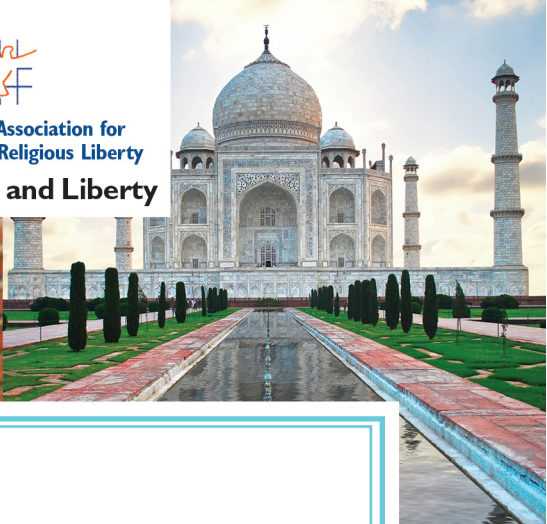




International Association for
the Defence of Religious Liberty
Conscience and Liberty



WORLDWIDE HUMAN RIGHTS AND RELIGIOUS LIBERTY

A NEW EQUILIBRIUM OR NEW CHALLENGES

VOLUME I



Bern, Switzerland

International Association for the Defence of Religious Liberty

Conscience and Liberty

Special Edition

Volume I

WORLDWIDE HUMAN RIGHTS AND RELIGIOUS LIBERTY A NEW EQUILIBRIUM OR NEW CHALLENGES

Two anniversaries:

313-2013 - 1700 years since the Edict of Milan

1948-2013 - 65 years of the journal C & L

Bern, Switzerland

INTERNATIONAL ASSOCIATION FOR THE DEFENCE OF RELIGIOUS LIBERTY

A non-governmental organisation granted with consultative status at the United Nations in Geneva, New York and Vienna, the European Parliament in Strasbourg and Brussels, the Council of Europe in Strasbourg, and the Organization for Security and Cooperation in Europe

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We believe that religious liberty is a God-given right, and hold that it is best exercised where separation is maintained between church and state.

We believe that legislation and other governmental acts which unite church and state are opposed to the best interests of both institutions and are potentially prejudicial to human rights.

We believe that public authorities are divinely ordained to support and protect citizens in their enjoyment of natural rights, and to rule in civil affairs; in this realm public authorities warrant respectful obedience and willing support.

We believe in the natural and inalienable right of freedom of thought, conscience and religion; this right shall include freedom to have or to adopt a religion or belief of one's choice; to change religious belief according to conscience; to manifest one's religion or belief either individually or in community with others and in public or private, in worship, observance, practice and teaching – subject only to respect for the equivalent rights of others.

We believe that religious liberty also includes the freedom to establish and operate appropriate charitable, humanitarian or educational institutions, to solicit or receive voluntary financial contributions, to observe days of rest and celebrate holidays in accordance with the precepts of one's religion, and to maintain communication with those who share the same beliefs, individually or collectively in organized communities at national and international levels.

We believe that religious liberty and the elimination of intolerance and discrimination based on religion or belief are essential in the promotion of understanding and peace among peoples.

We believe that citizens should use lawful and honorable means to prevent the reduction of religious liberty, so that all may enjoy the recognition of their freedom of conscience.

We believe that fundamental freedom is epitomized in the Golden Rule, which teaches that every human being should do to others as he would have others do to him.

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Liviu Olteanu, editor
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Introduction

Happy Birthday!

*Bruno Vertallier*¹

A sixty-fifth anniversary should be celebrated, especially when it concerns celebrating the existence of the journal “Consciousness and Liberty” which has served the cause of the values held so dear to our human heritage. “Conscience and Liberty” along with all its members and its authors, is faithful to its mission of reminding us of its worthy vocation - to defend what is essential to human beings, namely, the right to think and believe in complete freedom.

Freedom of conscience and religion hangs in a very fragile balance. However, who would consider being so intolerant to the point of refusing their neighbour the freedom to think or believe what they want to? It seems absurd to deny this fundamental right so dearly achieved during the French Revolution. But it only takes a religious symbol or even just referring to a text that is considered sacred to trigger a reaction of unprecedented violence amongst those who consider freedom of conscience as an inalienable right. History reminds us regularly that freedom of conscience and especially religious freedom has not been a leisurely stroll since the time of the Edict of Milan in 313. Lapses such as the Inquisition, the Saint Bartholemew’s Day massacre or Calvin’s quarrel with Michael Servetus shows that human history is tainted with the blood of those who held differing opinions from the powers that be. This still exists today although it has largely moved on from the Judeo-Christian environment. Lessons learnt from the injustices throughout history should remind us that these abuses should no longer exist. Unfortunately in many regions in the world, where the constitutions of these countries assure the respect of human rights and guarantee fundamental freedoms, the same injustices are repeated.

1 Bruno Vertallier is a Doctor of Theology, President of the International Association for the Defense of Religious Liberty, and author of numerous articles concerning religion, ethics, and freedom of religion. He actively participates in many international conferences on leadership and global religious freedom. The headquarters of the IADRL are located in Bern, Switzerland.

A man, named Paul, at one time in his life, took the lives of several of his fellow citizens. Following a profound development in his own experience, he wrote: 'Why is my liberty judged by another *man's* conscience?' 1 Cor. 10:29. I'll leave that question for you to ponder upon.

Dear readers, let us continue to participate together with true feeling for this work of peace and freedom of conscience, for you and your fellow man, lest this liberty be taken away from us.

Happy reading!

EDITORIAL

Religious Liberty in today's world: A new equilibrium or new challenges?

*Liviu Olteanu*¹

The History of International Religious Freedom

The history of religious freedom in the world is of great interest. “This is the story of the victory of international law over those who refuse to adhere to international standards and criteria. This is the story of secular tolerance opposed to religious violence” or the history of the need to “convince” some people that they should subscribe to a particular model of religious freedom which serves as an example to organize and democratize their modes of action and society. This is the story of change in the conditions of religious oppression in order to free individuals and their discriminatory processes². Of course, this is the story of the ups and downs of freedom, a history characterized by intolerance, discrimination or persecution, as well as hopes and challenges, struggles and victories.

The Edict of Milan was issued 1700 years ago, opening a new era of religious pluralism, the basis of religious freedom for all people. In 313, new horizons opened throughout the empire in terms of freedom.

To what extent is religious freedom distinctive and necessary in our society today?

1 Attorney Liviu Olteanu is the Secretary General of the International Association for the Defence of Religious Liberty and an Observer and Permanent Representative at the United Nations in Geneva, New York and Vienna, at the European Parliament in Brussels and Strasbourg and Representative at COE and OSCE, where he intervenes on behalf of human rights and religious liberty. Liviu Olteanu has respect for men of all faiths and beliefs and a strong will for dialogue and a search for balance and honesty in the quest for human dignity. Liviu Olteanu stresses the need for tolerance and acceptance of others' differences and the respect of religious freedom and of conscience for all people.

2 Elizabeth Shakman Hurd, *The global securitization of religion*, <http://blogs.ssrc.org/tif/2010/03/23/global-securitization/>

◄ *New Challenges*

It is undeniable that religious liberty is confronted with new and unprecedented challenges due to increasing and aggressive secularism, as well as an important redefinition of the major social institutions [...] Around five million people worldwide live in societies permitting serious violations of freedom³.

◄ *Current Trends*

Christians are the most persecuted group in the world: one Christian is killed every five minutes because of religious discrimination. [...] Between the 1st and the 20th century, more than seventy million Christians were martyred, and forty million of them died during the last century⁴.

Today, there are *several speeches and different alternatives* on the matter of religious freedom, such as:

a. *Religious freedom, a valid universal principle, based on international standards and international law.* Religious freedom is guaranteed by international laws established by a large multi-national and multi-religious coalition; a large majority of countries world-wide have signed up to these (even though these laws are not always put into practice)⁵.

b. *Religious liberty, a social model that requires special protection.* It is our conception of religion that makes religious freedom a social model requiring protection, institutions and specific interventions⁶.

c. *Religious freedom, an approach to national or international security.* Do we really consider religion as an approach to national or international security? Can we talk about "securitization of religion"⁷?

d. *Religious freedom, a national and international authority.* Often the political discourse on religious freedom is a fixed discourse and a regional, national and international authority whose use causes problems within the Real-

3 Dr. Katrina Lantos Swett, CNA Daily News, May 31st 2013.

4 Hilary White, reporting on the testimony of Massimo Introvigne, Christians are the most persecuted group in the world, at the annual meeting of the OSCE, May 22 in Tirana, Albania, Life Site News.com, May 31, 2013.

