

# Faith & Freedom

*Using the UDHR to Practice What We Preach*



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The first full, modern articulation of international standards protecting freedom of religion and belief is found in the 1948 Universal Declaration of Human Rights (UDHR). The core of those standards is articulated in Article 18:

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.

In addition to Article 18, there are other important clauses within the

UDHR that complement the protections for freedom of religion or belief, including the Preamble, Articles 2, 16, 26 (providing that certain rights cannot be limited on the basis of race, religion, or other impermissible factors), and other articles that provide for freedom of expression and freedom of association. Most of the major international and regional human rights instruments drafted after 1948 trace their origins back to the UDHR. The majority of the current constitutions of countries of the world were drafted after 1950, and many of them can trace their own protections for freedom of religion back to the UDHR.

The rights of religious believers are among the oldest protected by in-

ternational treaties. Prior to 1948, they typically appeared in one of two limited guises. The first were as provisions in bilateral treaties requiring a country to respect the rights of a religious minor-

Second, individuals have the right to form groups and to practice their religion in community with others.

Third, freedom of religion or belief protects not only adherents of religion,

out digressing into the legality of U.S. obligations to comply with international law, there are, in fact, three mechanisms for international monitoring of internal U.S. practices pertaining to freedom of religion:

First, the U.N. Committee on Human Rights. The United States is required to submit a report to the U.N. Committee on Human Rights once every five years to describe U.S. compliance with the International Covenant on Civil and Political Rights (ICCPR), including Article 18 of the ICCPR, which pertains to freedom of religion or belief. The U.S. government has now submitted a total of three periodic reports. Following the submission of the U.S. reports, the U.N. Human Rights Committee issues its own report and calls for additional information. In addition, NGOs, including the ACLU, often issue their own "shadow reports" which usually differ markedly from the United States' account in describing its compliance with the entire range of human rights issues, including religious freedom.

The second monitoring mechanism is through the U.N. Special Rapporteur on Freedom of Religion or Belief. The Special Rapporteur issues ongoing reports evaluating U.N. member states compliance with international standards for freedom of religion and belief. The United States is included in these ongoing reports. In addition, the Special Rapporteur may make an "*in situ*" visit to countries in order to conduct a more detailed examination of a country's practices. Such a country visit to the U.S. took place in 1998.

The third mechanism is the Organization for Security and Cooperation in Europe (OSCE) with 56 participating states. The OSCE holds an annual "human dimension implementation meeting" where participating states offer criticisms and comments on each others' human rights practices. NGOs are

ity living within the country. The second were the famous multinational "minority treaties" that were negotiated and ratified between the First and Second World Wars, and that protected the rights of religious minorities to practice their religion as a group. But it was not until the UDHR in 1948 that an international body, the Commission on Human Rights, under the leadership of Eleanor Roosevelt, negotiated and adopted an international standard that was much broader than any previous instrument.

If the words of Article 18 seem either obvious or unexceptional to the twenty-first century reader, it is in large measure due to the fact that the UDHR helped establish what is now widely regarded as the governing international standard. While it cannot be said that the freedom of religion principles of the UDHR are universally accepted (and it certainly should not be imagined that are respected in practice), they do articulate several themes that are widely acknowledged, including:

First, freedom of religion or belief is a right that belongs to everyone. It is not a "group right" that resides only in a community (as in the minority treaties) where the community can in turn force those in its midst to accept the group's practices. The locus of the right is in the individual.

but all people of conscience whether they believe in one God, many gods, or no God. It protects *beliefs* in addition to *religions*.

Fourth, people have, in addition to the freedom to express religious (or non-religious) beliefs, the additional right to *manifest* those beliefs in ways such as wearing religious attire and engaging in religious activities in public.

Fifth, individuals have the right to change their religious beliefs and practices, which includes the right to convert to another religion or to leave religion altogether. This right, in conjunction with the right to express religious viewpoints, provides for the right to persuade, proselytize, and convert.

Finally, the UDHR (implicitly in Article 18 and explicitly in Articles 2, 16, and 26) prohibits the state from discriminating against people on the basis of religion.

**B**ecause the UDHR is a "declaration" and not a binding "treaty" (or convention), it contains no mechanisms for legal enforcement. While it is common for international lawyers to assert that the UDHR is "customary international law" and therefore is "legally binding," there are no legal mechanisms either in the UDHR itself or in American domestic law to give it legal effect. With-

also permitted to express their own observations and critiques.

