] and the concluding observations expressed its concern that the dominant role of the Catholic Church could lead to "certain de facto discrimination" against other religions,[179] indicating a causal link between constitutional favoritism and the treatment of other religions.

171 A/49/40 (I): 235, 1994.
172 A/49/40 (I): 158, 1994.
173 A/54/40 (I): 285, 1999.
174 CCPR/C/SR.1347: 80 Evatt, 88 Lallah, 1994.
175 A/49/40 (I): 351, 1994.
176 CCPR/C/SR.1392: 13 Bán, 26 Medina Quiroga, 27 Prado Vallejo, 1995 & CCPR/C/SR.1396: 33 Prado Vallejo, 1995.
177 CCPR/C/SR.1396: 22, 1995.
178 CCPR/C/SR.1396: 37 Medina Quiroga, 1995.
179 A/50/40: 212, 1995.

This critical line towards state favoritism was followed up and linked to formalized registration practices during the reviews of Slovakia and Lithuania in 1997, where the committee for the first time expressed its views on legal provisions spelling out the criteria for religious organizations to obtain official registration. Unlike its previous observations on the boundaries between state and religion, these reviews addressed the viability of concrete legal mechanisms whereby states assessed the religiosity of applicant communities. In the case of Slovakia, the committee asked the state party to provide more information on the nature of registration criteria in its list of issues.[180] During the review, the state delegation provided a comprehensive account of the procedure:

> Requests [for registration] must provide administrative information such as the society's name, headquarters address and officials, as well as a statement acknowledging respect for national laws and tolerance of other societies and non-believers. Documentation was required on the society's status and management, including details of persons authorized to receive stipends and how they were appointed and dismissed. Registration was carried out by the Ministry of Culture, which also looked into aspects such as conformity with the law, morality, tolerance and respect for the rights of others. Registration by the Ministry was an administrative act, governed by the administrative code in force. The Supreme Court could be requested to review any refusal of registration. Currently, 15 churches and religious associations were registered.[181]

Additionally, the state representative introduced a law from 1993 that made religious communities eligible to apply for the restitution of land confiscated during occupation and Communist rule, between 1945 (1939 for Jewish communities) and 1990.[182] The committee took issue with several of these provisions, inquiring on the potential for discrimination implied by applying a numerical limit to communities eligible for registration, the nature of subsidies offered following registration, the percentage of the population that were not members of any of the registered groups, and the relation between registration and restitution of property.[183] In its concluding observations, the committee praised the legal initiative to provide restitution of confiscated property to religious communities, but characterized the criteria for registration as "very restrictive", leading to the exclusion of some religious communities from being legally recognized and able to

180 The list is not available through the official documentation systems of the United Nations, but is referred to in the summary records of the third meeting with Slovakia (CCPR/C/SR.1591: 52, 1997).
181 CCPR/C/SR.1591: 52–54, 1997.
182 CCPR/C/SR.1591: 55, 1997.
183 CCPR/C/SR.1591: 66 Pocar, 1997 & CCPR/C/SR.1592: 6 Medina Quiroga, 1997.

function freely. In order to rectify this situation, the committee recommended that the Slovak authorities adopt "all necessary measures" to amend the relevant legislation.[184]

Later in 1997, the committee reviewed Lithuania, encountering a largely similar situation wherein a state power that had recently gone through a major political overhaul had adopted a legal framework that encompassed both the registration of religious communities and the restitution of property confiscated during Communist rule, which ended in 1990. Like Slovakia, Lithuania was also asked to clarify its registration procedure, to which the state delegation responded that

> ...the Law [on religious communities] granted the status of traditional religious denominations and communities to those religions which had historic roots in Lithuania and comprised a part of its historical, spiritual and social heritage. According to the Constitution, traditional or Staterecognized churches and religious organizations enjoyed the rights of a legal person. Under article 6 of the Law, other nontraditional denominations could be granted State recognition provided their teaching and rites were not contrary to law and morality. Such nontraditional religious denominations acquired the rights of a legal person upon registration of their statutes or equivalent documents.[185]

Despite similarities, the criteria for registration in Lithuania differed from the Slovak approach in several respects: rather than requiring a minimum membership, the state party employed the distinction between "traditional" vs "non-traditional" religions, in explicit violation of the guidance offered by the HRC in general comment no. 22 (see above). The state delegation stressed that the registration procedure was closely tied to the restitution of property, although only religious communities operative during Communism were eligible to apply.[186] The committee observed in its concluding observations that registration requirements, and distinctions between religious communities in that connection, could result in religious discrimination, recommending that the state party ensure that no such discrimination take place.[187] The committee's concerns were reiterated following the 2004 review of Lithuania.[188]

Taken together, the reviews of Slovakia and Lithuania offer several insights into the approach of the HRC to the issue of registration in the latter half of the 1990s: First, the overarching issue remained that of non-discrimination, as the

184 A/52/40 (I): 368, 382, 1997.
185 CCPR/C/SR. 1635: 40.
186 CCPR/C/SR.1635: 60, 1997.
187 A/53/40 (I): 175, 1998.
188 CCPR/CO/80/LTU: 16, 2004.

committee expressed its concern with the application of minimum membership requirements, distinguishing between different categories of registration and the extent to which non-registered communities may be able to function freely. All of these issues relate to the distinctions made by state parties between religious communities that were historically recognized, and the treatment of more recent or numerically insignificant communities. Second, the committee did not seem to have a clear position on the topic of restitution of church property confiscated by Communist authorities prior to 1990, as the Slovak authorities were commended for this system, while the Lithuanian version was ignored. Third, both states indicated moral limitations to the registration of religious communities, an issue that the committee elaborated extensively on in its general comment (see above), but ignored during the reviews.

Since the latter half of the 1990s, the committee has maintained its criticism of states parties operating with hierarchical systems of recognition and registration, but has increasingly dealt with recognition and registration separately. Hence, while the committee has expressed its concern with the recognition of special status of Judaism in Israel,[189] Buddhism in Mongolia,[190] the Catholic Church in Chile,[191] Costa Rica,[192] Argentina,[193] Venezuela[194] and Liechtenstein,[195] the Orthodox Church in Greece[196] and the Lutheran churches in Denmark[197] and Iceland,[198] these reviews have largely addressed the potential for discrimination inherent to constitutional provisions securing a separate status for these religious communities in areas such as financing and education.[199] These cautious reminders, that are often offered in general, non-specific language, are seldom followed up in the review of the next report from state parties.

189 A/53/40 (I): 324, 1998.
190 CCPR/C/79/Add.120: 16, 2000.
191 A/54/40 (I): 220, 1999.
192 A/54/40 (I): 285, 1999.
193 CCPR/CO/70/ARG: 16, 2000.
194 CCPR/CO/71/VEN: 25, 2001.
195 CCPR/CO/81/LIE: 13, 2004. Although the concluding observations do not mention the Catholic Church directly, the summary records indicate that the differential treatment in question referred to the special status of the Catholic Church (CCPR/C/SR.2205: 39).
196 CCPR/CO/83/GRC: 14, 2005.
197 CCPR/C/DNK/CO/5: 12, 2008.
198 CCPR/C/ISL/CO/5: 13, 2012.
199 One notable exception is the 2000 review of Ireland, where the committee engaged the practical preference bestowed on religious organizations, who could be exempt from anti-discrimination legislation in employment processes, even for non-religious functions, which could lead to discrimination (A/55/40 (I): 443, 2000).

Parallel to these mild reproaches, the committee has displayed a more active interest in the potential for discrimination in registration procedures. In particular, the committee has been dismissive of any form of compulsory registration regimes, which have mainly been identified in Eastern European and post-Soviet states. These restrictions vary, from the prohibition of unregistered religious activity in Uzbekistan,[200] Kazakhstan[201] and Turkmenistan,[202] to the absolute ban on some religions in Tajikistan,[203] restrictions on non-registered religious practices in Azerbaijan,[204] and the correlation between registration and status as conscientious objector to military service in Kyrgyzstan[205] and Ukraine.[206] These states generally display a severely restrictive approach to any manifestations of religion or belief, encompassing education, draconian terrorism legislation and various administrative penalties, including limited printing quotas for religious texts, all of which have been roundly criticized by the HRC.

Another strain in the practice of the HRC on registration has engaged the material provisions of registration regimes specifically, contesting their legitimacy and compatibility with the provisions of the ICCPR. Drawing on the criticism of Slovakia and Lithuania in 1997, these observations have generally been suspicious of any substantive and definite criteria for the registration of religious communities or organizations: Reviewing Belgium and Armenia in 1998, the committee reiterated its concern with numerical limits as part of registration requirements, and the relation between registration and access to public funding.[207] At the same session, the committee approached the issue from a different angle during its review of Austria, expressing its concern with the restriction of recognized minorities to "certain legally recognized groups" in Austria, and with the legal provisions and benefits relating to the recognition of religions, which may violate articles 18 and 26 because they distinguish between recognized and non-recognized religions.[208]

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200 CCPR/CO/71/UZB: 24, 2001. These concerns were reiterated following the 2005 (CCPR/CO/83/UZB: 22, 2005) and 2010 (CCPR/C/UZB/CO/3: 19, 2010) reviews of the state party.
201 CCPR/C/KAZ/CO/1: 24, 2011.
202 CCPR/C/TKM/CO/1: 17, 2012.
203 CCPR/C/TJK/CO/2: 20, 2013.
204 CCPR/C/AZE/CO/3: 13, 2009.
205 CCPR/CO/69/KGZ: 18, 2000.
206 A/57/40 (I): p. 35: 20, 2002. Similar concerns, albeit without direct references to the registration regime, were expressed following the consecutive reviews of Ukraine, in 2006 (CCPR/C/UKR/CO/6: 12, 2006) and 2013 (CCPR/C/UKR/CO/7: 19, 2013).
207 CCPR/C/79/Add.99: 25, 1998 & CCPR/C/79/Add.100: 19, 1998.
208 CCPR/C/79/Add.103: 14 – 15, 1998.

In the review of Hungary in 2002, the nature and number of acceptable criteria for the registration of religious communities was raised during the meeting between the committee and the state party. The committee expressed its concern with draft tax legislation that would be advantageous for "established churches", to the detriment of other religious communities in the list of issues prior to the meeting.[209] Responding to the question during the meeting, a representative from the state delegation explained that the earlier legal framework had required only the support of 100 signatories for religious communities to obtain registration with tax benefits, an arrangement that had been "abused by groups whose activities were unrelated to religious belief". The amendments therefore featured "additional criteria", attempting to define the notion of religion.[210] According to the draft law, religion was

> ...an ideology or philosophy which contained systemic convictions about the supernatural, whose doctrines related to all reality, and which covered the whole human personality and set standards for behaviour which did not infringe on morals or human dignity. It further stipulated that an activity was not religious if it was primarily political, psychic, commercial, educational, cultural, social or medical, or primarily pertained to sports, children, or youth protection activities. The draft amendments also altered the registration rules in order to ensure uniform application of the law, and allowed for different treatment of certain churches based on their differing roles in society.[211]

Commenting on the draft law, one member of the committee observed that there was no universally accepted definition of religion that he was aware of, and suggested that the state party should evade definitions, so as not to cast judgements on the convictions of others.[212] By way of elaboration, he also suggested that defining religion "caused more problems than it solved", and recommended that Hungary promote the comparative study of religions, since ignorance was often a source of intolerance.[213] Although the state representative specified that the law had not yet been amended and no definitions had been attempted because of the "plethora of sects" emerging in Hungary, the committee nevertheless expressed its concern with discriminatory practices with respect to the registration of "certain religious groups" in Hungary, urging the state party to ensure that religious organizations are treated in a manner that is compatible

209 CCPR/C/73/L/HUN: 22, 2001.
210 CCPR/C/SR.1994: 28, 2002.
211 CCPR/C/SR.1994: 29, 2002.
212 CCPR/C/SR.1994: 46 Amor, 2002.
213 CCPR/C/SR.1994: 47 Amor, 2002.

with the Covenant.[214] Similar sentiments were expressed to Moldova in 2002, chastising the state party for providing "artificial hurdles" in its registration procedures, preventing individuals and organizations from exercising their religious freedom.[215] These concerns were reiterated during the 2009 review of Moldova,[216] and were echoed in observations following the 2011 review of Mongolia, where the committee criticized the "burdensome administrative procedures" for registering religious communities.[217]

Reviewing Luxembourg in 2003, the committee encountered a novel approach to the criteria necessary to obtain registration as a religious organization. In the list of issues prior to the meeting, the committee questioned the criteria employed by the state party in the allocation of state funds to religious communities, asking for more information on requests for financial aid from the Anglican and Muslim communities.[218] Following the meeting,[219] the committee expressed its concern with the criteria applied by the state party in the allocation of funding to religious organizations, which required such organizations to have "membership of a religion recognized worldwide and officially in at least one European Union country", as this may not be compatible with articles 18 and 26 of the Covenant.[220]

Revisiting Belgium in 2004, the committee did not reiterate its concern with the minimum membership limits of the registration regime (see above). Rather, the list of issues requested more information on the new practice of recognizing religious communities at the regional levels, why no mosques had been approved yet under this new practice, and what practical consequences followed from registration.[221] During the meeting, a state representative explained that delays in registration were due to internal disagreements within the state-appointed board of Muslim communities charged with the regional registration process, disagreements that also encompassed the proper criteria for registration.[222] Closing the session, a member of the committee observed that Belgian authorities could have done more to avert the problems leading to the lack of registered

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214 CCPR/CO/74/HUN: 14, 2002.
215 CCPR/CO/75/MDA: 13, 2002.
216 CCPR/C/MDA/CO/2: 25, 2009.
217 CCPR/C/MNG/CO/5: 24, 2011.
218 CCPR/C/77/L/LUX: 15, 2002.
219 Unfortunately, the summary records of the session, CCPR/C/SR.2080, CCPR/C/SR.2081 and CCPR/C/SR.2089 are not available in any official records of the UN, or in any other online database.
220 CCPR/CO/77/LUX: 7, 2003.
221 CCPR/C/80/L/BEL: 21, 2003.
222 CCPR/C/SR.2198: 37, 2004 (translation from the French original), CCPR/C/SR.2199: 13, 2004.

mosques,[223] a concern that was also expressed in the concluding observations of the committee, where it added that the state party should step up its efforts to ensure that Islam enjoys the same advantages as other religions.[224] During the 2010 review of Belgium, the registration of religious communities was not mentioned in the list of issues or concluding observations of the committee, but summary records from the meeting between the committee and the state party indicate that the registration of mosques was well underway.[225]

Reviewing Georgia in 2007, the committee returned to the nexus between registration of religious communities and the restitution of property confiscated under Communist rule. In the list of issues, the committee asked whether the state party intended to extend the legal recognition offered to the Georgian Orthodox Church to other communities. Additionally, the committee asked the state party for more information on acts of intolerance aimed at religious groups not considered "traditional", intimating a relation between restrictive registration practices and religious intolerance.[226] During the meeting, one member of the committee questioned the rationale for the differentiated registration regime in Georgia, and added her concerns for the lacking restitution of property to the Armenian and Catholic communities following the end of Communist rule.[227] Responding to these questions, one member of the state delegation elaborated extensively on the registration regime for other religions than the Orthodox Church, stressing their non-discriminatory nature and compatibility with the standards of the Covenant.[228] In its concluding observations, the committee reiterated its concern in the concluding observations that the different status of other religious groups could lead to discrimination, and regretted lacking efforts to restitute property confiscated during Communist rule.[229]

During the review of Monaco in 2008, the committee added a new dimension to its review of registration practices, questioning the state party on the institutional framework for the registration of religious organizations. While the issue was not raised in the list of issues or the meeting with the state party, the concluding observations expressed the committee's concern with the discretion given the state administration in deciding what constituted the "sectarian nature" of applicant communities, a term the committee also requested further

223 CCPR/C/SR.2199: 29 Amor, 2004.
224 CCPR/CO/81/BEL: 26, 2004.
225 CCPR/C/SR.2751: 46, 2010.
226 CCPR/C/GEO/Q/3: 17–18, 2007.
227 CCPR/C/SR.2484: 40 Motoc, 2007.
228 CCPR/C/SR.2485: 19, 2007.
229 CCPR/C/GEO/CO/3: 15, 2007.

clarification of.[230] Similar concerns about the institutional arrangements of registering religious organizations were expressed during the review of Azerbaijan in 2009, where the role of the Caucasus Muslim Board in the registration process was sought clarified in the list of issues,[231] and again during the meeting with the state party.[232] A member of the state delegation explained that the role of the board was to inform the relevant State committee "whether a given community which applied to be registered was Muslim or not", stressing that no communities had been denied registration so far.[233] The committee did not find this clarification sufficient, and expressed its concern with the lacking information about the "exact composition, criteria and prerogatives" of the Board in its concluding observations.[234]

In its most recent practice, the committee has continued its emphasis on the potential for discrimination when states parties distinguish between "traditional" and other religions in their registration practices, expressing their concern for the nature and consequences of such distinctions in its reviews of Serbia and Bulgaria in 2011.[235] In a similar vein, Turkey received criticism following its 2012 review for the restrictions imposed on religious communities that were not covered by the 1935 Law of Foundations.[236]

Taken together, the practice of the Human Rights Committee on the role of religious institutions and organizations has evolved considerably from 1993 to 2013. This evolution can roughly be divided into three sections. First, in an early phase after the adoption of general comment 22 in 1993, the committee appeared to consider recognition and regulation to be virtually coextensive, issuing observations that criticized state favoritism towards religious communities in general. During this early phase, the committee did not develop a geographical focus, as states from the Middle East, Europe and Latin America received various observations on their practices.

Second, towards the latter half of the 1990s, the committee started distinguishing between registration procedures, whereby minority religious groups could seek state approval of some form, and the various modes of legal recognition, mainly constitutional provisions safeguarding the leading, prominent or historically significant position of one or several religious organizations. During

230 CCPR/C/MCO/CO/2: 13, 2008.
231 CCPR/C/AZE/Q/3: 15, 2008.
232 CCPR/C/SR.2639: 63 Amor, 2009.
233 CCPR/C/SR.2640: 19, 2009.
234 CCPR/C/AZE/CO/3: 13, 2009.
235 CCPR/C/SRB/CO/2: 20, 2011 & CCPR/C/BGR/CO/3: 25, 2011.
236 CCPR/C/TUR/CO/1: 21, 2012.

this phase, the committee repeatedly expressed its concern with the potential for discrimination inherent to such constitutional provisions. These concerns were mostly directed towards Latin American states, although one Middle Eastern state, two Scandinavian and one Asian state also received criticism for their preference for a majority religious organization.

In a third phase, from the middle of the 2000s and up to the present, the committee appears to have abandoned its general skepticism towards constitutional arrangements favoring particular religious organizations, concentrating its efforts on the material provisions regulating registration practices. In these efforts, the committee has been entirely dismissive of any forms of compulsory registration, which has mostly been an issue in Central Asia and Eastern Europe. Additionally, the committee has been highly critical of any substantive criteria as part of the registration process. Numerical limits have been particularly unpopular with the committee, as has any form of additional rights or privileges associated with registration.

The main concern with criteria for registration, however, has been with the numerous states that distinguish between "traditional" or otherwise elevated religious organizations on the one hand, and "non-traditional", religious communities on the other. Encountering such registration procedures, the committee has consistently expressed its concern for their potentially discriminatory side effects, echoing its former concern with constitutional privileges bestowed on particular religious organizations. Observations on substantive criteria for registration and the relationship between such criteria and the distinction between ordinary and traditional religious organizations have exclusively been directed at European states. Finally, in recent years, the committee has displayed an increasing interest in the institutional framework of registration, expressing its concerns with excessive definitional powers, whether they reside in state bureaucracies or in external institutions.

Despite the various twists and turns in the practice of the committee on the recognition and registration of religious institutions and organizations, the principle of non-discrimination runs throughout from 1993 to 2013 as an overarching concern: in every concluding observation on the issue, the primary purpose of the committee has been to insist on a level playing field, securing that all religious worldviews have equal access to organize and attain legal personhood, through which they may be eligible for whatever rights and duties the states see fit. How states should proceed in order to achieve such a level playing field, however, is entirely another matter, as the committee has refrained from proposing particular rules and regulations for the recognition or regulation of religious organizations, limiting its recommendations to general calls on states to bring their legislation in line with the provisions of the Covenant.

The unwillingness of the HRC to issue specific recommendations on the acceptable content of criteria in registration procedures echoes the general approach of the committee to the proper boundaries of religion in international law, conceived of as a private, individual matter of conscience, principally beyond state control: by evading any specific recommendations, the committee maintains the open-ended nature of the right to freedom of religion or belief enshrined in article 18 of the UDHR and the ICCPR, and its interpretation of this right as "wide-reaching and profound" in its general comment no. 22. While this unwillingness may principally conserve the intended reach of the article, it also renders the concluding observations of the committee on the topic vague and obfuscating, granting states wide measures of discretion.

5.6.4 Religious Law

Although the reporting guidelines of the HRC explicitly encourage states to report on the existence and scope of religious law, very few states do so. Consequently, the influence of religious law has been a marginal topic in the monitoring practice of the committee. The committee first commented on the issue in its review of Iran in 1993. In the list of issues, the committee requested information on a number of topics relating to the boundaries between religious and secular law, including:

> (b)How can a conflict that may arise between the provisions of the Covenant and Islamic law be resolved? In view of the statement made by the representative of the Islamic Republic of Iran during the consideration of the initial report, has there been a general review undertaken of the compatibility of the provisions of the Covenant with Islamic law?[237]

Responding to these questions during the review, the state delegation dismissed any conflict between the Covenant and Islamic law, although there was no judicial precedent from the court system or the Guardian council.[238] During the review, one committee member summarized his many and profound concerns on the implementation of the Covenant in the state party, as an issue directly relating to the relation of religion to law:

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237 CCPR/C/SR.1193: 14, 1992. The list of issues is not available in the online document system of the UN, and is therefore quoted from the summary records from the interactive meeting between the state party and the committee.
238 CCPR/C/SR.1193: 16 – 19, 1992.

> The main concern of members was whether the Covenant might come into conflict with Islam. It was well known that Islam was a merciful and compassionate religion. However, in modern times, the image of Islam had been distorted and had caused the non-Muslim world to view Islam as isolated from its true nature. The Covenant was not a perfect instrument. However, it had been formulated and adopted with the help of many countries, including Muslim nations, and had to be accepted as it was.[239]

Building on this general tension, another committee member observed that the Iranian constitutional provision on the role of Islam as the origin of all its other laws may be in conflict with the Covenant, which could not be applied in such a way as to reflect considerations determined by any one religion.[240] Over the course of a record seven meetings[241] between the state party and the committee,[242] every possible aspect of the interface of law and religion was discussed, before the committee issued a set of concluding observations where it observed that it found it "somewhat difficult" to assess the compatibility of Iranian laws with the Covenant due to its lack of transparency and predictability. Furthermore, the committee noted "the numerous, explicit or implicit, limitations or restrictions associated with the protection of religious values, as interpreted by Iranian authorities", seriously impeding the implementation of human rights in the state party.[243]

Reviewing India in 1997, one committee member commented on the different rules for marital relations in the personal laws of Muslims and Hindus, insisting that the freedom of religion could not be used as an excuse for religious discrimination, and inquiring on the prostitution of children for religious reasons.[244] The

239 CCPR/C/SR.1193: 28, Sadi, 1992.

240 CCPR/C/SR.1193: 46 Chanet, 1992.

241 The standard number of meetings for the review of a periodic report at the HRC is two. While the committee occasionally convenes three or four meetings for particularly broad assessments, I have never come across any other report to which the committee has dedicated seven meetings.

242 CCPR/C/SR.1193, 1992, CCPR/C/SR.1194, 1993 CCPR/C/SR.1195, 1992, CCPR/C/SR.1196, 1993, CCPR/C/SR.1251, 1993 and CCPR/C/SR.1252, 1994.

243 CCPR/C/79/Add.25: 6, 1993. Similar sentiments were expressed during the 2011 review of Iran, where the religious nature of the Iranian legal system became a major topic during the meeting (CCPR/C/SR.2834: 18 Flinterman, 42 Thelin, 2012), and was followed up in the concluding observations, where the committee noted with concern that "reference is made in the State party's system to certain religious tenets as primary norms", recommending the full implementation of the Covenant and suggested to the state party that it should ensure that "internal norms" were not invoked as justification for the non-implementation of human rights provisions (CCPR/C/IRN/CO/3: 5, 2012).

244 CCPR/C/SR.1605: 4–5, 7 Medina Quiroga, 1997.

state party pointed out that some issues were beyond the reach of the federal state, and it was up to each regional administration to govern, including "religious and social practices, customary law, the administration of civil and criminal justice, property and the transfer of land and resources".[245] In its concluding observations, the committee pointed out that

> …the enforcement of personal laws based on religion violates the right of women to equality before the law and to non-discrimination. It therefore recommends that efforts be strengthened towards ensuring the enjoyment of their rights by women without discrimination and that personal laws be enacted which are fully compatible with the Covenant.[246]

While the observation stops short of recommending the discontinuation or abolition of personal laws based on religious affiliation, it does imply a structural critique of maintaining different legal rules for different religious communities.

Similar sentiments were expressed in the reviews of France and Lebanon, also in 1997. During the review of France, one member questioned the practice in the French Overseas Territory of Mayotte, where women retained their status under personal laws derived from Islam, in violation of article 26 (non-discrimination before the law) and 27 (the rights of minorities) of the ICCPR,[247] to which the state delegation responded that anyone may repudiate the personal law system and choose to be governed by civil law instead.[248] In its concluding observations, the committee observed that the system in the French overseas territories "might in some situations lead to discriminatory attitudes and decisions, especially against women", suggesting a comprehensive study to review the legal system in Mayotte and New Caledonia in order to eliminate possible violations of article 3 on gender equality.[249]

In the review of Lebanon, the committee inquired about the existence, nature and competence of religious courts,[250] and the nature of the requirements that eligibility for political office depended on membership in a religious community.[251] Members of the state delegation responded that religious courts mainly dealt with marriages, and that the only requirement for eligibility to political

245 CCPR/C/SR.1605: 23, 1997.

246 CCPR/C/79/Add.81: 17, 1997.

247 CCPR/C/SR.1600: 13 Evatt, 1997. Medina Quiroga also "associated herself" with the question at 14, and also suggested the practice may violate article 3 of the ICCPR on gender equality.

248 CCPR/C/SR:1600: 35, 1997.

249 CCPR/C/79/Add.80: 11, 1997.

250 CCPR/C/SR.1578: 38 Medina Quiroga, 2000.

251 CCPR/C/SR.1578: 40 Ando, 2000.

office was religious affiliation, which "had little to do with religious faith".[252] After an extensive discussion on the competence of religious courts and the consequences of membership in religious communities, one committee member concluded that religion "seemed to be an obstacle" to the full implementation of the Covenant.[253] This concern was carried over to the concluding observations, where the committee pointed out that the Lebanese system of marriage laws and eligibility for political office dependent on religious affiliation did not comply with the Covenant, and recommended the state party to conduct a review of its legal framework on these issues.[254]

In its review of Israel in 1998, the committee expressed its concern over the application of religious laws and the reservation against article 23 (on marriages) of the Covenant lodged by the state party in this respect.[255] Responding to the question, members of the state delegation explained that secular courts had "attempted to intervene" in certain matters regarding marriages, although child marriages, which were acceptable within the Jewish and Muslim courts, were "very uncommon".[256] In its concluding observations, the committee expressed its concern with the religious courts and their rules on marriages and burials, with no civil alternative. The committee suggested that the state party should "facilitate civil alternatives" for those not belonging to a religion.[257]

The early practice of the HRC on the influence of religious law on the implementation of the provisions of the ICCPR was careful to relate its comments to material provisions of the Covenant. This basic line of argument has also been consistent throughout the later practice of the committee on the topic of religious laws, where the committee has combined observations on the provisions of the ICCPR violated by the existence and enforcement of specific legal rules derived from religious traditions with recommendations to states parties to eliminate these violations through recourse to legal reforms.

Such concluding observations have been issued on the detrimental effects of applying the Islamic Sharia to the equality between men and women in Gam-

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252 CCPR/C/SR.1578: 50, 59, 2000.

253 CCPR/C/SR.1579: 63 Ando, 2000 (translation from the Spanish original).

254 CCPR/C/79/Add.78: 18, 19, 22, 1997.

255 CCPR/C/SR.1676: 4 Lallah, 8 Medina Quiroga, 1998. The reservation lodged by Israel reads as follows: "With reference to Article 23 of the Covenant, and any other provision thereof to which the present reservation may be relevant, matters of personal status are governed in Israel by the religious law of the parties concerned. To the extent that such law is inconsistent with its obligations under the Covenant, Israel reserves the right to apply that law". United Nations Treaty Collection https://treaties.un.org/ (accessed 31.08.2016).

256 CCPR/C/SR.1677: 55, 57, 1998.

257 CCPR/C/79/Add.93: 29, 1998.

bia,[258] Greece[259] and Indonesia,[260] the discrimination against non-Catholic couples in Costa Rica, where only Catholic marriages have civil effect,[261] and on the binding effects and lack of appeal in decisions taken by religious courts in Ethiopia regarding inheritance, marriage, divorce and the guardianship of minors.[262] The Philippines has been criticized for its acceptance of religious courts sanctioning underage marriages and polygamy,[263] while Djibouti has been urged to “harmonize” its interpretations of the Islamic Sharia on inheritance, divorce, marriage and other family matters.[264]

The monitoring practice of the HRC on religious law displays the broad interface between religiously derived legal rules and key provisions of the Covenant. Unlike CERD, which has primarily stressed the discriminatory potential of applying religious laws, the HRC has emphasized the clash between the material provisions of Catholic and Islamic law and provisions of the Covenant, in particular regarding its rules on marriage and divorce (article 23)[265] and on the access to due process (article 14).[266]

258 CCPR/CO/75/GMB: 16, 2004.
259 CCPR/CO/83/GRC: 8, 2005.
260 CCPR/C/IDN/CO/1: 6, 2013.
261 CCPR/C/CRI/CO/5: 10, 2007.
262 CCPR/C/ETH/CO/1: 22, 2011.
263 CCPR/C/PHL/CO/4: 11, 2012.
264 CCPR/C/DJI/CO/1: 7, 2013.
265 Article 23 reads in full: “1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. 2. The right of men and women of marriageable age to marry and to found a family shall be recognized. 3. No marriage shall be entered into without the free and full consent of the intending spouses. 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.”
266 Article 14 reads in full: “1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. 2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. 3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and

5.7 Summary

As the monitoring body entrusted to oversee the implementation of the ICCPR, the concluding observations of the Human Rights Committee carry great influence, both on the practice of the other treaty bodies, and well beyond the United Nations. Hence, the way the committee approaches religion has potentially far-reaching consequences for how the concept is understood and conceptualized. Unlike the other treaty bodies, to which the notion of religion is mostly peripheral or secondary in nature, the HRC monitors a comprehensive set of provisions on religion, at the heart of which lies its approach to the content and scope of article 18. While the concluding observations issued by the committee on minorities, discrimination, organizations and the role of religious law can sometimes leave out reference to article 18, the underlying notion of religion informing the work of the committee is mainly derived from the distinction in the provision between deeply held beliefs within an untouchable *forum internum* and its external manifestations, which can be displayed within the confines of a closely circumscribed *forum externum* (see chapter 3).