5 William Inboden, A valuation of religion freedom on <http://blogs.ssrc.org/tif/2010/04/02/a-valuation-of-religious-freedom/>

6 Webb Keane, What is religious freedom supposed to free on <http://blogs.ssrc.org/tif/2012/04/03/what-is-religious-freedom-supposed-to-free/>

7 William Inboden, A valuation of religious freedom on <http://berkeleycenter.georgetown.edu/rfp/events/freedom-to-flourish-is-religious-freedom-necessary-for-peace-prosperity-and-democracy> & <http://blogs.ssrc.org/tif/2010/04/02/a-valuation-of-religious-freedom/>

politik. Unfortunately, the concept of religious freedom is not perceived everywhere in the same way, it takes on a different meaning according to different groups, countries or regimes⁸.

e. Religious freedom is a necessity to prevent an erosion of the position of believers. The legal protection of religious freedom should not be considered “only as an option, but rather as a way to avoid an erosion of the position of the believers.”⁹

f. Religious freedom, a source of peace and international stability. Certainly, religious freedom must be respected as a normative framework of human rights. “In addition, it is closely related to other social and political benefits. [...] For example, in countries that respect freedom of religion, we find that the level of violence toward religion is lower than in countries that impose strong restrictions in the field of religion, where the level of violence is high¹⁰.”

g. Religious minorities, the greatest beneficiaries of religious freedom. All members of a state are supposed to be protected by the right to religious freedom, but we find that “religious minorities are the greatest beneficiaries of protection that allows them to practice their beliefs freely, without fear of social discrimination or interference from the state¹¹.”

h. Religious freedom for all human beings. As stated by Evans, “faith communities must reject the superficial tendency entailed in demanding or accepting these freedoms for themselves, and should defend without hesitation the freedom of religion or belief for all. As religious communities are not willing to fight so that all can benefit from the freedom they want their members to enjoy, it is unlikely that freedom of religion or belief should be extended to all¹².”

Memory and tributes

In the introduction to this history of religious freedom, we have mentioned in the first chapter of this special edition of the journal *Conscience* and

8 Talal Asad, on <http://blogs.ssrc.org/tif/2009/01/13/talal-asad-on-religion-belief-and-politics/>

9 E.S. Hurd, *Believing in religious freedom* on <http://blogs.ssrc.org/tif/2012/03/01/believing-in-religious-freedom/>

10 William Inboden, *A valuation of religious freedom* on <http://blogs.ssrc.org/tif/2010/04/02/a-valuation-of-religious-freedom/>

11 Saba Mahmood: *Religious freedom, minorities' rights and geopolitics*, on <http://blogs.ssrc.org/tif/2012/03/05/religious-freedom-minority-rights-and-geopolitics>

12 E. S. Hurt, *Believing in religious freedom* on <http://blogs.ssrc.org/tif/2012/03/01/believing-in-religious-freedom/>

Liberty the former secretaries and presidents of the honorary committee of the IADRL and we have published letters and excerpts from some of their articles. Dr. Jean Nussbaum has defended human rights and the principle of religious freedom, and began his work in 1946. He was the founder of the IADRL and launched the publication of the journal *Conscience and Liberty* in 1948. Drs Pierre Lanarès, Gianfranco Rossi, Maurice Verfaillie as well as Karel Nowak also defended the principle of religious freedom.

At that time, the IADRL worked with chairpersons of the committee of honour: Mrs. Eleanor Roosevelt, Edgar Faure, Dr. Albert Schweitzer, René Cassin, Leopold Sedar Senghor and Mary Robinson; all persons having a style, influence and experience that enabled them to play a major role in the field of human rights and religious freedom.

In the second chapter entitled «Human Rights and Religious Freedom in the World Today: a new equilibrium or new challenges?» can be found the outstanding articles of the current Secretary General of the United Nations, Mr. Ban Ki-moon, the UN High Commissioner for Human Rights, Navi Pillay, the former Secretary General of the United Nations, Mr. Kofi Annan, and an excellent and profound interview with Professor Heiner Bielefeldt, Special Rapporteur on freedom of religion or belief of the United Nations. We draw your attention to the detailed and measured article by the Ambassador of Uruguay to the United Nations in Geneva and former chairperson of the Council of Human Rights at the United Nations in 2012, Mrs. Laura Dupuy Lasserre. The chapter concerns the regional vision of the Council of Europe on religious freedom by the ambassador of the Council of Europe to the United Nations in Geneva, Mr. Petru Dumitriu; it also contains an article by the former Special Ambassador of the United States for religious freedom, Robert Seiple. On the same topic in this chapter, we recommend the articles by Judge Harald Mueller of Hanover, Germany, Professor Jose Miguel Serrano from the Complutense University of Madrid, Spain, and Dr. John Graz, Secretary-General of the IRLA in Washington DC.

In the third chapter of this edition, we offer different and particularly interesting examples of religious freedom presented by major figures such as Emiliano Timiadis, Bishop of the Orthodox Church, Pietro Pavan, Cardinal of the Roman Catholic Church, Professor Ganoune Diop from the Seventh-day Adventist Church, and Professor Mohamed Talbi from the Muslim community. We also recommend the articles on the history of religion by the historian Marta Sordi and former Secretary General of the IADRL, Dr. Pierre Lanarès.

Conclusion

Today when we look around us it is easy to discover that our world is a complex and polarized one, with trends and attitudes and with many contrasts: pluralism and uniformity; Capitalism and Communism; North and South; rich and poor; balanced practices and fundamentalism; religion and secularism; good legislation versus bad practice and applicability; human rights and dictatorship; equality and discrimination; majority and minorities; liberty and prison, and so on.

We are not 100% free when or until the Other is detained, condemned and persecuted for his/her conscience, religion or belief or because one belongs to a religious minority; and we are doing nothing for it. Neutrality has serious and multiple consequences for the individuals belonging to religious minorities, and also for international security and peace.

There are rights, responsibilities and liberties that belong to the patrimony of our humanity. **And there are times, circumstances, events and people that impact thoughts, choices and perspectives. It is always necessary to have references and models of responsible individuals that took or are taking the mission of freedom seriously.** Eleanor Roosevelt, Dr. Jean Nussbaum, René Cassin, Dr. Albert Schweitzer, Martin Luther King, Nelson Mandela, Václav Havel, Kofi Annan, Dr. Ben Carson, Ban Ki-moon, Heiner Bielefeldt, etc. or OHCHR, UN HRC, UNESCO, Unicef, Amnesty International, Human Rights Watch, USCIRF, Pew Forum are references.

Many people are still suffering because of a lack of religious liberty and freedom of conscience, or because they are different than the majority. And countless of them are being held in prison as seen with: Saeed Abedini in Iran, Sajjad Masih in Pakistan, Bruno Amah in Togo, etc. Antonio Monteiro was recently released from prison, and we are happy for him. But, let us look at the present conditions of North Korea, the Middle East and North Africa. There are still countries with high or very high restrictions on religion and religious liberty.

Christians are the most persecuted people in the entire world. Why is religious hate, intolerance, discrimination, restriction and persecution so popular in the 21st Century?

According with “Pew Forum on Religion and Public Life” (Rising Tide of Restrictions on Religion, September 2012, p. 20-21), the restrictions on religion rose in all regions of the world. **We can refer to the specific types of governmental restrictions:** governmental favoritism of religion; no national

government interventions in religious discrimination cases; governmental limits on religion conversion; widespread governmental intimidation of religious groups; the national government not respecting religious freedom in practice; violence toward minority religious groups; governments prohibiting worship or certain religious practices. **Further, when we delve into social hostilities**, we see: acts of sectarian violence between religious groups; incidents of hostilities over conversions from one religion to another; violence or threats of violence to enforce religious norms; religion-related terrorism; groups dominating the national public life with their perspective on religion; abuse of religious minorities for acts perceived offensive to the majority, and so on. Are there issues of concern today? Of course there are!

