

Can God and Caesar Coexist?

Can God & Caesar Coexist?

Balancing Religious Freedom
and International Law

ROBERT F. DRINAN, S.J.

Yale University Press New Haven and London

Copyright © 2004 by Yale University.

All rights reserved.

This book may not be reproduced, in whole or in part, in any form (beyond that copying permitted by Sections 107 and 108 of the U.S. Copyright Law and except by reviewers for the public press), without written permission from the publishers.

Designed by Nancy Ovedovitz

Set in Minion type by Integrated Publishing Solutions.

Printed in the United States of America.

Library of Congress Cataloging-in-Publication Data

Drinan, Robert F., S.J.

Can God and Caesar coexist? : balancing religious freedom and international law / Robert F. Drinan, S.J.

p. cm.

Includes bibliographical references and index.

ISBN 0-300-10086-8 (alk.paper)

1. Freedom of religion. 2. Freedom of religion (International law) I. Title.

K3258.D75 2004

341.4'832—dc22

2004041977

A catalogue record for this book is available from the British Library.

The paper in this book meets the guidelines for permanence and durability of the Committee on Production Guidelines for Book Longevity of the Council on Library Resources.

10 9 8 7 6 5 4 3 2 1

Contents

ONE	A New Global Right: Religious Freedom	1
TWO	The Dimensions of the Freedom of Religion and of Conscience	8
THREE	Religion in the Structure of the United Nations	30
FOUR	Religious Freedom in the United States	48
FIVE	Religious Freedom and the European Court of Human Rights	86
SIX	Vatican II Vigorously Defends Religious Freedom	96
SEVEN	The Rights of Dissenters	113
EIGHT	Religious Freedom and Issues of Gender and Sexuality	134

NINE	When Governments Repress and Persecute Religion	151
TEN	The People's Republic of China and Religious Freedom	165
ELEVEN	Religious Freedom and the Muslim World	181
TWELVE	The World's Jewish Community and Religious Freedom	191
THIRTEEN	Questions of God and Caesar	212
<i>Appendix A. United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)</i>		
		247
<i>Appendix B. Vatican II Statement on the Jews</i>		
		253
	<i>Selected Bibliography</i>	255
	<i>Index</i>	257

I

A New Global Right: Religious Freedom

Scores of constitutions drawn up since the end of World War II have proclaimed religious freedom as one of the most fundamental rights known to humanity. Similarly, international covenants of human rights have exalted the right to religious liberty as a privilege that is so foundational and precious that it should be guaranteed by international law.

Support for the right to practice the religion of one's choice is very new in human history, and it prompts dozens of questions. If the new right to religious freedom were accepted and enforced, for example, would the world be spared the savagery of wars prompted at least in part by the clash of religious beliefs?

The worldwide spread of national and international commitments to religious freedom also begets a host of questions. Can the governmental and other bodies that support this right believe that the absolutism with which most religious bodies have traditionally promulgated their beliefs is now so diminished that the adherents of most religions would not seek to

impose their views on others? Is agnosticism now so widespread that neither believers nor nonbelievers have the certainty that is necessary to seek to impose their religious views by force? Whether or not this is the case, the origins and implications of these unprecedented world commitments to protect religious freedom deserve intense scrutiny and evaluation.

Support is not universal, and resistance to ensuring religious freedom must also be evaluated. China and India, for example, are not open to witnesses of religions that are not indigenous to those countries. Similarly, the forty or so nations that contain the world's billion Muslims are not always receptive to religious beliefs or bodies whose teachings are, at least in part, contrary to Islam.

In other words, although the vast majority of nations have made a commitment to religious freedom, it is unclear how those nations actually behave in respect to creeds and cults that are at variance with their historic cultural and religious beliefs.

One would like to think that wars inspired by religious zeal were safely in the past. Clearly they are now forbidden by customary international law; after all, the 191 nations that have ratified the United Nations covenants on political and economic rights have solemnly pledged to refrain from such wars. But the international machinery to prevent them is very new and still feeble.