Despite its dominance, the "Protestant" notion of religion developed in article 18, where belief is primary and all its external trappings are secondary, is

in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g) Not to be compelled to testify against himself or to confess guilt. 4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. 6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him. 7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

constantly played out in contrast to more subtle and implicit notions of religion/s conceived of as identity or as a social phenomenon. Throughout its monitoring practice, the HRC has developed its approaches to religion by contrasting the freedom of each individual to the established powers of state-sanctioned religious dogma and the powers of religious institutions and organizations in society. In these observations, the committee has consistently used the norms of the ICCPR on the freedom of religion or belief, the right to non-discrimination and the rights of minorities to limit the social, political and legal influence of religious communities and organizations. In this way, the HRC frequently construes social and organizational dimensions of religion as the "other", the counter concept and chief limitation of the rights of each individual under article 2 to equal treatment, under article 18 to enjoy freedom of religion or belief, and under 27 to profess and practice their own religion.

This preference for the individual over the collective in religious matters is perfectly in line with the practice of the committee under its individual complaints mechanism and the tenor of its general comment no. 22, both of which emphasize the broad and pervasive rights of individuals to choose their own beliefs and the clear-cut limits of states' involvements with these beliefs. Within this particular frame of reference, the social, cultural or any other role played by religious doctrines, practices and beliefs, merit no more special treatment or concern than do comparable, non-religious alternatives. As such, the religion encountered by the HRC beyond its core provisions remains largely undifferentiated from its surroundings.

In this particular respect, the HRC is alone among the treaty bodies examined in this book: From the tentative suggestions of CERD that religious differences, leaders and doctrines can play a role in preventing or exacerbating violent conflict and to the broad-based engagement with religious leaders prescribed by the committees monitoring CEDAW and the CRC, the other committees increasingly see the social role of religion as decisive to the successful implementation of the treaties they are set to monitor. The disinterest in religion is all the more striking for the HRC due to its role as the committee in charge of the legal framework that most decisively influences the legal boundaries for religious individuals, communities and organizations in society.

The tendency of the HRC to only address religion whenever it is explicitly covered by one or more of its material provisions brings its approach close to that favored by actors at the first United Nations, as an unspecified, yet ultimately benevolent force in society that should be cherished and protected. By evading the actual influence of the social, political and cultural, or simply "lived" notions of religion (see chapter 8) in the societies that it monitors, the committee has been able to focus stringently on the material provisions of the ICCPR that

explicitly regulate religion in some way or form. Whenever it has encountered states that have sought to pin down one specific approach to religion, particularly in their registration procedures, the committee has been adamant that no specific definition should be adopted. Likewise, its general comment no. 22 on the interpretation of article 18 stresses that belief and religion are to be "broadly construed", and that they should not be limited to "traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions". This *via negativa* approach secures the lofty ambitions of the political actors of the first UN to keep the concept of religion open and inclusive. However, by refusing to fill the concept with any content, and by ignoring the social and cultural role of religion in human rights treaty implementation, the HRC simultaneously complicates the "vernacularization" of the provisions on religion in the ICCPR.

Parallel to its refusal to allow any substantial content to the concept of religion, the legalism of the HRC has led it to urge states to adopt legislation that protects the rights of religious minorities, even in cases where it has not contested the lack of such minorities in the state in question: From its literal, legalist reading of the obligations on states parties under article 27 of the ICCPR, all states are required to adopt legal measures protecting the rights of ethnic, religious or linguistic minorities. Hence, the committee requires the adoption of categories of minority identification that do not necessarily align well with how different segments of the population identify themselves. In this way, the HRC runs the risk of "religionizing" the minority concept in states where no such identification has previously been common—not unlike the "ethnicization" of minorities advised by CERD (see chapter 4).

6 The Committee on the Elimination of Discrimination against Women

6.1 Introduction

Before CEDAW entered into force in 1981 upon the 20th ratification of the instrument, the convention had earned the questionable reputation of provoking the largest number of reservations from substantial articles of any UN human rights treaty (Riddle 2002: 606). While religion is not a part of the convention text, it is a significant rationale cited by states parties for their reservations (Krivenko 2008: 117). Like every other human rights treaty, CEDAW has a clause (28(2))[1] prohibiting reservations that are incompatible with the object and purpose of the treaty; however, as with every other similar treaty, the clause has never been applied, a decision for which the committee has received criticism (Minor 1994: 145).

Adopted in 1979, in the middle of the United Nations Decade for the Advancement of Women (1975–1985), CEDAW was the end result of a drafting process effectively started with the creation of the Commission on the Status of Women (CSW) under the auspices of the ECOSOC in 1946. The issue of women's rights gained momentum at the UN in the 1960s, particularly after the adoption of ICERD, the ICESCR and the ICCPR, simultaneously setting precedents for the formation of human rights treaties, and reproducing the gender-biased catalogues of rights launched in the UDHR in 1948 (Charlesworth 1995: 104–108). While equality between the sexes was included in all prior instruments, either relating specifically to the provisions of treaties (ICERD and the ICESCR), or also more generally to the rule of law (the ICCPR), neither of these instruments touched upon the gendered nature of social and legal issues like the structure of family life and procedures governing marriage (Defeis 2011: 400).

The legal framework creating a committee for the monitoring of CEDAW spans only five articles: Created by article 17(1)[2] of CEDAW, the committee is em-

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1 Article 28(2) reads: "2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted."

2 Article 17(1) reads: "1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties

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powered under article 21(1)[3] to make "suggestions and general recommendations" based on the examination of state reports, which are to be submitted by states parties every fourth year after the initial report, a procedure closely resembling earlier instruments. Unlike its predecessors, each composed of 18 members, the CEDAW committee has 23 members.

CEDAW does not mention religion either in the preamble or in substantial articles. Rather than reproducing the list of prohibited grounds from discrimination from the UDHR, the drafters of CEDAW modeled the convention on the approach taken in ICERD article 5, in which the prohibited grounds of discrimination are applied to a wide range of fields. Unlike ICERD, however, CEDAW does not presume the pre-existence of these rights, but creates them as additional obligations on states parties. Article 1[4] lists political, economic, social, cultural, civil or any other fields as domains in which women and men should enjoy equal rights, while subsequent articles elaborate on the specific legislative measures to be adopted by states parties in each field.

While articles 10 (equal access to education),[5] 12 (equal access to health care, including family planning),[6] 15 (equality before the law)[7] and 16 (equality

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from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems."

3 Article 21(1) reads: "The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties."

4 Article 1 reads in full: "For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

5 Article 10 reads in full: "States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training; (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality; (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and

in marriage and family relations)[8] frequently interact with religious laws, doctrines and practices, the key provisions of CEDAW when faced with the potential impact of religion is article 2 (f):

> States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake
> (...)
> (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

and article 5(a):

> States Parties shall take all appropriate measures:
>
> (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are

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other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods; (d) The same opportunities to benefit from scholarships and other study grants; (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women; (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely; (g) The same Opportunities to participate actively in sports and physical education; (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning."

6 Article 12 reads in full: "1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. 2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation."

7 Article 15 reads in full: "1. States Parties shall accord to women equality with men before the law. 2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals. 3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void. 4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile."

8 See below.

> based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

Articles 2(f) and 5(a) do not only engage the impact of religion and culture, but also prescribe courses of action for states facing such impact. As such, the articles represent opportunities to engage both the patriarchal and suppressive, and the intersectional, multivalent dimensions of religion, requiring from states that they modify patterns of conduct, in order to eliminate practices that are not favorable to gender equality.

6.2 General Recommendations

The committee monitoring CEDAW has followed the lead of previous committees by regularly issuing general recommendations on how the provisions of the treaty should be interpreted. Over the course of 34 GRs, the committee has favored a thematic approach, frequently dedicating recommendations to cross-cutting issues not covered explicitly by the convention. Across these issues, religion is frequently touched upon as a linchpin in the observance of women's rights to equality. In GR 14 on female circumcision,[9] the committee lists the encouragement of politicians, professionals, religious and community leaders to cooperate in influencing attitudes towards the eradication of female circumcision, which is characterized as a "traditional practice".

In GR 21 on equality in marriage and family relations,[10] the committee commented on the scope of articles 2 and 16,[11] which were the main causes for the

9 A/45/38(SUPP), 1990.
10 A/49/38(SUPP), 1994.
11 Article 16 reads in full: "1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an

unprecedented number of reservations to the convention. In the recommendation, the committee notes the alarming number of reservations and points out that examination of states parties reports show that "common law principles, religious or customary law" provide rights and responsibilities of married partners, rather than principles from CEDAW. Although these three legal sources "invariably" restrict women's rights to equal status and responsibility within marriage, only religious and customary laws are singled out as areas to be confronted in specific recommendations to states parties.

A similar sentiment was expressed in GR 23 on public and political life,[12] where the cultural framework of values and religious beliefs was considered to be "the most significant factors inhibiting women's ability to participate in public life". Consequently, states parties were asked to provide details of any restrictions of women's access to such participation, whether arising from legal provisions, or traditional, religious or cultural practices.

While religion in GR 21 and 23 is construed as a repository of norms that hamper gender equality, recommendations 24 on health[13] and 25 on temporary special measures[14] are more measured, focusing on respect for local variety in the implementation of health legislation and the convergence of multiple forms of religion and other grounds of discrimination, respectively. In GR 28 on the core obligations of states under article 2,[15] the committee engaged the concept of intersectionality, observing that gender is a social construct arising from the interplay with a wide range of other issues, including religion or belief:

> Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.[16]

occupation; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. 2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."

12 A/52/38/Rev.1(SUPP), 1997.

13 A/54/38/Rev.1(SUPP), 1999.

14 A/59/38(SUPP), 2004.

15 CEDAW/C/GC/28, 2010.

16 CEDAW/C/GC/28: 18, 2010.

Hence, states are encouraged to identify and change any factors that may lead to hierarchical relationships, unequal power distribution and rights that differentiate between men and women. The importance of religion to articles 2(f) and 5(a) was also explicitly acknowledged by the committee in GR 28.

In GR 29 on the economic consequences of marriage, family relations and their dissolution,[17] the committee dealt extensively with the nature and role of religious law, particularly as it pertains to family law in general, and to marriage and its dissolution in particular. The committee strongly recommended that legal arrangements governing family life should be non-discriminatory, and either common to all, or left to individual choice, suggesting that constitutional exemptions for other legal forms, such as customary or religious law, should be eliminated. Furthermore, the committee urged all states to implement a system of common marriage registration, as required by CEDAW.

6.3 Individual Communications

CEDAW does not provide for individual communications, and an optional protocol on the issue was not agreed upon until 1999.[18] By 2014, the committee had reviewed 31 individual communications, 16 of which were deemed admissible (Hodson 2014: 567). Among the cases brought before the committee, only the inadmissible *Kayhan v. Turkey*,[19] where a female teacher of religion was dismissed for wearing a headscarf, has been related to religion, with topics like violence against women, reproductive rights and employment dominating the case load so far.

6.4 Reporting Guidelines

The CEDAW reporting guidelines[20] feature a general introduction, emphasizing factors complicating the implementation of the convention. Rather than specific provisions relative to each article or rights cluster, however, the guidelines ask each state to report, relative to each article, on how previous concluding observations have been handled, information on additional legal and other steps

17 CEDAW/C/GC/29, 2013.

18 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (A/RES/54/4), 1999.

19 CEDAW/C/34/D/8/2005, 2006.

20 HRI/GEN/3/Rev.3, 2008.

taken, and remaining obstacles. The committee does not request any particular information on religion. The International Women's Rights Action Watch[21] (IWRAW) has published an online guide for NGOs to the CEDAW reporting procedure, but without rights-specific recommendations.[22]

6.5 The Religion of CEDAW

Despite its omission from the treaty provisions, the centrality of religion to the interpretation of the CEDAW is not disputed: reservations are commonly motivated by the predominance of religious law (Krivenko 2008: 122), and the prevalence of religion in the practice of the CEDAW committee entails that "the references to culture and tradition as needing redefinition (…) should be taken as including religion" (Evans and Whiting 2006: 12), an assessment supported by the concluding observations by the committee on this topic, which tend to include religion both as part of the patterns of conduct to be modified, and as practices that should be eliminated (see below).

The committee monitoring CEDAW has regularly engaged religion as a surrounding feature, as an irritant preventing the proper implementation of its core provisions on gender equality and related issues. In this way, the approach to religion at the committee is characterized by a perceived outsider perspective, akin to the dominant perspective among actors at the second, technocratic level of the UN, where religion is simply one among many obstacles to be surpassed in order to perform the actual work. The religion recognized by the committee has two dimensions, both of which are primarily social, influencing the context for the implementation of provisions on gender equality: the primary dimension to religion is its role as a patriarchal system of norms that legitimize the subjugation of women across a wide number of different social arenas, including law and religious institutions and organizations.

The second dimension to religion, however, is a more nuanced and less clear-cut appreciation of the social role played by religion as one of several intersecting dimensions to identity and daily life, a role that can be both detrimental and conducive to the implementation of human rights provisions in unequal measures. Encountering this second dimension to religion, the committee has

21 The IWRAW was organized in 1985 at the Third World Conference on Women in Nairobi, Kenya, to promote recognition of women's human rights under the CEDAW, and works primarily with capacity-building among NGOs reporting to the CEDAW. http://www1.umn.edu/humanrts/iwraw/ (accessed 31.08.2016).

22 http://www1.umn.edu/humanrts/iwraw/proceduralguide-08.html (accessed 31.08.2016).

gradually become more accommodating, recognizing the need to work with religious leaders and institutions to gain progress in the implementation of its core provisions (see below).

6.6 Approaches to Religion in the Monitoring Practice CEDAW, 1993–2013

6.6.1 Minorities

Religious discrimination and the rights of women belonging to religious minorities have not been major topics in the practice of the committee. Article 2 of CEDAW has comprehensive provisions on non-discrimination in all fields,[23] and the majority of its provisions outline the obligations of states to adopt legislation and policies that promote the equality of men and women, including the adoption of "temporary special measures aimed at accelerating de facto equality" in article 4.[24] While the role of majority religions in creating or amplifying discrimination against women across a variety of social arenas has been fre-

23 Article 2 reads in full: "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women."

24 Article 4 reads in full: "1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory."

quently addressed by the committee (see below), discrimination against women on the grounds of their religious beliefs or minority affiliations has only rarely been commented by the committee.

The committee addressed the issue of religious discrimination against minorities during the review of Israel in 1997: Commenting on the definition of minorities in the state party, one member observed that the classification of Arab and Palestinian women as belonging to ethnic and religious minorities, and not national minorities, was disadvantageous.[25] Another questioned the inequality of access to services among minority women subject to violence and the role of religious fundamentalism in the increasing harassment of women,[26] and a third voiced her concern with stereotypes among religious groups, asking "whether the Government had the political will to draw a clear distinction between political and religious authority, especially in cases where such stereotypes and customs were most harmful to women".[27] Although the committee commented on the specific challenges faced by women who belong to a religious minority, it was also critical of the religious traditions with which these women identified, signaling a somewhat different conception of minorities from that of the other committees, which have generally not ventured into discussions of the minorities within minorities issue (see above), and have been adamant that states should provide protection for religious minorities.

Responding to these concerns, the Israeli state delegation provided a comprehensive account of the measures implemented to improve the situation of Arab minority women in Israel, introduced with the assertion that

> Israel was a Jewish nation and a democratic State that guaranteed equality to all of its citizens, regardless of their religion, race or sex. All citizens and residents of Israel—Jews and non-Jews, women and men—were equal before the law and received the same protection under the law. Each social and ethnic community in Israel had the opportunity, within legal bounds, to express its uniqueness, particularly with regard to religion.[28]

Commenting on the "cultural" roots of misogynistic practices, a member of the state delegation said that the Israeli state abhorred such practices, and had implemented numerous measures to prevent culturally related acts of violence against minority women, including the creation of an "underground railroad" to transport women and children to safety.[29]

25 CEDAW/C/SR.351: 4 Aouij, 1998.
26 CEDAW/C/SR.351: 12 Javate de Dios, 1998.
27 CEDAW/C/SR.351: 13 Castillo, 1998.
28 CEDAW/C/SR.354: 3, 1997.
29 CEDAW/C/SR.354: 9, 1998.

Following a lengthy list of measures adopted by the government to prevent discrimination of Arab women in Israel, one member of the committee expressed her concern with the refusal of the Israeli delegation to address the challenges faced by Palestinian women, an attitude she contended was unhelpful for a dialogue with the committee on the issues in question.[30] Another member suggested that the recognition of the Palestinians as a national minority should become part of the Israeli Basic Law, respecting their history, religion, culture and identity.[31] In its concluding observations, the committee did not raise the issue of the legal recognition of the Palestinians as a national minority, but expressed its concerns with the different standards of living and health, and levels of and access to education among women from non-Jewish minorities, in particular Arabs and Bedouins.[32] Similar concerns with the status of Arabs and Bedouins in the state party were expressed following the 2005 and 2011 reviews of Israel.[33]

The reviews of Israel are largely representative for the views expressed by the committee on the topic of religious discrimination, which have been concentrated on *de facto* discrimination,[34] under which women face challenges related to their identity as members of religious minorities. Whereas other committees have commented on religious discrimination as an issue experienced by minorities in general, the CEDAW committee has consistently engaged the specific nature of religious discrimination experienced by minority women: In consecutive concluding observations issued to Greece in 2002, 2007 and 2013, the committee has emphasized the plight of women in the Muslim minority in Thrace who are not covered by the general laws of Greece concerning marriage and inheritance, and therefore at risk of polygamous unions and repudiation as a form of marriage cancellation.[35] Similar concerns regarding the inequality in marriage and

30 CEDAW/C/SR.354: 44 Aouij, 1998 .
31 CEDAW/C/SR.354: 50 Ferrer, 1998.
32 A/52/38/Rev.1(SUPP): 161–162/176, 1997.
33 CEDAW/C/ISR/CO/3: 31–36, 39–40, 2005 & CEDAW/C/ISR/CO/5: 32–47, 2011. The concluding observations following the 2011 review also featured criticism against the specific problems experienced by Palestinian women with family reunification and house demolitions (CEDAW/C/ISR/CO/5: 24–28, 2011).
34 A rare exception is the concluding observations issued to the Republic of Korea following its 1998 review, where the committee recommended the state party to recognize a full definition of discrimination in its Equality Act, which would include "discrimination on the basis of religious beliefs, political preferences, age or disability" (A/53/38/Rev.1: 372, 1998).
35 A/57/38(SUPP): 295–296, 2002, CEDAW/C/GRC/CO/6: 33, 2007 & CEDAW/C/GRC/CO/7: 36, 2013. During the 2013 review, the committee also expanded its observations on the particular challenges facing women from the Muslim minority in accessing education, social benefits and health care, and participating in public life (CEDAW/C/GRC/CO/7: 32, 2013).

numerous other violations against religious minority women have been expressed in concluding observations issued to India,[36] Thailand,[37] The Philippines,[38] New Zealand,[39] Myanmar[40] and Pakistan.[41]

Reviewing France in 2003, the committee expanded on its earlier skepticism towards gender equality within religious minority groups. In its concluding observations, the committee expressed its concern with

> the continuing discrimination against immigrant, refugee and minority women who suffer from multiple forms of discrimination based on sex and on their ethnic or religious background, in society at large and within their communities. The Committee regrets the very limited information provided in the reports with regard to violence, including domestic violence, against immigrant women and girls.[42]

In order to eliminate these multiple forms of discrimination, French authorities were advised to respect and promote the human rights of women over "cultural practices", and to conduct "awareness-raising programmes" targeting the communities in question.[43]

Prior to the consecutive review of France in 2008, the committee emphasized an entirely different dimension to the minority complex, when it sent the state party a list of issues where it referred to the earlier request by the Committee on the Rights of the Child on the consequences of the prohibition of "ostensible" signs or dress indicating religious allegiance at school.[44] In its response to this list, the French government responded that the ban had been implemented in an "atmosphere of calm", with less than 10 pupils per year found in violation of the ban, the introduction of which had allowed many pupils "to understand the meaning of the principle of secularism".[45] The ban on ostentatious religious wear or symbols was also raised during the meeting between the state party and the committee, as one member of the committee questioned the validity of information that women who wore the veil were denied nationality, which would violate article 9 of the convention.[46]

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36 A/55/38(I): 68 – 69, 2000.
37 CEDAW/C/THA/CO/5: 35 – 36, 2006.
38 CEDAW/C/PHI/CO/6: 29 – 30, 2006.
39 CEDAW/C/NZL/CO/6: 26 – 27, 2007.
40 CEDAW/C/MMR/CO/3: 42 – 43, 2008.
41 CEDAW/C/PAK/CO/4: 37 – 38, 2013.
42 A/58/38(SUPP): 275, 2003.
43 A/58/38(SUPP): 276, 2003.
44 CEDAW/C/FRA/Q/6: 15, 2007.
45 CEDAW/C/FRA/Q/6/Add.1: p.22, 2007.
46 CEDAW/C/SR.817: 54 Belmihoub-Zerdani, 2008.

By way of response, a member of the state delegation explained that the ban was only in force in schools, and was not intended to penalize girls, but to protect them, by giving them “the opportunity to have the experience of not wearing the veil”.[47] Several committee members found the answers of the French authorities unsatisfactory, questioning the ability of poor immigrant families to afford private educational alternatives, and characterizing the ban as a “fundamental violation of girls’ human rights”.[48] Although these concerns were dismissed by the state delegation,[49] the committee carried its concerns with the ramifications of the ban to its concluding observations, in which it urged the state party to make sure that the rights of girls to education and inclusion in all facets of French society were not violated.[50]

The two sets of observations issued to France show the dilemmas of the “minority within minority” issue, as the committee simultaneously had to consider the religious discrimination against women within minority groups, as it did in the 2003 review, but also within larger society, as it did in the 2008 review. Simultaneously, the observations illustrate how the treaty body machinery can generate multiple perspectives on the same issue, as it highlighted a dimension to the French law on ostentatious religious symbols that escaped criticism from both the HRC (see chapter 5) and the CRC (see chapter 7).

The committee revisited the question of discriminatory effects of bans on the Islamic veil in its review of Belgium in 2008. During the meeting, one member questioned the effects of the banning of the veil and whether the authorities had consulted the Islamic community prior to the imposition of the ban, which she claimed could be interpreted as a form of legitimized racism and intolerance. [51] Another committee member declared that, while she “quite understood the need for schools to exercise autonomy and for teachers to be neutral”, her main concern was the broader scope of the Belgian ban which empowered administrators beyond the educational sector to impose similar bans.[52] In its concluding observations, the committee expressed its concern with the discriminatory effects of the veil ban for girls from ethnic and religious minorities and their access to education. Additionally, the committee was concerned with the

47 CEDAW/C/SR.817: 55, 2008.
48 CEDAW/C/SR.818: 3 Dairiam, 5 Ara Begum, 2008.
49 CEDAW/C/SR.818: 7, 2008.
50 CEDAW/C/FRA/CO/6: 20, 2008.
51 CEDAW/C/SR.852: 41 Coker-Appiah, 2009.
52 CEDAW/C/SR.852: 68 Gabr, 2009.

multiple forms of discrimination experienced by immigrant, minority and refugee women on the basis of sex and ethnic or religious background.[53]

Reviewing Germany in 2004, the committee addressed the minority within minority question from a different angle: While the question was not raised during the meeting with the state party, the committee dedicated a substantial paragraph to the issue in its concluding observations, where it emphasized the increased vulnerability of women suffering from multiple forms of discrimination, based on sex, ethnic or religious background and race to trafficking and sexual abuse. Expressing its concern with the lacking information on women in such precarious situations in the German periodic report, the committee reminded the state party of its obligations under the convention to eliminate discrimination against migrant and minority women, "both in society at large and within their communities, and to respect and promote their human rights, through effective and proactive measures, including awareness-raising programmes".[54]

Concerns with violence and discrimination suffered by migrant women within their own communities were reiterated following the consecutive review of Germany in 2009, although not linking the issue explicitly to religious minorities.[55] Whereas observations issued to France and Belgium highlighted the challenges experienced by religious minority women seeking educational alternatives, the observations issued to Germany stressed the precarious situations in which religious minority women found themselves more generally, thereby widening the critique of the committee against the minority within minority issue from an issue-specific to a systemic level. In its more recent practice, the committee has mostly been concerned with discrimination faced by women from religious minorities in society at large, as The Netherlands[56] and Indonesia[57] have both received concluding observations expressing the committee's concern with the multiple forms of discrimination experienced by women from minority religious backgrounds.

Taken together, the practice of the CEDAW committee on religious discrimination and religious minorities is almost entirely dedicated to the *de facto* challenges faced by women from minority religious groups. Lacking any material provisions on religious discrimination to monitor, the committee has relied on its general provisions on discrimination to emphasize the precarious situation

53 CEDAW/C/BEL/CO/6: 35 – 36, 39, 2008.
54 A/59/38(SUPP): 394 – 395, 2004.
55 CEDAW/C/DEU/CO/6: 59 – 60, 2009.
56 CEDAW/C/NLD/CO/5: 42 – 43, 2010.
57 CEDAW/C/IDN/CO/6 – 7: 45 – 46, 2012.

of women who suffer multiple forms of discrimination due to their membership in minority religious groups. The committee has focused on religion both as a patriarchal force in society that is harmful to women, but also as critical to the identity of minority women suffering multiple forms of discrimination, suggesting a more expansive reading of religion than its erstwhile religion-making, which tends to construe religion primarily as a repressive social force.

Over the course of several observations issued to European states in the mid-2000s, the committee has observed the tension between these different sources of discrimination against religious minority women, emanating both from wider society, and from repressive elements within religious traditions, the so-called "minorities within minorities" complex, obliging states to identify and limit these different sources of harm. In this balancing act, the committee has been critical towards states adopting restrictive legislation aimed at protecting women from repressive elements within their own religious traditions, like the bans on the Islamic veil in schools in France and Belgium, primarily because of its detrimental effects on girls' access to education.

6.6.2 Organizations

CEDAW has no material provisions on the recognition and registration of religious organizations. Despite the importance of religion to the implementation of the convention, the nexus between state authority and religious organizations has only sporadically been addressed by the committee. Although the committee has displayed a keen interest in the borders between secular state authority and religious laws, doctrines and practices, these have generally not been related to particular institutions or organizations, but have addressed the larger social role of religion in society (see below). Nevertheless, the CEDAW committee has issued concluding observations that address religious institutions directly, either regarding their general relations to the state party, or, more frequently, regarding their influence on the access to and content of education.

The committee first commented on the role of religious institutions during its 1997 review of the small island nation of St. Vincent and the Grenadines. In the meeting with the state party, one member of the committee questioned the delegation on the prevention of teenage pregnancies, expressing her surprise with the limited success of churches in dissuading teenagers from engaging in sexual activity, and proposing that churches should be "actively involved in helping

young people to understand the consequences of teenage sex".[58] Responding to the question, a member of the delegation explained that the churches on the islands were aware of the problem, but presently not engaged in its prevention.[59] In its concluding observations, the committee recommended that the state party include churches and other actors from civil society to help develop gender sensitive sexual education that could curb the high rate of teenage pregnancies, indicating a willingness to see churches as constructive participants in the realization of women's rights.[60]

After this initially positive attitude towards the involvement of churches, the committee developed a more critical stance over the following years. During the review of Croatia in 1998, as part of the replies to questions on article 16 of the convention (on marriage and family life), members of the state delegation explained that religious groups were counselling couples on family relations.[61] Although this was the only mention of religious groups during the meeting between the state party and the committee, the concluding observations expressed the concern of the committee with the adverse influence of "church-related groups" on the policies of the Croatian government on women.[62]

Reviewing the Dominican Republic during the same session, the committee expressed similar hostility towards the influence of churches. Prior to the meeting, the committee questioned the role of churches in the state party, in particular the role of the Catholic and Evangelical churches in the National Committee for Monitoring of the National Plan of Action of the Fourth World Conference on Women, and the exact nature of the links between the state party and the Catholic Church.[63] Responding to these questions, a member of the state delegation explained that the membership of two churches in the national monitoring committee was determined on the basis of their numbers of followers and their influence on the "political, social and cultural life" of the state party.[64] On the nature of the links between the state and the Catholic Church, the representative explained that

58 CEDAW/C/SR.316: 48 Abaka, 1998.
59 CEDAW/C/SR.322: 26, 1998.
60 A/52/38 (I): 147, 1997.
61 CEDAW/C/SR.368: 73, 1998.
62 A/53/38/Rev.1: 108, 1998.
63 The list of issues is not available from any of the official document sources of the UN. The questions have been reconstructed from the summary records from the meeting with the state party, where they are quoted by the state representative. See following notes for full references.
64 CEDAW/C/SR.379: 27, 1998.