Religious Liberty is a cornerstone of freedom. We do not defend one religion, church or belief, but a principle: the Principle of religious liberty for ALL people. Why would we not work to protect the wonderful diversity of another as well as ourselves?

A just society accepts the differences in matters of religion and respects the right of a person to comply with his religious beliefs, and it treats all individuals equally, without compromising religious faith in favor of social norms¹³. **“Human rights and religious freedom in the world today: a new balance and new challenges?”** The answer to this question must be twofold: legislation is more balanced, but new challenges arise as to its implementation.

The good news is that all individuals have the opportunity to defend and protect religious freedom in the world and to support national and international institutions on human rights and religious freedom in favor of peace, human rights and freedom. We need to exercise a new paradigm of the multi-disciplinary and multi-institutional dialog. I name it the Dialog 5 between the forward five categories of peacemakers: ‘Government – Diplomatic – Religious – Scholars - Civil Society (NGOs)’ - representatives.

This special edition of *Conscience and Liberty* wants to be a voice that every person matters!

Let us be Ambassadors of liberty, hope and peace!

13 Rabbi Meir Soloveichik, professor at Yeshiva College in New York, *Religious Liberty does not require us to minimize our faith*, on <http://blog.acton.org/archives/55517-religious-liberty-does-not-require-us-to-minimize-our-faith.html>



CHAPTER

1

The history of the International Association for the Defence of Religious Liberty retraced by the chairpersons of the Honorary Committee, leading figures of the United Nations and previous Secretary Generals of the IADLR

Letter from 1948

*Jean Nussbaum*¹

NUSSBAUM

International Association FOR THE DEFENCE OF RELIGIOUS LIBERTY

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Dear Sir,

The struggle for freedom has now affected the entire world and the salvation of our civilization depends upon its outcome. But what is a free country?

The different responses and more or less tendentious interpretations abound. Is there yet a "touchstone" that indisputably makes it possible to judge? Most certainly and here it is:

A free country is undoubtedly one where a citizen may think as he pleases, where he may believe or not believe; one where religious freedom is sound and without official limitations. Religious freedom exists only in the free world and the first indication of a social or political oppression for citizens begins with a restriction of their right to worship at their discretion or for its existence to be denied.

1 Doctor Jean Nussbaum was present in April 1945 at the United Nations Convention in San Francisco, whose aim was to replace the Society of Nations. On this occasion, Jean Nussbaum met Eleanor Roosevelt with whom he shared the same point of view. When he established the International Association for the Defence of Religious Liberty (IADRL) in 1946, naturally Eleanor Roosevelt accepted the position of president of the honorary committee that comprised eminent personalities such as diplomats, academics, lawyers and politicians. Jean Nussbaum explained that the aim of the IADRL was to spread the principles of this fundamental freedom (religious liberty) throughout the world, and to defend, by any lawful means, the right of every man to engage in the worship of his choice, or not to worship at all. Our association neither represents any church in particular, nor any particular political party. It is tasked with the goal of uniting every spiritual force to overcome intolerance and fanaticism in all its forms.

Founded many years ago in the United States, the International Association for the Defence of Religious Liberty, by extending its branches in various European countries, now has men concerned for human dignity who want to organize real "control stations" for freedom throughout the world.

Believers or unbelievers, Protestants or Catholics, Christians, Jews or Muslims, philosophers, agnostics or spiritualists find themselves fraternally joined within its ranks, which are steadily growing.

The journal "Conscience and Freedom" of which you are receiving the first issue today, has been created to maintain a necessary connection between them, to periodically bring them a harvest of news or documents gleaned from around the world.

The most diverse as well as the most eminent leading figures grace the table of contents that we are presenting to you and emphasize the interest that our movement arouses.

We invite the European French-speaking elite, of which you are one, to take an interest in our efforts and join us. We need, in each country around the world, collaborators and delegates, whatever their political leanings or doctrinal or dogmatic nuances, as long as their hearts and their spirits are above all open and concerned enough to persist.

Would you like to join with us?

You can either do so simply by showing us your sympathy or by subscribing to our association for which Mrs. Roosevelt has accepted the Honorary Presidency and of which the Committee of Patronage of our European section includes the highest political and religious personalities. Even better, you could become our national or regional delegate. We will be happy to welcome you among us as such and to inform you inasmuch as you wish, of the support we expect from you.

The hour has come for the elite to be on their guard. The salvation of our freedom, built on centuries of relentless struggles and innumerable sacrifices, depends on the vigilance of each and every one.

In the hope that you appreciate the importance and reality of our actions, and in anticipation that we will hear from you soon, please accept, Sir, the expression of our highest sentiments.

Secretary General

P.S. Provisional addresses:
Switzerland: 8 Grand Chene, Lausanne
Belgium: 11, Rue Stevens-Delannoy, Brussels 2

The struggle for human rights as perceived

Eleanor Roosevelt

Mrs F. D. Roosevelt² could have contented herself with inheriting a name universally revered by free men.

Yet, by wanting more she became a champion for the cause of human dignity in the world.

Through her own merit, she warranted the respect and recognition of all thinking men.

As President of Honour of the International Association for the Defence of Religious Liberty, it fell to her to launch the broadcast of «Conscience and Liberty» on Radio Monte-Carlo. Her magnificent address is reproduced below.

I have come this evening to talk with you on one of the greatest issues of our time, that is the preservation of human freedom. I am pleased to be speaking here, in France, this land that is so familiar with the concept of freedom. For many years the roots of the tree of liberty have spread throughout this nourishing soil and have found within the necessary goodness needed to blossom and grow. It was here the Declaration of the Rights of Man was proclaimed, and the great slogans of the French Revolution -- liberty, equality, fraternity -- fired the imagination of men. I have chosen to discuss this issue in Europe because this has been the scene of the greatest historic battles between freedom and tyranny. I have decided to discuss it while Europe is hosting the meeting of the General Assembly because freedom is a key issue for the settlement of various key policies that divide peoples and governments today, and is, therefore, an issue that will affect the future of the United Nations.

The decisive importance of this issue was fully recognized by the founders of the United Nations, in San Francisco. Concern for the preservation and promotion of human rights and fundamental freedoms stands at the heart of

² Eleanor Roosevelt received, in 1968, the posthumous United Nations prize for human rights. She had been the first president of the Commission for Human Rights at the United Nations and she had played a decisive role drafting the composition of the Universal Declaration of Human Rights. This article has been published in the Journal 'Conscience and Liberty' no.2, 1949.

the United Nations. Its charter is distinguished by its preoccupation with the rights and welfare of individual men and women. The United Nations has made it clear that it intends to uphold human rights and protect the dignity of the human personality. In the preamble to the charter the keynote is set when it declares: "We, the people of the United Nations determined...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and... to promote social progress and better standards of life in greater freedom."

This reflects the basic premise of the charter that the peace and security of mankind are directly linked with a mutual respect for the rights and freedoms of all.

One of the purposes of the United Nations is declared in Article 1 to be: "to achieve international cooperation in solving international problems of an economic, social, intellectual, 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."

First of all, it is necessary for us to fully understand the essential freedom of democracy. Basic human rights are simple and easily understood: freedom of speech and a free press; freedom of conscience and worship; freedom of assembly and the right of petition; the right of men to be secure in their homes and free from unreasonable search and seizure and from arbitrary arrests and sanctions.

Sometimes the processes of democracy are slow, and I have known some of our leaders to say that a benevolent dictatorship would accomplish the ends desired in a much shorter time than it takes to go through the democratic processes of discussion and the slow formation of public opinion. But there is no way of ensuring that a dictatorship will remain benevolent or that power once in the hands of a few will be returned to the people without struggle or revolution. This we have learned by experience and we accept the slow processes of democracy because we know that shortcuts compromise principles on which no compromise is possible.

In the United States, we are old enough not to claim perfection. We admit to being confronted by certain problems caused by the existence of discriminatory attitudes towards certain groups of our population, but we are making steady progress towards a solution to these problems. Through normal democratic processes we are beginning to recognise our needs and understand how every one of our citizens can benefit from a full and complete equality. Free discussion on the subject is permitted in our country. Our Supreme Court has recently taken decisions that clarify a number of our laws in order to guarantee the rights of all.