With some important exceptions, the United States may be regarded as a country where religious freedom is widely protected and where a wide range of religious believers are free to practice their religion alone or in community with others. Unlike many countries of the world, it is relatively easy in the United States to form religious organizations that receive state recognition, obtain tax-exempt status, buy property, hire employees, and erect religious buildings. Indeed, the creation of religious organizations as legal entities is so routine and unexceptional in the United States that Americans typically do not realize how difficult this can be in other places in the world.

For most practical purposes, governments in the United States do not interfere in religious activities, review religious literature, restrict religious expression, nor permit state discrimination on the basis of religion. People are free to join religions, leave religions, and form new religions. Moreover, many elements of civil society in the United States are broadly protective of religion. There are many legal organizations that are secular (such as the ACLU), or religious, that actively defend the rights of individuals and religious communities, both in the courts and in the legislatures. It is not only the U.S. Constitution and the constitutions of the fifty states that provide a legal framework for protecting religious beliefs, but there are many laws that prohibit religious discrimination (such as in employment), and that promote free exercise of religion.

While religious freedom in the United States largely complies with international norms and is generally superior to most other countries in the world, there are some important weak-

nesses that should be noted. Societal discrimination may arise with regard to any religious (or belief) group, whether Roman Catholic, Jewish, fundamentalist Christian, Scientologist, Mormon, Jehovah's Witnesses, or another. Each may be subject to harassment, acts of vandalism, or hate speech. While

full due process, a hearing, a trial or even statement of reasons.

*Non-believers.* While laws generally do not discriminate against non-believers *per se*, there is significant societal pressure against those who do not acknowledge a belief in God. It is difficult

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*Muslims.* Even before September 11, 2001, Muslims have been disproportionately subjected to disparate treatment and discrimination. Security officials have long been understood to apply “religious and ethnic profiling” particularly at borders and for plane travel. The discrimination may be based on appearance or on names. Federal authorities have designated Muslim charities as supporting or engaging in terrorism and seized their assets based upon unproved and unsubstantiated allegations of their involvement in terrorist financing very often without

to identify any major elected political official in the United States who openly professes to be a non-believer. Non-belief in God is viewed with suspicion and linked to being “un-American.” Governments often further an official theism by erecting state-funded monuments promoting religious beliefs, sponsoring religious activities and rituals, and promoting particular religious beliefs and practices at public schools.

*Native American religions.* There are important political and legal barriers that restrict Native Americans from freely exercising their religious beliefs. While there might be some practical reasons for not deferring to Native American religious beliefs in cases such as where the recognition of a sacred site (e.g., a mountain) might infringe on other uses, there are a significant number of examples where the discrimination is due simply to bias, a lack of familiarity, or an unwillingness

of the majority to compromise with Native American practices.

Apart from these three groups, societal or legal interference with the rights of religious freedom typically are short-term and exceptions to the rule.

Since the 1940s, the United States has played a prominent role in vigorously promoting the rhetoric of “freedom of religion” (though *not* “freedom of religion *and* belief”) in the international arena. During World War II, Franklin Roosevelt identified “freedom to worship” as one of the “four freedoms” for which the allies were fighting against totalitarianism. Eleanor Roosevelt played an important role in promoting the UDHR. Americans at the Second Vatican Council were influential in promoting religious freedom within the Catholic Church. In many international bodies, it is the United States that

is most likely to raise questions about other countries’ compliance with international religious freedom standards.

In 1998, the U.S. Congress enacted the International Religious Freedom Act that, by law, makes the promotion of international religious freedom an integral part of U.S. foreign policy. The law created an office within the State Department assigned to promoting religious freedom which issues an annual report on the status of religious freedom in the countries of the world.

While the United States may be credited for bringing added attention to religious persecution and discrimination, it has not always taken an appropriate and balanced approach. As with other aspects of its foreign policy program, the United States tends to act unilaterally and to put pressure on other countries rather than to seek allies with similar concerns. The U.S. should emphasize the promotion of freedom rath-

er than condemn those who violate it.

Eleanor Roosevelt said, “Learn from the mistakes of others. You can’t live long enough to make them all yourself.” As a country which makes religious freedom a foreign policy priority, the U.S. should be particularly well-versed in the dangers of restricting those freedoms. Sixty years after the UDHR, Eleanor Roosevelt’s dream has not been fully realized—even within her own country. While the U.S. has more widespread religious freedom than is found in much of the rest of the world, there are still steps that must be taken to improve the state of religious freedom at home. Only then can religious freedom be promoted abroad without reservation or hypocrisy.

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