The ultimate reasons why religious freedom is cherished so widely and so deeply today need to be explored and amplified. At its most superficial level, the right to the free exercise of religion is a rule of expediency that can be traced to 1648, when the Peace of Westphalia restored to Lutherans the free practice of their religion in the Holy Roman Empire and extended it to the Calvinists, while recognizing that the dom-

inant religion of a nation normally forms the core of the church-state relationship in that country. Given the presumptive power of the religious majority, religious minorities are protected by the general right to religious freedom. This rule, with some modifications, may be agreeable to the nations of Europe, the United States, and the Commonwealth, but the concept sometimes lacks legs elsewhere.

Of every hundred people on Earth, nearly twenty are Muslim. The fifty-five nations that make up the Islamic Conference are deeply divided over the question of religious freedom. Although most Muslims, if asked, would register disapproval of the Taliban's destruction of Buddhist shrines in Afghanistan in 2001, for example, there is nevertheless a consensus among Muslim nations that the secular state can embrace the full exercise of the rights and duties that derive from the Koran.

The uncertainty around the world concerning the extent to which governments should guarantee religious freedom is one of the major reasons why the United Nations has not pursued a covenant or a legally binding instrument on freedom of religion, as it has done with respect to such issues as the rights of minorities, women, and children. Similarly, that uncertainty is one of the principal reasons why it has never considered establishing a world entity to monitor compliance with the demands of religious freedom, as it has done to implement its covenants on political and economic rights.

As one contemplates the possibility of a world tribunal competent to adjudicate and penalize denials of religious freedom, one must reflect on Christ's predictions that his followers would be persecuted. Indeed, nothing in the New Testament is clearer. Given this received wisdom, why should Christians now seek assurances that they will not be harmed or treated as second-class citizens? In the early years after the Crucifixion, it

never entered a Christian's mind—or anyone else's—to insist on the kind of right to religious freedom now set forth solemnly in several documents of the United Nations.

Christians like myself may be asked whether their desire to ensure religious freedom for all who have faith in any religion is at odds with their belief in Christianity. But this suggestion of a conflict of faith is not valid, because central to Christianity is the conviction that no one believes in Christ unless that person receives the grace to believe directly from God. Christ made it clear to his Apostles and to all of us that he chose them, they did not choose him. Faith is not earned or merited; it is a gratuitous gift from God. A Christian may, and indeed must, desire that governments facilitate the rights of all persons who accept the gift of faith as it is offered to them by God.

To be sure, the Catholic Church did not always seek religious freedom for every believer. For centuries the Church held to the conviction that governments should be required to discourage and even ban not only non-Christian religions but any version of Christianity that differed from Catholicism. But in 1965 the Second Vatican Council radically altered that doctrine, so that now the Catholic Church strongly states that any governmental coercion of individuals to adhere or not to adhere to any religion is wrong.

By this policy, Christians seek to protect from persecution not merely themselves but all followers of all the religions of the world. Christians are well aware of Christ's words: "If they persecuted me, they will also persecute you" (John 15:20). The words Christ uttered just before this prediction are equally foreboding: "Because you do not belong to the world, and I have chosen you out of the world, the world hates you" (John 15:17).

People of faith are well aware of the complexity of the

task of guaranteeing religious freedom. The second edition of *World Christian Encyclopedia*, issued in 2001, reports that 84 percent of the world's 6.06 billion persons declare themselves to be adherents of some form of organized religion. Fewer than 2 billion are Christian, and about half of these are Catholic. Muslims number 1.1 billion; Hindus, 812 million; and Buddhists, 359 million. The number of Jews throughout the world is estimated to be 14 million. Animists and others account for most of the rest.

The idea of creating some sort of international legal machinery to resolve clashes between these religious groups may seem quixotic. Indeed, some observers may have thought it unnecessary—but the genocide in Rwanda, resulting partly from religious differences, has gone far to change their minds. But there are alternatives. A unique trial in Belgium of persons who had fled from Rwanda drew on the four universally binding Geneva conventions of 1949 and led to the conviction of Rwandan nationals, including two nuns, in a foreign nation. Some could argue that this approach is preferable to the establishment of a world tribunal. Although the approach used in Belgium may be satisfactory in some ways, however, it by no means ensures uniformity, reliability, or predictability.