The development of the ideal of freedom and its translation into the everyday life of the people in large areas of the earth is the product of the efforts of many peoples. It is the fruit of a long tradition of vigorous thinking and courageous action. No single race and no one people can claim to have done all the work to achieve greater dignity for human beings and greater freedom to develop human personality. In each generation and in each country there must be a continuation of the struggle and new steps forward must be taken since this is pre-eminently a field in which to stand still is to retreat.

The future must see the broadening of human rights throughout the world. People who have glimpsed freedom will never be content until they have secured it for themselves. In their truest sense, human rights are a fundamental object of law and government in a just society. Human rights exist to the degree that they are respected by people in their relations with each other, and by governments in their relations with other governments and towards their own citizens.

The Charter of the United Nations is a guiding beacon along the way to the achievement of human rights and fundamental freedoms throughout the world. The immediate test is not only to the extent to which human rights and freedoms have already been achieved, but the direction in which the world is moving. Is there a faithful compliance with the objectives of the charter if some countries continue to curtail human rights and freedoms instead of promoting the universal respect and a general observance as called for by the charter?

Freedom for the individual is an inseparable part of the cherished traditions of France. As one of the delegates from the United States, I pray Almighty God that we may achieve another victory here for the rights and freedoms of all men.

Letter from 10th january 1977

*Edgar Faure*³

ASSEMBLÉE NATIONALE

FRENCH REPUBLIC
LIBERTY - EQUALITY - FRATERNITY

Office of The President

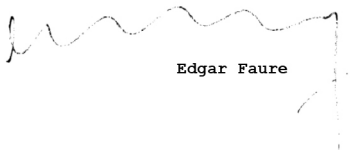
Paris, 10 January 1977

Dear Sir,

In response to your letter and the contact already established between Mr. Andrew DUFAU and my colleague Professor Hubert Thierry, I am pleased to inform you of my willing acceptance to succeed my late lamented friend, Rene CASSIN, as president of the Committee of Honour of the International Association for the Defence of Religious Liberty. This is a cause in which I have a profound interest.

The presence within the committee of personalities such as President SENHOR and Professor ELLUL, for whom I have the utmost esteem, is a further reason for accepting your courteous proposition.

In the sincere hope that we have the opportunity to meet in the near future, please allow me to offer you my very best regards.



Edgar Faure

Mr P. Lanares
International Association for
the Defence of Religious Liberty
Schosshaldenstrasse 17
3006 Berne - Switzerland

³ Edgar Faure was a former Chairperson of the Honorary Committee of the IRLA. Lawyer and President of the Council of State, he has also been the Minister for Education in France.

René Cassin and the Religious Problem⁴

Madame René Cassin

By the time he reached the age of nineteen years, René Cassin⁵ had been preoccupied by the question of religion. As a student at Aix en Provence, he had become acquainted with Abbot Vincelot with whom he had forged a friendship and who had a profound influence upon his thinking. The Abbot, to whom he wrote regularly throughout his military service, made him read many books about Catholic philosophy. Later, when Abbot Vincelot was gravely ill (he passed away in 1909), he bequeathed his Bible to him, which my husband kept close throughout his life.

In 1911, he met a Protestant pastor whose lofty opinions and religious faith made a great impression on him. But it was one of his beloved elderly relatives, a rabbi from Alsace, who instructed him in the Jewish way of life, the faith of his fathers. What struck him was that certain major positive principles were shared across all religions: the search for good, surpassing oneself, the commandment to love others, and also that they are all connected by their ultimate goal: "All that rises, converges!"

What shocked this universalism-enamoured spirit was the divergence among religions, which was the source of so many conflicts and wrongdoings throughout the centuries. He was distressed by their desire for power and how they strayed from their roots. As a result, his knowledge of history served to distance him from practising believers. The wars provoked and often inflamed by religions, the persecutions committed in their names, the unjust discrimination against the Jews and the humiliation and misery that they endured for thousands of years, all erased any form of attachment to a religious creed.

Of course he recognised the artistic blossoming inspired by religious faith, the sanctity of prominent figures, and he respected the faith of those sincere individuals who were able to rise above sectarianism and idolatry. But he heartily condemned both political and religious fanatics alike; not only did he

4 Article published in the journal 'Conscience and Liberty' no.14, 1977.

5 Former Chairman of the Honorary Committee of the IRLA. He was a legal expert, a judge and Chairperson of the European Court of Human Rights. He was one of those who inspired the Universal Declaration of Human Rights and participated in other work on human rights. In 1968, he received the Nobel Peace Prize as well as the United Nations human rights prize.

condemn them, but he dreaded them for their lack of intelligence and generosity, motivated as they are by a blind and pitilessly crushing inner madness.

Twenty-four members of my husband's family perished in Hitler's death camps. This did not prevent him from declaring that just one unknown victim would suffice to make him wholeheartedly condemn the totalitarian state- a poisoned fruit born of sectarianism and intolerance.

One day he said to a friend who had been speaking about faith in God, "I don't know if God does or does not exist but I think that if He does exist, it must please Him that one works for justice."

In fact, his reason for living was to work towards a more humane world where the oppressed individual, crushed for hundreds of years by all forms of oppression and domination, can reclaim his lawful rights, become more aware and can extricate himself from his sheepish resignation.

When he had written Article 18 of the Universal Declaration of the Rights of Man, he said, "Ah, Father Gregory would have been so happy to have seen the declaration of freedom of thought, of belief of religion and worship for which he put his life on the line many times; and in Article 26, the right of every human being to have an education. He would have also derived enormous satisfaction to find that the concept of the duties of man has been alluded to and included in part within the principles of the French constitutional law."

As both philosopher and jurist, René Cassin strove all his life for the cause of freedom of mankind, starting with the individual citizen, showing solidarity towards everyone. Awareness by the latter of his rights would give him the strength to take on various moral obligations through a tolerance of differences, and also an education would turn him into a civic-minded adult working for the greater good.

He wanted to see freedom at the heart of every nation so that this law would become their universal rule. He warmly welcomed the teachings of 'Pacem in terris' by Pope John XXIII, and he wrote on that subject in an article entitled: "Vatican II and the Protection of the Individual". He said, "I am pleased that the Council supports the international institutions in existence which, either on a global or regional level, work towards progress and peace. It denounces those crimes that are particularly horrendous such as so-called war crimes, the extermination of peoples, nations or groups designated as genocide by the 9 December, 1948 convention, and it praises the courage of those who openly resist."

He believed that with the co-operation of statesmen, one had to mobilise moral, secular and religious forces without excluding any single denomination.

He had many friends from highly diverse groups; he sought out conversations with representatives from all faiths, even, and I might almost say especially, the most humble, in the pursuit of one voice, one echo that rose above the commonplace.

He said, "That which has always motivated me is a hatred of hate!" For René Cassin, the most effective remedy for hatred is justice, and it is by that inspiration upon which the law is formulated. He waged this battle until his dying days. A genuine 'resistance fighter' against everything which oppressed mankind, he was an awakener of consciences, a passionate defender of peace and of the brotherhood of men of goodwill.

In this he was religious.

He wrote his final article "The Curate from Dompcevrin from his hospital bed days before he passed away. Once more he recalled this memory from the 1914 war, when he was gravely injured and thought he was about to die. In those final moments he thought about what the priest at Dompcevrin said to him, and he felt the need to draft this text himself and entrust it to me. And it is these final thoughts with which I will leave you:

"The Battle of the Marne had rendered the Northeast of France a vast cemetery. At the end of September 1914, the Meuse was still a battlefield. I had been gravely injured by a bullet to the stomach and I can see once again before me the fire that burnt down the aid station of the village of Dompcevrin. The captain, a friend of my younger sister, was hardly able to hide his horror when he discovered my bleeding wounds. In the early morning, I was lying on the ground in misery like my companions. The beasts deprived of their owners kept a troubled silence, but the untended cows were lowing.

At daybreak, I saw the heavy silhouette of the curate moving around the area. This rustic, elderly fellow leant over the wounded men, many of whom were at death's door. His words of comfort had very little effect on them.

When it came to my turn I was fully conscious, and whilst thanking the curate for his visit I said to him in all honesty, "I am a stranger to your way of worship and I don't share your convictions". He replied in his rugged voice, "My child, if you have to appear before the Supreme Judge shortly, know that He will be a judge of love."