> the link between the Church and the State had been consolidated by the concordat signed in 1954 between the Government and the Holy See. In effect, the concordat limited the implementation of measures to change social norms that hindered women's advancement. The current reform process involved the redefinition of the State's relationship with other sectors, including the Church. However, that would be a complex task, in view of the profoundly religious character of the Dominican people.[65]

Another member of the delegation commented on the continued resistance from the Catholic Church to the inclusion of sex education in the school curriculum.[66] In its response to these explanations, members of the committee expressed their collective dismissal of the role of the Catholic Church in the state party: the pressure of the church should be resisted in order to allow sex education;[67] the concordat was an obstacle to progress and modernization and should be disbanded in order to bring about a clear separation of church and state;[68] such a separation would have a profound impact on maternal mortality, abortion, the prevention of HIV/AIDS and the elimination of stereotypes;[69] the "nefarious effects" of some of the teachings of the Catholic Church on the development of adolescents were characterized as among the most basic impediments to women's rights;[70] and any influence of the Catholic Church on the policies of the government would be unconstitutional, given the secular nature of the state party.[71] In its concluding observations, the committee echoed these views, noting the absence of a clear separation between church and state, characterizing such an "intermingling" of secular and religious spheres as a serious impediment to the full implementation of the Convention.[72]

Reviewing Ireland and Belize in 1999, the committee expanded this critical stance towards the role of churches, particularly in education. In the review of Belize, a member of the state delegation elaborated on the role of the church in the formulation of policies and laws on family planning and HIV/AIDS, [73] and the practice of Catholic schools to expel pregnant students[74] and to fire preg-

65 CEDAW/C/SR.379: 39, 1998.
66 CEDAW/C/SR.379: 54, 1998.
67 CEDAW/C/SR.380: 28 Gonzalez, 1998.
68 CEDAW/C/SR.380: 29 Corti, 35 Ferrer, 1998.
69 CEDAW/C/SR.380: 38 Bustelo Garcia del Real, 1998.
70 CEDAW/C/SR.380: 47 Estrada Castillo, 1998.
71 CEDAW/C/SR.380: 56 Abaka, 1998.
72 A/53/38.Rev.1: 331, 1998. The committee did not raise the role of the church or its relation to the state party in any way or form during the consecutive review of the Dominican Republic (A/59/38 (SUPP): 275 – 315, 2004).
73 CEDAW/C/SR.432: 3, 1999 .
74 CEDAW/C/SR.432: 12, 1999.

nant, unwed teachers.[75] One member of the committee expressed her concerns with the church-state relationship, particularly in education and health, where the secularism of the constitution of Belize was not evident.[76] Another committee member wondered whether the church had been invited to participate as a social institution to prevent stereotyping of women, in line with article 5 of the convention, or whether it had simply been seen as a passive audience to the process.[77] A third member suggested that the state party should work with Catholics who took a liberal stance on contraception, to find a way to meet the need for family planning under the present church-state system.[78] In its concluding observations, the committee expressed its serious concern with the church-state system in Belize, reiterating its claim from the review of the Dominican Republic that the "intermingling of religious and secular spheres constitute[d] a serious impediment to the full implementation of the convention", in particular in health and education.[79] These worries were repeated during the consecutive review of Belize in 2007, where the committee commented the detrimental influence of the Church over education in Belize in the list of issues,[80] during the meeting with the state party[81] and in its concluding observations.[82]

In the review of Ireland at the same session, the committee did not comment on the role of religious organizations in its list of issues, nor during the meetings with the delegation from the state party. Nevertheless, the concluding observations issued by the committee noted the influence of the Church, not only on attitudes and stereotypes, but also on official policies, in particular women's right to health, including reproductive health, which was "compromised" by the influence of the Church.[83] In the review of the consecutive report of Ireland, the influence of the church was not mentioned whether during the meeting with the state party or in the concluding observations of the committee.[84]

During the 1990s, the views of the committee on the role of religious organizations, while sparse, were fairly pessimistic, considering their influence to be detrimental to the rights of women, particularly in the areas of health and edu-

75 CEDAW/C/SR.432: 16, 1999.
76 CEDAW/C/SR.432: 30 Abaka, 1999.
77 CEDAW/C/SR.432: 38 Hazelle, 1999.
78 CEDAW/C/SR.438: 32 Schöpp Schilling, 1999.
79 A/54/38/Rev.1: 52/48, 1999.
80 CEDAW/C/BLZ/Q/4: 21, 2007.
81 CEDAW/C/SR.794 (A): 16 Pimentel, 2007.
82 CEDAW/C/BLZ/CO/4: 23, 2007.
83 A/54/38/Rev.1: 180, 1999.
84 CEDAW/C/IRL/CO/4 – 5, 2005.

cation. However, with the exception of the criticism of the church offered in the review of Belize in 2007, which may be considered a follow-up of the 1999 review, the committee has abstained from criticizing the influence of religious organizations on women's health and education in its more recent practice. By the turn of the twenty-first century, the committee has chosen a different path, and has increasingly called for the inclusion of religious organizations in the protection of women's rights. Reviewing Malta in 2004, the committee encountered a state delegation that explained how the church helped people in need and advised the government on its work to secure gender equality.[85] Although one member of the committee suggested that Malta should address sex education from a "non-religious angle",[86] these concerns were not carried over into the concluding observations of the committee, which suggested that Maltese authorities should continue to involve church authorities in awareness campaigns to eradicate gender stereotypes in line with article 5 of the convention.[87] Similar sentiments were expressed in the concluding observations following the review of Malta in 2010.[88]

Reviewing Cook Islands in 2007, one member of the committee observed that the boundaries between church and state seemed to be "blurred", asking whether there were any plans to reform the church, "given that Christianity relegated women to stereotypical roles".[89] Responding to the question, a member of the state delegation indicated that no such reform was underway, as the church played a pivotal role in public life, and public events were blessed by a prayer ceremony at the beginning and end.[90] In its concluding observations, however, the committee did not address the issue of this fairly unequivocal "intermingling" of religious and secular spheres, rather calling upon the state party to involve church leaders in its efforts to raise awareness and change attitudes to prevent the stereotyping of women.[91]

In 2008, the committee requested information from Ecuador on the safeguards to secure a "secular approach" to sexual and reproductive health, in the wake of a recent bill in parliament banning a "morning after" pill.[92] In its written replies, the state party elaborated extensively on the intensification of

85 CEDAW/C/SR.656: 2, 4, 2004.
86 CEDAW/C/SR.656: 48 Schöpp Schilling, 2004.
87 A/59/38 (II): 106, 2004.
88 CEDAW/C/MLT/CO/4: 19, 2010.
89 CEDAW/C/SR.808: 6 Shin, 2007.
90 CEDAW/C/SR.808: 9, 2007.
91 CEDAW/C/COK/CO/1: 23, 2007.
92 CEDAW/C/ECU/Q/7: 24, 2008.

a campaign in Ecuador among "quarters close to the Catholic Church, NGOs and conservative groups", fighting against sexual and reproductive rights, despite the recognition of such rights in the constitution. These groups had made a strong impact, promoting sexual abstinence and fidelity as responses to HIV/AIDS, reducing sexual diversity and advocating the punishment of all forms of abortion, successfully outlawing the medication in question.[93] Despite these setbacks, one member of the state delegation proclaimed the secular nature of the recently adopted constitution of Ecuador to be one of the main aspects that secured progress for women in the state party.[94] However, no member of the committee raised the issue of the influence of the church, or of the newly adopted secularity of the state party during the meetings. In its concluding observations, the committee restricted its recognition to noting "with appreciation" that Ecuador was now a secular state that safeguarded the equal rights of men and women.[95]

During the review of Costa Rica in 2011, one committee member inquired at some length about the ramifications of the constitutional provision that declared that Costa Rica was a Roman Catholic state, the various impacts this status might have for the sexual and reproductive rights of women, and how the concordat between the state party and the Holy See affected matters of health and education.[96] Another member asked how the influence of the Catholic Church on the formulation of public policy affected the awareness of and access to contraception, while a third member recalled that

> while it was important to take account of cultural realities, including religious traditions, article 5 of the Convention was clear that cultural patterns of conduct must not interfere with the equality of women with men. A secular State would provide more opportunities for implementing the Convention.[97]

Another committee member questioned the limited access to abortions due to provisions that granted conscientious objection for health providers, addressing the nexus between the freedom of religion or belief and surrounding human rights directly.[98]

93 CEDAW/C/ECU/Q/7/Add.1: p.27, 2008.
94 CEDAW/C/SR.854 (B): 2, 2008 .
95 CEDAW/C/ECU/CO/7: 16, 2008.
96 CEDAW/C/SR.978: 15 Schulz, 2011.
97 CEDAW/C/SR.978: 43 Pimentel, 2011.
98 CEDAW/C/SR.979: 49 Arocha Dominguez, 2011.

In this way, the committee gradually developed its critique of the impact from religious doctrines and practices, moving from initial observations concerning the constitutional order of Costa Rica, via the potentially harmful effects of religious traditions, and down to practical, material conflicts arising from the clash between religious beliefs and the provisions of the convention. These observations were fused in the concluding observations of the committee, where it not only referred to "the prevailing negative influence of some religious beliefs and cultural patterns" that hampered the sexual and reproductive rights of women, but also expressed its concern about article 75 of the Constitution (asserting the Roman Catholic nature of Costa Rica), which "may have an impact on the persistence of traditional gender roles in the State party".[99] In order to rectify the situation, the committee advised awareness-raising and public education campaigns addressing political and religious leaders with a view to bring about changes in traditional attitudes.[100]

In a similar vein, in its list of issues to Paraguay in 2011, the committee requested information on cultural and religious stereotypes in the state party that had prevented the adoption of a series of law proposals targeting gender equality,[101] referred to in the periodic report submitted by the state party.[102] During the meeting, the state representative confirmed that the legislative process on gender equality had been suspended "owing to pressure from religious fundamentalists within the academic community".[103] One member of the committee asked whether the state party had entered into discussions with the religious leaders fueling the resistance,[104] while another observed that, although Paraguay was a secular state, fundamentalist, anti-abortion groups exerted great political pressure.[105] A member of the state delegation acknowledged the difficult pressure on the political and legislative process to adopt new laws on abortion, "even in a secular State".[106] Following the meeting, the committee expressed its concern

> about the persistence of discriminatory traditional attitudes and the prevailing negative influence of some manifestations of religious beliefs and cultural patterns in the State party

99 CEDAW/C/CRI/CO/5 – 6: 18, 2011.
100 CEDAW/C/CRI/CO/5 – 6: 19, 2011.
101 CEDAW/C/PRY/Q/6: 8, 2011.
102 CEDAW/C/PAR/6: 31, 2010.
103 CEDAW/C/SR.1000: 4, 2011.
104 CEDAW/C/SR.1000: 41, Ameline, 2011.
105 CEDAW/C/SR.1001: 10, Pimentel, 2011.
106 CEDAW/C/SR.1001: 20, 2011.

> that hamper the advancement of women's rights and the full implementation of the Convention, in particular sexual and reproductive health and rights.[107]

The concluding observations went on to recommend that the state should conduct awareness-raising and public education campaigns addressing "in particular religious leaders and Government leaders to bring about changes in traditional attitudes associated with discriminatory gender roles in the family".[108]

Reviewing Moldova in 2013, the committee questioned the dominant role of the Orthodox Church and the level of choice for parents in religious education, urging the state party to examine the messages conveyed through religious instruction to combat gender stereotyping,[109] to which the state delegation responded that religious instruction was optional.[110] Another member questioned the influence of the church on restrictions on women's access to abortion,[111] a concern that was not addressed by the state delegation, but was carried over to the concluding observations issued by the committee, where it observed that, "although the State party is a secular State, religious institutions often perpetuate traditional gender roles in the family and in society and influence State policies with an impact on human rights", advising the authorities to ensure that local authorities promote policies based on gender equality principles, "without interference from religious institutions".[112]

During the meeting with Andorra in 2013, one member of the state delegation explained that the decriminalization of abortion was a particularly sensitive topic, as the current political system of the state party had a prominent member of the Catholic Church, the Bishop of Urgell, acting along the President of France as a co-prince and Head of State, and progress on issues like abortion and gay marriage would have to depend on a shift in cultural norms.[113] Noting that having a Catholic bishop as head of state may complicate the legalization of abortion, one member of the committee speculated as to whether this situation may also be turned into an advantage, as it could be a "catalyst for improving the position of the state party on migration, given the Catholic Church's approach to supporting all members of the community and Pope Francis's desire

107 CEDAW/C/PRY/CO/6: 18, 2011.
108 CEDAW/C/PRY/CO/6: 19, 2011.
109 CEDAW/C/SR.1159: 34 Halperin-Kaddari, 2013.
110 CEDAW/C/SR.1159: 44, 2013.
111 CEDAW/C/SR.1160: 24 Schultz, 2013.
112 CEDAW/C/MDA/CO/4–5: 17–18, 2013.
113 CEDAW/C/SR.1166: 18, 2013.

to open new frontiers".[114] In conclusion, a member of the state delegation observed that balancing a secular and a religious head of state, while challenging, was "a great source of pride and enriched the national tapestry".[115] In its concluding observations, the committee encouraged the state party to include the church in its "proactive and sustained measures" to eliminate traditional stereotypes and patriarchal attitudes, once more ignoring an obvious "intermingling" of religious and secular spheres.[116]

Despite a limited number of concluding observations on the topic, the CEDAW committee has gone through a considerable change in its views of the role of religious organizations. Whereas criteria for registration or the constitutional recognition of religious organizations have rarely been addressed by the committee, several concluding observations towards the end of the 1990s indicated a critical view of the role of religious organizations, in particular the Catholic Church and its influence on women's education and health. Following highly critical remarks at the turn of the century, however, the committee seems to have embraced an altogether more conciliatory approach in later years, whereby the "intermingling of secular and religious spheres" that were considered severe impediments in the earlier practice of the committee has been bypassed in recent concluding observations, which have favored the outreach and engagement of churches and their authorities in the implementation of CEDAW. The new approach to the role of religious organizations in the implementation of the convention represents a clear departure from the overall approach to religion of the committee, which has tended to be more critical towards the influence of religion, and in particular towards the powerful organizations of majority religions.

6.6.3 Religious Law

The committee has extensively engaged the impact of religious law on the enjoyment of the rights enshrined in CEDAW since its inception. In its initial engagements with legal forms outside state control, only mild reproaches towards such arrangements were issued by the committee, notably to Bangladesh[117] and Zam-

114 CEDAW/C/SR.1166: 31 Pomeranzi, 2013.
115 CEDAW/C/SR.1166: 34, 2013.
116 CEDAW/C/AND/CO/2–3: 20, 2013.
117 A/48/38(SUPP): 325, 1994. These concerns were reiterated by the committee following the consecutive review of Bangladesh in 2004 (A/59/38(SUPP): 247–248. 2004).

bia.[118] Examining the combined initial and second report submitted by Tunisia in 1994, the committee expressed its approval of the ways in which Tunisian authorities had handled the relationship between civil and religious laws since independence in 1956:

> Bearing in mind Tunisia's geo-political environment, it paid tribute to the big strides made by the country for the advancement and empowerment of women and stated that Tunisia could be considered, even since the 1950s, as a shining example for other countries, because of its progressive and programmative [sic] interpretation of Islam. (…) The Committee equally noted with great admiration the existing political will to maintain progressive interpretation of women's rights under both civil and religious laws.[119]

The praise was offered despite the committee's considerable misgivings with several intersections of religious and civil law, notably different rules of inheritance and marriage for women and men,[120] and the continued reservations of the Tunisian government to parts of the convention for religious reasons.[121] Several individual members of the committee offered their personal views on the successful integration of Islamic and civil law in Tunisia,[122] inquired which parts of the Koran were utilized in cases of interreligious marriages,[123] and whether the authorities had considered offering assistance to other Islamic nations or bringing its work to the attention of the Organization of the Islamic Conference (OIC).[124]

The 1995 Tunisia review marks a shift, after which the committee started commenting more extensively on the role of religious law specifically, in particular the compatibility of Islamic law with the provisions of the convention. In line with this approach, Morocco received criticism from two committee members[125] during its review in 1997 for its religiously inspired reservations to articles 2 and 16, before being advised by another member of the committee on the compatibility of Islam and women's rights:

> [Ms. Aouij] recalled that Islam had been the first of the great world religions to specifically lay down certain basic rights for women; Islam was an adaptable religion, and its beliefs

118 A/49/38(SUPP): 364 – 365, 1994. Similar concerns were expressed by the committee following the 2002 and 2011 reviews of Zambia (A/57/38: 250 – 251, 2002 & CEDAW/C/ZMB/CO/5 – 6: 13 – 14, 2011).

119 A/50/38: 222, 265, 1995.

120 A/50/38: 253, 1995.

121 A/50/38: 266/271, 1995.

122 CEDAW/C/SR.269: 19 Tallawy, 22 Ouedraogo, 56 Corti, 1995.

123 CEDAW/C/SR.269: 54 Hartono, 1995.

124 CEDAW/C/SR.273: 41 Khan, 1995.

125 CEDAW/C/SR.312: 18 Schöpp Schilling, 19 Cartwright, 1998.

> were capable of being harmonized with the exigencies of modern life and the consequences of economic and social development. (…) A modern, enlightened reading of the sacred texts would enable Islamic countries to integrate women into development, which was a prerequisite for the material and cultural advancement of their societies.[126]

During the final meeting of the session with Morocco,[127] the impact of religious law on human rights compliance came to the forefront of the discussion, with committee members weighing in on benefits and problems inherent to Islam and human rights, and the chairperson of the committee pointing to strategies for implementation of human rights norms developed by other countries in which Islam was the dominant religion, notably Turkey and Tunisia.[128] The discussion was carried over into the committee's concluding observations, which requested that Morocco

> persevere in using ijtihad, which was the evolving interpretation of religious texts so as to give the necessary impetus to the improvement of the status of women and thus gradually to change attitudes.[129]

Incidentally, the committee reviewed Turkey in the same session, commending the separation of religion from the state,[130] while expressing its concern that "various political groups" were threatening the secular rule of law due to the predominantly Muslim nature of Turkey's population.[131] During the review, representatives of the state party described the grave threat to Turkey's secular rule posed by religious fundamentalists,[132] a concern shared by one member of the committee, adding that "Religion should be a matter of conscience, not of law or force".[133] The chairperson of the session, however, observed that despite the secularity of the Turkish state, its reservations to the convention followed the pattern of Islamic religious law.[134]

In its consecutive session later in 1997, the committee expressed its serious concern about the reported imposition of fatwas in Bangladesh "using religious

126 CEDAW/C/SR.313: 11, 1998 & CEDAW/C/SR.312: 22, 1998.
127 CEDAW/C/SR.320, 1998.
128 CEDAW/C/SR.320: 47 Abaka, 1998.
129 A/52/38/Rev.1: 71, 1997; underscore in the original.
130 CEDAW/C/SR.319: 10 Aouij, 1998.
131 A/52/38/Rev.1: 164, 1997.
132 CEDAW/C/SR.318: 10, 1998.
133 CEDAW/C/SR.319: 11 Aouij, 1998.
134 CEDAW/C/SR.319: 14 Khan, 1998.

justification to punish women",[135] significantly expanding its critique of the parallel legal system in Bangladesh expressed in its 1993 review (see above). During the review, committee members followed up their concern for the harmful influence of religious fundamentalists, commenting on Muslim groups who invoked religion as a guise to perpetuate patriarchal traditions and preventing gender equality in Bangladesh.[136] Several members also expressed their approval of the withdrawal of several reservations to the convention by Bangladesh, and their hope that these withdrawals could serve as an inspiration for other Muslim majority countries that had entered reservations for religious reasons.[137]

Starting in 2001, the committee adopted a specific, standardized response to the influence of Islamic law on the implementation of its core provisions, issuing similarly sounding concluding observations to the Maldives[138] and Singapore[139] on the role of Islamic law in their respective domestic legal systems. The recommendation to Singapore is the more elaborate of these, and was directed at the reservations lodged by the state against articles 2 and 16 of the convention

> Recognizing that the pluralistic nature of Singapore society and its history call for sensitivity to the cultural and religious values of different communities, the Committee nevertheless wishes to clarify the fact that articles 2 and 16 are the very essence of obligations under the Convention. Since some reforms have already been introduced in Muslim personal law, the Committee urges the State party to continue this process of reform in consultation with members of different ethnic and religious groups, including women. It recommends that the State party study reforms in other countries with similar legal traditions with a view to reviewing and reforming personal laws so that they conform with the Convention, and withdrawing these reservations.[140]

While the recommendation to the Maldives was shorter and directed at its effort to reform its family law, the suggestion that the state party seek out the experiences of other countries with similar, in this case Islamic legal systems, was largely identical.[141] During the meeting with representatives from Singapore, one committee member recommended that Singapore study examples of the reconciliation between Sharia and secular law from Muslim countries throughout the world,[142] without specifying which countries, and what successes had

135 A/52/38/Rev.1 (SUPP): 447, 1997.
136 CEDAW/C/SR.358: 9 Acar, 1998.
137 CEDAW/C/SR.358: 2 Bernard, 9 Acar, 12 Cartwright, 14 Corti and 19 Javate de Dios, 1998.
138 A/56/38(SUPP): 114 – 146, 2001.
139 A/56/38(SUPP): 54 – 96, 2001.
140 A/56/38 (SUPP): 74, 2001.
141 A/56/38(SUPP): 141, 2001.
142 CEDAW/C/SR.515: 34 Acar, 2001.

been achieved. Several times in the first decade of the 2000s, the committee repeated this recommendation to countries with legislation derived from Islamic teachings that were perceived to be in conflict with the convention, to seek out the experiences of other Muslim countries or countries with similar legal traditions. With minor differences, such recommendations have been given to Yemen,[143] Sri Lanka,[144] Malaysia,[145] Jordan,[146] Indonesia[147] and Djibouti,[148] and repeated during the next periodic reviews of the Maldives[149] and Singapore.[150]

The recommendation to states that they seek out comparative jurisprudence from other countries with similar challenges lacks a specific reference as to which countries have succeeded in this effort,[151] and as to whether the comparison and modification of religious law should be performed by the state or the religious community in question. While a strict interpretation of article 2(f) would suggest that modification or abolition of discriminatory laws are primarily obligations upon state parties, the recommendations of the committee seem to indicate that state parties should collaborate with religious groups in these reform efforts. This impression is confirmed by the concluding observations follow-

143 A/57/38 (III): 393, 2002.
144 A/57/38(SUPP): 275, 2002.
145 CEDAW/C/MYS/CO/2: 14, 2006.
146 CEDAW/C/JOR/CO/4: 12, 2007.
147 CEDAW/C/IDN/CO/5: 13, 2007.
148 CEDAW/C/DJI/CO/1–3: 13, 2011.
149 CEDAW/C/MDV/CO/3: 37, 2007.
150 CEDAW/C/SGP/CO/3: 16, 2007.
151 On one occasion, following the review of the United Arab Emirates in 2010, the committee has expressed its "encouragement" with ongoing comparative research on the legal experiences of other Arab and Islamic countries, although it stressed the work that still remained in this process: "The Committee notes with satisfaction the State party's reference to the gradual, greater flexibility in sharia interpretation, such as the presence of a woman judge and the debates on the interpretation of sharia beginning to take place in relation to equality before the law and access to justice for women. It is also encouraged by the State party's ongoing comparative research on Arab and Islamic countries and the withdrawal of reservations to articles 15 and 16 of the Convention. Nevertheless, the Committee expresses concern about the fact that women in the State party continue to have unequal legal capacity compared with men and are treated unequally in courts, and with regard to freedom of movement. (…) The Committee urges the State party to abolish all discriminatory provisions on women's freedom of movement. It recommends that the State party review their reservation to article 15, paragraph 2, taking into consideration the experiences of countries with similar religious backgrounds and legal systems that have successfully accommodated domestic legislation to commitments emanating from international legally binding instruments, with a view to its withdrawal of the reservation" (CEDAW/C/ARE/CO/1: 45–46, 2010).

ing up the initial recommendation to Singapore (2001) in 2007[152] and 2011,[153] where the committee expressed its satisfaction that law reform was underway, while stressing the importance of including religious groups in this effort. Similar calls for the engagement of religious groups and their leaders in reform efforts have been expressed to the Philippines,[154] Mauritius,[155] Niger,[156] Jordan,[157] Syria,[158] Myanmar,[159] Tunisia,[160] Uganda,[161] Egypt, [162] Bangladesh,[163] South Africa[164] and Indonesia.[165]

Additionally, the criteria for the recommendation are somewhat unclear, as states with comparable religious legal systems that do not conform to the requirements of the treaty do not receive similar recommendations. Reviewing Ghana,[166] Kenya,[167] and Sierra Leone,[168] the committee observed conflicts between "Mohammedan" laws, primarily on marriages, but refrained from suggesting studies of comparable legal systems. Likewise, reviewing Kazakhstan,[169] Azerbaijan,[170] Tajikistan,[171] Bahrain,[172] and Egypt,[173] the committee pointed to the problems of parallel legal systems based on religious belonging, particularly

152 CEDAW/C/SGP/CO/3: 15 – 16, 2007.
153 CEDAW/C/SGP/CO/4: 15 – 16, 2011.
154 CEDAW/C/PHI/CO/6: 12, 2006.
155 CEDAW/C/MAR/CO/5: 13, 2006. This call was reiterated in the concluding observations issued by the committee following the review of the consecutive report of Mauritius in 2011 (CEDAW/C/MUS/CO/6 – 7: 15, 2011).
156 CEDAW/C/NER/CO/2: 16, 2007.
157 CEDAW/C/JOR/CO/4: 18, 2007.
158 CEDAW/C/SYR/CO/1: 18, 2007.
159 CEDAW/C/MMR/CO/3: 47, 2008.
160 CEDAW/C/TUN/CO/6: 17, 2010.
161 CEDAW/C/UGA/CO/7: 12, 2010.
162 CEDAW/C/EGY/CO/7: 16, 2010.
163 CEDAW/C/BGD/CO/7: 16, 2011.
164 CEDAW/C/ZAF/CO/4: 42, 2011.
165 CEDAW/C/IDN/CO/6 – 7: 18, 2012.
166 CEDAW/C/GHA/CO/5: 35, 2006.
167 CEDAW/C/KEN/CO/6: 44, 2007. Similar concerns were expressed by the committee following the 2011 review of Kenya, but with a particular emphasis on the problems associated with exemptions from general legislation offered to Khadi courts set to adjudicate cases under religious law (CEDAW/C/KEN/CO/7: 11 – 12, 2011).
168 CEDAW/C/SLE/CO/5: 39, 2007.
169 CEDAW/C/KAZ/CO/2: 29 – 30, 2007.
170 CEDAW/C/AZE/CO/3: 29 – 30, 2007.
171 CEDAW/C/TJK/CO/3: 53, 2007.
172 CEDAW/C/BHR/CO/2: 39, 2008.
173 CEDAW/C/EGY/CO/7: 48, 2010.

concerning early marriage and polygamy, but suggested a unified family law and reforms rather than amendments to the religious legal systems through studies of comparative jurisprudence.

Reviewing the influence from legal systems from religious traditions other than Islam, the committee has settled for a different approach. In its review of Israel, the committee found an undue influence of religious law on reservations and provisions of the convention, urging the state party to alter course. However, whereas states with Islamic religious laws were asked to study comparative jurisprudence and to reinterpret its religious texts, Israel was requested to "complete the secularization of the relevant legislation".[174] During the review, one member flatly stated that it was "unacceptable to base a legal system on the religious, cultural or traditional practices of any ethnic group within a country",[175] despite the committee's established practice of recognizing such systems and suggesting their amendment in dialogue with the communities in question.

During the following review of Israel in 2005, the committee expressed its concern that the state party claimed that religious laws could not be reformed,[176] before recommending the "harmonization" of religious laws with the convention during the 2011 review,[177] indicating a possible spillover effect from its practice on Islamic religious laws, moving from calls for secularization and the lack of reform options and over to a view of religious laws as amenable and subject to revision. Unlike the standardized observations issued to states with Islamic legal systems, however, the recommendations of the committee to Israel have been entirely unilateral, as the state has been asked to prohibit key religio-legal concepts and limit the scope of religious courts without doing so in collaboration with the communities in question.

Whereas the committee suggests the reinterpretation or secularization of religious forms of law to bring it in line with the convention,[178] other legal systems are sought "reviewed" for their compatibility with the convention. The latter group is largely represented in states in Sub-Saharan Africa where legal systems commonly interact with a mixture of parallel customary, religious or traditional systems of law. Whereas Ethiopia was advised to review its tripartite (national,

174 A/52/38/Rev.1: 173, 1997.
175 CEDAW/C/SR.351: 16 Khan, 1998.
176 CEDAW/C/ISR/CO/3: 25, 2005.
177 CEDAW/C/ISR/CO/5: 49, 2011.
178 The major exception from this general trend is Greece, where the Muslim minority in Thrace is governed according to Muslim personal laws. Rather than advising the state to reinterpret the law, however, the committee asked Greece to orient Muslim women on their rights according to civil law (CEDAW/C/GRC/CO/6: 33–34, 2007).

customary and religious) legal system,[179] Namibia's traditional courts were "recognized", although the government was urged to ensure that those courts comply with the convention.[180]

The committee has stopped short of issuing a general dismissal of legal pluralism as such, but has come close on several occasions, suggesting in its concluding observations to Nigeria in 1998 that "The coexistence of three legal systems, civil, religious and customary, make it difficult to adopt and enforce laws which genuinely protect women's rights",[181] a recommendation that was repeated following the state party's 2004 review.[182] Related sentiments have been expressed towards Tanzania,[183] Equatorial Guinea,[184] Ghana,[185] India,[186] Sri Lanka,[187] Chad[188] and Zimbabwe.[189]

Despite fairly strong criticism levelled against the presence of plural legal orders in general, the committee does not always recommend their unification or dissolution: Upon the review of Vanuatu, a small island nation in the South Pacific with 62 inhabited islands, the committee issued stern criticism of its customary "island courts" and the fact that religious and cultural norms were given equal status in the constitution. However, rather than calling for the dissolution of the island courts system, the committee recommended increased training of its judges and the possibility to appeal customary law decisions to the civil law system, in what amounted to a rare recognition of the potentially conducive role played by customary law in the implementation of the convention.[190] Similar, conciliatory concluding observations in which plural legal systems have been sought harmonized or amended rather than eradicated have been issued to Madagascar,[191] Cameroon,[192] Liberia,[193] Papua New Guinea[194] and Ethiopia,[195]

179 A/51/38(SUPP): 139, 154, 1996.
180 A/52/38/Rev.1: 126, 1997. Following the consecutive review of Namibia, these concerns were reiterated by the committee (CEDAW/C/NAM/CO/3: 16 – 17, 2007).
181 A/53/38/Rev.1: 154, 1998. This general claim on the problems inherent to legal pluralism was also raised during the review (CEDAW/C/SR.396: 14 – 15, 2001).
182 A/59/38(SUPP): 296, 2004.
183 A/53/38/Rev.1: 229 – 230, 1998. These concerns were reiterated by the committee following the 2008 review of Tanzania (CEDAW/C/TZA/CO/6: 146 – 147, 2008).
184 A/59/38(SUPP): 192, 2004.
185 CEDAW/C/GHA/CO/5: 36, 2006.
186 A/55/38: 60 – 61, 2000. These concerns were reiterated following the 2007 review of India (CEDAW/C/IND/CO/3: 10 – 11, 2007).
187 CEDAW/C/LKA/CO/7: 16, 2011.
188 CEDAW/C/TCD/CO/1 – 4: 12, 42, 2011.
189 CEDAW/C/ZWE/CO/2 – 5: 38, 2012.
190 CEDAW/C/VUT/CO/3: 38 – 39, 2007.
191 CEDAW/C/MDG/CO/5: 37, 2008.

suggesting the emergence of a more contextually sensitive approach to the influence of legal pluralism.

In its most recent practice, the committee seems to have embraced a more legalist approach to adjustments of religious law, as it has increasingly refrained from encouraging states to seek out comparative jurisprudence, settling for legal reforms of discriminatory religious laws in the concluding observations issued to Kuwait,[196] Jordan,[197] Comoros,[198] Cyprus[199] and Greece.[200] One exception from this general turn is the 2013 review of Afghanistan, where members of the committee suggested during the meeting with the state party that Afghan authorities should seek assistance from moderate Islamic leaders attached to Al-Azhar University in Cairo to ensure consistency between positive law and Islamic law,[201] and that they should conduct awareness-raising campaigns to help the public understand that harmful practices "were in fact contrary to Islam".[202] These concerns were also carried over to the concluding observations, where the committee suggested that the state party adopt a policy and strategy "raising the awareness of religious and community leaders with the aim of preventing misinterpretations of Sharia law and Islamic principles".[203]

Taken together, the CEDAW approach to religious law is subordinate to its general view of legal pluralism as an implicit threat to women's rights: From the practice of the committee, it seems evident that religious law is considered a key building block in the social and cultural patterns that states should modify or abolish according to article 5(a) of CEDAW. Religion, on this reading, is not only influential, but is at the very core of the creation and maintenance of patterns of conduct and practices that are detrimental to gender equality, due to its ordered, institutional strength as a force to be reckoned with in society, as put by a former member of the committee (Raday 2003: 667–668). This dismissive stance notwithstanding, the tendency of the committee to recommend reinterpretations of religio-legal systems in states with Islamic law, or, more recently, to

192 CEDAW/C/CMR/CO/3: 47, 2009.
193 CEDAW/C/LBR/CO/6: 15, 2009.
194 CEDAW/C/PNG/CO/3: 50, 2010.
195 CEDAW/C/ETH/CO/6–7: 13, 2011.
196 CEDAW/C/KWT/CO/3–4: 51, 2011.
197 CEDAW/C/JOR/CO/5: 50, 2012.
198 CEDAW/C/COM/CO/1–4: 40, 2012.
199 CEDAW/C/CYP/CO/6–7: 36, 2013.
200 CEDAW/C/GRC/CO/7: 37, 2013.
201 CEDAW/C/SR.1132: 43 Gabr, 2013.
202 CEDAW/C/SR.1132: 44 Al-Jehani, 2013.
203 CEDAW/C/AFG/CO/1–2: 23, 2013.

call for amendments of other pluralist legal systems, seems to indicate a gradual shift towards an appreciation of salience over substance in its view of legal pluralism; acknowledging the entrenched, integral nature of these forms of law in the states in question, the committee seems to consider amendment more conducive to the implementation of human rights norms than abolition.