Most persons who speak out for religious tolerance may be vulnerable to a claim that they are biased in favor of their own faith. That charge could be made against me, for that matter: the objectivity of a person who by solemn vow is committed to the advancement of the Catholic faith and the interests of the Holy See can be challenged. But as we have seen, the Second Vatican Council made it clear that the Church does not condone any pronouncement or action that allows any shade of “coercion” for the advancement of the Catholic religion. It is certainly clear beyond question that since 1965, the

Catholic Church has repudiated centuries of its customary practices, concluding that no government action that seeks to urge citizens to adhere or not to adhere to any religion may be condoned.

The idea of creating a world tribunal that would guarantee the free exercise of religion will elicit a strong reaction from both believers and nonbelievers. The world has welcomed the pronouncements of the United Nations committees that monitor the implementation of the political and economic rights to which the vast majority of nations have pledged their support. But an international entity sitting in judgment on the way these same nations regard religious freedom raises more serious misgivings, questions, and doubts. The feeling is somehow pervasive that government organizations—or even a transnational legal body—should not get involved in the religious practices of 84 percent of the human race.

But the world also remembers more and more vividly the tragedies brought about in the name of religion by the Crusades, the Inquisition, the persecution of the Jews, and the many wars over religion in Europe and elsewhere. Indeed, the contemplation of such transgressions led Pope John Paul II to apologize for the atrocities for which the Catholic Church can be held partly or wholly responsible.

The 172 nations that participated in the 1993 UN World Conference on Human Rights in Vienna repeated and reinforced the proclamations of world law in favor of religious freedom. But the Vienna Conference made no giant step forward in this area, as the participants felt that the threat to world religious freedom had subsided with the demise of the USSR.

Since then the hindrances to religious freedom in Sudan, Northern Ireland, China, Bosnia, and elsewhere have strengthened the position of those individuals, nongovernmental or-

ganizations, and nations that want greater global protection for the right to religious freedom. But the cry for the expansion of this right is not universal. Many people remain leery of the interjection of secular forces—however well-meaning—into the beliefs or doings of religious groups.

Americans generally share a profound distaste for any governmental ruling that could potentially coerce a religious group in what it will or will not do or may proclaim. Although there is no reason that the U.S. example should necessarily serve as a guide for the rest of the world, it does seem to permeate the global debate about what governments can or should do to maximize the religious freedom of persons who are confronted by open hostility because of their religious beliefs or conduct. It is to be hoped that the general international consensus supporting religious freedom will enable the international community to free itself from the vestiges of a past rife with religious persecutions and move toward a future of true religious freedom. The world faces both obstacles and aids as it embarks on this journey.

II

The Dimensions of the Freedom of Religion and of Conscience

In the years since World War II the entire world has repeatedly and insistently proclaimed its determination to maximize religious freedom. The planet's 191 nations have not proposed, much less promulgated, a binding covenant on religious freedom, such as the several covenants on torture, freedom of the press, the rights of women, and the duties owed to refugees. Still, the privileges solemnly proclaimed for religion and its adherents manifest a sincere, worldwide conviction that religion is very special and that society and its laws must give it special deference: it seems to be assumed that law must yield to the dictates of conscience when those dictates are contrary to what the law would otherwise require. Yet this deference to religious freedom seems thin and easily overcome. Terms such as "public order" and "the common good" can swallow even the most imperious claims of religious dissenters.

How can the effectiveness of humanity's announced respect for religious freedom be evaluated? One way is to survey how nations are complying with the demands for religious freedom, some of which have attained the status of customary

international law. This test is filled with problems, because certain restrictions on religious freedom and impositions in the name of religion are almost inseparably intertwined with factors of history, culture, and mythology. Another problem is that many nations and several human rights tribunals have tended to avoid clashes between the rights of religious believers and what is perceived to be the common good.

Yet another difficulty derives from the fact that many religious dissenters have not gone to court to litigate their opposition to the law or accepted customs. St. Paul urged Christians to avoid litigation, and many have complied. How many dissident religious groups have bowed to what they conceive to be a restriction on their conscience is unknown and unknowable.

The most important question relates to an ancient issue: whether a nation should or can establish one religion as the official faith of the country. Will world law someday hold that, for the sake of maximizing religious freedom, no nation can formally exalt one religious faith over any other?