This scene is one that I will never forget. "The French countryside could grow green again, villages could change their mayor or curate, but for as long as I live, I will always see the massive silhouette and hear those words from the curate of 1914!"

Preface of the Encyclical 'Pacem in terris'

René Cassin

It is a profound honour for those who have participated in drafting the Universal Declaration of the Rights of Man, to pay tribute to the great Pope John XXIII.

With the encyclical 'Pacem in terris', he was able to lend the weight of his high authority in a religious context to a document which had been drafted by mere mortals, representatives of their States; and he expressed the hope that they establish amongst themselves a common and respected political authority.

But even back then in 1948, having become nuncio in Paris after leaving Southeast Europe where he had been overwhelmed by so much suffering, Mr Roncalli had given me much personal encouragement; he had clearly understood before many others the importance of protecting the Rights of Man for the sake of social and international peace.

The United Nations Human Rights Commission was in session in Geneva when the conclave began at which he was in the running for election as a successor to the recently deceased Pope Pius XII. I seem to recall that particular day when I declared publically that it was preferable for the choice of the cardinals to fall upon the Patriarch of Venice, although many did not consider him as palpable. I went even further. I took it for granted that he would be elected. Rarely has the conclave been so brief.

The people were not mistaken by conferring upon Pope John XXIII their unanimous veneration.

René Cassin, 1987
Nobel Peace Prize Winner

Letter from 10th Novembre 1988

*Leopold Sédar Senghor*⁶

Léopold Sédar SENGHOR
B.P. 5106
DAKAR – FANN (Sénégal)

N° 012/FS/88

Dakar, 10 November 1988

Mr. Secretary General,

I have received your very touching letter dated 6 October 1988.

Your letter was of even more interest for as well as being a socialist, I am a practising Catholic. That is to say that I am in favour of religious liberty.

Therefore, I accept with pleasure the position as director of the steering committee of your association.

I look forward to the pleasure of making your acquaintance, Mr. Secretary General.



Leopold Sedar Senghor

*Mr. Gianfranco Rossi
Secretary General
of the International Association
for the Defense of Religious
Liberty
Schlosshaldenstrasse 17
3006 BERN (Switzerland)*

I am very happy to accept your invitation to be the President (Chairman ?) of The Committee of Honour of your Association.

Léopold Sédar Senghor

Former President of the Republic of Senegal

⁶ Leopold Sedar Senghor is a former Chairman of the Honorary Committee of the IRLA (International Religious Liberty Association). A poet, writer, member of the French Academy, but also a man of politics, he was the first president of the Republic of Senegal. He has defended cultural diversity and individual freedoms.

Letter from 1st August 2003

*Mary Robinson*⁷

ETHICAL GLOBALIZATION INITIATIVE

A project led by Mary Robinson

1 August 2003

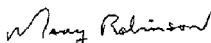
Dear Sir,

Thank you for your letter on behalf of the International Association for the Defence of Religious Liberty, inviting me to become the Chairperson of the Honorary Committee, which counts amongst its members several VIPs from the scientific, political and religious arena.

I am very familiar with the history of the association, and I am very honoured to accept the invitation to become Chairperson of the Honorary Committee, following in the footsteps of those great names that precede me.

I will be ready to promote, along with the association, the rights linked to freedom of religion and conviction, and to urge further thought on the implications of this fundamental dimension of human dignity.

Please accept, Sir, the expression of my highest consideration,



Mary Robinson

Maurice Verfaillie
Secretary General
International Association for the Defence of Religious Liberty
Schlosshaldenstrasse 17
CH 3000 Berne 32

Fax: +31 359 15 66

271 Madison Avenue Suite 605 New York, New York 10016 USA Tel: +1 212 895 8082 fax +1 212 895 8084
email: mary.robinson@eginitiave.org www.eginitiave.org

48 Chemin du Grand-Montfleury PO Box 147 1290 Versoix, Switzerland tel: +41 22 755 2125 fax: +41 22 755 2287

⁷ Mary Robinson is the President of the Honorary Committee of the IADLR. She is a previous United Nations High-Commissioner for Human Rights and previous president of the Irish Republic. She received the Presidential Medal of Freedom in 2009.

UN Representative – IADRL, The Messenger de la Paix

UN Representative

UNITED NATIONS  NATIONS UNIES

PORTAL ADDRESS-ADRESSE PORTAL: UNITED NATIONS, N.Y. 10007
CABLE ADDRESS-ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

6 July 1987

REFERENCE:

Dear Mr. Rossi,

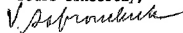
Based on the positive experience of the United Nations in observing the International Year of Peace, special recognition is now to be given to those organizations and institutions which made significant and concrete contributions to the programme of the Year. Some 300 organizations and institutions have been selected as honorary "Peace Messengers" and will receive a special Peace Messenger certificate. This certificate is an expression of appreciation for efforts made in the context of the Year. It is also presented in the hope that the recipients will continue their co-operation with the United Nations in working toward the realization of the long-term objectives set forth during the Year.

It is my pleasure to inform you that the Secretary-General has designated International Association for the Defense of Religious Liberty as a "Peace Messenger".

A special Peace Messenger presentation ceremony will take place at United Nations Headquarters in New York on 15 September 1987, the International Day of Peace. Your organization is cordially invited to designate a representative to receive the Peace Messenger certificate on that day. For those organizations unable to designate or send a representative to New York, ceremonies will also be held at United Nations offices in Geneva and Vienna on 15 September. Additional presentation ceremonies can be arranged at United Nations Information Centres around the world.

This letter is an official invitation to one of the ceremonies in New York, Geneva or Vienna. Presentations at UNICs should be arranged directly with the Directors. In accordance with established financial regulations, the United Nations cannot assume responsibility for the travel and subsistence costs of representatives. Please send the information requested on the enclosed form by mail or cable not later than 15 August 1987 in order that the certificates can be prepared for presentation on 15 September.

It is my particular pleasure to express to you my appreciation for the efforts of your organization in the the observance of the Year. I look forward to our continued contact and co-operation.

Yours sincerely,

Vasily S. Safronchuk
Under-Secretary-General for
Political and Security Council Affairs

Mr. G. Rossi
International Association for
the Defense of Religious Liberty
Schosshaldenstrasse 17
3006 Berne
Switzerland

Statement by the Secretary General, United Nations, on religious freedom⁸

Javier Pérez de Cuellar⁹

Protecting the spiritual integrity of the human person is one of the noblest goals of the United Nations.

Defining documents such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights proclaim and guarantee every one the right to freedom of thought, conscience and religion. The charter itself challenges discrimination based on faith by noting, among the purposes of the organisation, encouragement of respect “for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”

The General Assembly, in its first session, has embarked on the task of the organisation, which is to realise the principles proclaimed by the charter in declaring “that it is in the best interest of humanity to bring to an immediate end persecution and religious or racial discrimination”, and by inviting governments and responsible authorities “to take, to this end, the speediest and most energetic measures.”

Freedom of conscience goes beyond freedom of thought. It is, indeed, an active law which, under the terms of the Universal Declaration of Human Rights, implies, “the freedom to change one’s religion or belief and freedom to manifest one’s religion or belief alone or in community with others and in public or private through teaching, in practice, at worship and by the observance of rituals.” If freedom of conscience was the basis of some of the noblest achievements of humanity, its infringement has caused, over the centuries, untold human suffering; in our time, the exercise of this right is a constant struggle.

Progress has not been easy. After many years of work, the General Assembly adopted in 1981 the Declaration on the Elimination of all forms of intol-

8 Statement written for the journal ‘Conscience and Liberty’ no. 34, 1987.

9 Former Secretary General of the United Nations (1982-1991), recipient of the Presidential Medal of Freedom at the close of his term of office. He was also the Peruvian Ambassador to Switzerland and also at Unesco (2001-2004).

erance and of discrimination based on religion or conviction. This declaration reaffirms the fundamental principles on the matter, refines the contents of the right, and provides for measures to be taken by states to ensure its enjoyment.

The representatives of the United Nations are now following the implementation of the Declaration very closely. In December 1984, the United Nations organisation in Geneva arranged an international seminar on promoting understanding, tolerance and respect regarding the freedom of religion or belief. It studied the nature and extent of contemporary manifestations of intolerance with regard to religions or beliefs and pondered the nature of activities which allow the application of the Declaration of 1981.