6.6.4 The Impact of Religion

Confronted by the impact of religious doctrines and practices on the implementation of the provisions of CEDAW, the committee has developed a three-pronged approach where it shifts between (1) the adoption and implementation of legal measures to counter such influences, (2) calls for reinterpretation or adjustment of the doctrines and practices in question, or (3) the engagement of religious leaders and institutions in society. Whereas the request that states enact legal reforms has been central to the concluding observations of the committee throughout its practice, calls for reinterpretations and requests for the engagement of religious leaders and the institutions they lead in protecting the rights of the convention are later innovations, gaining momentum in the late 1990s and early 2000s. Before this time, the committee would generally recommend that states adopt legislation that would outlaw practices that violated article 2(f) of the convention. Reviewing Uganda in 1995, the committee recommended that

> legal measures be taken against all religious and customary practices that discriminate against women. Furthermore, awareness programmes must be put in place to change mentality and attitudes. The Committee also recommends that laws be amended to empower women in matters of inheritance and success.[204]

Hence, the committee considered a combination of awareness programs and legal reform to be the best solution to prevent violations of the convention originating in religious and customary practices. Similar sentiments were expressed to Turkey during its 1997 review, when the committee recommended that honor killings "based on customs and traditions" should be "appropriately addressed under the law".[205] Later that same year, however, Israel was advised only to take "necessary steps" to eliminate forced marriages, honor killings, polygamy and

204 A/50/38: 341, 1995.
205 A/52/38/Rev.1: 195, 1997.

FGM,[206] allowing the state party to decide for itself on the best way to combat the practice.

During the review of Indonesia in 1998, the committee stressed that traditional norms and culture and their reinforcement by the "patriarchal values of the religion" constituted one of the main obstacles to the implementation of the convention,[207] and further that

> [s]ome of Indonesia's traditional values and religious principles constituted fundamental impediments to the implementation of the Convention. Indonesia should examine its traditional values in order to determine those that were core values and those that were the result of patriarchal or historical customs, separate from the real core values. She was sure that the basic core values of Indonesia were not in contradiction with human rights principles.[208]

This comment encapsulates the view of values underpinning the later observations of the committee more generally: that there is a "more real", universal, shared core of values in states parties that are coextensive with human rights norms in international instruments, and that values in contradiction with such instruments are the results of external pressures in the shape of patriarchal or historical customs. The nature of this core of values and the scope of values that have been derived from external forces varies according to the state under review, but the basic dichotomy of a core influenced and corrupted by external forces prevails (see below). In its concluding observations to Indonesia, the committee suggested that the state party take account of the committee's remarks on religious and cultural values,[209] and recommended that the government should take immediate steps to eradicate the practice of polygamy and change other discriminatory laws.[210]

A more substantial indication of the precise nature of the core of values referred to in the review of Indonesia became apparent at the examination of Azerbaijan, during the same session in 1998. Several committee members expressed their enthusiasm for the secular nature of the Azerbaijani constitution, which ensured the separation of the state from religion.[211] In the concluding observations, however, the committee expressed its concern with the *de facto* discrimination experienced by women in the state party, despite the fact that it should be "rel-

206 A/52/38/Rev.1 (SUPP): 178, 1997.
207 CEDAW/C/SR.378: 34, Kim, 1998.
208 CEDAW/C/SR.378: 39 Schöpp Schilling, 1998.
209 A/53/38/Rev.1: 301, 1998.
210 A/53/38/Rev.1: 307, 1998.
211 CEDAW/C/SR.367: 24 Corti, 26 Acar, 32 Khan, 1998.

atively easy" to implement the provisions of the convention due to the secularity of the state, necessitating governmental commitment to "eliminate deeply patriarchal attitudes".[212] During the same session, similar stress was put on the separation of the state from religious influences to the Dominican Republic, which was asked to "take steps to ensure the de facto separation of the secular and religious spheres, with a view to ensuring the full implementation of the Convention" (see above).[213]

During the 1999 sessions of the committee, the relation between state power and religious practices was approached in a slightly different direction by the committee during the review of Algeria, where the "constant citing of religious principles and cultural specificities" by the state delegation were dismissed, and Algerian authorities asked to take measures to assure that "religious and cultural patterns" did not inhibit the position of women in society.[214] During the review, the Algerian delegation was assured by members of the committee that although the state religion of Islam was a religion of tolerance, the Koran should be reinterpreted according to the circumstances,[215] and that the state had a responsibility to show that Islam could be adapted to take into account women's rights,[216] echoing the observations issued by the committee on the influence of religious laws. During the same session, the committee reviewed the report submitted by Nepal, observing that numerous traditions and practices detrimental to women and girls

> [s]uch as child marriage, dowry, polygamy, deuki (a tradition of dedicating girls to a god or goddess), who become "temple prostitutes", which persists, despite the prohibition of the practice by the Children's Act) badi (the ethnic practice of forcing young girls to become prostitutes) and discriminatory practices that derive from the caste system are still prevalent.[217]

According to the concluding observations, these practices and attitudes, should be eliminated through the adoption of policies, programs and public awareness campaigns.[218]

Reviewing Pakistan in 2007, the committee reiterated its view of a universal core of values threatened by external, corruptive forces, but this time as a strug-

212 A/53/38/Rev.1: 58, 1998.
213 A/53/38/Rev.1: 351, 1998.
214 A/54/38/Rev.1: 71 – 72, 1999.
215 CEDAW/C/SR.406: 35 Aouij, 1999 & CEDAW/C/SR.407: 39 Aouij, 1999 .
216 CEDAW/C/SR.406: 46 Acar, 1999.
217 A/54/38/Rev.1: 153, 1999.
218 A/54/38/Rev.1: 154, 1999.

gle within a singular religious tradition. During the meeting with the state party, the committee observed that problems with sexual stereotypes were common in Islamic societies, questioning the delegation whether Pakistan had advocates seeking to disseminate "the real tenets of Islam with regard to the role of women".[219] These views were carried over to the concluding observations, where the committee expressed its concern with prevailing trends of fundamentalism, intimidation and violence in the name of religion, urging the state party to take prompt action to counterinfluence "the misinterpretation of Islam" among non-State actors undermining women's rights.[220]

In the early 2000s, the committee added another nexus between a universal core of values, and doctrines and practices that threatened such values: in consecutive concluding observations to The Democratic Republic of Congo,[221] Burkina Faso[222] and Guinea,[223] the committee localized the origins of practices threatening human rights primarily in rural areas, where "customs and beliefs are most broadly accepted and followed".[224] While the committee recommended the usual mixture of legal and policy measures to eradicate such practices, it also added a new dimension to its concluding observations by suggesting that state authorities in Burkina Faso should cooperate with numerous social actors, including religious leaders, to "encourage a change in people's way of thinking and accelerate the process of the emancipation of women through law reform, information, education and communications".[225] This recommendation inaugurated the third tier of the approaches developed by the committee when faced by the influence of religious doctrines and practices: the engagement of religious leaders and institutions in society.

From the early 2000s and onwards, the committee has gradually expanded its recommendations on legal and policy measures to regularly include such engagement and outreach to religious leaders. The 2000s was a transitional period where the committee oscillated between different approaches, recommending a combination of legal and policy measures to eliminate traditional practices and stereotypes in Zambia,[226] The Republic of Congo,[227] Nepal,[228] Cambodia,[229]

219 CEDAW/C/SR.781: 42 Gabr, 2007.
220 CEDAW/C/PAK/CO/3: 28–29, 2007.
221 A/55/38(SUPP): 194–238, 2000.
222 A/55/38(SUPP): 239–286, 2000.
223 A/56/38: 97–144, 2001.
224 A/55/38(SUPP): 230, 2000.
225 A/55/38: 266, 2000.
226 A/57/38 (SUPP): 239, 2002.
227 A/58/38 (SUPP): 183, 2003.

Togo[230] and Ghana.[231] Parallel to these observations the committee included recommendations to engage religious leaders in these efforts in its concluding observations to Nigeria,[232] Malta,[233] Uzbekistan[234] and The Philippines.[235]

In 2007, a virtual tipping point can be identified, as observations recommending engagement with religious leaders became a regular feature whenever the committee engaged the influence of religious doctrines and practices on the implementation of the convention. These recommendations frame the role of religious leaders in this process as vital and comprehensive: In the concluding observations to Tajikistan in 2007, the committee requested that religious leaders should be addressed in order to change the widely accepted subordination of women and the stereotypical roles applied to both sexes, but also "targeted" in campaigns to modify existing gender-role stereotypes and strategies to prevent unregistered religious unions.[236] Other states have been asked to eliminate negative cultural practices and stereotypes "in collaboration with" religious leaders;[237] to prevent harmful traditional practices "with the support of",[238] or "involving" religious leaders;[239] or to "encourage religious authorities to promote positive images of women and the equal status and responsibilities of women and men in society".[240] In other settings, religious leaders are viewed as recipients of knowledge, about the convention,[241] of training about gender equality more generally,[242] or about the health risk of harmful practices for women.[243]

Taken together, these observations suggest an ambiguous role for religious leaders, who can be of assistance on some issues, but seem to constitute obstacles on others. While observations tend to suggest the involvement of religious leaders on several issues, the most frequent ground for suggesting the engage-

228 A/59/38 (SUPP): 209, 2004.
229 CEDAW/C/KHM/CO/3: 36, 2006.
230 CEDAW/C/TGO/CO/5: 15, 2006.
231 CEDAW/C/GHA/CO/5: 22, 2006.
232 A/59/38 (SUPP): 300, 2004).
233 A/59/38(SUPP): 106, 2004.
234 CEDAW/C/UZB/CO/3: 20, 2006.
235 CEDAW/C/PHI/CO/6: 18, 2006.
236 Tajikistan, CEDAW/C/TJK/CO/3: 20, 34, 36, 2007.
237 Mauritania, CEDAW/C/MRT/CO/1: 22, 2007.
238 Guinea, CEDAW/C/GIN/CO/6: 25, 2007.
239 United Kingdom, CEDAW/C/UK/CO/6: 279, 2008.
240 Yemen, CEDAW/C/YEM/CO/6: 15, 2008.
241 South Africa, CEDAW/C/ZAF/CO/4: 13, 2011 and Guyana, CEDAW/C/GUY/CO/7–8: 9, 2012.
242 Djibouti, CEDAW/C/DJI/CO/1–3: 25, 2011.
243 Ethiopia, CEDAW/C/ETH/CO/6–7: 19, 2011.

ment of religious leaders is the measures proposed by the committee to change stereotypes and cultural attitudes that are not conducive to gender equality, both of which are frequently connected to both article 2(f) and 5(a) by the committee.[244] These suggestions are commonly localized early in the concluding observations, indicating their importance to the committee,[245] but are often not directed towards specific practices. Rather, addressed to elusive and widely encompassing topics like "attitudes" and "ideologies", these suggestions relate to the structural level of state implementation of the convention.

One particularly controversial issue that has generated a substantial number of recommendations to involve religious leaders is the continued practice of female genital mutilation (FGM) in numerous states.[246] Recommendations on this topic seemingly revert to the view of the committee of a core set of values that is coextensive with human rights, and its continued corruption through admixture with other practices, originating in surrounding traditions, customs and culture. The committee has been adamant that FGM "has no basis in religion",[247] and

244 Malta (A/59/38 SUPP): 106, 2004), Uzbekistan (CEDAW/C/UZB/CO/3: 20, 2006), The Philippines (CEDAW/C/PHI/CO/6: 18, 2006), Serbia (CEDAW/C/SCG/CO/1: 20, 2007), Syria (CEDAW/C/SYR/CO/1: 18, 2007), Cook Islands (CEDAW/C/COK/CO/1: 23, 2007), Jordan (CEDAW/C/JOR/CO/4: 20, 2007), Rwanda (CEDAW/C/RWA/CO/6: 22, 2009), Tuvalu (pastors, CEDAW/C/TUV/CO/2: 28, 2009), Timor-Leste (CEDAW/C/TLS/CO/1: 28, 2009), Botswana (CEDAW/C/BOT/CO/3: 24, 2010), Turkey (CEDAW/C/TUR/CO/6: 21, 2010), Bangladesh (CEDAW/C/BGD/CO/7: 18, 2011), Sri Lanka (CEDAW/C/LKA/CO/7: 23, 2011), Costa Rica (CEDAW/C/CRI/CO/5–6: 19, 2011), Paraguay (CEDAW/C/PRY/CO/6: 19, 2011) and Lesotho (CEDAW/C/LSO/CO/1–4: 21, 2011), Chad (CEDAW/C/TCD/CO/1–4: 21, 2011), Nepal (CEDAW/C/NPL/CO/4–5: 18, 2011), Congo (CEDAW/C/COG/CO/6: 21–22, 2012), Algeria (CEDAW/C/DZA/CO/3–4: 27–28, 2012), Zimbabwe (CEDAW/C/ZWE/CO/2–5: 9–10, 2012), Jordan (CEDAW/C/JOR/CO/5: 24, 2012), Guyana (CEDAW/C/GUY/CO/7–8: 21, 29, 2012).

245 According to the working methods of CEDAW, issues are sorted in the order of importance of the particular issues to the country under review (Ways and means of expediting the work of the Committee on the Elimination of Discrimination against Women. Note by the Secretariat. CEDAW/C/2009/II/4: 19).

246 Nigeria (A/59/38 (SUPP): 300, 2004 & CEDAW/C/NGA/CO/6: 22, 2008), Mauritania, (CEDAW/C/MRT/CO/1: 37, 2007), Niger (CEDAW/C/NER/CO/2: 18, 2007), Guinea (CEDAW/C/GIN/CO/6: 25, 2007), United Kingdom (CEDAW/C/UK/CO/6: 279, 2008), Yemen (CEDAW/C/YEM/CO/6: 35, 2008), Portugal (CEDAW/C/PRT/CO/7: 31, 2009), Guinea-Bissau (CEDAW/C/GNB/CO/6: 26, 2009), Egypt (CEDAW/C/EGY/CO/7: 42, 2010), Burkina Faso (CEDAW/C/BFA/CO/6: 24, 2010), Uganda (CEDAW/C/UGA/CO/7: 22, 2010), Italy (CEDAW/C/ITA/CO/6: 52–53, 2011), Kenya (CEDAW/C/KEN/CO/7: 20, 2011), Djibouti (CEDAW/C/DJI/CO/1–3: 17, 2011), Ethiopia (CEDAW/C/ETH/CO/6–7: 19, 2011), Chad (CEDAW/C/TCD/CO/1–4: 21, 2011), Côte d'Ivoire (CEDAW/C/CIV/CO/1–3: 27, 2011), Oman (CEDAW/C/OMN/CO/1: 26, 2011). Congo (CEDAW/C/COG/CO/6: 22, 2012). The recommendation to include religious leaders in eradicating the practice is also mentioned in general recommendation no. 14 of the committee (A/45/38(SUPP), 1990).

247 Indonesia, CEDAW/C/IDN/CO/5: 21, 2007.

that the primary task of states in the eradication of this practice is to address the "underlying cultural justifications" of FGM in collaboration with religious leaders.[248] These views seem to suggest that the primary task of religious leaders in the battle against FGM is to denounce the practice, clarify its non-religious nature, and assist in its decoupling from a shared core of values.

The importance of this distinction was evident in the review of Indonesia in 2007, as the committee requested information about actions taken by the state party to address constraints to the implementation of the convention represented by "sociocultural attitudes and the misinterpretation of religious teachings",[249] pointed out in the previous observations of the committee (see above). During the session, representatives of the state party claimed that FGM was an Egyptian practice, highlighting the distinction between Muslim and customary practices.[250] One committee member observed that FGM was still prevalent in Islamic areas, despite the position of the Ministry of Health on the issue,[251] while another member confirmed the view of the state party, as she pointed out that "female genital mutilation was not an Islamic custom, but rather an African one: a clear fatwa had been issued specifying that the sharia prohibited the custom as a violation of human rights".[252]

In its concluding observations, the committee suggested public awareness-raising campaigns to change the cultural perceptions connected with FGM, a "practice (…) that has no basis in religion".[253] In the consecutive review of Indonesia in 2012, the committee expanded on this critique, advising Indonesian authorities to raise awareness, sensitize and collaborate with religious leaders and religious groups to eradicate FGM, and to "encourage those groups to engage in comparative studies with other regions and/or countries which do not have this practice",[254] echoing the views of the committee on the need to learn from other states in its practice on Islamic religious law over the same period of time (see above)

Reviewing Guinea, on the other hand, the committee was faced by a state delegation whose members openly disagreed on the correlation between FGM and religion, with three members observing a link between Islam and the prac-

248 Mauritania (CEDAW/C/MRT/CO/1: 28, 2007), Guinea (CEDAW/C/GIN/CO/6: 25, 2007), Egypt (CEDAW/C/EGY/CO/7: 42, 2010), Guinea Bissau (CEDAW/C/GNB/CO/6: 26, 2009), Uganda (CEDAW/C/UGA/CO/7: 22, 2010), Kenya (CEDAW/C/KEN/CO/7: 20, 2011).
249 CEDAW/C/IDN/Q/5: 7, 2007.
250 CEDAW/C/SR.799 (A): 28, 2007.
251 CEDAW/C/SR.800 (A): 22, Pimentel, 2007.
252 CEDAW/C/SR.800 (A): 24, Gabr, 2007.
253 CEDAW/C/IDN/CO/5: 20 – 21, 2007.
254 CEDAW/C/IDN/CO/6 – 7: 22/24, 2012.

tice,[255] and a fourth member refusing such a link, pointing to the prevalence of FGM also in non-Muslim areas of the country,[256] a position supported by one member of the committee, with reference to the lack of FGM in her Muslim majority home country, Bangladesh.[257] Another member of the committee described FGM as a barbaric practice that has nothing to do with Islam, but was introduced by a British gynaecologist in the nineteenth century as a means of neutralizing the perceived threat posed by women's sexuality and making women more compliant.[258] In its concluding observations, the committee amalgamated these views to observe the "entrenched cultural underpinnings" of the practice, advising the state party to strengthen education and awareness-raising efforts with the support of religious leaders to eliminate FGM "and its underlying cultural and religious justifications",[259] indicating an instability in the relation between external customs and practices and a core of values, apparently settling for a compromise on the correlation of the practice with religion.

In their assessments of other states that have received similar recommendations on the need to involve religious leaders in the fight against FGM, committee members and state delegations have agreed emphatically on the non-religious nature of the practice, and its exclusively cultural justifications. During these reviews, state representatives have pointed to fatwas by Islamic scholars denouncing the practice,[260] to FGM as an ancient tribal practice,[261] to the lack of recognition of FGM in Islamic law,[262] and to the encouragement of Christian and Muslim networks to make it clear that there were no religious justifications for the practice.[263] Committee members, for their part, have stressed that FGM has nothing to do with religion,[264] that the practice is not linked to any religion,[265] that there can be no religious justification for the practice,[266] and

> noting that female genital mutilation was generally perceived as a religious obligation in Guinea-Bissau, [Ms. Rasekh] enquired about the steps taken by the Government to reverse

255 CEDAW/C/SR.795 (A): 30, 32, 45, 2007.
256 CEDAW/C/SR.795 (A): 46, 2007.
257 CEDAW/C/SR.795 (A): 35 Begum, 2007.
258 CEDAW/C/SR.795 (A): 42 Simms, 2007.
259 CEDAW/C/GIN/CO/6: 25, 2007.
260 Mauritania, CEDAW/C/SR.787: 42, 2007 and Egypt, CEDAW/C/SR.918: 79, 2010.
261 Egypt, CEDAW/C/SR.918: 59, 2010.
262 Guinea-Bissau, CEDAW/C/SR.904: 22, 2010.
263 Kenya, CEDAW/C/SR.963: 36, 2011.
264 Mauritania, CEDAW/C/SR.787: 36 Simms, 2007.
265 Guinea-Bissau, CEDAW/C/SR.903: 55 Gabr, 2010.
266 Kenya, CEDAW/C/SR.963: 27 Gabr, 2011.

> that belief. She would also like to know if any religious groups were working to spread awareness that such practices were not an obligation under any religion.[267]

Taken together, these views indicate a complete dismissal of religious justifications for female genital mutilation, even in cases where such practices are perceived by the population as a religious obligation. In this particular context, religious doctrines and practices, and religious leaders who direct their authoritative interpretation, are generally viewed as valuable allies in the fight against FGM, whose sole origin can be found in ancient customs and patriarchal ideologies external to religion.

6.7 Summary

The monitoring practice of the committee from 1993 to 2013 on the influence of religion on the implementation of the provisions of CEDAW plays out in the space between the different models of religion recognized in its general recommendations: On the one hand, religious legal rules, doctrines and practices are viewed as significant components in patriarchal systems that subjugate and discriminate against women, and should therefore be reformed, harmonized or eradicated. On the other hand, there is a growing recognition that the legal rules, doctrines and practices developed and maintained by religious leaders and institutions play decisive roles in numerous societies around the world, to the extent that their complete exclusion from the implementation of human rights is impractical or maybe even impossible.

By emphasizing the shifting role of religion in the protection of women's rights, the CEDAW committee has adhered closely to the pragmatic approaches to religion dominant among actors at the second UN, working from a pretended "outside". Examining state reports on the implementation of CEDAW, the committee has repeatedly addressed the material consequences for its convention caused by the social and cultural influence of religion, either in its doctrinary, legal or organizational form. However, by also emphasizing the "intermingling" of religious and secular spheres of society as a challenge to treaty implementation in its own right, the committee has drawn upon more ad hoc, contextually determined approaches to religion more commonly associated with the third UN.

The practice of the committee illustrates the complexities of resolving the paradox between these different approaches: Although the general recommen-

267 Guinea-Bissau, CEDAW/C/SR.904: 21 Rasekh, 2009.

dations of the committee emphasize the "intersectionality" of different causes for discrimination and do not seem to distinguish sharply between the influence of religion and surrounding concepts like culture and customs, the observations of the committee have been consistently engaged in the separation of religion from other influences on the implementation of its provisions: Religious laws, in particular Islamic laws, have generally been treated in isolation and kept apart from the role of customary legal rules; religion has been dissociated from harmful traditional practices, which have been attributed to external forces like tradition, culture or patriarchal ideology; and the committee has been adamant that the separation of religion from state power is necessary for the implementation of its provisions. Singling out the social role of religion in this way, the committee has gone in the opposite direction of the Human Rights Committee, which tends to avoid differentiating religion unless it is legally required to do so.

In these separations, committee members have generally been careful to avoid the suggestion that religious legal rules, doctrines or practices should be eliminated or unilaterally reformed by state parties, as a narrow reading of the wording of articles 2(f) and 5(a) would seem to suggest. Rather, the committee, through its singling out of religion and its increasing calls for the involvement of religious communities and their leaders in the implementation of its provisions, apparently seeks to narrow the gap between its opposing views of religion as both detrimental and conducive to the protection of women's human rights. By cultivating the isolation of religion from its surroundings as a particularly detrimental force in society, the committee has simultaneously opened up the space for religious leaders in harnessing and controlling these forces, in order to improve the conditions for the implementation of the provisions of CEDAW.

The singling out of religion in the practice of the committee raises important questions concerning the hierarchy of influences on the implementation of the provisions of CEDAW: Whereas states with legal systems explicitly derived from the Islamic Sharia are asked to seek inspiration from comparative jurisprudence and to reform their legal frameworks in cooperation with religious communities and their leaders, states with more informal, "Mohammedan" legal systems or with Jewish law, have been asked to "eliminate" or "secularize" their provisions, indicating a less favorable view of the possibility of reforming these legal systems. Additionally, the singling out of religion from other influences on the implementation of the provisions of CEDAW may serve to exacerbate the "demonization of culture" (Merry 2003a) in the practice of the committee. By distancing religion from harmful traditional practices like female genital mutilation, however, the committee simultaneously blames such procedures on other social forces, like traditions, culture and customs.

7 The Committee on the Rights of the Child

7.1 Introduction

The adoption of the Convention on the Rights of the Child in 1989 inaugurated a new era in UN treaty monitoring. The adoption of the CRC moved children from their former role as subsidiaries of their parents to legally recognized individuals (Hammarberg 1990: 99). Initially scheduled for adoption during the 1979 International Year of the Child as an expanded version of the non-binding Declaration of the Rights of the Child (1959),[1] the draft descended into the conventional gridlock of human rights treaty drafting, only to emerge in its present form decades later. The resulting instrument broke completely with the paternalistic approach of the declaration, for reasons that are not entirely clear, although the composition of the draft working group and the contributions of several NGOs probably played a decisive role (Cohen 1990: 142).

The Committee on the Rights of the Child is created and structured in articles 42–45 of the CRC, with 18 independent experts scheduled to meet for three weeks every year and to receive periodic reports from states parties every fifth year after their initial report. The committee is competent to make suggestions and general recommendations. Unique among the treaty bodies, the committee is mandated to ask for additional information if required, and to engage in extensive dialogue with United Nations agencies on their topics of specialization.[2]

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1 GA Resolution 1386(XIV), 1959.

2 These unique features are listed in article 45, which reads in full: "In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention: "(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities; (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications; (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child; (d) The Committee may make suggestions and general recom-

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The committee was also the first to adopt the practice of issuing concluding observations following every reporting cycle from the beginning of its work, and the first to be expressly allowed to consider information from other sources than governments.[3]

Although the CRC is a single-issue convention dedicated to a specific category of rights holders, the articles contained in the instrument bear closer resemblance to the structure of the International Bill of Rights (IBR)[4] than to the other thematically oriented treaties on racial discrimination and discrimination of women, featuring numerous provisions on religion. In the preamble[5] and article 2,[6] the CRC reiterates the catalogue of prohibited grounds for discrimination in the IBR, and then expands the list to also include ethnicity and disability. In article 29,[7] the convention regulates the purpose of education, covering the equality of the sexes, ethnicity and friendship among religious groups and peoples of indigenous origins. Article 30[8] duplicates article 27 of the ICCPR on the

mendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties."

3 See previous note.

4 The International Bill of Rights is conventionally used by the UN secretariat as shorthand denoting the rights contained in the UDHR, ICCPR and ICESCR put together.

5 "Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

6 Article 2 reads in full: "1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."

7 The full list on the direction of education in article 29 (d): "The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin."

8 The only substantial difference is that article 30 adds "children who are indigenous" to the list. The article reads in full: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his

rights of minorities to exercise their religion to the child-centered context of the CRC with only minor changes.

In article 14,[9] the novelty of the CRC approach to child rights stands out in particular: Whereas former treaties subsumed a child's religion under the rights of their parents, the CRC creates individual religious rights for children. Using the ICCPR article 18 as a point of departure, article 14(1) of the CRC obliges states parties to respect the right of the child to freedom of thought, conscience and religion. The principle of parental rights and responsibilities to provide guidance and direction in the exercise of rights in a manner consistent with the evolving capacities of the child, included in the treaty as a stand-alone provision in article 5, is also included in article 14(2), emphasizing the importance of the evolving capacities approach to the freedom of religion or belief. Along with the principle of the best interest of the child, launched in article 3(1)[10] and then repeatedly mentioned, the evolving capacities concept was one of the most significant innovations of the CRC. Although a clarification of the permissible range of manifestations of this right are absent, acceptable limitations listed in 14(3) are identical to the ICCPR article 18(3).

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or her own culture, to profess and practice his or her own religion, or to use his or her own language."

9 Article 14 reads in full: "1. States Parties shall respect the right of the child to freedom of thought, conscience and religion. 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others."

10 Article 3 reads in full: "1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision. "

7.2 General Comments

Starting in 2001, the committee monitoring the CRC has issued 21 general comments, and is alone among the treaty bodies in publishing only theme-based comments. Religion has four different modalities in the GCs issued by the CRC: First, the importance of religion as a prohibited ground of discrimination in article 2 of the convention is repeatedly mentioned, with respect to HIV/AIDS and the rights of the child,[11] the rights of children with disabilities,[12] the rights of children in juvenile justice,[13] and the rights of the child to rest, leisure, play, recreational activities, cultural life and the arts.[14] According to the general comment issued by the committee on article 29, education is one of the primary means to fight discrimination, as it should "overcome the boundaries of religion, nation and culture built across many parts of the world". The transgression of such boundaries should be made possible by employing a "balanced approach" to education based on dialogue and respect for difference, despite the potential tension between subparagraph 1(c) on the respect for the cultural identity of the child, and subparagraph 1(d), on the promotion of friendship and tolerance among all peoples.[15]

Second, the role of religious leaders in assisting the implementation of the convention is repeatedly emphasized,[16] safeguarding the school environment[17] and engaging in the fight against HIV/AIDS.[18] Third, in the comment on the right of the child to freedom from all forms of violence, prohibiting corporal punishment of children on religious grounds is firmly placed within the acceptable limitations of the right to freedom of religion or belief in ICCPR article 18, confirming the general prohibition against exercising one fundamental right to the detriment of another.[19]

Fourth, in the extensive comment on the key concept of the best interest of the child as a primary consideration,[20] the committee observes that the best interest principle is both a substantive right, an interpretative legal principle and a

11 CRC/GC/2003/3, 2003.
12 CRC/C/GC/9, 2007.
13 CRC/C/GC/10, 2007.
14 CRC/C/GC/17, 2013.
15 CRC/GC/2001/1: 4, 2001.
16 CRC/GC/2003/5, 2003.
17 CRC/GC/2001/1, 2001.
18 CRC/GC/2003/3, 2003.
19 CRC/C/GC/13, 2011.
20 CRC/C/GC/14, 2013.

rule of procedure, to secure the child's "holistic physical, psychological, moral and spiritual integrity (...) and to promote his or her human dignity". As a vital component of the child's identity, its "ethnic, religious, cultural and linguistic background" should always be taken into account in the consideration of a foster home or placement, adoption or separation from the family. However, such a background may only be preserved if it does not conflict with any of the provisions of the CRC.

7.3 Individual Complaints

The CRC was furnished with an Optional Protocol on an individual communications procedure in 2011 through resolution 66/138 of the UN General Assembly. The Protocol entered into force in 2014, and the committee has presently (2016) only reviewed one submission, which it found inadmissible.[21]

7.4 Reporting Guidelines

The CRC reporting guidelines[22] provide for the same general requirements as the other committees, but additionally request that states refer to how earlier recommendations from the committee have been met. Rather than article-specific guidelines, the committee requests different kinds of information from the various rights clusters covered by the convention.[23] The guidelines request information on the participation of religious groups in drafting state reports, and ask states to include relevant statistical data and information disaggregated on religion.[24] For participation in the CRC process, Child Rights Connect[25] has published a guide to the reporting mechanism (CRC 2014) that is more concerned with

21 *A.H.A. v. Spain*, Communication no. 1/2014 (CRC/C/69/D/1/2014), 2015.

22 CRC/C/58/Rev.2, 2010.

23 The clusters, as defined by the committee, are: measures of implementation, definition of the child, general principles, civil rights and freedoms, family environment and alternative care, disability, basic health and welfare, education, leisure and cultural activities and special protection measures.

24 CRC/C/58/Rev.2: 4, 11, 2010.

25 Formerly the NGO Group for the CRC, Child Rights Connect was set up in 1983 to influence the drafting of the CRC. Today, the organization is considered among the strongest international expertise on children's rights, and continues to influence the international monitoring of children's rights http://www.childrightsconnect.org/about-us/ (31.08.2016). For a consideration of the NGO participation in the drafting of the CRC, see Türkelli and Vandenhole 2012.

the style and format of NGO reporting than substantial issues, providing no rights-specific guidelines for the submission of reports.

7.5 The Religion of the CRC

To the committee monitoring the CRC, religion does not necessarily originate in "the citadel of the mind" of the ICCPR, but is an inherently multidimensional concept that influences the implementation of the CRC in numerous ways. Like the HRC, the committee is obliged to recognize religion as a protected form of belief, as spelled out in article 14 of the CRC; however, the only general comment on the issue is more concerned with the potential for violence against children emanating from manifestations of religion or belief, rather than the protection of such beliefs (see above). As such, the committee has nowhere near the same kind of commitment to article 14 of the CRC as the HRC has to article 18 of the ICCPR.

Hence, the identity dimension of religion, which has also been emphasized by CERD, seems considerably more important than the freedom of belief, as the committee has warned frequently against discrimination on religious grounds, particularly concerning children from vulnerable groups. In addition to the belief and identity dimensions to religion, however, the committee has also paid particular attention to the potential social influence of religion, particularly as it is wielded by religious leaders, whose engagement has been a key concern to the committee from the very beginning.