Some internationally recognized human rights, such as freedom of speech, freedom of the press, and the ban on torture, have attained such universal acceptance that international law insists that they cannot be annulled or impaired even in times of national crisis. Other human rights, such as the right to a democratic government and the right to religious freedom, combine to suggest that nations cannot tell some of their citizens that, although they are free to practice their religion, they must accept the nation's legal or traditional preference for another faith.

Will international law someday require the Republic of Ireland to delete from its laws the provisions that establish Catholicism as the stated faith of the entire country? Will the exaltation of religious freedom now so clear in international

law eventually require Islamic countries to cease to base their civil laws on the Koran, even though the vast majority of their citizens have inherited and presumably accept the Muslim faith? International law has hardly commenced the tricky task of balancing the right of nations to prefer the faith of the majority against the claims of citizens in the religious minority who feel that they have, by law, been relegated to second-class citizenship.

An analysis of the ways in which this task could be approached is much easier in respect to Europe and Latin America than to Africa, Asia, and India. In the past most nations in Europe and Latin America have contributed in one way or another to the world establishment of religions, and several nations, such as Great Britain, retain shreds of this history. The countries of Europe and Latin America could be described as post-Christian. Here adjustment can be made to deemphasize the Christian traditions of the past, with new arrangements extended to immigrants from countries whose ideological makeup does not encompass Christianity.

But all the international declarations on religious freedom insist that each faith must fully enjoy an opportunity to spread its message. Does international law require the governments of Latin America, pervasively Catholic ever since their founding, to offer equal status to foreign evangelical non-Catholic missionaries? Although non-Catholic forces are making notable progress there, resistance is palpable. Here we see the difficulties that accompany the introduction of the full religious freedom proclaimed by international law in nations where a large majority adheres to one religion. What of the right of the Latin American Catholics to be left alone? Surely that desire is no less legitimate for them than the desire of

Africans not to be “involved” by Christian missionaries from countries that once claimed their nations as colonies.

The more one inquires into the proper place of international law in regulating or vindicating religious freedom, the more complex the problem appears. International law has become the norm by which basic human rights are affirmed and sometimes enforced. If international law is to assume a supervisory and enforcing role with regard to religious freedom, should we begin to inquire whether individual sovereign states should look to world law to discover the basic principles governing the place of religion in society?

Many religious groups will be very reluctant even to consider that the place of religion in a nation such as Norway, Nigeria, or Pakistan should be determined by the norms set forth in 1981 in the United Nations Declaration on Religious Freedom. Most of the world's nations would agree, at least in theory, that Article 19 of the Universal Declaration of Human Rights could govern freedom of the press everywhere in the world; this freedom is nearly universally accepted. But when it comes to religious freedom, it is clear that the nations where a religion is a part of the entrenched establishment will not so readily accept outside authorities. Furthermore, in nations with a long-standing relationship between government and religion, many will claim that any weakening of the hegemony of the traditional religious belief would threaten the morality and well-being of the country.

So who would benefit if somehow there emerged an international covenant that regulated the treatment of religious persons and organizations? Groups that would benefit would certainly include nontraditional religions and faiths yet to be born.

It is universally assumed that governments do not create

religions; they come from the depths of the human soul or, if you are a believer in some supernatural force, from a god or some transcendent force. In fact, the mystery of all human existence and the terrible record of governmental abuse make it clear that governments could not be trusted even if a global system to punish governments that violate universally recognized human rights were to be created. Governments are not necessarily the friends of their subjects. Rulers often put their own political fortunes ahead of the rights of those they rule. Only if they rule with the consent of the governed in a functioning democracy will the fear of removal from office theoretically inhibit ruthless politicians from annoying or angering their constituents.

Would the governments of the world be better or worse if religious forces did not exist? Religions assume or assert that they furnish civilizing influences that prompt rulers to treat the governed with respect and kindness. Political leaders sometimes concede this claim, although sometimes, as in Cuba, they don't want churches to be active or even visible. It is generally assumed that the presence of religious faith does make governments more aware of the moral and ethical standards that became embodied in world law when the signatories of the UN Charter solemnly pledged to observe the human rights embodied in the charter and treaties of the United Nations.