The Commission on Human Rights and the sub-commission for the prevention of discrimination and the protection of minorities have challenged independent experts to study the problems of intolerance and discrimination based on religion or belief. These studies should provide food for thought when the organisation is stepping up efforts to put across the facts about freedom of thought, conscience and religion.

The United Nations Organisation continues to apply itself to making this freedom a concrete reality for every person in the entire world. Since the practice of this right is intimately linked to the flourishing of the human being in his very nature and in the sentiments of brotherhood, which unite humanity. As the universal Declaration of Human Rights proclaims in its initial article: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act in a spirit of brotherhood towards one another."

Letter of February 6, 1993

*Boutros Boutros Ghali*¹⁰



OFFICE OF THE SECRETARY GENERAL

6 February 1993

Dear Sir,

It is with great interest that I read your letter of 16 December 1992, as well as the special edition of your magazine 'Conscience and Liberty' featuring the activities of the United Nations in promoting freedom of thought and religion. I thank you sincerely for them both.

First, I would like to let you know how grateful I am for your encouragement in this mission that is very much my own. The task of the UN in these troubled times, even notably in the heart of Europe, is most certainly not the easiest. Like you, I am convinced of the necessity to safeguard freedom of conscience, which has been jeopardised by all forms of extremism across various global platforms. It is evident that there can be no work for peace and justice without a profound and daily commitment to tolerance.

Finally, I would like to express how anxious I am to promote the wonderful founding principles of the United Nations charter and therefore, intend to support associations such as yours; without which the UN would not have the necessary stepping stones that it very much needs to access the public conscience.

My dear Sir, I thank you once again for your kind concern and offer you my most sincere regards.

A handwritten signature in dark ink, reading 'Boutros Boutros-Ghali', is written in a cursive style.

Boutros Boutros-Ghali

Mr Gianfranco Rossi
Secretary General
International Association
for the Defence of Religious
Liberty
Berne

¹⁰ Boutros Boutros Ghali was the Secretary General of the United Nations from 1992-1996. Statesman and Egyptian diplomat, legal expert and university lecturer, he was the professor of International Rights and International Relations at the University of Cairo.

Tolerance: an attitude of peace¹¹

Jean Nussbaum¹²

“Conscience and Liberty” once again presents a series of testimonies promoting tolerance given by the most eminent and diverse personalities of our time.

You will also find inside, as in the previous edition of our journal, historical articles dealing with problems that arose in the near or distant past concerning religious liberty.

Perhaps you’ll feel somewhat disappointed that our collaborators seem to feature current topical issues to such a limited extent, especially since freedom of conscience seems more threatened and more precarious with each passing day.

Throughout our own Europe, still torn apart by the aftermath of war, and in Asia where national and civil wars all have more or less a religious aspect, tolerance is in danger.

Is not our very reason for existing to defend and cry out, loudly, each time it is attacked? How can we claim to fight fanaticism if we passively assist or even vaguely consent to its universal triumph?

Dear readers, we have asked ourselves these questions and with the same amount of anxiety as you. Neither their seriousness nor their urgency has escaped us. But, the only weapons we have available to resolve these matters are spiritual weapons. These are not, thank God, the least effective but they are also not the most obvious.

Our first goal is to create a climate of tolerance; for we are not Pharisees who congratulate ourselves on our perfection. We are well aware that tolerance is difficult to practise and we shy away from it very quickly once we give in to passion. We will never fulfil our mission by arranging a crusade of the “tolerants” against the “intolerants”.

Yet it is hardly possible to tackle current issues dispassionately. First of all, they move us so deeply that it is impossible for us to consider them with the equanimity and detachment we would need to judge them fairly. We are also

11 This document is the editorial of the ‘Conscience and Liberty’ Journal no.2, published in 1949.

12 See page

not suitably fully informed to grasp every aspect about them. The documents available to us are fragments, partial, difficult to check and very often contradictory.

Fanaticism exists, that is a fact, but it rarely speaks its name. The human conscience has at least acquired the ability to refuse to acknowledge it. It appears to everyone, even those who practise it, like a return to savagery. So it paints itself with varied pretexts: patriotism, a struggle for progress, a need for unity or a reaction against foreign interference. How is it possible to tell the true from the false? The task is even more awkward because the countries where religious liberty is threatened are those that do not allow freedom of the press, nor postal connections abroad, and who firmly close their borders. The information we are presented about them is fatally flawed either because of the official ideology of the country in question or because of the opposing ideology of those who have provided the information.

Finally, we should add that the defenders of religious liberty, where it is or seems to be threatened, are not always able to obviously tell the difference between the spiritual and the worldly. They are priests or believers of a religion that they hold dear; but at the same time, they are human - they have one homeland, one city. They have a political ideal that they wish to see materialise. Thus they can also give rise to persecutions though it is difficult to say whether they affect the believer or the citizen.

Certainly it is unfortunate that the progress of democracy in the world has not led to the disappearance of the crime of opinion, but it is up to each nation to give itself the law that suits it best. We consider it our duty – of tolerance also – to retain strict political neutrality and to never make a hasty or inconsiderate judgement on internal affairs of state.

The cause of religious liberty can gain nothing through this inopportune intervention. Those who have to struggle to maintain their faith – but who can nevertheless still hold on to it and pass it on to their children – run the risk of seeing a government that already has the tendency to treat them suspiciously become alarmed upon receiving our criticisms and protests.

Is it not preferable to abandon our aggressive spirit and try to understand and allay suspicions through a true spirit of charity? We are not warriors. We know that every work of tolerance is primarily a work of peace and fraternity, and we will do everything in our power never to fail in this sacred duty.



Declaration by the IADRL at the World Conference on Human Rights¹³

*Gianfranco Rossi*¹⁴

The International Association for the Defence of Religious Liberty wishes to express its sincere thanks to all UN member states that have made it possible to organise this World Conference on Human Rights.

A huge need to work towards the promotion and protection of human rights and of fundamental freedoms is being felt. In fact, hundreds of millions of men, women and children suffer everyday on our planet, even sometimes losing their lives because their fundamental rights have been trampled upon.

Every nation, it is true, has the inalienable right to self-determination, to choose and to freely develop its political, social, economic and cultural systems. But no nation or group can assume the right to **establish or maintain a political system** that does not respect the rights and fundamental freedom of individuals; in other words that refuses to respect the inherent dignity of each member of the human race.

We must strive ceaselessly to build a society that always focuses its attention on man, on his freedom, his well-being and his complete fulfillment. Without man, there would be no society; it is therefore for him that we must combine our efforts.

With this in mind, the right to freedom of thought, of conscience, of religion and of belief is of fundamental importance.

13 This conference was held in Vienna from 14 to 25 June 1993. Gianfranco Rossi made his statement in part verbally at the plenary session of 24 June. 370 copies of the text were printed and distributed by the secretariat of the Conference to the delegates present.

14 Dr. Gianfranco Rossi, as former Secretary General of the AIDLR (1983-1995), contributed significantly to the drafting of the "Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief", in particular that of Article 6, paragraph h. There are some principles that have guided Dr. Rossi in his activities for religious freedom. First: the principle of equality, no individuals or groups can claim the right to establish or to maintain a political regime which does not respect the rights and freedoms of all human beings. Second: the principle of difference saying that today's pluralistic society has to respect not only the similarities, but also the differences between human beings. Third: Rossi concluded with an appeal to all religions to purify themselves of every form of intolerance and extremism, noting that it is impossible to build a pluralistic society without respect and cooperation.

In fact, to guarantee this right to each individual means to acknowledge his right to be himself, to live in harmony with his deepest convictions and his own world view, to thrive in a perspective that goes beyond his life on earth to attain the certainty of an eternal destiny.

We can only reinforce the words of Rene Cassin, winner of the Nobel Peace Prize and one of the fathers of the Universal Declaration of Human Rights, when he said: “The right to the freedom of thought is the basis and the starting point for all other rights. It is the right to the freedom of conscience that gives the human being his value and his dignity.”

It must not be forgotten that millions of men and women have sacrificed their lives in the fight against Fascism and Nazism in order to guarantee, in particular, religious freedom for human kind, which is one of the four fundamental freedoms specifically mentioned by Franklin Roosevelt and Winston Churchill in the Atlantic Charter dated 14th August 1941.