7.6 Approaches to Religion in the Monitoring Practice of the CRC, 1993–2013

7.6.1 Minorities

The legal framework on discrimination and the rights of minorities in the CRC closely resembles that of the International Covenant on Civil and Political Rights (ICCPR): article 2 prohibits discrimination in the enjoyment of the rights set out in the convention,[26] and article 30 protects the rights of children who belong to

26 Article 2 reads in full: "1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or

ethnic, linguistic, religious or indigenous minorities to enjoy his or her culture, to profess and practice his or her religion, or to use his or her language.[27] While the CRC lacks a parallel to article 26 of the ICCPR on equality before the law, both articles 2 and 30 are broader in scope than their ICCPR parallels,[28] offering additional criteria for protection, including the rights of indigenous children.[29]

The Committee on the Rights of the Child issued a general comment on its interpretation of the rights of indigenous children in 2009, where it linked article 30 directly to the protection offered in article 27 of the ICCPR, but expanded the scope of this article with its particular emphasis on the recognition of the collective traditions and values in indigenous cultures.[30] It also established the principle of self-identification as indigenous as a fundamental criterion for their identification regardless of their recognition in law, and referred to the general principle of non-discrimination in the enjoyment of the other rights in the convention as a moderator on the implementation of article 30.[31]

In its monitoring practice, the committee has consistently been more concerned with the rights of children who belong to religious minorities than with the general prohibition against discrimination and the rights of indigenous children. The committee first commented on the rights of religious minority children during its reviews of The Federal Republic of Yugoslavia (FRY)[32] and Croatia in 1996. The review of the FRY was conducted without the presence of a state del-

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other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."

27 Article 30 reads in full: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

28 Articles 2 and 27. See above.

29 The rights of indigenous children are also protected under articles 17, ensuring that the mass media take steps to safeguard their linguistic needs, and 29, on the purpose of education, emphasizing friendship among all peoples, including indigenous peoples.

30 CRC/C/GC/11: 16, 2009.

31 CRC/C/GC/11: 19/22, 2009. The principle of self-identification is derived from the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries No. 169 (1989), article 1 (2).

32 The Federal Republic of Yugoslavia was the name of the political entity that was created by Serbia and Montenegro following the breakup of the Socialist Federal Republic of Yugoslavia in 1991. From 2003, the republic was known as Serbia and Montenegro, until it was split up in 2006, into The Republic of Serbia, which is considered the successor state of Yugoslavia under international law, and Montenegro. (Oeter 2011).

egation, and the committee issued a set of concluding observations following the review where it expressed its concern with the treatment of the Muslim minority in Sandjak, where numerous human rights violations had occurred "with impunity". The committee also expressed its concern with the incitement to hatred against ethnic and religious groups broadcast by certain mass media.[33]

Reviewing China, the committee addressed the controversy surrounding the recognition of the spiritual leader Panchen Lama (see also chapter 4.6.1) and its compatibility with article 14.[34] The Chinese delegation explained that the State council had made a decision concerning the funeral and reincarnation of the tenth Panchen Lama, following the passage of the ninth Panchen Lama in 1989, stressing that his government respected the religious beliefs and sentiments of the broad mass of believers in Tibet. This procedure was part of the Chinese rule in Tibet, which stretched back to the 13th century and had been reinstated in 1959 in order to abolish the system of serfdom operated by the Dalai Lama, a system that was "even more cruel than that existing during the Middle Ages in Europe and the slavery system in the United States".[35] Several members of the committee questioned the delegation on the whereabouts and situation of the Panchen Lama,[36] and the delegation replied that he was under government protection with his parents since separatists were seeking to kidnap him.[37]

In its concluding observations, the committee refrained from explicit reference to the Panchen Lama and his rights under article 14, focusing instead on the right to freedom of religion for children belonging to minorities under article 30, expressing its deep concern with violations of the human rights of the Tibetan minority. According to the committee, "[s]tate intervention in religious principles and procedures seems to be most unfortunate for the whole generation of boys and girls among the Tibetan population".[38] Following the review of the consecutive report by China in 2005, these concerns were expanded to cover the Uighur and Hui minorities, but framed as violations under article 2 on non-discrimination and article 14 on the freedom of religion or belief,[39] and further expanded in the concluding observations following the 2013 review of China,

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33 A/51/41: 884 – 885, 1996. Following the 2008 review of the successor state to the FRY, The Republic of Serbia, the committee expressed its concerns with the treatment of children belonging to the Roma minority (CRC/C/SRB/CO/1 : 25 – 26, 50, 60 – 62, 75, 2008).

34 CRC/C.12/WP.5, 1996 [the document is neither paginated, nor numbered].

35 CRC/C/SR.299: 8 – 9, 1996.

36 CRC/C/SR.299: 25 Hammarberg, 26 Santos Pais, 1996.

37 CRC/C/SR.299: 39, 1996.

38 A/53/41: 113, 1998.

39 CRC/C/CHN/CO/2: 30/44, 2005.

where the committee expressed its concerns with the self-immolations among youth from religious minorities in Tibet, and the torture and ill-treatment of children from certain religious and ethnic groups.[40]

Reviewing Myanmar, the committee questioned the state party on the preventive measures taken to protect children belonging to ethnic and religious minorities from discrimination.[41] During the meeting the state delegation explained the interrelationship of religion and the responsibility for the development of children in Myanmar:

> In the culture of Myanmar, parents bore primary responsibility for the development of children. Monks and teachers were considered as moral and ethical models, and there was no discrimination between sons and daughters, both being referred to frequently as "precious jewels". The people of Myanmar were deeply religious, and religion placed on parents a duty to restrain children from vice, exhort them to virtue, train them for a profession, provide for a suitable marriage and hand over an inheritance at the appropriate time.[42]

Stressing that there was no religious discrimination in Myanmar, the delegation asserted that the freedom of worship was completely unrestricted.[43] Following the review, the committee issued concluding observations that were critical of the protection of religious minorities in Myanmar, which was marked by lacking legislation and implementation of the principle of non-discrimination of religious minorities, including the practice of noting religious affiliation on identity cards.[44] These concerns were reiterated and expanded to cover the situation of indigenous minorities in Rakhine state following the 2004 review of Myanmar,[45] and expanded further still to cover the predominance of Buddhism in the education and recruitment of children from religious minorities to participate in armed conflict following the 2012 review of the state party.[46]

Taken together, the approach of the CRC committee to religious discrimination and the rights of religious minorities expressed in the reviews of the FRY, Croatia, China and Myanmar in the middle of the 1990s reflects the main directions in the practice adopted by the committee up to the present, split between observations that relate to *de jure* discrimination hardwired into the legal framework and *de facto* discrimination experienced by religious minorities or indige-

40 CRC/C/CHN/CO/3–4: 35, 43, 2013.
41 CRC/C/Q/Mya.1: 10, 1996.
42 CRC/C/SR.357: 5, 1997.
43 CRC/C/SR.359: 4, 1997.
44 A/53/41: 574–575, 594–595, 1998.
45 CRC/C/15/Add.237: 27, 34, 79, 2004.
46 CRC/C/MMR/CO/3–4: 35, 41, 45, 81, 2012.

nous groups. Unlike the HRC, the CRC committee has only rarely been faced with states claiming to have no minorities or to favor some minorities over others, for historical or other reasons (see chapter 5.6.2).

Among these issues, by far the most prevalent are the observations issued on *de facto* religious discrimination, whereby members of minority religious communities experience different forms of treatment that violate provisions of the CRC. Observations of this kind have been issued to numerous countries from 2000 to 2013,[47] and span from the concern expressed by the committee with discriminatory attitudes and xenophobia experienced by children who belong to religious minorities in Luxembourg,[48] to the widespread poverty, lack of birth registration and the effects of armed conflicts on religious minority children in The Philippines.[49] Rights violations suffered by religious minority children include failure to provide access to and adequate content of education,[50] inheritance and property,[51] social services,[52] food, health care and survival,[53]

47 Russia (CRC/C/15/Add.110: 25, 1999 & CRC/C/RUS/CO/3: 23–24, 2005), South Africa (CRC/C/15/Add.122: 41, 2000), Côte d'Ivoire (CRC/C/15/Add.155: 22–23, 2001), Tanzania (CRC/C/15/Add.156: 26–27, 2001), Bahrain (CRC/C/15/Add.175: 28–29, 2002), Greece (CRC/C/15/Add.170: 27–28/33–35/38–39/44–47, 2002 & CRC/C/GRC/CO/2–3, 2012), Sudan (CRC/C/15/Add.190: 26–28, 2002 & CRC/C/SDN/CO/3–4: 29–30, 2010), Sri Lanka (CRC/C/15/Add.207: 25–26, 2003 & CRC/C/LKA/CO/3–4: 28–29, 2010), Syria (CRC/C/15/Add.212: 33, 2003), Pakistan (CRC/C/15/Add.217: 29–30/38–39/40–41, 2003 & CRC/C/PAK/CO/3–4: 30–31/41–42, 2009), Brunei (CRC/C/15/Add.219: 26–27, 2003), Bangladesh (CRC/C/15/Add.221: 79–80, 2003 & CRC/C/BGD/CO/4: 32–33, 2009), Japan (CRC/C/15/Add.231: 50, 2004), Luxembourg (CRC/C/15/Add.250: 19–20, 2005), The Philippines (CRC/C/15/Add.259: 20–21/33–34/92–93, 2005 & CRC/C/PHL/CO/3–4: 29–30/36–37, 2009), Bosnia and Herzegovina (CRC/C/15/Add.260: 26, 2005), Australia (CRC/C/15/Add.268: 24, 2005), Thailand (CRC/C/THA/CO/2: 24–25, 2006 & CRC/C/THA/CO/3–4: 33–34, 2012), Saudi Arabia (CRC/C/SAU/CO/2: 27–28/40–41/66, 2006), Malaysia (CRC/C/MYS/CO/1: 106, 2007), Georgia (CRC/C/GEO/CO/3: 77, 2008), Bhutan (CRC/C/BTN/CO/2: 72–73, 2008), Moldova (CRC/C/MDA/CO/3: 25–26, 2009), Afghanistan (CRC/C/AFG/CO/1: 59–61, 2011), Singapore (CRC/C/SGP/CO/2–3: 71–72, 2011), Laos (CRC/C/LAO/CO/2: 36–37, 2011), and Kuwait (CRC/C/KWT/CO/2: 37–38, 2013).

48 CRC/C/15/Add.250: 19–20, 2005.

49 CRC/C/15/Add.259: 20, 33, 76, 92, 2005.

50 Côte d'Ivoire (CRC/C/15/Add.155: 22–23, 2001), Greece (CRC/C/15/Add.170: 27–28/33–35/38–39/44–47, 2002 & CRC/C/GRC/CO/2–3, 2012), Singapore (CRC/C/SGP/CO/2–3: 71–72, 2011), Kuwait (CRC/C/KWT/CO/2: 37–38, 2013).

51 Tanzania (CRC/C/15/Add.156: 26–27, 2001).

52 Bahrain (CRC/C/15/Add.175: 28–29, 2002).

53 Bangladesh (CRC/C/15/Add.221: 79–80, 2003) and Thailand (CRC/C/THA/CO/2: 24–25, 2006).

as well as "societal"[54] and social and political discrimination.[55] Additionally, the committee has expressed its concern with discrimination against religious minority children more generally.[56]

In these observations, the committee has generally referred states to article 2 of the CRC, securing that children belonging to religious minorities are covered by the erstwhile provisions of the convention. Only on rare occasions has the committee encountered and commented on the rights of minority children to profess and practice their own religion in line with article 30, or discrimination in the enjoyment of article 14 on the freedom of religion or belief: In observations issued to South Africa in 2000,[57] Indonesia in 2004[58] and Bhutan in 2008,[59] the committee called upon the state parties to ensure the religious rights of minority groups, but without invoking article 30. Following the review of Uzbekistan in 2013, the committee observed that, despite the constitutional protection of the freedom of religion or belief, unregistered religious activities, "which are frequently those of minorities" were subject to criminal and/or administrative sanctions, suggesting that the state party must ensure the rights of all children to the freedom of religion or belief.[60]

Observations where the committee has identified *de jure* discrimination caused by legislative scope differ from observations on *de facto* discrimination because they address legislation approved and enforced by the states under review. Hence, whereas issues of "actual" discrimination generally indicate incomplete implementation of the convention, legal discrimination signals the active dismissal of the convention by the state party, including legal provisions which are either lacking, are discriminatory in scope, or have discriminatory effects. Reviewing Iran in 2000, the committee included several questions in its list of issues concerning the legal protection offered children from religious minorities in the state party, addressing both their rights to non-discrimination under article 2 of the CRC and their integration into society under article 30.[61]

54 Sri Lanka (CRC/C/15/Add.207: 25–26, 2003) and Pakistan (CRC/C/15/Add.217: 29–30/38–39/40–41, 2003).
55 Sudan (CRC/C/15/Add.190: 26–28, 2002).
56 Russia (CRC/C/RUS/CO/3: 23–24, 2005), Thailand (CRC/C/THA/CO/2: 24–25, 2006) and Moldova (CRC/C/MDA/CO/3: 25–26, 2009).
57 CRC/C/15/Add.122: 41, 2000.
58 CRC/C/15/Add.223: 90, 2004.
59 CRC/C/BTN/CO/2: 72–73, 2008.
60 CRC/C/UZB/CO/3–4: 32–33, 2013.
61 CRC/C/Q/IRA/1: 10, 32, 1999.

During the meeting with the state party, the Iranian delegation explained that numerous ethnic and religious minorities had always lived in harmony in Iran, and members of the four constitutionally recognized religions were overrepresented in Parliament, whereas the government was taking steps to strengthen the rights of all minorities, including those without constitutional protection.[62] Following a question on the status of children from religious minorities, the state delegation stressed that the situation of non-recognized religions and beliefs, such as the Baha'i, had improved with the adoption of new legislation.[63]

Despite this assurance, the committee expressed its concerns with the restrictions on the freedom of religion or belief and the related discriminatory treatment of the Baha'i minority in its concluding observations, where it also referred to the 1981 declaration, general comment no. 22 of the HRC and recent reviews of the state party conducted by the Committee on Economic, Social and Cultural Rights (CESCR) and the Special Rapporteur on the question of religious intolerance.[64] Revisiting Iran in 2005, several members of the committee repeated their concern with the treatment of children belonging to the Baha'i minority,[65] concerns that were promptly dismissed by the state delegation,[66] but reiterated in the concluding observations issued by the committee following the review.[67] Similar concerns with *de jure* restrictions on the freedom of religion of children from religious minorities were expressed in the concluding observations issued by the committee following the review of Algeria in 2012.[68]

Reviewing France in 2004, a member of the committee expressed his surprise that the best interests of the child had not been part of the recent debate on the ban on the wearing of religious symbols in schools.[69] Another member questioned whether the communities affected by such a ban had been consulted, and whether the state party had considered its potential for inspiring extremism,[70] while a third member questioned the role of such a ban in estranging youth from disadvantaged backgrounds and its compatibility with article 14 of the CRC on the rights of children to freedom of religion or belief.[71]

62 CRC/C/SR.617: 11, 2000.
63 CRC/C/SR.618: 21, 2000.
64 CRC/C/15/Add.123: 35–36, 2000.
65 CRC/C/SR.1015: 8 Filali, 25 Ouedraogo, 2005 (translation from the French original) & CRC/C/SR.1016: 26 Krappmann, 2005.
66 CRC/C/SR.1016: 31, 2005.
67 CRC/C/15/Add.254: 24, 41–42, 2005.
68 CRC/C/DZA/CO/3–4: 41–42, 2012.
69 CRC/C/SR.967: 26 Kotrane, 2004 (translation from the French original).
70 CRC/C/SR.967: 35 Khattab, 2004 (translation from the French original).
71 CRC/C/SR.967: 42 Liwski, 2004 (translation from the French original).

Responding to these questions, a member of the state delegation explained that the recently adopted legislation was intended to provide a uniform application of the principle of laïcité, based on the principle of respect for the freedom of conscience, and the affirmation of shared values underlying national unity beyond specific religious affiliations.[72] Committee members, not satisfied with this explanation, followed suit with additional questions, linking the ban on religious symbols to the provisions of article 29 of the CRC on the access to education,[73] questioning government engagement with Muslim girls who dropped out of public schools because their parents did not allow them to remove their headscarves.[74] In its concluding observations, the committee reiterated its concerns with the discriminatory effects of the legislation:

> The Committee notes that the Constitution provides for freedom of religion and that the law of 1905 on the separation of church and State prohibits discrimination on the basis of faith. The Committee equally recognizes the importance the State party accords to secular public schools. However, in the light of articles 14 and 29 of the Convention, the Committee is concerned by the alleged rise in discrimination, including that based on religion. The Committee is also concerned that the new legislation (Law No. 2004–228 of 15 March 2004) on wearing religious symbols and clothing in public schools may be counterproductive, by neglecting the principle of the best interests of the child and the right of the child to access to education, and not achieve the expected results. The Committee welcomes that the provisions of the legislation will be subject to an evaluation one year after its entry into force.[75]

In its recommendations, the committee particularly stressed the implementation and ramifications of the legislation on the rights of children, urging the state party to use the enjoyment of children's rights as enshrined in the convention as a "crucial criteria" in the evaluation of the law.[76]

Prior to the 2009 review of France, the committee questioned the state party on the number of children expelled and reinstated in school for ostensibly signaling their religious affiliation in a "conspicuous" manner,[77] to which the state party provided comprehensive statistics of cases raised under the act, dropping dramatically from the year of its implementation to the following school year, demonstrating that the principles of the act had been "broadly accepted by pupils and their families".[78] The issue was not addressed in full during the

72 CRC/C/SR.967: 52, 2004 (translation from the French original).
73 CRC/C/SR.968: 33 Kotrane, 2004.
74 CRC/C/SR.968: 43 Khattab, 82 Doek, 2004.
75 CRC/C/15/Add.240: 25, 2004.
76 CRC/C/15/Add.240: 26, 2004.
77 CRC/C/FRA/Q/4: 6(b), 2009.
78 CRC/C/FRA/Q/4/Add.1: p.38, 2009.

meeting with the state party, but in its concluding observations, the committee expressed concern with the compatibility of the ban on religious symbols in schools with article 14 of the CRC and endorsed the recent criticism expressed to French authorities on this issue during its reviews before the CEDAW committee and the HRC (see above).[79] Similar dismissals of proposed bans on religious apparel have been issued in concluding observations to Tunisia,[80] Germany[81] and Azerbaijan,[82] albeit drawing on different provisions of the convention: whereas the committee reviewed the issue in Tunisia solely from the perspective of article 14, the assessments of Germany and Azerbaijan were additionally considered to violate articles 29 on the content of education, and article 28 on the access to education, respectively.

Taken together, the practice of the CRC committee on religious discrimination and religious minorities affirms its overall view of religion as primarily a matter of identity, as the majority of its concluding observations have been issued to states where children experience a range of different forms of *de facto* discrimination due to their membership in a religious group or minority. In these observations, which have mostly been issued to Asian and African states, children are more or less subsumed into their group affiliations, as the committee has paid little or no attention to the specific needs of children themselves. This approach is markedly different from the more child-centered views of the committee on religious organizations in education, where the concrete, practical effects on children have been consistently emphasized by the committee (see below).

In these observations, the freedom of religion or belief is only intermittently raised by the committee. However, when faced by *de jure* discrimination like bans on religious headgear, the committee has more readily framed differential treatment of children on the basis of their religion as a potential violation of article 14, albeit mostly in conjunction with a concern with the access to education under article 28. Despite its general comment on the topic, the committee has been reluctant to interpret discrimination as relevant to article 30 on the rights of minority children, relying instead on articles 2, 28 and 29, and to a lesser extent on article 14. Taken together, these omissions suggest that the committee has yet to develop a practice on the specific rights of minority children who are subject to religious discrimination.

79 CRC/C/FRA/CO/4: 45, 2009.

80 CRC/C/15/Add.181: 29–30, 2002. These concerns were reiterated in 2010 (CRC/C/TUN/CO/3: 36–37, 2010).

81 CRC/C/15/Add.226: 30–31, 2004.

82 CRC/C/AZE/CO/3–4: 40, 2012.

7.6.2 Organizations

Approaching the role of religious organizations, the CRC committee has drawn on its general approach to the legal concept of religion as primarily an issue concerning the identity of the child, and as a powerful social force that shapes the conditions for the implementation of human rights. The overarching emphasis of the committee in its observations on religious organizations is on harmony and reconciliation between different religious identities and groups in society, primarily in the provision and content of education. While the committee has largely ignored the topic of recognition and registration of religious institutions and organizations in its practice from 1993 to 2013,[83] it has issued numerous concluding observations on the role of religious organizations in education.

The approach of the committee to the role of religious organizations in education can be subdivided into two broad categories, corresponding to the difference between article 28, on the access to education, and article 29, on the content of education: First, the committee has extensively engaged states on the role of religious institutions as providers of education, either in concert with public school systems, or in parallel education systems. Second, the committee has repeatedly expressed its concerns with the content of education, in particular the necessity of including "friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin" as a primary purpose of education.

Although education has always been important to the committee (Langlaude 2007: 138), and was the subject of its very first general comment in 2001 (see chapter 7.2), the committee only rarely commented on the relation between religion and education during the 1990s. In these early observations, the committee did not develop any specific focus, shifting between considerations: Commenting on the potential for discrimination in compulsory religious education in Norway, the committee evaded the relation between such education and the relation

83 There are five exceptions to this general rule: Indonesia (CRC/C/15/Add.7: 15, 1993 & CRC/C/15/Add.25: 13, 1994) and Iran (CRC/C/15/Add.254: 41–42, 2005) have received criticism from the committee for their continued legal distinction between recognized and non-recognized religions. Additionally, Uzbekistan (CRC/C/15/Add.167: 35–36, 2001) and Turkmenistan (CRC/C/TKM/CO/1: 34–35, 2006) have been criticized for their compulsory registration regimes for religious organizations, and Ukraine for its prohibition of the establishment of children's associations along political and religious lines (CRC/C/UKR/CO/3–4: 39–40, 2011).

between the state church and minority religious communities, although explicitly raised by a member of the state delegation during the meeting.[84]

Reviewing Senegal in 1995, members of the committee raised the issue of living conditions for children attending Koranic schools and were forced to beg in the streets, an issue that the state did not address sufficiently because such schools were allegedly exempt for religious reasons from the general ban on child begging, requesting more information on the status of such schools in Senegal.[85] In its concluding observations, the committee expressed its serious worries with the living conditions of some students in Koranic schools, urging Senegalese authorities to pay special attention to their plight and to ensure an effective system to monitor their situation.[86] Similar sentiments were expressed in the concluding observations issued after the review of Chad in 1999.[87] In the review of the Holy See in 1995, the committee for the first time related the issue of religious education directly to article 29, urging the state party to include the spirit and philosophy of the convention in the curricula of Catholic schools worldwide.[88] Likewise, during the reviews of Serbia and Lebanon in 1996, both were advised to incorporate article 29(1) (d) on the friendship between all peoples and religious groups as a primary purpose of education.[89]

Reviewing Myanmar in 1997, the committee requested more information on the practice whereby poor children were sent to Buddhist monasteries to receive education, questioning whether children from other religious backgrounds received religious education in monasteries.[90] The state delegation explained that the primary purpose of a monastic education was to impart the teachings of Buddha to children,[91] a reply that provoked the "particular concern" of the committee in its concluding observations, recommending that the state party should provide an alternative education choice for poor, non-Buddhist chil-

84 CRC/C/SR.150: 6, 1994. In its concluding observations, the committee noted the opt-out possibility for parents, but expressed its concerns with the potential violation of the right to privacy of parents who would have to expose their faith in order to be granted an exemption (CRC/C/15/Add.23: 9, 1994).

85 CRC/C/SR.249: 18 Karp, 39 Santos Pais, 1995 (translation from the French original)

86 CRC/C/15/Add.44: 15, 29, 1999. Similar concerns were raised following the consecutive review of Senegal, in 2006 (CRC/C/SEN/CO/2: 60, 2006).

87 CRC/C/15/Add.107: 25, 1999. These concerns were reiterated following the 2009 review of Chad (CRC/C/TCD/CO/2: 41–42, 2009).

88 CRC/C/15/Add.46: 11–12, 1996.

89 CRC/C/50: 109, 1996 & CRC/C/15/Add.54: 33, 1996.

90 CRC/C/SR.359: 15, 26 Santos Pais, 1997.

91 CRC/C/SR.359: 42, 1997.

dren.[92] While the issue was ignored in the 2004 review of Myanmar, the committee expanded its concerns with the monastic educational institutions following the 2012 review, as the concluding observations advised the state party to establish mechanisms for receiving complaints, investigations and prosecutions for reports of physical abuse in institutions run by private and religious organizations.[93]

Taken together, these early observations indicate watchful skepticism towards the role of religious organizations in the provision of education, suggesting revisions of the curricula in Catholic schools, increased monitoring of the living conditions in Koranic schools, and the provision of non-Buddhist alternatives to monastic education. Throughout the 2000s, this skepticism towards the influence of religious institutions and organizations was reiterated repeatedly, in particular as it pertained to living conditions and abuse in Koranic schools: Reviewing Mali,[94] the Comoros,[95] Mauritania,[96] Gambia,[97] Niger,[98] Pakistan,[99] Burkina Faso[100] and Algeria,[101] the committee repeatedly expressed its concerns with the lacking monitoring of and intervention in the education and living conditions provided by Koranic schools. These concerns included the prevalence of corporal punishment, child labor, begging, sexual abuse, violence, military training and recruitment to armed conflicts, chaining, illegal detention and trafficking, violating numerous articles of the CRC. In order to handle these egregious human rights violations, the committee has generally suggested that state parties prosecute those responsible for the worst offences, and initiate administrative reforms that secure the control and follow-up of religious schools, including calls for the integration of such schools into the public education system. The committee has generally refrained from approaching Koranic schools from the perspective of non-discrimination and the rights of the child to freedom

92 CRC/C/15/Add.69: 16, 37, 1997.
93 CRC/C/MMR/CO/3–4: 55–56, 2012.
94 CRC/C/15/Add.113: 33, 1999. Similar concerns were expressed by the committee following the consecutive review of Mali in 2007 (CRC/C/MLI/CO/2: 62–63, 2007).
95 CRC/C/15/Add.141: 31–32, 2000.
96 CRC/C/15/Add.159: 49–50, 2001. Similar concerns were expressed by the committee following the 2009 review of Mauritania (CRC/C/MRT/CO/2: 74–74, 2009).
97 CRC/C/15/Add.165: 60–61, 2001.
98 CRC/C/15/Add.179: 66–67, 2002. Similar concerns were expressed by the committee following the 2009 review of Niger (CRC/C/NER/CO/2: 37–38, 2009).
99 CRC/C/15/Add.217: 61–62/62, 2003. Similar concerns were expressed by the committee following the 2009 review of Pakistan (CRC/C/PAK/CO/3–4: 80–81, 2009).
100 CRC/C/BFA/CO/3–4: 70–71, 2010.
101 CRC/C/DZA/CO/3–4: 75–76, 2012.

of religion or belief, concentrating on their compatibility with article 28 on the access to education, and the nature of disciplinary measures in such schools.

Commenting on the influence of organizations from other religious traditions, the committee has approached the issue somewhat differently: First, reviewing Belize in 2005, members of the committee expressed their skepticism with an educational system in which the Catholic Church played an active role, empowered not only to decide the curriculum, but also to hire and fire teaching staff.[102] In particular, one member expressed her concern with the role of the church in the expulsion and dismissal of pregnant students and teachers.[103] Although the delegation from the state party expressed its commitment to develop "what was essentially a Church-based education system", it also stressed the importance of maintaining good relations with the Church.[104] In its concluding observations, the committee expressed its concern with the implementation of national policies and principles in education, including church-based schools. Additionally, it expressed its "grave concern" with the tendency to exclude pregnant students. In order to improve the situation, the committee advised the state party to improve its care for pregnant teenagers and young mothers and to "improve the quality of education".[105]

Second, reviewing Ireland in 2006, the committee observed that 93 percent of Irish schools were Catholic denominational schools and questioned the delegation on what alternatives were available for religious minorities and non-religious families.[106] The state delegation explained that the state would willingly support denominational schools founded by other religious communities, and that most new schools were multidenominational.[107] In its concluding observations, the committee expressed its concern with the fact that non- or multidenominational schools in Ireland constituted less than 1 percent of primary education facilities, recommending the state party to promote the establishment of non- or multidenominational schools.[108]

Third, during its 2008 review of Bhutan, the committee questioned the delegation on the role of monasteries in caring for poor children; how many children lived in monasteries, whether it was voluntary, and who regulated the ac-

102 CRC/C/SR.1010: 9, 68 Aluoch, 60 Smith, 2005.
103 CRC/C/SR.1010: 66 Smith, 2005.
104 CRC/C/SR.1010: 62, 2005.
105 CRC/C/15/Add.252: 61, 2005.
106 CRC/C/SR.1182: 9 Smith, 2006.
107 CRC/C/SR.1182: 26, 2006.
108 CRC/C/IRL/CO/2: 60 – 61, 2006.

tivities in the monasteries.[109] The state delegation explained that the monastic school system catered to many children, but acknowledged that monasteries had not incorporated "modern thinking" on the rights of the child, and were too rigid, although some schools for Hindu children existed in the south of the country, offering education for children from that religious minority.[110] In its concluding observations, the committee expressed its concern that corporal punishment was still widespread throughout the country, including monasteries, and that monasteries were the only providers of alternative care in the country.[111]

Finally, in concluding observations following the review of The Republic of Korea in 2012, the committee commended the state party for the discontinuation of compulsory religious education, but expressed its concern with restrictions on the freedom of religion of students enrolled in religious private schools that did not adequately facilitate "an atmosphere conducive to religious diversity", in particular regarding different dietary requirements.[112] Consequently, whereas Koranic schools seem to be accepted in principle by the committee as a necessary, albeit flawed, institution, the reviews of Belize, Ireland, Bhutan and the Republic of Korea indicates that education offered by other religious organizations raise concerns over the potential discrimination of children from religious minorities in education.

Parallel to its concerns with the living conditions in religious schools under article 28, the committee also stepped up its observations on article 29 in the wake of its general comment no. 1 on the purposes of education published in 2001 (see above). While Côte d'Ivoire,[113] Bangladesh,[114] Benin[115] and Mauritania[116] have received observations on the curricula in Koranic schools, most observations on this topic have been directed at the curricula maintained by states as the primary providers of public education. Starting with the review of India in 2000,[117] the committee has issued concluding observations requesting states to include the purposes of education spelled out in article 29(1) (d) in their national curricula to Saudi Arabia,[118] Oman,[119] Bahrain,[120] Belgium,[121] Israel,[122] Iceland,[123]

109 CRC/C/SR.1353: 60 Herczog, 81 Ortiz, 2008.
110 CRC/C/SR.1354: 33, 40, 2008.
111 CRC/C/BTN/CO/2: 37–38, 44–45, 2008.
112 CRC/C/KOR/CO/3–4: 38–39, 2012.
113 CRC/C/15/Add.155: 50–51, 2001.
114 CRC/C/15/Add.221: 64–65, 2003.
115 CRC/C/BEN/CO/2: 61–62, 2006.
116 CRC/C/MRT/CO/2: 66, 2009.
117 CRC/C/15/Add.115: 59, 2000.
118 CRC/C/15/Add.148: 39–40, 2001.
119 CRC/C/15/Add.161: 45–46, 2001.