What forces are operating to make the United Nations and other global entities more proactive in protecting human rights, particularly religious freedom? Those forces are mostly nongovernmental organizations (NGOs) that were created to protect the rights of such groups as the Christians in southern Sudan and the Kurds. These NGOs have broad constituencies, but there is as yet no worldwide network of organizations united in their efforts to protect the religious freedom of a

wide variety of religious nonconformists, dissidents, and conscientious objectors. If there were a global group such as Amnesty International dedicated to religious freedom, the issues would become more clearly defined and the family of nations would develop a consensus on the role of religion around the globe. In fact, the U.S. Commission on International Religious Freedom was designed to do just that, as we shall see in due course.

We are seeking here to resolve questions that have hardly been raised at the international level. In a sense, the family of nations has deliberately set these questions aside as too complex or too difficult to resolve. In the process it has opened itself up to the charge that it has privatized religion by its failure to grant it a place as a juridical entity at some international forum or tribunal. The absence of any real discussion of religious freedom at the world level has also arguably exalted secular moral norms as the only guiding principles for the interpretation and enforcement of international human rights.

The abdication, or at least the silence, of international law on the subject of religious freedom allows nations to feel certain that they will not be punished for doing dreadful things to persons who practice a religious faith of which the government disapproves. Amnesty International and the Human Rights Watch regularly report on the brutal treatment that nations such as China, Bangladesh, and Sudan extend to Christians and other adherents of unapproved faiths. In essence, the world's silence allows that conduct to continue.

In every discussion on human rights—especially on the right to freedom of religion—the unspoken major premise always relates to the question of who is the architect and the enforcer of a society's basic moral principles. Questions related to marriage, education, and the care of the elderly are not is-

sues that throughout history have been resolved by secular societies alone; they have been directed by nongovernmental traditions that claim some authority from a superhuman source.

There is a deep and pervasive conviction among people, especially in this new age of international human rights, that governments have committed such incredible atrocities (one thinks of Germany and Cambodia) that the promoters of universal moral norms should be heeded. The entire movement of international human rights has reminded the world that governments that follow only the defined demands of their own leaders can betray humanity, as the dictators and tyrants of the twentieth century did. This is the fundamental reason why the architects of the moral revolution that created the new international reign of human rights have consistently sought to maximize the thrust and scope of religious freedom around the world.

In the introduction to an impressive 1997 world report titled *Freedom of Religion and Belief*, its editors, Kevin Boyle and Juliet Sheen, assert that “there is consensus among those concerned that freedom of thought, conscience, religion and belief should be the subject of a new international human rights convention.” But, they say, “it cannot be an immediate objective.” They justify their go-slow policy by citing the work of the UN special rapporteur on religious freedom, who believes that the best thing to do at the moment is to continue the work begun by the NGOs in giving priority to religious freedom. Of course, that is not a very satisfactory response to the countless victims who are suffering because of their religious beliefs.

The dimensions of religious freedom are profound, complex, and in some ways immeasurable and indefinable. The way international law defines and treats religious freedom will

almost certainly grow in importance in the years ahead. Indeed, it is not impossible that in the near future one of the central issues in the area of human rights will be the level of attention and enforcement that world law will accord to the boundaries of religious freedom.

The 1981 United Nations Declaration on Religious Freedom is very clear in its assertion that disregard of the right to freedom of religion has “brought, directly or indirectly, wars and great sufferings to humankind.” This is especially so, the declaration adds, when the actions “amount to kindling hatred between people and nations.”

The abiding antagonism to religion, or at least to Christianity, shown by the officials of the Chinese government may or may not be corrected as the Western world becomes more familiar with China. In any case, many people will remain fearful or uneasy about the influence of religion. The persecutions and wars carried out in the name of religion by nations and factions through the centuries have left millions with the opinion that religions bring more hostility than peace. That impression is widespread and perhaps ineradicable.

Consequently, it may seem surprising that the documents and teachings of international law are so favorable to freedom in the exercise of religion. Almost every international document allows for the exercise of religion in the most generous terms. Only the Convention on the Elimination of Discrimination against Women (CEDAW) is silent on religion; one can conclude that its authors believed that religion through the years has not favored equality for women, and consequently did not expressly urge religious freedom.

The long history of violence and wars associated with religious causes is one of the major reasons there is only a declaration on religious freedom rather than a covenant open to

ratification by individual nations. But the deep fear of violating religious freedom has prompted the authors of the international law of human rights to extend rights in this area to persons of conscience and conscientious objectors, especially in the context of war.