In their sincere quest for the truth, in their search for answers to fundamental questions such as: Where do we come from? Where are we going? What is the meaning of life? Men can find satisfactory answers in a specific religion. Some find it in the religion of their parents, others in a different religion.

An individual should be free to choose his religion because his earthly and eternal destinies are closely linked.

The state that truly respects religious liberty should guarantee to each person the freedom to follow the spiritual path that his conscience dictates, in accordance with the teachings he believes were given to him by God, the supreme authority.

It does not fall within the competence of the state to meddle in this domain, and even less to impose upon its citizens a specific view of the world, whether it is a religious one or not.

The state should be the **community home** for all its citizens. This means that, in each country, **ideological pluralism** should not only be accepted as a fact but it should be recognised by law. Different “views of the world” -whether religious or not - **should** have the right to exist, to express themselves and to be valued in an atmosphere of mutual respect. None of those viewpoints should use the power of the state to eliminate the others or stop them from expressing themselves or to act freely.

Religions with a global vision of the human family that preach justice, peace and love amongst men, should play an important role in the building of a **pluralistic** society that respects human rights.

But it is necessary that religions and religious organisations be the faithful interpreters of the divine revelation that they claim to be the guardians and dispensers of. For if, instead of scrupulously teaching the messages received from above, religion would degenerate; if it was to become an instrument allowing a spiritual power to exert itself over consciences and aimed to use the medium of state law to apply its own particular rules, it would then become a **curse** for society. No one can ignore the dark periods of history that were dominated by intolerance and religious dogma.

We are forced to recognise, in our time, some worrying manifestations of religious extremism that is contrary to the building of a pluralistic society.

In fact, we witness an increasingly menacing rise in movements fraught with **religious totalitarianism**. In many countries, these movements aim to impose, by means of state law, the rules of a single religion. Society as a whole finds itself controlled by the precepts of that religion. Those who refuse to conform to the new order are considered as infidels and unbelievers, and there is no hesitation to use force against them.

In fact, the institution of totalitarian theocratic regimes has already become reality, or almost so, in certain countries where massive violations of human rights are recorded and where the penal code makes provision for the death penalty for those who abandon the official religion.

On the eve of the 21st century and in the Age of Human Rights, the international community cannot accept that member states of the United Nations should decree the death penalty for citizens who, acting on their convictions, decide to change religions. The right to religious freedom implies the freedom to change religion, as is affirmed in Article 18 of the Universal Declaration of Human Rights and in other international edicts.

We sincerely wish that the World Conference of Vienna would clearly take a stance against the demonstration of religious extremism that constitutes a repudiation of the principles of the United Nations Charter and threatens to destabilize international equilibrium.

The regional meeting for Africa held in Tunis on 2-6 November, whose task it was to contribute to the organisation of this conference, turned its attention to this problem. They adopted a resolution entitled "International Cooperation for the Fight against All Forms of Intolerance and Religious Extremism".

We think that this world gathering should express itself on the same topic and adopt some concrete measures. It could in particular ask the Commission for Human Rights to plan an international convention on the freedom

of thought, conscience and religion. Such a convention would naturally be allotted a specialist administrative committee.

We must fight vigorously and with utmost urgency against religious extremism and strive to the best of our ability to ensure that the right to the freedom of thought, of conscience and religion or conviction is recognised and guaranteed by law in every country, not only in principle but also in all its different manifestations. At this point in time, most states recognise this in principle, but several of them strongly restrict its application by legal measures that constitute veritable forms of intolerance and discrimination by reducing to practically nothing the exercise of this right. Hence, the necessity for an international tool that is not only very specific to this task and all its main implications, but that would at the same time have executive powers, thus forcing those states that will sign up and ratify it to respect it fully and in concrete terms.

This tool would also apply to those countries who would not have signed, because it would exert a moral pressure on them that would be infinitely greater than that produced by the Declaration for the elimination of all forms of intolerance and discrimination founded on religion or conviction.

This would be rendering a great service to humanity if it succeeded in giving each human being the guarantee that this freedom would indeed be respected, this is of fundamental importance not only for individuals, but also for society as a whole. In fact, to recognise and respect freedom of religion and conviction means to accept ideological and political pluralism and to build the state's solid foundations of rights and true democracy thus allowing all men to enjoy equality of dignity and rights while respecting diversity.

Do not Meet Intolerance with Intolerance¹⁵!

*Maurice Verfaillie*¹⁶

In San Francisco, at the end of the Second World War, men and women of good will created the United Nations Organisation and, a few years later in 1949, others gave birth to the European Council; they all had the same primary objectives: to prevent the miseries of war for future generations, to promote the protection of human rights and fundamental freedoms, and to put into practice the tolerance required to live in peace with each other.

Nowadays, we can observe that the practice of these fundamental freedoms (in particular those that concern our association) and that of individual and community rights relating to freedom of religion, belief and worship – is generally good in many countries where democracy is truly put into practice.

There are also many countries in the world today where these rights are systematically violated, either because the religion does not correspond with the dominant ideology, or because the laws in effect are not adequate enough to protect those rights, owing to the fact that education of tolerance and respect of freedom and the diversity of the religious communities does not fit with the conceptions of the religious majority in the country; or even because the right to change religion is not permitted.

Now we are forced to also take note of the appearance of another problem that is affecting our societies more deeply than generally thought. It concerns the emotional response to the profusion of new and ancient religions; an ever-increasing scale of emotion that is contributing to the creation of a climate of mistrust and suspicion as some take advantage of the fear factor. These new tensions manifest themselves equally at the heart of Western democracies as they do elsewhere within other political systems. Given time, they could well contribute to undermining the good work accomplished thus far by those or-

15 Extracts of editorial “Ne pas répondre à l'intolérance par l'intolérance” of the former Secretary-General Maurice Verfaillie, published in the Conscience and Liberty magazine no. 53, 1997.

16 Former Secretary General of the IRLA (1995-2005); he has a Ph.D. in Religious Studies and is a specialist in Religious History. In 1998, he received the Commander's Cross of the National Order of Merit.

ganisations defending the right to freedom of religion and faith. Certainly, we cannot overlook the fact that speeches in opposition to human rights are being heard far more often. They occur more and more openly. Certain circles go so far as to deny these rights. It is equally true to say that the religious news is punctuated with incomprehensible dramas sometimes provoked by confusion or more often by extremism, fanaticism, fraud or the actions of maladjusted people.

But the new angle of the problem is equally disturbing. It sometimes comes in the form of a crusade against what we would call nowadays the phenomenon of 'sects' and new religious movements. Those defending religious freedom are struck by the hasty generalisations, the irresponsible intermingling and stigmatisation of those who do not altogether conform to the mental structure forged by the majority opinion.

The International Association for the Defence of Religious Freedom does not, in principle, defend religious liberty at all costs. It is evident that the society must structure different freedoms for the collective good. Many types of behaviour are reprehensible. Those who harm the freedom of choice in the matter of conscience and religion, like those who violate human dignity, who put in danger the security of men and women, their health and their lives or who overstep the limits of good morals should be punished by the same token. But it is also essential for the functioning of a true democracy that punishments should be based on the same legal foothold as those which apply equally to all: to individuals or communities, to traditional churches, both old and new, to old or new spiritual communities, both mainstream and minorities.

**THE CROSS OF COMMANDER OF THE ORDER OF NATIONAL
MERIT IS CONFERRED ON MAURICE VERFAILLIE,
SECRETARY GENERAL OF THE INTERNATIONAL
ASSOCIATION FOR THE DEFENCE OF RELIGIOUS LIBERTY**

The Spanish King, Juan Carlos I, has awarded the Cross of Commander of the Order of National Merit to Maurice Verfaillie, Secretary General of the International Association for the Defence of Religious Liberty (AIDLR).

At midday on 27 April 1998, the king bestowed the honour upon Maurice Verfaillie via his emissary, the Secretary of State of the Ministry of Justice, José Luis Gonzáles Montes. It is the first time in Spanish history that this distinction has been awarded for the defence of religious liberties.

“Since mankind is still in the making, so it is and always will be in the case of freedom”, declared Maurice Verfaillie during his acceptance speech. As Secretary General of AIDLR since 1995, he has been engaged in this cause since 1960 and admits to owing much to Pierre Lanares, the previous Secretary General of the Association.