Libya,[124] Syria,[125] and Brunei.[126] Whereas all these observations were issued between 2001 and 2003, the committee has only recommended this inclusion twice between 2003 and 2013, to Malaysia[127] and Macedonia,[128] signaling a diminishing interest in the issue.

In addition to these general calls for the inclusion of article 29(1) (d) as a primary purpose of education, the committee has issued critical observations to states where the tenets of a majority religion have influenced the contents or framework of education, affecting children's rights to the freedom of religion or belief, in particular children belonging to religious minorities. Reviewing Poland in 2003, the committee observed that the Catholic Church had a great deal of influence, and asked whether Catholic children at state schools were given the opportunity of religious instructions while those of other religions were not.[129] The committee expressed its worry that, while alternatives to religion classes in public schools were available in the state party, the authorities should do more to ensure the free choice of children between religious instruction and ethics.[130]

Similarly, during the review of Armenia in 2005, a committee member expressed his concerns with the agreement between the Armenian Apostolic Church and the state on the nature and content of religious education, an agreement he believed might be in violation of article 14.[131] Receiving no answer, the committee issued concluding observations expressing their concern with the compulsory study of the history of the Apostolic Church,[132] a concern that was reiterated in the concluding observations following the 2013 review of Armenia.[133] Related concerns were raised in the concluding observations following the review of Italy in 2003 and 2011, as the committee commented the dominant role of Catholicism and the lacking educational alternatives for children from

120 CRC/C/15/Add.175: 43 – 44, 2002.
121 CRC/C/15/Add.178: 25 – 26, 2002.
122 CRC/C/15/Add.195: 56 – 57, 2002.
123 CRC/C/15/Add.203: 36 – 37, 2003.
124 CRC/C/15/Add.209: 39 – 40, 2003.
125 CRC/C/15/Add.212: 46 – 47, 2003.
126 CRC/C/15/Add.219: 50, 2003.
127 CRC/C/MYS/CO/1: 75, 2007.
128 CRC/C/MKD/CO/2: 65 – 66, 2010.
129 CRC/C/SR.827: 50 Citarella, 2002.
130 CRC/C/15/Add.194: 32 – 33, 2002.
131 CRC/C/SR.925: 6 Citarella, 2004 (translation from the French original).
132 CRC/C/137: 208 – 209, 2004.
133 CRC/C/ARM/CO/3 – 4: 45 – 46, 2013.

other religious traditions, advising the state party to ensure that religious instruction was "truly optional".[134] Similarly, Costa Rica received criticism from the committee following its 2005 review for the dominant role of Catholicism in the curriculum in public schools.[135]

Reviewing Cyprus in 2012, the committee considered the relationship between the dominance of the teachings of one religious group in education and the hostility between religious groups in society: Several members of the committee questioned the role of Greek Orthodoxy in religious education, requesting more information on the availability of religious education for children belonging to religious minorities.[136] In its concluding observations, the committee observed that

> (c) Religious education may be a factor of division and conflict among children in school and does not sufficiently contribute to a spirit of understanding, tolerance and friendship among all ethnic and religious groups as stipulated in article 29, paragraph 1 (d) of the Convention. (...) The Committee urges the State party to take measures to: (...) (c) Ensure that religious education is optional, taking into consideration the best interests of the child, and is conducted in a manner that contributes to a spirit of understanding, tolerance and friendship among all ethnic and religious groups as stipulated in article 29, paragraph 1 (d), of the Convention.[137]

Hence, according to the committee, the preference for one religious tradition in the curriculum issued by the Cypriot authorities could be divisive and create conflicts among schoolchildren, conflicts that could be alleviated by the verbatim introduction of article 29(1) (d) as a primary purpose of education.

Finally, following the examination of Kuwait in 2013, the committee expressed its concern with the requirement that no teachings of other religions were allowed during the time Sunni Islam was being taught, including in private Shiite schools. Additionally, the committee was particularly concerned with the derogatory language in textbooks, labeling students from other religions as "infidels". The committee recommended Kuwait to ensure the full respect of children's right to the freedom of religion or belief, in particular by allowing children in private religious schools to receive teaching in their religion if they wish.[138]

Taken together, the practice of the CRC committee on the interrelationship between religious organizations and education corresponds closely with the

134 CRC/C/ITA/CO/3–4: 30–31, 2011.
135 CRC/C/15/Add.266: 25–26, 2005.
136 CRC/C/SR.1700: 22 Madi, 30 Varmah, 70 Herczog, 2012.
137 CRC/C/CYP/CO/3–4: 44–45, 2012.
138 CRC/C/KWT/CO/2: 37–38, 2013.

dominant concept of religion at the committee, conceptualizing religion primarily as a key part of children's identity that should be considered in all decisions concerning the child, and secondarily as a powerful social force that decisively influences the rights of children. This is also encapsulated in the inherent tension identified by the committee in its general comment on article 29, between the consideration of the cultural identity of the child and the importance of promoting harmony between religious groups in subparagraphs c and d of article 29 (1), respectively. The freedom of religion or belief has only occasionally been raised by the committee on this topic, even when states have actively allowed the dominance of schools promoting one majority religion.

The overarching concern in the practice of the committee on this topic has been the access to education for all children, a consideration that clearly trumps the related concern with the potential for discrimination inherent to the involvement of religious organizations in the content or conduct of education. Whereas the committee has been highly critical towards some of the living conditions, curricula and manners of discipline in religious educational institutions, it has consistently refrained from suggestions to disband or shut down religious educational establishments that cater to poor and disadvantaged children in order to protect their freedom of religion or belief.

Encountering dissatisfactory curricula, unequal opt-out opportunities or undue influence from religious organizations on the conduct of education in public schools, however, the committee has readily drawn upon its provisions on non-discrimination and the freedom of religion or belief, recommending the reform of curricula, religious education tailored for minorities, and the discontinuation of special treatment of majority religious organizations in education. Taken together, these observations seem to suggest that the committee views the role of religious organizations in education as a necessary ally in situations where states are unable to offer universal education and a potential enemy in situations where the organizations of majority religions influence education in public schools.

7.6.3 Religious Law

Much in the same vein as CEDAW, the CRC does not explicitly prohibit the recognition or application of religiously derived legal rules. Nevertheless, the committee has repeatedly been forced to consider the role of religious law in the implementation of the provisions of the convention. Initially, the comments published by the committee on this topic were directed at concrete legal measures that were found to be incompatible with the convention: Reviewing Jordan

in 1994, the issue of religious law surfaced already in the list of issues sent by the committee to the state party, questioning the regulation of breastfeeding in the Personal Status Act,[139] to which the state party replied that the code was primarily moral and didactic in nature, and was therefore characterized by "a sense of spiritual and physical harmony between the persons covered by its provisions and their Lord".[140] The issue was raised again in the review by committee members who inquired about the borderlines between Islamic law and other laws, particularly in cases that involved plaintiffs from different religions, and the risks of overlapping jurisdictions,[141] but receiving no answer from the state delegation. In its concluding observations, the committee observed that different personal status regulations according to the child's religion resulted in uncertainty and possibly discrimination, recommending the adoption of a new, common personal status act.[142]

Similar sentiments were expressed during the review of Sri Lanka in 1995, when the committee expressed its concern with the disparities in marriage regulations between the personal status laws of different religious communities.[143] The issue of multiple marriage regimes for different religions was raised during the review by two committee members,[144] and expanded to the Muslim prohibition of adoption in Sri Lanka.[145] In its concluding observations, the committee suggested that the problem with differing legal rules in different religious communities should be amended by "standardizing the age of marriage in all communities".[146]

Starting with the review of Bangladesh in 1997, the committee took a more active interest in the topic of religious law as such, requesting information on the efforts taken by the state party to "unify" religious and state laws, and the status of the convention in situations of conflict with national legislation in the list of issues.[147] In a supplementary report, the state party confirmed that "Most children's lives are governed by family custom and religious law rather than by State law",[148] acknowledging the request by the committee for law re-

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139 CRC/C.6/WP.4: 13, 1994.

140 Reply to List of Issues: Jordan: 13, 1994 (the document was published before the CRC started assigning document codes to replies).

141 CRC/C/SR.143: 52 Mason, 55 Santos Pais, 1994.

142 CRC/C/15/Add.21: 12, 1994.

143 CRC/C/15/Add.40: 11, 1995.

144 CRC/C/SR.228: 56 Karp, 60 Badran, 1995.

145 CRC/C/SR.229: 61 Mombeshora, 65 Karp, 1995.

146 CRC/C/15/Add.40: 28, 1995.

147 CRC/C/Q/Ban.1: 2, 1997.

148 CRC/C/3/Add.49: 5, 1997.

form:[149] During the review, the issue of religious law was raised as committee members and state representatives largely agreed on the nature of the problem and the need for legal reform.[150] Among these issues, only the topic of the power of customary and religious law over the lives of children was noted by the committee in its concluding observations,[151] as one of the factors preventing the full implementation of the convention, although not followed up by a specific recommendation.

Reviewing India in 2000, the committee identified numerous points of contention between religious laws and the convention, singling out marriage, custody, the guardianship of infants and inheritance as particularly worrisome areas where "religion-based personal laws" perpetuated gender inequality.[152] In its recommendations on how to deal with this issue, the committee suggested that Indian authorities combine legal reform with the mobilization of political, religious and community leaders, indicating a new recognition of the importance of engaging religious communities in order to achieve law reform,[153] although this recognition was not reiterated in the concluding observations issued following the review of the consecutive report of India in 2004.[154]

Taken together, these early views of the committee seem to indicate a view of religious law as a potential obstacle that can primarily be overcome by legal reforms. While religious law in itself was not criticized as problematic, the borderlines between such legal orders and civil law, and the potential conflict between specific provisions of such laws and the convention, were frequently brought up by the committee. Parallel to the development of this view of religious law, however, the committee started engaging the role of customary law somewhat differently, pointing to the mere existence of the latter as problematic to the implementation of the convention. During the review of Zimbabwe in 1996, one committee member observed that customary law "applied only to traditional societies and thus represented a system based on race, which did not seem to be

149 CRC/C/3/Add.49: 41, 1997.
150 CRC/C/SR.380: 16 Karp, 32, 1997.
151 CRC/C/15/Add.74: 12, 1997.
152 CRC/C/15/Add.115: 32, 2000.
153 CRC/C/15/Add.115: 33, 2000.
154 While the committee repeated its call for reform of the religiously based personal laws of India, it suggested more unilateral state action: "(a) Scrutinize carefully existing legislative and other measures, including religious and personal laws, both at the federal and state levels, with a view to ensuring that the provisions and principles of the Convention are implemented throughout the State party; (b) Ensure the implementation of its legislation and its wide dissemination" (CRC/C/15/Add.228: 10, 2004).

ideal".[155] While the committee also pointed out concrete contradictions between the age limit for marriages between customary and civil law,[156] only the observation that a dual system of common and customary law created "additional difficulties" in the implementation of the convention, and impeded the efficient monitoring of its provisions found its way into the concluding observations.[157]

In the review of Nigeria later the same year, members of the committee inquired about the status of customary law within the hierarchy of the legal system,[158] to which the state representative replied that different tribes had different customary laws, but that civil law would always prevail in cases of conflict.[159] In the concluding observations, the state party was asked to take into account the compatibility of the system of customary law and regional and local laws with the articles of the Convention,[160] suggesting a structural critique of legal pluralism as potentially damaging to the implementation of the convention in itself. Reviewing Ghana[161] and Uganda[162] in 1997, however, the committee gradually started becoming more concrete in its observations, pointing to specific problems inherent to customary legal provisions, notably the issue of marriage, indicating a less hostile view of parallel legal systems as a structural problem.

Reviewing the Comoros and Djibouti in 2000, the committee for the first time addressed the issue of triangular legal systems, where traditional, religious and state law existed side by side. In identical observations, both states were asked to

> take all appropriate measures to complete the process of law review and, where appropriate, adopt or amend legislation so as to ensure the harmonization of applicable provisions of the different jurisdictions (traditional, Islamic and civil law), ensuring their conformity with the provisions and principles of the Convention.[163]

Hence, unlike earlier reviews, the committee did not see the coexistence of parallel legal systems to be problematic in and of itself. Similar sentiments were expressed in the reviews of Tanzania,[164] Cameroon[165] and Gambia.[166] This concili-

155 CRC/C/SR.293: 39 Santos Pais, 1996.
156 CRC/C/SR.293: 39 Santos Pais, 1996 & CRC/C/SR.294: 11, Hammarberg, 1996.
157 CRC/C/15/Add.55: 11, 1996.
158 CRC/C/SR.321: 23 Mason, 42 Belembaogo, 1996.
159 CRC/C/SR.321: 44, 1996.
160 CRC/C/15/Add.61: 27, 1996.
161 CRC/C/15/Add.73: 7, 1997.
162 CRC/C/15/Add.80: 9, 1997.
163 CRC/C/15/Add.131: 14, 2000 & CRC/C/15/Add.141: 10, 2000.
164 CRC/C/15/Add.156: 11, 2001.

atory view was further expanded during the review of Lesotho in 2001: while the state party was questioned about the compatibility of civil and customary law,[167] the concluding observations recommended the authorities to ensure that ongoing customary law practices are "in conformity with the Convention",[168] indicating a recognition of the continued presence of customary law in the state party, granted that its provisions were brought in line with the convention. Notably, however, unlike the review of India, neither of the recommendations to reform the different combinations of religious, customary and civil legal systems suggested the inclusion of the communities involved.

In the reviews of Niger and Burkina Faso in 2002, the committee returned to a structural critique of customary law as problematic in and of itself, observing that "the coexistence of customary law and statutory law impedes the implementation of the Convention in the State party, where traditional practices are not conducive to children's rights",[169] advising the state parties to "take all the necessary steps to harmonize existing legislation and customary law with the Convention".[170] To Eritrea and Zambia in 2003, the committee emphasized the nexus between customary laws and practices and the best interests of the child in both states parties, advising a mixture of legal reform and outreach to community leaders to amend the situation.[171]

The practice of the committee on customary forms of law parallel to state law has gradually moved towards an emphasis on the relationship between such forms of law and the prevalence of traditional practices, and an awareness of the need to include religious and community leaders in order to harmonize legislation and prevent such practices. This general pattern has been repeated with minor variations in the concluding observations issued to Eritrea,[172] Pakistan,[173] Nepal,[174] Nigeria[175] and Madagascar.[176] This practice suggests a view of

165 CRC/C/15/Add.164: 10, 2001.
166 CRC/C/15/Add.165: 12, 2001.
167 CRC/C/SR.685: 11/36, Doek, 21, Karp, 2001.
168 CRC/C/15/Add.147: 10, 2001.
169 CRC/C/15/Add.179: 8, 2002 & CRC/C/15/Add.193: 4, 2002.
170 CRC/C/15/Add.179: 10, 2002 & CRC/C/15/Add.193: 8, 2002
171 Eritrea (CRC/C/15/Add.204: 24, 2003) and Zambia (CRC/C/15/Add.206: 25, 2003).
172 CRC/C/15/Add.204: 19, 2003
173 CRC/C/15/Add.217: 33, 2003
174 CRC/C/15/Add.261: 66, 2005
175 CRC/C/15/Add.257: 55, 2005. This recommendation was reiterated by the committee following the consecutive review of Nigeria in 2010 (CRC/C/NGA/CO/3–4: 66, 2010)

customary laws as thoroughly embedded in the social fabric, intimately related to harmful practices, and primarily amenable through the collaboration with traditional, religious and community leaders.

Encountering more clearly "religious" laws, the committee has suggested a different way to handle potential violations of the provisions of the CRC: Reviewing Iran, Lebanon, The United Arab Emirates, Israel, Syria, India and Malaysia, the committee consistently found religious systems of law to be at odds with provisions of the convention, primarily in the field of marriage. In its recommendations, the committee has suggested that reforms of religious law should be conducted in cooperation with the communities in question;[177] advised states to establish criteria to assess whether actions were in accordance with Islamic texts;[178] to "[u]ndertake all possible measures to reconcile the interpretation of Islamic texts with fundamental human rights";[179] to reconcile the interpretation of religious laws with fundamental human rights,[180] and, in the case of Malaysia,

> The Committee recommends that the State party conduct an international comparative study on the implications of the dual legal system of civil law and Syariah law and, based on the results of this assessment, take necessary measures to reform this dual system with a view to removing inconsistencies between the two legal systems in order to create a more harmonious legal framework that could provide consistent solutions, for example, to family-law disputes between Muslims and non-Muslims.[181]

In addition to these specific recommendations concerning conflicts between concrete provisions of religious laws and the convention, the committee issued numerous observations early in the 2000s on the more general influence of particular interpretations of religion on the legal framework. In the reviews of Iran,[182]

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176 CRC/C/15/Add.218: 22, 2003. Similar concerns were reiterated following the 2012 review of Madagascar, but with an emphasis on community and traditional leaders, not religious leaders (CRC/C/MDG/CO/3–4: 26, 28, 54, 2012)

177 Lebanon, CRC/C/15/Add.169: 10, 2002. This recommendation was reiterated following the 2006 review of Lebanon (CRC/C/LBN/CO/3: 26, 2006).

178 Iran (CRC/C/15/Add.123: 34, 2000). This recommendation was also reiterated following the 2005 review of Iran (CRC/C/15/Add.254: 40, 2005).

179 United Arab Emirates, CRC/C/15/Add.183: 22, 2002.

180 Israel, CRC/C/15/Add.195: 11, 2002. A near identical passage was included in the observations issued by the committee following the 2003 review of Syria (CRC/C/15/Add.212: 10, 2003).

181 CRC/C/MYS/CO/1: 15, 2007. This passage is almost entirely similar with a paragraph from the observations issued to Malaysia by the CEDAW the year before (CEDAW/C/MYS/CO/2: 14, 2006).

182 CRC/C/15/Add.123: 6, 2000.

Jordan,[183] Djibouti,[184] Egypt,[185] Saudi Arabia,[186] Qatar,[187] Bahrain[188] and The United Arab Emirates,[189] the committee included the following, identical observation:

> Noting the universal values of equality and tolerance inherent in Islam, the Committee observes that narrow interpretations of Islamic texts by authorities, particularly in areas relating to family law, are impeding the enjoyment of some human rights protected under the Convention.[190]

This paragraph summarizes the general view of religious laws held by the committee as a body of norms that essentially safeguard equality and tolerance, but have been distorted by the narrow interpretations offered by state authorities, in much the same way as the "core of values" identified by the committee monitoring CEDAW (see chapter 6.6.4). This view is markedly different from the observations of the committee on customary laws, which have been considered to be little more than slightly formalized rules for cultural, traditional and customary practices.

In its more recent practice, the committee has confirmed the gap between its attitude towards religious and customary laws, as it has returned to its former tendency to criticize customary legal systems structurally, pointing to the obstacle constituted by the continued application of customary law, advising Eritrea to promote awareness of legislation among involved communities;[191] observing the practical challenges of the plural legal system in Mauritania,[192] and the negative effects of the application of three different sources of law in Niger.[193]

Finally, in the reviews of Pakistan in 2009 and Sri Lanka in 2010, the committee issued its first observations on the nexus between religious laws and the freedom of religion or belief, observing that, in Pakistan, "freedom of religion is limited in practice" and that "citizens who are normally governed by secular law might sometimes be subject to sharia law", suggesting that parents should be

183 CRC/C/15/Add.125: 9, 2000.
184 CRC/C/15/Add.131: 8, 2000.
185 CRC/C/15/Add.145: 6, 2001.
186 CRC/C/15/Add.148: 6, 2001.
187 CRC/C/15/Add.163: 9, 2001.
188 CRC/C/15/Add.175: 4, 2002.
189 CRC/C/15/Add.183: 4, 2002.
190 CRC/C/15/Add.125: 9, 2000, Jordan.
191 CRC/C/ERI/CO/3: 8–9, 2008.
192 CRC/C/MRT/CO/2: 7–8, 2009.
193 CRC/C/NER/CO/2: 7, 2009.

given the full duties and responsibilities to give guidance to their children in the exercise of religious freedom in a manner consistent with the evolving capabilities of the child.[194] In this way, the committee for the first time established a relationship between religious and secular laws and the implementation of article 14 on the freedom of religion or belief of children.

Reviewing Sri Lanka in 2010, the committee asked the state party to provide information on efforts taken to prevent early and forced marriages among Muslims and other communities.[195] The state party replied that the personal laws of Sri Lanka were the offshoots of "history, culture and the sacred beliefs of the people who are governed by such laws". Accordingly, any reform effort would have to emanate from these communities themselves, in order to ensure compliance with "ICCPR norms", to enable them to enjoy such rights in accordance with their religion and culture.[196] During the interactive session, several members of the committee raised the issue of underage marriages in the Muslim community,[197] and the efforts by the state party to reform its personal laws,[198] imploring the state delegation to "impose its will" on the religious communities, rather than wait for customs to change gradually.[199]

Members of the state delegation responded that personal laws "could not be changed" because they had existed side by side with general laws for a long time,[200] and although gradual changes had been achieved,[201] general laws passed by the state "could not detract from special laws such as those derived from Muslim legislation".[202] In its concluding observations, the committee urged the state party to prohibit underage marriages and to conduct sensitization and education programs targeting religious leaders. Additionally, however, the committee reminded the state party of general comment no. 20 by the Human Rights Committee on gender equality, and reminded the state party that "freedom of religion may not be invoked to justify discrimination against girls and practices such as forced and early marriages".[203]

194 CRC/C/PAK/CO/3–4: 43–44, 2009.
195 CRC/C/LKA/Q/3–4: 9, 2010.
196 CRC/C/LKA/Q/3–4/Add.1: 28, 2010.
197 CRC/C/SR.1567: 24 Citarella, 74 Aidoo, 2010 & CRC/C/SR.1569: 11 Al-Asmar, 2010.
198 CRC/C/SR.1567: 29 Lee, 2010.
199 CRC/C/SR.1567: 45 Kotrane, 2010.
200 CRC/C/SR.1567: 44, 2010.
201 CRC/C/SR.1567: 49, 2010.
202 CRC/C/SR.1569: 14, 2010.
203 CRC/C/LKA/CO/3–4: 56–57, 2010.

7.6.4 The Impact of Religion

In much the same way as the CEDAW committee, the committee monitoring the CRC has engaged the impact of religion continuously since its inception in 1991. The CRC has multiple provisions regulating religion (see chapter 7.1), ranging from the right of the child to freedom of religion or belief (article 14) and the rights of children that belong to religious minorities (article 30), to the rights of children not to be discriminated against on religious grounds (article 2) and the necessity of considering children's religious backgrounds in adoption and other forms of alternative care (article 20).[204] However, these provisions have only rarely been addressed by the committee in its concluding observations.

Despite its limited recommendations on provisions relating directly to religion, the committee has issued a considerable number of concluding observations that engage the role of religion as a social force, in line with its general view of religion as a vital component of children's identity and a decisive social and institutional force that intersects with the convention as a whole. In particular, the committee has repeatedly recommended that states engage religious leaders and institutions in the dissemination and training of personnel working with children on the principles and provisions of the convention.

Advising states on the proper handling of rights abuses originating in religious practices and doctrines, the committee has followed the main divisions in the approach developed by the CEDAW committee, mixing advice on legal reform and policy measures with community outreach and awareness campaigns. The CRC committee, however, has more consistently acknowledged the decisive impact of religious practices to the protection of children's rights, inviting the participation of religious leaders in the prevention of rights abuses and the dissemination of the convention from the early 1990s and onwards. Additionally, the committee has increasingly engaged the role of religious institutions and their treatment of children, as examined in some detail above.

The committee engaged the influence of religious doctrines and practices at its very first review session, held in January 1993. Examining the initial report of

204 See above for the full text of articles 2, 14 and 30. Article 20 reads in full: "1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. 2. States Parties shall in accordance with their national laws ensure alternative care for such a child. 3. Such care could include, inter alia, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."

Sudan, committee members questioned the delegation on the issue of female circumcision,[205] to which the state delegation responded that it had been prohibited by law since 1948, but was still widely practiced in rural areas, although it "had nothing to do with religion".[206] The members of the committee responded to this claim with curiosity, questioning the delegation on the role of religious leaders in the fight against the practice, and asking "whether the Koran mentioned female circumcision",[207] to which the state delegation promptly responded that it did not.[208] Additionally, the committee questioned the delegation on the influence of religion on the access of NGOs to the country,[209] teaching in local languages,[210] legislation[211] and shop opening hours.[212] Of all these topics, only concerns with the issue of female genital mutilation and the recommendation to include religious and community leaders in eliminating this practice were raised in the concluding observations.[213]

Following this early, broad engagement with religious and traditional doctrines and practices and the proper means of their discontinuation, the committee consistently favored a community-oriented approach throughout the 1990s, recommending the gradually increased inclusion of religious and community leaders in issues like the elimination of harmful practices, the dissemination of the principles of the convention, and the establishment of national machineries for its implementation to Pakistan,[214] Burkina Faso,[215] Madagascar[216] and Senegal.[217]

Reviewing the Holy See[218] in 1995, the committee returned to a broad-based assessment of the impact of religious doctrines and practices on the implemen-

205 CRC/C/SR.89: 11 Santos Pais, 1994. The various practices characterized as female circumcision have increasingly been labelled Female Genital Mutilation/Cutting (FGM/C), but both the terminology applied and the assessment of the practices that fall under this heading are hotly disputed (see Wade 2011 for an overview).
206 CRC/C/SR.89: 18, 1994.
207 CRC/C/SR.89: 22 Belembaogo, 1994.
208 CRC/C/SR.89: 25, 1994.
209 CRC/C/SR.70: 23 Santos Pais, 1993.
210 CRC/C/SR.71: 13 Mason, 1993.
211 CRC/C/SR.89: 51 Mason, 1994 & CRC/C/SR.90: 1 Belembaogo, 1993.
212 CRC/C/SR.90: 12 Hammarberg, 1993.
213 CRC/C/15/Add.10: 22, 1993.
214 CRC/C/15/Add.18: 27, 1994.
215 CRC/C/15/Add.19: 4, 1994.
216 CRC/C/15/Add.26: 17, 19 1994.
217 CRC/C/15/Add.44: 18, 29, 1995.
218 The Holy See is the executive branch of the Vatican city state, and is legally distinct from the latter, but conjoined by the supreme status of the Pope in both entities. The distinction be-

tation of the convention. Recognizing the unique characteristics of the state party, the committee questioned the delegation extensively on its reservations,[219] the jurisdiction of the Holy See over children attending Catholic institutions outside the state party,[220] and its emphasis on the parental freedom of religion or belief at the expense of the rights of children.[221] Responding to the questions, the delegation acknowledged that although there were no children under the formal jurisdiction of the Holy See, the state party had decided to ratify the convention due to its "moral jurisdiction" over the religious education of children arising from its role as principal educator of Catholic teachers.[222] Elaborating on the specifics of this jurisdiction, members of the delegation explained that, while individual states managed institutions, they depended on the Holy See for doctrinal and moral principles.[223]

In the ensuing discussion, committee members openly disagreed on the nature of the obligations resting on the Holy See, as one member observed that the state party had an illegitimate power over other states parties, and wondered if the state party should rather have observer status,[224] while another member suggested that the committee should take the unique opportunity to address the worldwide Catholic Church, which had contributed greatly to the protection of the rights of children.[225] Overall, most members supported the latter position, encouraging the state delegation to utilize its moral jurisdiction to disseminate the principles of the convention.[226] While several critical questions were raised concerning the dismissal of contraception by the state party,[227] only the suggestion to wield its moral influence was carried over to the concluding observations:

> In view of the moral influence wielded by the Holy See and the national Catholic churches, the Committee recommends that efforts for the promotion and protection of the rights provided for in the Convention be pursued and strengthened. In that regard, the Committee wishes to underline the importance of wide dissemination of the principles of the Conven-

tween the Vatican and the Holy See dates back to the Lateran Treaties between Italy and the Vatican in 1929, which created the Holy See as the international legal personality of the Vatican (Chong and Troy 2011).

219 CRC/C/SR.255: 11, Santos Pais, 1995 (translation from the French original).
220 CRC/C/SR.255: 13, Badran, 1995 (translation from the French original).
221 CRC/C/SR.255: 15, Karp, 1995 (translation from the French original).
222 CRC/C/SR.255: 19, 23, 1995 (translation from the French original).
223 CRC/C/SR.255: 28, 1995 (translation from the French original).
224 CRC/C/SR.255: 32, Kolosov, 1995 (translation from the French original).
225 CRC/C/SR.255: 34–35, Santos Pais, 1995 (translation from the French original).
226 CRC/C/SR.256: 9, Belembaogo, 1995.
227 CRC/C/SR.256: 13, 26, Mombeshora, 1995.

> tion and its translation into languages spoken throughout the world, and recommends to the State party to continue to play an active role to that end.[228]

Entirely evading the numerous violations of the convention based on religious doctrines and practices identified in the state party during the review, the committee focused on the potentially positive effects of the unique status of the Holy See as the head of the worldwide Catholic Church for the dissemination of the convention.[229] Throughout the practice of the committee, it has continued issuing similarly sweeping and general recommendations to state parties to include religious leaders in the dissemination of the principles of the convention.[230] In

228 CRC/C/15/Add.46: 11, 1995.

229 This moderate recommendation is a far cry from the most recent concluding observations issued by the committee following its consideration of the second periodic report of the Holy See in 2014. In these observations, the committee reaffirmed the unique obligations of the Holy See as the head of the worldwide Catholic Church, but pointed out numerous conflicts between the provisions of the Canon law that is the foundation of the Church, the policies and actions of the Church and its members, and the provisions of the convention. These conflicts included the insufficient legal protection of children against sexual abuse; the lacking monitoring of abuse of children in institutions run by the Church worldwide; the perpetuation of gender stereotypes in statements and learning materials published by the Church; the tendency to preserve the reputation of the Church over the best interests of the child in cases of sexual abuse; the violations against the rights of children of Catholic priests to know their parents; the inhuman, cruel and degrading treatment and physical and sexual abuse of children in the Magdalene laundries of Ireland run by four congregations of Catholic Sisters; corporal punishment and ritual beatings of children in Catholic schools; the neglect of the Church in following up cases of sexual abuse of thousands of children worldwide perpetrated by members of the Church, and its dismissal of contraception and sexual and reproductive health and information (CRC/C/VAT/CO/2: 13–14, 19–20, 25–28, 29–30, 33–34, 37–38, 39–40, 43–44, 56–57).

230 Yemen (CRC/C/15/Add.47: 15, 1996 & CRC/C/15/Add.102: 13, 1999), Togo (CRC/C/15/Add.83: 38, 1997 and CRC/C/TGO/CO/3–4: 21, 2012), Bolivia (CRC/C/15/Add.95: 18, 1998), Guinea (CRC/C/15/Add.100: 13, 1999 & CRC/C/GIN/CO/2: 28, 2013), Honduras (CRC/C/15/Add.105: 20, 1999), Nicaragua (CRC/C/15/Add.108: 25, 1999), Chad (CRC/C/15/Add.107: 3, 15, 1999), Vanuatu (CRC/C/15/Add.111: 12, 1999), India (CRC/C/15/Add.115: 33, 2000 & CRC/C/15/Add.228: 23–24, 2004), Cambodia (CRC/C/15/Add.128: 26, 2000), Djibouti (CRC/C/15/Add.131: 24, 2000), Comoros (CRC/C/15/Add.141: 20, 2000), Qatar (CRC/C/15/Add.163: 31, 2001), Lebanon (CRC/C/15/Add.169: 20, 2002), Niger (CRC/C/15/Add.179: 20, 2002), Tunisia (CRC/C/15/Add.181: 19, 2002), Seychelles (CRC/C/15/Add.189, 2002), Sudan (CRC/C/15/Add.190: 22–23, 2002 & CRC/C/SDN/CO/3–4: 21–22, 2010), Poland (CRC/C/15/Add.194: 24, 2002), Morocco (CRC/C/15/Add.211: 22, 2003), Syria (CRC/C/15/Add.212: 47, 2003), Madagascar (CRC/C/15/Add.218: 21–22, 2003), Brunei (CRC/C/15/Add.219: 25, 2003), Algeria (CRC/C/15/Add.269: 25, 2005), Ghana (CRC/C/GHA/CO/2: 22, 2006), Mauritius (CRC/C/MUS/CO/2: 23, 2006), Saudi Arabia (CRC/C/SAU/CO/2: 28, 2006), Samoa (CRC/C/WSM/CO/1: 23, 2006), Senegal (CRC/C/SEN/CO/2: 20, 2006), Jordan (CRC/C/JOR/CO/3: 26, 2006), Mali (CRC/C/MLI/CO/2: 24, 2007), Malaysia (CRC/C/MYS/CO/1: 34, 2007), Eritrea

addition to mobilization and awareness-raising among religious leaders, as preferred by the CEDAW committee, however, the CRC committee also frequently suggests their "sensitization" and training on the provisions of the convention, indicating a more didactic approach to the role of religious leaders in the implementation of the convention.