Many may feel that any treatment of the evolution of the freedom of religion into a right enshrined in customary international law should not complicate the story by remarking on the international law of human rights that embraces the aspirations of conscience. But the two stories are inseparable. The demands of conscience are included in almost every treatment of religious freedom in the United Nations covenants on human rights.

Guarantees of human rights will continue to be resisted when they encompass acknowledgment of the right to follow one's conscience. One objection is that there are already too many codified rights that lack any meaningful enforcement. Another is the amorphous and subjective nature of the dictates of conscience. A third is the feeling that the problems associated with conscience could or should be placed in the ambit of religious freedom, a concept with relatively definable dimensions.

Although the United Nations Charter mentions human rights in five places, it makes no specific mention of any right to religious freedom based on conscience. The United Nations created the Commission on Human Rights (including members from the United States, the USSR, the United Kingdom, France, and China, along with a dozen smaller nations), and it composed the Universal Declaration of Human Rights (UDHR), which in Article 18 states: "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 and in private, to manifest his religion or belief in teaching, practice, worship and observance.”

The legislative history of Article 18 is traced in a book by Leonard Hammer, *The International Human Right to Freedom of Conscience*, which makes it clear that the framers wanted to protect not only traditional religious freedom but also “belief,” “thought,” and “conscience.” It is hard to imagine any statement more inclusive.

The complete history of the UDHR leaves no doubt that the framers intended that the right to hold a conscientious belief should attain the status of a protected international human right on a par with the right to hold a religious belief. This right to conscience, new to international law, is, like all of the rights recognized in the UDHR, subject to the limitation in Article 29(2), which states that “in the exercising of human rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

It could be argued that Article 29(2) tends to negate the bold claims encouraged by Article 18. But the proclamation of the rights of conscience in a major international document, now a part of customary international law, is an event with enormous consequences.

The language in the UDHR of 1948 was codified in Article 18 of the International Covenant on Cultural and Political Rights (ICCPR). It reads, “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 preaching.” The inclusion of the right to freedom of “thought, conscience and religion” in a document now ratified by over 160 nations, including the United States and China, is obviously an event uniquely important in world history.

Also of significance is Article 18(4) of the ICCPR: “The state parties to the present covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure religious and moral education of their children in conformity with their own convictions.” This instinct of parents to provide what they view as appropriate religious and moral education is often drawn from their consciences, but, although 160 nations have recognized it, the right of parents to determine their children’s education is largely underdeveloped in international law. At the national level, the right is most common in countries where there is a significant religious or ethnic majority, and parents are accorded the right to send their children to schools consistent with the convictions of the majority.

The protection of “thought, conscience and religion” in the UDHR is echoed in Article 9 of the European Convention on Human Rights (ECHR). The UDHR is the blueprint for the ECHR, although the ECHR provides that the right to conscience may be suspended in times of public emergency. The ECHR also narrows the right of parents to control the education of their children, and some nations, including Greece, Portugal, and Ireland, have entered reservations to Article 9.

The right to conscience is also codified in Article 12 of the American Convention on Human Rights (AmCHR). The authors of this document, coming as they did from largely Catholic nations in Latin America, inserted a right to “profess or

disseminate” rather than merely profess, so a right to proselytize was thereby granted. The Latin American document is also stronger on the rights of parents. Article 12(4) reads, “Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.”

The Organization of African Unity issued the African Charter on Human and People’s Rights (AfrCHR) in 1981. That document uses different language to express the rights of convictions, although in Article 8 “freedom of conscience” is deemed to be equal to the “profession and free practice of religion.” The AfrCHR also stresses the traditional values of the African community and mandates in Article 27(1) that “every individual shall have duties towards his family and society, the state and other legally recognized communities and the international community.” Although the approach of Africa to the definition of human rights is somewhat different from that taken in Europe and Latin America, it appears that the right to freedom of conscience is on an equal footing with the freedom to practice one’s religion.

One can conclude, then, that the right to follow one’s conscience has been included in solemn documents of the United Nations ever since 1948 and that the regional organizations that implement those rights have included the right to conscience as an integral part of the principles recognized by the United Nations covenants. Therefore, the right to follow one’s conscience is in international law a largely unexplored source of very significant personal power. The framers of the new right to obey one’s conscience did narrow it when they agreed that it did not include an effective right to abstain from following the law on the basis of one’s subjective convictions of conscience. As suggested later in this chapter, however, per-

sons conscientiously opposed to war may have the right under international law to refuse to make war, with or without a duty to perform alternative service.

Of prime importance to the place of religious freedom in international law is the treatment of the concept in the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (reproduced in Appendix A). This declaration, adopted by the UN General Assembly in 1981, is intended to clarify Article 18 of the ICCPR.

Article 1 of the declaration reiterates the content of the UDHR, ICCPR, AmCHR, and AfrCHR in these words: “Everyone shall have the right to freedom of thought, conscience and religion. The right shall include freedom to have a religion or whatever 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.” Once again, the triad is there—freedom of “thought, conscience and religion.”

It is clear that the drafters of the Declaration on Religious Freedom intended to protect conscientious belief to the same extent that religious belief was protected. It is also clear that Article 1 of the declaration was based on Article 18 of the ICCPR and hence was meant to incorporate moral notions more general than transcendental ideas. The authors of the declaration, like the drafters of the UDHR and the ICCPR, avoided any specific language that could weaken the universality of the document.

The authors of the Declaration on Religious Freedom made it very clear to the General Assembly in 1981 that they did not seek the status of a covenant for this document. But the remarkable similarity of the declaration to the UDHR, ICCPR,

and similar documents suggests that the United Nations could have taken it up as a covenant available for member states to sign and ratify rather than as a mere declaration lacking any machinery to monitor or enforce its implementation. But history shows that the right to religious freedom, endorsed and blessed by everyone in the human rights community though it be, is not yet ready to become enforceable.

That state of things may have been confirmed by the terrorism inflicted on the United States on September 11, 2001. Fear of religious extremism was intensified in many Americans on that day; the violence of Osama bin Laden's followers tended to be generalized to all religious groups. It is easy to point out that neither the Koran nor any other traditional religious text condones terrorism, but the pervasive feeling is that Islamic groups, among others, are engaged in a war against the United States. These feelings will no doubt prove to be another obstacle to the realization of a true global right to religious conscience.

Other documents spelling out the right to freedom of religion include the 1949 Fourth Geneva Convention, which in Article 27 states that all persons have a right to "their religious convictions and practices." The 1965 Covenant on the Elimination of All Forms of Racial Discrimination (CERD) also contains familiar words about the right to freedom of "thought, conscience and religion." The state reports to the UN committee monitoring compliance with the CERD offer illuminating insights as to how the United Nations commission has ordered nations such as Zambia, Kuwait, Tunisia, and Burundi to grant the fullness of religious freedom.

The 1989 Covenant on the Rights of the Child (CRC) also provides in Article 14 for the "freedom of thought, conscience and religion." The CRC, now accepted by every nation except

the United States, has developed a working jurisprudence that accepts the rights of parents but accords priority to the rights of the child. The difficult task of the committee monitoring the CRC is to respect, rather than ensure, the right of the child to religious freedom as the child conceives it in collaboration with the parents.

The final document from the United Nations World Conference on Human Rights held in Vienna in June 1993 updates the scope of the right to religious freedom. The Vienna Conference did not, however, expand on the notion of religious freedom, because that meeting was focused primarily on a restatement of human rights after the end of the Cold War.

The evolution in international law of the right to follow one's conscience is a remarkable development. Nothing like it had ever happened before in regulating the sensitive issue of the relationship of the coercive power of government and the prophetic voices of those who are following their conscience. This development is particularly remarkable in that international law has now by clear implication accepted the statements of Martin Luther and Cardinal Newman that the voice of conscience is the voice of God. Consequently, no government can compel a person to act against his or her conscience.

What will be the consequences of this new world law granting the freedom to act on one's "conscience, religion or belief"? For the first time in history there are norms discouraging nations from punishing an individual who acts contrary to law because of a moral conviction derived from conscience. Will it work? Despite all the awful things that have happened to dissidents and conscientious objectors in Cambodia, Rwanda, and the Balkans, one has to hope that a new era has arrived and that governments and organized religion will respond to the