Since the early 2000s, the committee has expanded its approach to rights violations linked to religious and traditional doctrines and practices, issuing numerous concluding observations on these issues. In these observations, a distinction between "religious" practices that should be eradicated with the assistance of religious and community leaders and more "traditional" practices that should be eliminated by other means has gradually emerged: Reviewing Iran and Jordan in 2000, the committee criticized discriminatory attitudes against girls and children born out of wedlock, suggesting a mixture of legal reforms and an examination of "the practices of other States that have been successful in reconciling fundamental rights with Islamic texts", an effort that should also mobilize the support of religious leaders.[231] Similar recommendations on the same topic were issued to Saudi Arabia,[232] Oman,[233] Egypt[234] and Qatar[235] in 2001 and Libya,[236] Morocco[237] and Syria in 2003,[238] although the latter recommendations did not include references to the practices of other states.

Reviewing Turkey in 2001 and Jordan in 2006, the committee recommended that the practice of "honor killings" should be fought with the inclusion of religious and community leaders,[239] while Grenada,[240] Suriname,[241] Tanzania,[242] Gambia,[243] Kenya,[244] Malawi[245] and Timor-Leste[246] were advised by the commit-

(CRC/C/ERI/CO/3: 21, 2008), Bhutan (CRC/C/BTN/CO/2: 20 – 22, 2008), Mauritania (CRC/C/MRT/CO/2: 23, 2009), Tajikistan (CRC/C/TJK/CO/2: 32, 2010), Cameroon (CRC/C/CMR/CO/2: 22, 2010) and Nigeria (CRC/C/NGA/CO/3 – 4: 20 – 21, 2010).

231 CRC/C/15/Add.123: 22, 2000 & CRC/C/15/Add.125: 30, 2000.
232 CRC/C/15/Add.148: 24, 2001.
233 CRC/C/15/Add.161: 25, 2001.
234 CRC/C/15/Add.145: 30, 2001.
235 CRC/C/15/Add.163: 31, 2001.
236 CRC/C/15/Add.209: 24, 2003.
237 CRC/C/15/Add.211: 26, 2003.
238 CRC/C/15/Add.212: 26, 2003.
239 CRC/C/15/Add.152: 32, 2001 & CRC/C/JOR/CO/3: 39, 2006.
240 CRC/C/15/Add.121: 16, 2000.
241 CRC/C/15/Add.130: 32, 2000.
242 CRC/C/15/Add.156: 35, 2001.
243 CRC/C/15/Add.165: 31, 2001.
244 CRC/C/15/Add.160: 32, 2001.
245 CRC/C/15/Add.174: 32, 2002.

tee to raise awareness among religious leaders on the importance of birth registration. In more general terms, the committee has asked India,[247] Myanmar[248] and Yemen[249] to involve religious leaders in the prevention of religiously based discrimination. On the topic of early marriages, the committee has recommended that Madagascar,[250] Liberia,[251] Nigeria[252] and Nepal[253] involve religious and community leaders in sensitization programs.

Additionally, numerous countries have been asked to include religious leaders in the eradication of harmful traditional practices, in particular the widespread practice of female genital mutilation (FGM).[254] Unlike the CEDAW committee, however, the CRC committee has not sought to embed the practice in an auxiliary "cultural" or "traditional" sphere that corrupts an inner core of shared values: Whereas the CEDAW committee has claimed that FGM has "no link to religion" urging states to address the "underlying cultural justifications" of the practice (see above), the CRC committee has not commented on the relation between religion and FGM, consistently asking states to engage religious leaders in its eradication, without addressing its potential underpinnings or origins from surrounding cultural practices.

Recommendations to include religious leaders in the fight against human rights violations have continued up to the present, as Afghanistan,[255] Turkey[256]

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246 CRC/C/TLS/CO/1: 36, 2008.
247 CRC/C/15/Add.228: 28, 2004.
248 CRC/C/15/Add.237: 28, 2004.
249 CRC/C/15/Add.267: 33 2005.
250 CRC/C/15/Add.218: 24, 2003.
251 CRC/C/15/Add.236: 51, 2004.
252 CRC/C/15/Add.257: 55, 2005.
253 CRC/C/15/Add.261: 66, 2005.
254 Senegal (CRC/C/15/Add.44: 18, 1995 & CRC/C/SEN/CO/2: 51, 2006), Ethiopia (CRC/C/15/Add.67: 23, 1997 & CRC/C/ETH/CO/3: 60, 2006), Togo (CRC/C/15/Add.255: 57, 2005 & CRC/C/TGO/CO/3–4: 58, 2012) Uganda (CRC/C/UGA/CO/2: 56, 2005), Ghana (CRC/C/GHA/CO/2: 56, 2006), Tanzania (CRC/C/TZA/CO/2: 51, 2006), Oman (CRC/C/OMN/CO/2: 52, 2006), Benin (CRC/C/BEN/CO/2: 54, 2006), Ireland (CRC/C/IRL/CO/2: 55, 2006), Kenya (CRC/C/KEN/CO/2: 54, 2007), Mali (CRC/C/MLI/CO/2: 53, 2007), Sierra Leone (CRC/C/SLE/CO/2: 58, 2008), Eritrea (CRC/C/ERI/CO/3: 61, 2008), Djibouti (CRC/C/DJI/CO/2: 56, 2008), DR Congo (CRC/C/COD/CO/2: 60, 2009), Chad (CRC/C/15/Add.107: 29, 1999 & CRC/C/TCD/CO/2: 62, 2009), Malawi (CRC/C/MWI/CO/2: 57, 2009), Mauritania (CRC/C/MRT/CO/2: 62, 2009), Niger (CRC/C/NER/CO/2: 60, 2009), Cameroon (CRC/C/CMR/CO/2: 60, 2010), Nigeria (CRC/C/NGA/CO/3–4: 66, 2010), Egypt (CRC/C/EGY/CO/3–4: 69, 2011) and Guinea-Bissau (CRC/C/GNB/CO/2–4: 44, 2013).
255 CRC/C/AFG/CO/1: 55–56, 2011.
256 CRC/C/TUR/CO/2–3: 57, 2012.

and Liberia[257] have been encouraged to raise awareness among religious leaders on the harmful effects of traditional practices, Bahrain,[258] Algeria,[259] Togo,[260] Rwanda,[261] Namibia,[262] and Syria[263] have been asked to involve religious leaders in the eradication of corporal punishment in schools, while Niue[264] has been encouraged to include religious leaders in the fight against domestic violence. In all of these cases, the committee clearly considered the various practices involved; birth out of wedlock, honor killings, birth registrations, early marriages, female genital mutilations, corporal punishment and domestic violence, to fall within a "religious" sphere, as religious leaders were consistently sought engaged in their amendment and eradication.

Other doctrines and practices, however, have been considered by the committee to be beyond this sphere, as referrals to the potential engagement of religious leaders have been omitted. Reviewing India in 2000, the committee observed the sexual abuse and exploitation of children from lower castes and from poor and urban areas "in the contexts of religious and traditional culture".[265] However, the committee did not suggest eliminating these practices by mobilizing religious and community leaders (see above), but rather by criminalizing the sexual exploitation of children and ensuring that child victims were not penalized.[266] Similarly, during the review of Mozambique in 2002, the state party was asked to prevent sexual abuse perpetrated by relatives in forced marriage, including rape as part of "magical-religious practices", through training campaigns, by implementing legislative and administrative measures, not involving religious or community leaders.[267] These concerns were reiterated following the 2009 review of Mozambique.[268]

In a similar vein, concluding observations issued by the committee about the "traditional beliefs", "misbeliefs" and "mistaken beliefs" responsible for the dis-

257 CRC/C/LBR/CO/2–4: 52, 2012.
258 CRC/C/BHR/CO/2–3: 45, 2011.
259 CRC/C/DZA/CO/3–4: 44, 2012.
260 CRC/C/TGO/CO/3–4: 44, 2012.
261 CRC/C/RWA/CO/3–4: 28, 2013.
262 CRC/C/NAM/CO/2–3: 39, 2012.
263 CRC/C/SYR/CO/3–4: 54, 2012.
264 CRC/C/NIU/CO/1: 37, 2013.
265 CRC/C/15/Add.115: 74, 2000.
266 CRC/C/15/Add.115: 75, 2000.
267 CRC/C/15/Add.172: 38–39, 2002.
268 CRC/C/MOZ/CO/2: 66, 2009.

crimination of children with disabilities in the Democratic Republic of Congo,[269] Sudan,[270] the Philippines,[271] Algeria,[272] Uganda[273] and Swaziland[274] suggested a broad array of different legal, policy and campaign tools, but saw no reason to include religious leaders in these efforts.[275] Reviewing Angola in 2004, the committee expressed its deep concern about the witchcraft accusations against children and "the very negative consequences of such accusations, including cruel, inhuman and degrading treatment, and even murder".[276] During the review, the state delegation recognized the extent of the problem, and pointed out that they were working with religious leaders in order to curb the practice.[277] In order to put an end to this abhorrent state of affairs, however, the committee only suggested that the state party should prosecute the perpetrators and "involve local leaders in education campaigns".[278]

During the review of Uganda in 2005, the committee "note[d] with deep concern" that child sacrifices took place in certain districts of the country, a problem the committee recommended that the state should resolve by prohibiting the practice, prosecuting the perpetrators and conduct awareness-raising campaigns.[279] Similar suggestions have been offered to other states parties where accusations of witchcraft have led to the abuse of children, including Malawi[280] and Benin.[281] In a similar vein, the committee requested that Pakistan

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269 CRC/C/15/Add.153: 50–51, 2001. These concerns were reiterated following the review of the consecutive report of the state party in 2009 (CRC/C/COD/CO/2: 28–29, 2009). See also below.
270 CRC/C/15/Add.190: 45–46, 2002. These concerns were reiterated following the review of the consecutive report of the state party in 2010 (CRC/C/SDN/CO/3–4: 48–49, 2010).
271 CRC/C/15/Add.259: 55–56, 2005. These concerns were reiterated following the review of the consecutive report of the state party in 2009 (CRC/C/PHL/CO/3–4: 53–54, 2009).
272 CRC/C/15/Add.269: 53–54, 2005.
273 CRC/C/UGA/CO/2: 46–47, 2005.
274 CRC/C/SWZ/CO/1: 48–49, 2006.
275 The concluding observations issued to The Solomon Islands in 2003 constitutes a singular exception to this general rule, as the committee recommended the inclusion of church authorities in the care for disabled children (CRC/C/15/Add.208: 39, 2003). The case is singular because the committee did not relate the status of disabled children to traditional beliefs, but to the remoteness of certain islands in the state party. Moreover, members of the state delegation pointed out the important role of the church to the care for the disabled during the interactive session with the committee (CRC/C/SR.874: 64, 2003).
276 CRC/C/15/Add.246: 30, 2004.
277 CRC/C/SR.992: 16, 2005.
278 CRC/C/15/Add.246: 31, 2004.
279 CRC/C/UGA/CO/2: 33–34, 2005.
280 CRC/C/15/Add.174: 27–28, 2002.
281 CRC/C/BEN/CO/2: 30–31, 2006.

should address “inhumane customs and rituals”, not by appeal to religious leaders, but by legally prohibiting such practices, and promoting a “culture of non-violence”,[282] while Liberia was asked to put an end to the ritualistic killings of children by ensuring “the strict application of the Children’s Law”.[283]

Reviewing The Democratic Republic of Congo in 2009, the committee commented extensively on the abuse of children accused of sorcery and witchcraft, pointing out the numerous rights violations constituted by such abuse, including the principle of non-discrimination, the best interests of the child, the right to life, survival and development and the right to participation.[284] One committee member in particular elaborated on the various dimensions related to the problem:

> As recognized in the State party report, the problem of children being accused of witchcraft had reached disturbing proportions, particularly in urban areas. A large percentage of street children had been separated from their parents following witchcraft accusations, which, disturbingly, were often made by the parents. The children were forced into church centres, where pastors subjected them to harsh and degrading treatment, including starvation, under the pretext of exorcizing them. Such acts could not continue if the State party was committed to protecting children’s rights and she asked what the Government was doing to put an end to the practice. While a belief in witchcraft was part of a traditional world view, it was not an acceptable explanation for objective phenomena, such as poverty, childhood illnesses and AIDS-related deaths. What was the Government doing to educate parents, church leaders and community leaders regarding the causes of the aforementioned problems and to emphasize that they had nothing to do with witchcraft? Did the Government have a strategy for dialogue with the religious leaders in question? Had the Government considered appointing a special adviser to investigate the problem, which seemed to be spreading?[285]

Following this comment, the concluding observations of the committee recommended the inclusion of religious leaders in the measures to prevent children from being accused of witchcraft. However, it also urged the state party to address the “root causes, inter alia, poverty”.[286]

Reviewing Nigeria in 2010, several committee members were critical of the practice of accusing children of witchcraft. One member explicitly linked this issue to the religious discrimination identified in the state party by the Special

282 CRC/C/PAK/CO/3 – 4: 45 – 46, 2009.
283 CRC/C/LBR/CO/2 – 4: 38, 2012.
284 CRC/C/SR.1384: 21 Khattab, 41 Ortiz, 2009 & CRC/C/SR.1385: 8 Aidoo, 2009.
285 CRC/C/SR.1385: 8, Aidoo, 2009.
286 CRC/C/COD/CO/2: 78 – 79, 2009.

Rapporteur on the freedom of religion or belief in 2006,[287] while another member emphasized the role of the Church in such accusations.[288] Although some members agreed with the claim of the state delegation that the practice originated in "poverty and ignorance",[289] the committee nevertheless explicitly asked the state party to "address the belief in child witchcraft, for the general public as well as for religious leaders",[290] potentially signaling a new willingness to see a relationship between religious leaders and accusations of child witchcraft. Another indication that the connection between religious leaders and harmful practices may gradually become more fluid is the concluding observations issued to Sudan in 2010, recommending the state party to conduct awareness-raising among religious leaders on the harmful effects of sexual abuse,[291] a practice the committee has formerly not linked to religious leaders.

Despite this new approach, the connection between witchcraft accusations and religion was dismissed again by the committee in its consecutive observations to Angola later in 2010: During the interactive session, both committee members and representatives from the state delegation agreed on the origin of accusations of witchcraft in "religious sects".[292] Nevertheless, the advice offered to the state party in the concluding observations was only to include "civil society organizations and traditional or community leaders" in the fight against accusations of witchcraft.[293] Likewise, following the review of Guinea-Bissau in 2013, the committee advised the state party to "monitor its efforts in this regard, and undertake a study on the extent and root causes" of the ritual murders of "albinos, children with disabilities, twins and other children who were accused of practicing witchcraft".[294]

In its most recent practice, the committee has repeatedly asked states parties to involve religious leaders more generally, in their efforts to integrate the principle of the best interests of the child in their domestic legal frameworks, in concluding observations issued to Namibia,[295] Armenia,[296] Guinea-Bissau,[297] Sao

287 E/CN.4/2006/5/Add.2, 2006, CRC/C/SR.1505: 23 Zermatten, 2011.
288 CRC/C/SR.1505: 56 Filali, 2011.
289 CRC/C/SR.1506: 53, 55 Koopraphant, 2010.
290 CRC/C/NGA/CO/3–4: 68, 2010.
291 CRC/C/SDN/CO/3–4: 84, 2010.
292 CRC/C/SR.1547: 62 Filali, 63, 2010.
293 CRC/C/AGO/CO/2–4: 54, 2010.
294 CRC/C/GNB/CO/2–4: 28–29, 2013.
295 CRC/C/NAM/CO/2–3: 33, 2012.
296 CRC/C/ARM/CO/3–4: 21, 2013.
297 CRC/C/GNB/CO/2–4: 27, 2013.

Tome and Principe,[298] Tuvalu,[299] Israel,[300] Niue[301] and Guyana,[302] in what appears to be a concerted effort to make states aware of the recently adopted general comment issued by the committee on the subject.[303]

The degree to which the engagement of religious leaders is a key concern to the committee is perhaps best illustrated by the concluding observations following the review of Guinea in 2013, which was asked to involve religious leaders in the development of a comprehensive policy on children for the realization of the principles and provisions of the convention;[304] that they be adequately and systematically trained on children's rights;[305] that they be involved in sustainable public education, awareness-raising and social mobilization programs to eliminate corporal punishment, including the religious interpretations that "wrongly prescribe whipping as an integral part of the Koran";[306] that they be trained to "identify child victims and to effectively intervene in case of abuse and neglect against children",[307] and that they be made aware of the harmful impact of FGM and other traditional practices and its consequences for "the psychological and physical health and welfare of the girl child, as well as her future family".[308] [309]

7.7 Summary

The practice of the committee monitoring the CRC from 1993 to 2013 displays the complexity of approaching religion from a child-centered rights perspective. Like the CEDAW, the CRC protects one specific category of rights holders, but does so in a very broad range of different rights areas. Unlike the other committees,

298 CRC/C/STP/CO/2–4: 26, 2013.
299 CRC/C/TUV/CO/1: 26, 2013.
300 CRC/C/ISR/CO/2–4: 24, 2013.
301 CRC/C/NIU/CO/1: 27, 2013.
302 CRC/C/GUY/CO/2–4: 27, 2013.
303 General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (CRC/C/GC/14, 2013).
304 CRC/C/GIN/CO/2: 14, 2013.
305 CRC/C/GIN/CO/2: 28, 2013.
306 CRC/C/GIN/CO/2: 49, 2013.
307 CRC/C/GIN/CO/2: 51, 2013.
308 CRC/C/GIN/CO/2: 56, 2013.
309 The committee has issued similar sounding observations to numerous states, but no other state has received a similarly comprehensive recommendation to include religious leaders in the implementation of the CRC. In the examination above, these observations have been split up in order to assess different topics together. As such, some observations appear several times throughout the text.

whose overarching interpretational commonality is that of non-discrimination and a limited set of rights guarantees, the committee monitoring the CRC is additionally obliged to examine the information in state reports from the perspective of the "best interests of the child". Hence, whereas the other committees have examined how states deal with issues like education, the role of religious laws and the impact of religious leaders and organizations from a shared emphasis on non-discrimination in the access to a selection of specific rights, the CRC committee has sought to translate these issues to the child-centered context of the CRC.

The emphasis on the specific needs of children has led the CRC committee to somewhat different approaches to religion than those of the other committees. It is the only committee to have addressed the living conditions and curricula in Koranic schools, which it has criticized in the reviews of numerous African states. During these reviews, it has rarely commented on the dominance of one religious educational alternative over others and the potentially discriminating effects of this, focusing instead on how to improve the form and content of the existing educational alternatives on offer. This differs markedly from the approach of the other committees, which have stressed the potentially discriminatory effects inherent to denominational education.

The CRC committee is also the only committee to distinguish clearly between customary and religious laws, approaching the former as closely connected to harmful traditional practices and the latter as a system that can be changed given the right reforms and outreach to the communities in question. The committee has repeatedly engaged in a structural critique of customary law, while suggesting that religious law may be engaged and amended, much in the same way as general legislation. The CRC committee is also alone among the treaty bodies in bringing attention to sexual abuse in religious contexts and the abuse and even murder of children accused of witchcraft.

Despite these differences, there are also similarities—like the HRC and the committee monitoring CEDAW, the CRC committee has been concerned with the role of children belonging to religious minorities and the ways in which religious discrimination more generally influences children, as the primary rights holders protected under the CRC. It has consistently sought out the collaboration with, or urged the engagement of religious leaders, much like the CEDAW committee, although it has done so for a longer period of time.

Despite similarities in wording between the CRC article 14 and the ICCPR article 18, the CRC committee has only rarely addressed religion as a question about beliefs and their manifestations. Across the different themes raised by the committee in its concluding observations, religion has primarily been viewed as a dimension to identity and a social force that influences the implementation

of the provisions of the CRC. Unlike the CEDAW committee, the CRC committee has not discussed the secularity of states as a prerequisite for the implementation of its treaty provisions, despite its repeated concerns with sexual and other kinds of abuse within religious schools and communities. Nor has it displayed the same interest in the reinterpretation of the Koran or the correction of what Islam really says about rights as has members of the CEDAW committee.

Taken together, the modalities of religion at the CRC committee resemble the approaches to religion among actors at the second United Nations: Like the specialized programs and agencies of the UN, the committee has primarily approached religion as a surrounding feature influencing its main purpose, which is to secure the rights of children as they are laid out in the CRC. In this way, the committee has sought to engage religion from a pretended "outside", untarnished by the partisanship and power plays of actors at the first or third UN, who tend to engage in religion-making from above or below. However, unlike most actors at the second UN, some observations issued by the committee hint at a less instrumentalist view of religion: In particular, the formulation of a standardized observation on the "universal values of equality and tolerance inherent in Islam" developed by the committee in the early 2000s (see above) indicates an approach to religion more in line with the "civil religion" approach favored by actors at the first UN (see chapter 3).

8 Legal Forms of Religious Life

Emile Durkheim famously sought out the "elementary forms" of religious life among the aboriginals of Australia, whom he considered to have "the simplest and most primitive religion that is known at present" (Durkheim 1995: 1). While his primary subject matter was the religious ideas and practices of the aboriginals, his underlying intention was to say something more universally relevant about how and why anyone can be religious, thereby addressing "a fundamental and permanent aspect of humanity" (Durkheim 1995: 1). In a similar vein, this book has sought out the legal forms of religious life at the United Nations, and in particular among the human rights treaty bodies, as one of the largest, yet in many ways among the most primitive legal monitoring machineries in the world. While the primary subject matter of the book has been the specific approaches to religion in the concluding observations issued by four treaty bodies, the underlying intention has also been to identify more general patterns in how religion is approached in law and policy, which are no less fundamental or permanent aspects of humanity than the characteristics of "religious life" identified by Durkheim.

In the more than 100 years that have passed since the publication of *Elementary Forms of Religious Life*, religion has increasingly become subject to legal regulation and political debate, to the point where law and policy have become major frames of reference for most aspects conventionally characterized as "religion". Politicians, legislators and the judiciary have their say on everything from the boundaries of the "manifestations" of religious beliefs in the public sphere, the religious doctrines espoused in schools, the creation and influence of religious organizations and institutions and to the social and legal influence of religious laws, doctrines and practices. While some authors may attribute this increase to a "comeback" or "return" of religion to the public sphere (see chapter 1), another explanation may be the more gradual and general process of juridification, understood as the increasing recourse to law engendered by "the proliferation of rights discourses globally, regionally and nationally; and the growth of international law generally and the use of international courts and war crimes tribunals more specifically" (Blichner and Molander 2008: 37).

Indeed, as legal rules increase in number and scope at every level of governance, ever larger parts of society have become subject to "legal framing"; the development of a legal culture "that extends beyond or even replaces other background cultures. An individual is increasingly part of a society by virtue of accepting law as the basic frame of reference" (Blichner and Molander 2008: 47). As the findings in this book attest to, law is a basic frame of reference for

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a broad variety of different aspects of religion/s. The importance of this frame of reference is not limited to the legal rules that govern "religion" explicitly, but extends well into the governance of a wide array of other issues that frequently interact with religion/s, ranging from the rights of women and children to the right to freedoms of expression and association. In this way, the concluding observations issued by the treaty bodies from 1993 to 2013 serve as exemplars of how actors within an increasingly global legal culture "make" religion, using the vocabulary of law as their primary frames of reference and tools of distinction.

In order to identify more general aspects of the religion-making of the committees, this final chapter revisits some of the themes that have been addressed most frequently by the committees, pointing to divergences and convergences in their approaches. Despite clear and substantial differences in their approaches to what religion is and what role it should play in relation to the instruments they monitor, the committees have addressed several interrelated themes, five of which have stood out in particular over the course of the preceding chapters. First, the committees have entertained a sustained and broad engagement with the rights of religious minorities, from their proper codification in statutory law, their relation to other rights, the limits between religious and other minorities, and to the specific challenges arising for women and children belonging to religious minorities.

Second, the committees have extensively examined the role of religious organizations, from their recognition in constitutional and statutory law and to their contributions to education, health care and social morality, connecting the issue of religious organizations to a broad variety of different treaty provisions. Third, the role of religious, customary and indigenous forms of law, their recognition in "secular" law, their specific provisions, potential for reform and methods of interpretation and their real or perceived influence on the realization of a broad range of other rights has been repeatedly discussed. Fourth, the committees have engaged the social role of religious doctrines and practices, from the potential contributions of religious and traditional leaders in disseminating principles of human rights treaties and in battling harmful traditional practices, and to the role of religious organizations and precepts in preventing or exacerbating conflicts and tensions in society. Fifth, all the committees have commented extensively on the role of Islam, both in Muslim-majority countries and in countries where Muslims constitute religious minorities.

Assessing the role of religion across these themes, the committees have drawn in unequal measures on perspectives from the first, second and third UN, thus affecting the relationship between religion-making from above, below and outside. What constitutes the proper boundaries of "religion" in the ways in which the committees approach the rights of minorities, the role of or-

ganizations, non-state forms of law and doctrines and practices varies considerably from one committee to the other, as does their modes and means of interaction with actors at the different levels of the UN. Consequently, some states receive different recommendations from each committee for the same set of laws and practices, while other states receive the same recommendations despite differences in legislation. In these cases, the treaty monitoring process risks turning into a zero sum game in which states receiving praise for legal reform from one committee can be scolded for the very same reform by another committee.

Treaty bodies do not operate in splendid isolation. Their concluding observations on minority rights, the role of religious organizations, religious law and religious doctrines and practices resonate in unequal measures with pre-existing discourse on these themes, both within and beyond the academy. To better contextualize the approaches to religion favored by each treaty body on these themes, this chapter briefly maps some of the more important surrounding discourses on each theme before moving on to the views of the committees.

8.1 Minorities and Non-Discrimination

While the equality of rights for all regardless of their affiliation or status[1] has been at the core of the modern human rights concept since the formation of the UN, (Vandenhole 2005: 1), the idea of particular rights for distinct minorities is a considerably older idea, one that was all but eliminated with the adoption of the UDHR, although it has gradually been reinstituted over the course of the last decades (Normand and Zaidi 2008: 141; Barth 2008: 78, see chapter 3). Both sets of rights have equality as their ultimate purpose, but their methods for achieving this are fundamentally different. The principle of non-discrimination of individuals is derived from modern liberalism, furnishing sovereign individuals with human dignity, which is posited within the UDHR as a characteristic inherent to all human beings and primary to all other characteristics (Reinbold 2011: 161). The principle of granting specific rights to groups due to constitutive differences between these groups and their surroundings on the other hand, posits the collective and its distinctive identity traits as the constitutive bearer of rights, as regulated by the minority treaties negotiated by the League of Nations (Moyn 2014: 69–70). The tension between these opposing logics was part of the stale-

1 While some authors distinguish between equality and non-discrimination, attributing a stronger positive obligation upon states to the former, the terms are used virtually synonymous by the treaty bodies (Vandenhole 2005: 83). Hence, whenever I refer to “equality rights”, this encompasses rights to non-discrimination as well.

mate at the United Nations during the Cold War, with the Soviet Union championing the continued importance of minority rights and the US promoting the rights of the free and sovereign individual (Barth 2008: 69).

In the monitoring of the implementation of human rights provisions on discrimination and minority rights, the granting of any of these rights are expressly understood to have no repercussions on other rights, nor to be derivatives of other rights. Both sets of rights seek to bring about "substantive equality", i.e. *de facto*, rather than simply *de jure* equality for all (Henrard 2011: 401). To complicate the issue, religion constitutes a "special case" in the application of the equality principle by virtue of its strong protection as a personal belief, due to the tendency of international monitoring bodies to categorize all cases concerning religion under the "religion or belief" umbrella (Ghanea 2012: 61). Within this framework, religion or belief is primarily an individual elective, and not a dimension to the identity of groups, rendering its relation to other grounds for discrimination and differential treatment uncertain.

In the UN context, religious discrimination has also posed a particular challenge due to its unclear relation to racial discrimination, a challenge that has been left unresolved since the early 1960s, when negotiations on a common instrument prohibiting both racial and religious discrimination broke down, resulting in two parallel but asymmetrical protective instruments (see chapter 3). The ambiguity between racial and religious discrimination has resurfaced repeatedly at the UN monitoring bodies over the last decades, in particular in the practice of CERD (see chapter 4). Additionally, religious discrimination and the rights of religious minorities frequently interact with numerous other rights monitored by the committees, including but not limited to the rights of indigenous peoples, the rights of "old" vs. "new" minorities, the rights of minorities within minorities, and the "intersectionality" of religious discrimination with other grounds, like gender.

The religion-making of the committees from 1993 to 2013 demonstrate the complexity of disentangling the interrelationships between specific grounds for differential treatment. When taken together, the practices of the committees on the rights of minorities and non-discrimination offer counter-narratives to the tendency in international human rights law to conceive of religion primarily under "the freedom of religion or belief umbrella". Through their concluding observations, the committees have urged states to prohibit differential treatment based on religion, not in order to protect beliefs, but by repeatedly appealing to the concept of religious identity. Additionally, however, the observations issued by the committees on religious minorities are split in their emphasis on different dimensions of the minority complex. To CERD, the main problem seems to be the numerous lacunae in legislation on minority protection, as states fail to

protect minorities from both religious and ethnic grounds of discrimination. The HRC has been particularly preoccupied with the situation in Europe, where "old" minorities tend to have certain inherited privileges derived from earlier peace settlements, privileges that are not necessarily extended to more recent arrivals, thus violating the principle of equal treatment, whereas the CRC committee views the minority complex mostly from instances of *de facto* discrimination experienced by minority children. Finally, the committee monitoring CEDAW is alone in addressing the minorities within minorities complex in its practice, as it has stressed the obligations of state parties to protect members of minority groups from discrimination emanating both from within and from outside the groups with which they are affiliated.

The concluding observations issued to Cyprus illustrate some of these different perspectives. Whereas all the committees have highlighted some part of the challenges facing Cyprus by *de facto* differential treatment of some segments of the population in one way or form, each committee has done so from its specific approach to religion: The HRC observed in 1994 that tensions between the various ethnic and religious communities continued to be a problem and emphasized the plight of conscientious objectors,[2] a concern that was reiterated following the 1998 review, where the committee also expressed its concern for the differential treatment of citizens of Turkish origin and praised the establishment of a family court with jurisdiction over civil and religious marriage.[3] CERD stressed in 1995 that it would have preferred to refer to the religious groups listed in the report from Cyprus as ethnic groups,[4] a concern that was left out in the 1998 review and replaced by a concern for the lacking prohibition of racial discrimination in 2001.[5] Following the 2013 review of Cyprus, the concern with the relationship between racial and religious discrimination was reiterated, as the committee referred to "ethnic and/or religious communities", highlighted the need to recognize the right to self-identification of minorities, and recalled the intersectionality between ethnicity and religion, reminding the state of its obligations to the freedom of religion or belief under article 5.[6]

The committee monitoring CEDAW, having ignored the role of minorities in its 1996 and 2006 recommendations, issued a warning to Cyprus about its treatment of "ethnic minorities" following its 2013 review, urging the state party to

2 A/49/40 (I): 314, 321, 1994.
3 A/53/40 (I): 197, 198, 186, 1998.
4 A/50/18: 75, 1995.
5 A/56/18: 269, 2001.
6 A/69/18: 7, 14, 15, 2014.

"[i]ntensify its efforts to remove economic, linguistic and cultural barriers faced by girls belonging to ethnic minorities, including Turkish Cypriot girls".[7] While the committee also raised the issue of the subdivision of the population according to religious belonging, it did so in relation to the jurisdiction of religious family courts.[8] The CRC committee, having ignored the minority issue in its 1996 review of Cyprus, referred in its 2003 observations to the lack of legal provisions expressly outlawing racial discrimination by private persons, referring to the concerns expressed by CERD in 2001.[9] In its 2012 observations, the committee voiced its concern for discrimination "against children of Turkish origin and other minorities", advising the creation of a "targeted programme" specifically addressing the experiences of minority children,[10] while bringing up religion only in relation to the purposes of education in article 29 of the CRC.[11]

Taken together, the observations issued by the committees to Cyprus on the discrimination of minorities from 1993 to 2013 illustrate how the differences between the committees in approaching religion play out: While the HRC has only brought in religion in relation to the situation of conscientious objectors, CERD has consistently stressed the need to prohibit racial discrimination, while intermittently stressing its correlation with religious discrimination. The committees monitoring the CRC and CEDAW, on the other hand, have highlighted the specific challenges of children and women experiencing differential treatment, but have not discussed these from the perspective of the intersections between religious and ethnic discrimination. Across these observations, each committee has raised issues that are prominent in their instruments and their erstwhile monitoring practices, highlighting singular aspects of a complicated and entrenched phenomenon.

These divergent approaches can be perceived very differently: On the one hand, different approaches can reflect the successful burden-sharing between specialized entities, each set to stress its specific area of specialization. On the other hand, the scope of differences may indicate that the committees are discussing different matters altogether, leaving state parties with difficult choices: If Cypriot authorities were to follow the advice of the CEDAW committee in 2013 to pursue policies to eliminate "economic, linguistic and cultural barriers" faced by ethnic minorities, they would simultaneously run the risk of solidifying the borders between the fleeting identity traits of minorities, whose right to self-

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7 CEDAW/C/CYP/CO/6–7: 26, 2013.
8 CEDAW/C/CYP/CO/6–7: 35–36, 2013.
9 CRC/C/15/Add.205: 27–28, 2003.
10 CRC/C/CYP/CO/3–4: 21–22, 2012.
11 CRC/C/CYP/CO/3–4: 44–45, 2012.

identification was stressed by CERD the same year. Likewise, the recommendation by the CRC committee in 2012, that Cyprus should adopt "targeted programmes" specifically addressing discrimination against children from Turkish and other minorities could also create challenges for the self-identification required by CERD. The praise handed out from the HRC in 1998 for the creation of family courts with joint jurisdiction over religious and state law was directly contradicted by the CEDAW committee in 2013, as it observed that the coexistence of different religious laws at the family courts may negatively impact women in the case of divorce.

8.2 Institutions and Organizations

The legal recognition and regulation of religious communities as distinct from the state is commonly traced back to the peace at Westphalia in 1648, but has antecedents in older legal arrangements, stretching back to the laws of Roman and Islamic empires (Burbank and Cooper 2010: 73). Laws on religious communities have gradually shifted in form and content over the last decades, from primarily being a tool to prevent conflicts, to increasingly accommodate civil rights like religious freedom and non-discrimination (Rivers 2010: 33). Internationally, the shift from conflict prevention to the promotion of civil liberties was particularly striking, as the minority treaties of the League of Nations were replaced by the Universal Declaration of Human Rights (1948), which entirely evaded the concept of minorities, while promoting an individually determined set of rights related to religion (Claydon 1972: 405–406, see chapter 3). While the scope of the freedom of religion or belief is primarily determined by reference to the beliefs of individuals, there is widespread consensus that collective rights for religious organizations can be inferred from this right (Taylor 2005: 225).

Legal arrangements between religious organizations and state power have commonly been examined as subtypes of "church and state" relationships, although the translatability of this concept from a particularly Christian, even European, context to other traditions is debatable. Typologies of this relationship are legion (Temperman 2006: 274), but a division between complete separation, complete identification and managed pluralism is fairly uncontroversial. Among these alternatives, most authors favor the middle ground where states are neither theologically fortified, nor militantly anti-religious, thereby retaining a sense of religious literacy while not preferring any one tradition over others.[12]

12 What constitutes such a middle ground is not immediately obvious, as illustrated by Temper-

While recognition, as it is conceptualized under the church and state umbrella, is often an implicit and/or traditional arrangement with indirect or vague consequences (Davie 2000: 15–21),[13] registration practices tend to be formalized procedures for structuring terms of interaction between states and institutionalized religious communities, often with the express purpose of protecting the freedom of religion or belief for the members of such communities (Durham 2004: 321). Whereas recognition is ancient, registration is the modern invention of regulatory nation states that perceive the need to assert their control and dominance over religious communities (Gill 2008: 47). Hence, recognition and registration serve very different purposes: formal recognition of particular religious organizations in constitutions is often accompanied by sweeping assertions of the important historical role or predominance of one religious community,[14] and are used to secure the positions of majority traditions with a long and significant presence. Registration, on the other hand, is primarily dedicated to the identification and handling of minority communities. Registration procedures fill several functions, from the creation of legal personality, to facilitating training and appointment of clergy and establishing and administering schools, hospitals and other institutions, establishing the right to solicit, to accept and/or redistribute donations, and to administer burials and marriages (Durham 2004: 322). Additionally, and importantly, registration commonly entails either tax exemptions or financial support from state authorities.

The combined practice of the committees from 1993 to 2013 displays the complexity of the relationship between state authority and religious organizations, evident in the unevenly distributed geographical scope of concluding observations issued by the committees on this topic: whereas the HRC and CERD have been mostly concerned with the practices of states from Europe and Central Asia, the CRC committee has concentrated its efforts on Africa and Asia, while the CEDAW committee has focused its main attention on Latin America. Throughout these observations, the committees have addressed some overlapping, and numerous different dimensions of the relationship between states and religious

man's identification of seven intermediary positions between complete positive or negative state identification with a religion (2006: 282). See also Bader's identification of the myriad different meanings of secularism (2012: 22–25), which is the most popular term to describe a separation between church and state.

13 Although see Brathwaite and Bramsen for an examination of the correlation between religion and state conceived as a reconceptualization of Church and State, and democracy, which the authors claim to be inextricably linked (2011: 252). See also Driessen 2009: 76.

14 For an overview of the different phrases employed in constitutional provisions recognizing religion, see Fox 2011: 64.

organizations: All the committees overlap in their critique of arrangements whereby women, children or members of religious and ethnic minorities experience discrimination due to the explicit or implicit legal preference for a majority religious organization

Nevertheless, numerous concluding observations seem to suggest shifts in the ways the committees perceive the proper interrelationship of state power and religious organizations: The HRC has all but abandoned its criticism of constitutional recognition of religious organizations, concentrating its efforts on the criteria and institutional arrangements of registration practices. CERD has increasingly interpreted the role of religious organizations as a subset of the intersectionality between racial discrimination and the freedom of thought, conscience and religion, signaling a shift in emphasis from its general view of religion as primarily a dimension to identity, to a more individualist, belief-centered approach. The CRC committee, on the other hand, has confirmed its general view of religion as primarily related to identity by consistently framing the role of religious organizations through the provisions of the CRC on education, rather than the provision on freedom of religion or belief. Finally, the committee monitoring CEDAW, which is generally critical of the influence of religious organizations, has criticized states extensively for their relations to majority religions and has repeatedly praised the importance of secularity for the implementation of its provisions, but has also increasingly come to consider such organizations as potential partners in the implementation of the convention.

The ways in which the committees approach the role of religious institutions and organizations differently are evident in the combined observations issued by the committees to Ireland. In 1999, the CEDAW committee expressed its concerns with the dominant role of the Catholic Church, both in shaping social attitudes and in government policies, highlighting the challenges of women's reproductive health. In 2000, the HRC highlighted the consequences of exemptions in the employment code for religious bodies directing hospitals and schools, allowing them to discriminate on the ground of religion.[15] In its consecutive report, however, the committee was more concerned with the near-total dominance of denominational schools that provided a religiously integrated curriculum, depriving students of a secular primary education,[16] a concern shared by the CRC committee in 2006[17] and CERD in 2005[18] and 2011,[19] although with differing em-

15 A/55/40 (I): 443, 2000.
16 A/63/40 (I): p. 88: 22, 2008.
17 CRC/C/IRL/CO/2: 60 – 61, 2006.
18 A/60/18: 142, 2005.
19 A/66/18: 51, 2012.

phases: The committee monitoring the CRC was mostly concerned with the discriminatory nature of admission practices, while CERD expressed its concern with the potential for racial discrimination inherent to the system with denominational schools, stressing the intersectionality of racial and religious discrimination.

Hence, while all the committees agree on the potentially harmful side effects of the dominant role of the Catholic Church in Ireland, they emphasize the plight of very different constituencies: to the CEDAW committee, the influence of the Church was primarily problematic because it harmed women, while the HRC highlighted the challenges for individuals risking religious discrimination or for students seeking a secular education. The CRC, on the other hand, was not so much concerned with the curriculum as with the admission practices of Catholic schools, while CERD was alone in its emphasis on the racial component to the discriminatory side effects of a school system dominated by Catholic educational alternatives.

8.3 Religious Law

The modern human rights enterprise has traditionally adhered to the self-proclaimed universality of the UDHR, dismissing religious, customary, cultural and other alternatives to modern, legal rationality (Merry 2003a: 71). Derived from the presumed secularism of the Atlantic revolutions, the provisions of the UDHR and ensuing instruments have cordoned off religion to the private domain, with only limited manifestations allowed in the public sphere. This suspicion towards other forms of law builds on a long-standing civilizational ideal that considers the coexistence of parallel legal orders, or legal pluralism, as an indicator of incomplete territorial control, social and political backwardness and a lack of progress (Benton 2011: 65).

As the human rights enterprise has grown and diversified over the years, the initial suspicion towards other forms of law has gradually subsided, and approaches to competing legal orders have become more refined and sensitive to the importance of context: It is now widely acknowledged that the international legal order in itself is inherently pluralist and reliant on cooperation with other, overlapping legal mechanisms (Benvenisti and Downs 2007: 625; Burke-White 2004: 977); activists working to promote women's rights recognize the need to sometimes work with, not against other legal traditions (Boyle and Corl 2010: 209; Merry 2003b: 947) and the recognition of customary forms of law is considered vital to the protection of the rights of indigenous peoples (Perry 2011: 79). The necessity of involving religious legal forms in the protection of children's

rights was acknowledged already in the 1980s, when the CRC was adopted with an express recognition of the Islamic adoption principle of kafalah (Estin 2011: 229), a principle that has also been particularly emphasized in the reporting guidelines of the CRC committee.

These reorientations towards increased recognition of legal pluralism as a viable option to strengthen the protection of a variety of different human rights can be seen as a move from considerations of substance to considerations of salience:[20] Whereas former theoreticians and practitioners in the field of human rights emphasized the inherently incompatible nature of plural, co-existing legal orders by virtue of their perceived challenges to positive, state-sanctioned law, present human rights theory is more concerned with the efficacy of such forms of law, emphasizing the potential complementarity of state law and other forms of law (Sheppard and Provost 2013: 11).

In the monitoring practice of the treaty bodies, the role of religious law is clearly contentious, as all the committees have expressed some form of criticism towards non-state forms of law, while most have also recognized the necessity to seek the reform and harmonization of these legal norms with the principles of their treaties. Several lines of differentiation crisscross between the committees on this issue: the HRC appears least willing of all to entertain the possibility that religious or customary forms of law may be relied upon to help implement the provisions of the ICCPR. In particular, the committee has expressed its repeated and sustained concern that the recognition of religious and customary law can be discriminatory to women, and has urged states to ensure that everyone has access to the civil legal system. CERD, on the other hand, has gone furthest in the direction of endorsing the recognition of non-state forms of legal reasoning, urging states with sizeable indigenous populations to recognize legal rules, modes of interpretation and standards of proof derived from indigenous traditions. While the majority of recommendations in this area have been made to states with deep and troubled conflicts over access to land, the recommendations have also incorporated criminal and other types of legal rules. On the topic of religious law, the committee has largely followed the approach of the HRC, stressing the potential for discrimination inherent in the application of religion-based legal rules.

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20 This development is parallel to a similar shift in the historiography of the human rights movement, which is also increasingly moving from "substantive" appreciations of "hard" human rights law on-the-books, to thematic analysis of the salience of human rights law in relation to their surroundings, i.e. the softer law-in-action (see Moyn 2012 for a discussion of this shift).

The committees monitoring CEDAW and the CRC have stressed the challenges raised by customary and religious legal rules for the implementation of their instruments, but have also emphasized the need for reform of religious legal rules. In their recommendations, both have been particularly concerned with the role of Islamic law. The CEDAW committee has repeatedly asked states to seek out comparative jurisprudence from other states with Islamic legal systems, and have suggested state-initiated reinterpretations of the Koran in order to provide interpretations that are more conducive to women's rights. The CRC committee, while less willing to suggest the reinterpretation of religious texts, has highlighted the "universal values of equality and tolerance inherent in Islam", expressing its concerns with the narrow interpretations of these values by states parties.

The different approaches to the role of religious law in the observations issued by the committees are evident in the ways they have approached the confessional legal system in Lebanon, where the population is divided into a fixed set of religious communities that maintain their own legal systems in the area of family law and are allotted set quota of seats in parliament. Whereas CERD has repeatedly expressed its wish that the whole system of confessionalism should be dismantled in order to prevent discrimination and diminish the power of religious courts,[21] the HRC has suggested the introduction of civil laws on marriage and divorce alongside the religious legal system, while also removing the requirement that Lebanese citizens must be members of one of the recognized religious communities in order to run for the presidency.[22] The suggestion to adopt a unified civil code regulating personal status laws has been echoed by the committee monitoring CEDAW.[23] The CRC committee, on the other hand, has repeatedly suggested that the state party should cooperate with and create awareness among the confessional groups about the need to harmonize their legal rules on the minimum age for marriage with the principles of the convention.[24]

Hence, while the committees agree that the confessional legal system in Lebanon violates principles of their instruments, they disagree how these violations should be prevented. To CERD, the division of the population into religious groups that is integral to the system is in itself incommensurable with the principles of ICERD, and should therefore be abolished. Both the HRC and the CEDAW committee, on the other hand, isolate separate side effects of the system that collide with their respective instruments, and propose the adoption of addi-

21 A/53/18: 180, 1998 and CERD/C/64/CO/3: 82, 2004.
22 A/52/40 (I): 349, 353, 1997.
23 A/60/38: 99–100, 2005.
24 CRC/C/15/Add.169: 9–10, 21–22, 2002 and CRC/C/LBN/CO/3: 25–26, 2006.

tional legislation to bring the system in line. Finally, the CRC committee, recognizing the harmful effects of the system, has stressed the need to collaborate with religious groups and seek the amendment of the existing system. While these different approaches to the same problem are fully in line with the main approaches to religious law of each committee, the state party is left with a wide spectrum of choices, ranging from a complete overhaul of its legal system via reforms in specific areas, and to the gradual engagement with religious communities to bring about changes from within.

8.4 The Impact of Religion

The influence of religion on the implementation and monitoring of human rights norms is not limited to the legal or scriptural side of religious traditions. Rather, the practical dimensions of religiosity, i.e. what sociologists and anthropologists of religion have conventionally labelled "lived religion", the practical dimension to the lives led by individuals who self-identify as religious (McGuire 2008; Orsi 2006) can influence the implementation of human rights provisions well beyond the confines of religious organizations or the religious beliefs of individuals and their manifestations.

In recognition of this influence, a discourse on the relation between lived religion and human rights has developed over the last decades. This discourse is largely optimistic, pointing to the multiple opportunities for cross-fertilization and overlapping consensus between secularist human rights provisions and religious teachings and actions. In explicit opposition to the essentialization of religious traditions operative in legal and/or scriptural approaches, this is a "bottom-up" approach to human rights conflicts involving religion that seeks to deconstruct the boundaries between religious and other practices, in order to contextualize and accommodate the rights claims of marginalized groups (Schubert 2009: 40). In order to engage such composite practices from below, the lived religion approach seeks to dismantle the predominance of the public/private divide that has been foundational to the human rights enterprise since its inception. According to this line of reasoning, a sharp public/private divide distorts and simplifies the complex social role played by religious and other practices of non-state actors beyond the purview of state control, distortions that are particularly detrimental to the protection of women's rights (Johnstone 2006: 152).

In order to move beyond this divide, non-state private actors are increasingly being involved in the implementation and monitoring of human rights, including religious groups and, importantly, their leaders. The importance of non-state approaches, appealing to religious actors that work from below, has particularly

been addressed in human rights initiatives against female genital mutilation (FGM) (Boyle and Corl 2010: 197; Harris-Short 2003: 181), HIV/AIDS (Paiva et al. 2010: 291; Luginaah et al. 2005: 1697) and development more generally, including gender equality in the workplace and access to education (Deneulin and Rakodi 2011: 52; Njoh and Akiwumi 2011: 15).

While the influence of religious doctrines have long been part of the normative discourse on the foundations and standard-setting of human rights, the claimed comeback of religion in the public sphere has further increased their presence in the discourse on implementation. The acknowledgment that not only religious beliefs, but also religious practices play decisive roles in the recognition and implementation of human rights norms has gained increasing acceptance in the international community, sparking regional and global initiatives that seek to engage and harness religious practices in the protection of human rights. In this way, religious doctrines are increasingly relied upon to foster the implementation of a broad array of different rights, a reliance that has been particularly heartfelt among the actors working at the second UN.

The views of how religious leaders can help or prevent the implementation of human rights provisions is clearly ambiguous among the committees, ranging from the complete dismissal espoused by the HRC, and to the consistent, longlasting engagement with the vital role played by religious leaders expressed by the committee monitoring the CRC. Inbetween these polar opposites, CERD has issued a handful of observations on the ways in which the social role of religion may both create and prevent racial discrimination, while CEDAW has traditionally been critical of any religious influences in society, but has increasingly recognized the importance of religious leaders to the implementation of its instrument, albeit with greater reluctance than the CRC committee.

An illustrative example of the differing approaches among the committees to the social role of religion is the view of traditional harmful practices, in particular the practice of female genital mutilation, which has been framed differently by all the committees: for the CEDAW committee, it is an entirely cultural practice, whose religious connotations should be challenged and contested. The CRC committee, on the other hand, recognizes a religious component, while CERD views it as a practice among “ethnic” communities. Finally, the HRC simply suggests its eradication by legal means, whereas the other committees propose various degrees of engagement with religious and/or community leaders.

To the HRC, the origins of harmful traditional practices like FGM are simply not addressed, and their prevalence is considered primarily to be the result of faults with the creation or implementation of legal frameworks prohibiting such practices. To CERD, FGM is first and foremost a subset of racial discrimination, although the very recent practice of the committee suggests an increasing

willingness to include religious leaders in efforts towards its eradication. For the CRC committee, there seems to be a clear distinction between practices like honor killings, FGM and early marriages on the one hand, all of which are intertwined with religious customs and presuppose the involvement of religious leaders for their abolishment, and on the other, practices related to sexual abuse, accusations of witchcraft and sorcery, and the torture, murder and sacrifice of children, all of which are frequently separated from religion, and related to "customs". Finally, the committee monitoring CEDAW has been adamant that harmful traditional practices like FGM have "no relation" to religion, but are caused by external pressures and "underlying cultural justifications" that states should address by engaging religious leaders to assist in rectifying the mistaken associations made between such practices and religion, in particular Islam.

The overall increase in concluding observations on the influence of religion and the corollary increase in recommendations to include religious leaders may suggest that the religion-making from above favored by the HRC is becoming increasingly isolated, as the other committees employ considerably broader conceptualizations of religion than the minimalist concept of religion contained in article 18 of the ICCPR. This suggestion may be further strengthened by the indications in the very recent practice of the CRC and the CEDAW, to engage the detrimental effects of religious beliefs directly in a manner that is entirely new in the practice of the committees.

8.5 The Islamic World and the West

The concluding observations issued by the UN human rights treaty bodies from 1993 to 2013 have done little to specifically address the "growing divide" between the Islamic World and the West diagnosed by the UN Intellectual History Project (see chapter 1). All the committees have approached Islam frequently, and in different ways: No other religious tradition has been subject to similarly heated discussions among committee members or mentioned by far as often in their concluding observations as Islam. While observations on Islam escape easy classification, their sheer variety undermine the proposition that the Islamic world and the West are increasingly divided: If anything, the concluding observations on Islam testify to the complexity of discussing "the Islamic world" and "the West", as observations on Islam portray doctrinal, organizational, social and legal aspects of Islam that transcend any notion of a unified "world".

Indeed, one of the major iterations of Islam in the monitoring practice of the HRC is as the main component of identity for minorities whose rights to non-discrimination and the freedom of assembly have been violated, particularly in re-

views of states in Western Europe, the Middle East and Central Asia, indicating that “the West”, if anything, is infused with a variety of followers of “Islam”, generating considerable legal challenges. Similarly, to CERD, Islam is the primary example of an ethno-religious identity maintained by certain minorities at the complex intersection between religion and ethnicity in numerous state parties, in particular where Muslims constitute a minority and continue to experience discrimination and harassment intimately connected with racism and xenophobia.

The monitoring practice of the CRC committee adds yet another layer to the potential role of Islam, as the committee has highlighted the role of Koranic schools in Western Africa, which have been important providers of basic education, but are also responsible for numerous violations of other rights under the convention. Additionally, Islam has been recognized by the committee as a major component to the identity of children belonging to religious minorities who are subjected to harassment, and an important social actor that should be engaged in order to better protect children’s rights. Finally, to the committee monitoring CEDAW, Islam has been recognized as a component of the identity of minority women subject to discrimination, but more importantly as a competing source of laws on women’s rights that should be amended and reinterpreted in order to be brought in line with CEDAW.

The differing views of the committees on the role of Islam can be hard to reconcile; in particular, the numerous suggestions of CEDAW committee members that states have “misinterpreted” the Koran, and concluding observations that suggest that states parties seek out comparative jurisprudence in order to reconcile the Sharia with CEDAW, seem out of step with the other committees. The acceptance of the CRC committee of Koranic schools as the sole providers of education in some states seems to be at odds with its criticism of the dominance of singular religious traditions in education in other states, while the numerous observations of CERD of an “intersectional” relationship between Islam and ethnicity exist in splendid isolation from the practice of the other committees.

While many and profound divisions exist between the views of the committees and those of several states and their narrow interpretations of the legal protection of Muslim minorities, the proper role of religious schools and the influence of Islamic doctrines, the observations on Islam issued by the committees challenge the notion of a perceived divide between the Islamic world and the West, as the role played by Islam in relation to the implementation of human rights provisions is too complex and variegated to be neatly summarized.

8.6 Conclusion

The findings presented in this book attest to the deep and pervasive engagement with religion/s in the monitoring practice of the Human Rights Committee (HRC), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC). For most of the committees, this engagement has increased in later years, and is significantly broader than the scope of the legal provisions of the instruments monitored by the committees, resulting in inconsistencies and differences in the ways in which the committees deal with religion/s.

Given the complexity of "religion" as a term, concept and unit of analysis, inconsistencies and differences were to be expected. Indeed, one of the driving motivations for the examination of the documents published by the committees was the assumption that the committees would disagree on the nature and role of religion in their work. In this sense, the findings presented in chapters 4–7 were unsurprising. However, while disagreements and differences in interpretation could safely have been assumed at the outset, the volume of observations that deal with religion, their thematic distribution and the extent to which the committees have shifted their approaches to religion over the course of the 20 years of monitoring practice covered in this book were unexpected and could not have been uncovered without the empirical substantiation provided in the preceding chapters.

In terms of volume, the "return of religion" narrative would seem to suggest that the increasing political salience of religion would signal an increased attention towards religion at the HRC, as the committee with the most comprehensive framework on the rights of civil society and the affairs of political rule. However, as attested to in the findings presented above, the HRC has largely kept its distance from "the world of religion", with a few, notable exceptions, indicating neither a heightened, nor a diminished interest in the issue, despite its comprehensive legal framework directly related to religion, and the requirement that states include a broad variety of religion-related issues in their periodic reports. Equally unexpected, the committees monitoring the CRC and the CEDAW have both displayed a keen and growing interest in the role of religion to their instruments. In particular, the changes in the practice of the CEDAW committee in its approach to religion, which has moved from active opposition towards reluctant co-operation, were surprising and have not been addressed by earlier research that I am aware of.

Similarly, the willingness of both the CRC and the CEDAW committees to suggest various ways in which religious traditions could be reformed or reinterpret-

ed have not been empirically substantiated in earlier research. While the active involvement of CERD with religious issues was less surprising and are supported by findings in earlier research (see chapter 4), the specific ways in which the committee has approached the issue of intersectionality and the subtle shift from considering religion strictly under article 5 to also include it under article 1 have not previously been addressed in the literature. In particular, the ways in which the committee has effectively helped "ethnicize" religion by juxtaposing racial and religious discrimination should become subject to further research efforts.

The volume, themes and changing approaches to religion displayed by the committees over this 20-year period notwithstanding, I hope this book can serve to open up a larger conversation about the utter normality of religion as a social and political concept, and especially as a category and vital context for law and legal regulation: What stands out in the ways in which the committees navigate the "world of religion" is first and foremost its mundanity and plainness, as religious leaders, organizations, doctrines and practices are invoked copiously and regularly, often in a happenstance, indirect fashion, as one more item in the enormous landscape of law, society and politics to which the committees are forced to develop a point of view.

Approaching religion matter-of-factly, as yet another complicated socio-political concept to which they must direct their attention, the work of the committees is largely detached from and oblivious to the many and comprehensive theories and studies of laws of religion ("religious law") and laws on religion ("religion law") in the academy: Although the field of "law and religion" has become something of a boom industry over the course of the last decades, the disciplinary horizon of the field continues to be dominated by ecclesiastical law, discussions on the proper boundaries between church and state and the management of religious pluralism.[25] Limiting the scholarly inquiry to these established themes—which have also played a decisive role in the ways in which the data in this book has been parsed— risks missing the manifold interactions between law and religion that take place outside these narrow constructions. More importantly, a disciplinary horizon limited to laws on or of religion risks singling out "religion" from the multiple, intersecting contexts in which it appears, as a somewhat "special" or "unique" phenomenon.

As the scale and scope of the findings presented in chapters 4–7 attest to, religion, or more precisely religion-making is not a "special" or recent practice,

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25 For a broad-based assessment of the growing field of law and religion and how its thematic focus can be expanded, see Årsheim and Slotte 2017.

but a perpetual feature of modern society, as social, political and legal actors incessantly invoke various aspects of what they take to be "religious" to bolster their claims or undermine those of others. In this way, the hunt for a viable or coherent concept of "religion"—whether it is construed as a universal feature of mankind or a suppressive instrument of power—appears to be a chimera, as the constant production and reproduction of different concepts of religion that serve different ends appear to be among the few readily identifiable features of "religion".

Recognizing the always incomplete nature of "religion", inspired by the recent publication of a joint general recommendation on harmful practices issued by the committees monitoring CEDAW and the CRC in 2014,[26] and taking into account the many challenges and inconsistencies identified in chapters 4–7, the committees should consider the possibility of issuing a joint general comment or recommendation on their approaches to religion. As the findings in this book attest to, religion is a complex phenomenon with a long and troubled interpretational history and a complicated relationship to the implementation of human rights provisions, and the committees should be encouraged to come together to discuss the repercussions of these findings for their future work.

The objective of such a comment/recommendation would be to clarify the obligations of state parties under the legal instruments monitored by the committees by providing authoritative guidance on legislative policy and other appropriate measures that must be taken to ensure full compliance with their obligations. The committees should explicate their views of the role of religion relative to the implementation of their instruments, specifying their understanding of the exact nature of the relationships between religion/s and specific provisions of their respective instruments. The comment/recommendation should take into account the numerous views on religion represented in earlier comments and recommendations issued by the committees, paying particular attention to general comments no. 22,[27] 23[28] and 34[29] of the Human Rights Committee, positioning their views on the role of religion/s in relation to these comments. More specifically, the following issues should be clarified by the committees:

a) The social role of religious communities has been approached very differently by the HRC, which has consistently ignored any such role, and the other committees, which have all urged the involvement of religious communities and leaders in the implementation of their provisions, albeit in different

26 CEDAW/C/GC/31-CRC/C/GC/18, 2014.
27 CCPR/C/21/Rev.1/Add.4, 1993.
28 CCPR/C/21/Rev.1/Add.5, 1994.
29 CCPR/C/GC/34, 2011.

measures. The continued disinterest of the HRC is of particular importance because the committee monitors the most extensive and authoritative legislative framework on the role of religion in society. As such, the continued refusal of the HRC to allow any substantive content to the term and concept of "religion" in its practice should become subject to discussions.

b) The increased reliance on religious leaders in the practice of the CEDAW and CRC committees should be discussed with a particular emphasis on the nature and potential outcomes of such involvement, identifying pitfalls and best practices, looking in particular to the guidelines developed by other UN agencies for the involvement of religious actors.
c) Differences in the approaches to the principle of self-identification for members of minorities should be clarified and discussed by the committees. The emphasis on the intersectionality of religion, race and ethnicity developed in the monitoring practice of CERD should be examined by the other committees, with a particular concern for how an emphasis on this particular intersection may affect the rights of other vulnerable groups in society, notably women and children. Due to the many uncertainties involved in the notion of intersectionality, the committees should also consider issuing a separate comment on the viability of this particular concept.
d) The committees should discuss the extent to which state favoritism for a religious tradition, doctrine or organization constitutes impediments in themselves to the implementation of their provisions. The continuous criticism from the CEDAW committee paired with the intermittent criticism from the HRC and the virtual silence from the CRC and CERD serve to make the position of state favoritism vague and unclear. Taking into account the recent statements of the Special Rapporteur on the Freedom of Religion or Belief on the potential problems entailed by any form of favoritism,[30] the committees should spell out their views on which relationships are considered detrimental, for what reasons, and in relation to which provisions of their instruments.
e) The development of standardized recommendations by the CRC and CEDAW committees on the role of Islam and Islamic law should become subject to discussions, with a particular emphasis on (a) the differential treatment between Islamic and other forms of religious and customary law, and (b) the extent to which the committees view the reform of religious laws as more desirable to the implementation of their provisions than the abolition or disso-

30 A/HRC/19/60: 71–73, 2011.

lution of such laws. The appreciation expressed by CERD for the recognition of indigenous forms of law should be part of this assessment.

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Presently, all the committees publish separate documents with concluding observations, but throughout most of the 1990s, several of the committees only issued observations as parts of their annual/sessional reports, leading some references to be dated the year after the review took place. Annual/sessional reports are listed in the index, but not separately per country. Summary records are published haphazardly by the UN, and can appear several months, even years after meetings between state parties and committees. In order to make the list of summary records navigable, they are listed in order of their document number instead of their date of publication. While full records are given in the index, I have limited their inclusion in the main document to a simplified author-date format to avoid excessive listings. Digits from UN documents indicate paragraph number rather than page number.

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