Through Maurice Verfaillie’s award, it is also AIDLR which has been honoured. Founded in 1946 in Paris by Dr Jean Nussbaum, it has been awarded the status of a non-governmental organisation as a result of its international reputation.

Religious Extremism and Religious Liberty¹⁷

*Karel Nowak*¹⁸

It seems that religious fanaticism and religious liberty are two phenomena that create tensions and which, to some extent, are paradoxical. Extremism, and more especially religious extremism, has a tendency to be an obstacle for religious freedom. It often creates legal restrictions and, in some cases, provides the authorities with a pretext for limiting religious liberty. What can we understand by the term “religious extremism”? Many authors and speakers often use these terms as interchangeable synonyms. They are all lacking in a clear and agreed definition. What is more, the meaning of certain words has evolved over the course of time. For example, “fundamentalism” which was mostly positive in origin now has a pejorative connotation. Because they are not clearly defined, these terms give rise to negative sentiments which render their understanding even more subjective. What is an extremist? What is a fanatic? What is a fundamentalist?

“Extremism” and “fanaticism” are generally defined as a deviation from a commonly accepted behavioural norm that varies according to the time, place or culture. For example, the philosopher George Santayana said that “to be a fanatic is to pursue one’s goals having forgotten what one was aiming for”. According to Winston Churchill, “a fanatic is someone who cannot change their mind and won’t change the subject”. Whatever the definition, it appears that the fanatic displays very strict standards and displays very little tolerance for ideas or opinions contrary to his own.

International institutions such as the United Nations state that religious extremism and religious intolerance are growing sharply throughout the world. Abdelfattah Amor, the United Nations special Rapporteur, declared in his re-

¹⁷ Extract from the editorial in the journal *Conscience and Liberty* no. 70, 2009.

¹⁸ Karel Nowak, the former Secretary General of International Association for the Defense of Religious Liberty (AIDLR) was filled with passion for freedom of religion. Three words characterize Karel so well said J. Graz: “efficiency, wisdom and kindness.” Karel was convinced, as was Jean Nussbaum the founder of AIDLR, of the following: “If the principles are respected, our interests are included. But if we concentrate only on our interests, we are not credible and very easily lose grounds for our work.” Karel applied this view in his work.

port to the General Assembly in 1999 that “no religion is exempt from extremism”. In addition, his report mentioned that it was important to distinguish between extremists who use religion for political gains – who are in the minority – and those who practise their religion in accordance with its principles of tolerance and non-discrimination – who belong to the majority.

History has shown us that religious extremism and fanaticism of any nature are hostile and detrimental towards religious liberty. Religious groups that have extremist tendencies display very little tolerance towards other religions or other forms of devotion. In certain areas of the world, we have observed tendencies for “religious cleansing”, whereby religious minorities are systematically chased out of a given territory. On the other hand, there are governments who, in order to attempt to battle against religious extremism, restrict religious liberty to all.

In order to illustrate these sentiments, I will quote a personal remark by Nariman Gasimoglu, a scholar originating from Azerbaijan, a translator of the Koran, director of the Centre for Religion and Democracy in Baku, and former research associate at Georgetown University (US): “The Islamist Religious groups [...], which do not yet benefit from widespread support, have been strengthened by repression, whereas the moderate Muslims, the Protestants and the Jehovah Witnesses have suffered. The best – perhaps the only – method of countering religious extremism is to open up society to religious liberty for everyone, to democracy and free debate, including even Islamist groups. It is the only means to deprive Islamic extremism of its influence, by demonstrating the reality of what extremism in power could mean. Religious liberty favours democracy and democracy favours religious liberty. The more we allow people the freedom to practise their religion, the more we liberate society from the problems of religious extremism. Freedom is a form of remedy for social problems such as extremism.” *Proposal published by Forum 18 News Service.*

An even greater religious liberty – more freedom to communicate and teach various religious beliefs – constitutes a powerful antidote against religious extremism. Promoting the right to freedom of religion or belief is not only a moral imperative but also a practical obligation. It is the best solution against extremism and fanaticism, and is an essential means of guaranteeing the security of the world.



CHAPTER

2

**Human rights and religious freedom in the world today:
a new balance or new challenges?
Response of leading figures of the United Nations,
ambassadors and academics**

Is the world listening?¹

*Ban-Ki-moon*²

The founders of the United Nations understood that sovereignty confers responsibility, a responsibility to ensure protection of human beings from *want*, from *war*, and from *repression*.

I was born during the last part of the Second World War. As a child, I witnessed the ravages of the Korean War and the promise of peace. I learned about hunger, poverty and displacement in the ultimate classroom, personal experience. While others were studying in a classroom, I had to study outside under a tree. When it rained, we had to wait until it [turned] sunny to resume class under the tree... But I often wonder how many children in similar straits ask the same questions today that I did more than sixty years ago: Is the world listening? Will help arrive in time? Who will be there for my family and me?

Trying to make a difference - A Responsibility

This is exactly the experience I am having these days as Secretary-General of the United Nations. The task of human protection is neither simple nor easy. We don't always succeed. But we must keep trying to make a difference. That is our individual and collective responsibility. People like myself, as Secretary-General, and the leaders of the world have a moral and political responsibility to protect populations.

The world and its conflicts have changed significantly since the founding of the United Nations. And as the world has changed, so too must its institutions. The most enduring bend without breaking. They adjust to changing circumstances and opportunities, trimming their sails in shifting winds, knowing

1 UN Secretary-General Ban Ki-moon, Selected Speeches. Extract from: *Cyril Foster Lecture at Oxford University: Human Protection and the 21st Century United Nations*, see at: http://www.un.org/sg/selected-speeches/statement_full.asp?statID=1064; the under titles are not part of Selected Speeches.

2 Ban Ki-moon is the current and the eighth Secretary General of the United Nations since 1 January 2007. His mandate was renewed June 21, 2011 for a period up to December 2016. He was awarded the honorary title of Doctor Honoris Causa of the University of Malta (2009) and an honorary doctorate in law from the University of Washington in October (2009).

that the quickest route to their destination is rarely a straight line. Their pace varies but never their guiding principles. The challenges facing us have changed, but our core responsibility to maintain international peace and security has not.

The best form of protection is prevention

We are working to improve protection efforts to keep the vulnerable from double jeopardy. The best form of protection is prevention. Prevention saves lives as well as resources. Prevention is not a one-off affair. Human rights are an essential component of human protection. You might have heard of “R2P,” the responsibility to protect populations by preventing genocide, war crimes, crimes against humanity and ethnic cleansing. However, my doctrine envisages that our efforts to prevent these awful crimes rest on three pillars: first, state responsibility- each state should be responsible; second, international responsibility to help states succeed and third, timely and decisive responses should national authorities manifestly fail to protect, including under Chapter VII if the Security Council deems such steps necessary. I think civil society can be the eyes and the watchers of how governments are implementing all these principles of justice and accountability.

The drafting committee in San Francisco underscored that if fundamental freedoms and rights are “Grievously outraged so as to create conditions which threaten peace or obstruct the application of the provisions of the Charter, then they cease to be the sole concern of each state.” Where do we go from here? And so we must ask: Where do we go now, from here?

We are also promoting cross-cultural dialogue in situations of potential conflict through the UN’s Alliance of Civilizations, and warning against rising intolerance and the politics of polarization.

The United Nations was created to be an agent of change, not just an object of change. What is required is a shared responsibility. But this cannot be done without the help of governments, business communities, generous philanthropists, NGOs, and students. This is a shared responsibility. Together, we can answer the cry of that child trapped under the rubble of an earthquake and people caught in the crossfire and those who are wondering: Can the world hear my call? Who will help me and my family? The UN recognizes that human protection stands at the center of both its purposes and principles.

The words of the framers of the UN Charter still ring true today. “The Secretary-General, more than anyone else, will stand for the United Nations as a whole. In the eyes of the world, he must embody the principles and ideals of the

Charter." That is why human protection will remain a hallmark of my administration, continuously striving to make our deeds match our words. "We the people" expect and deserve nothing less.

Regardless of religious traditions, we have a common faith: a faith in our shared future³¹

In communities where symbols of religious minorities are seen as something to oppose or fear, we need continued engagement. In places where people are screened out of opportunity because of race, faith or even their name, we have more work to do.

Three-quarters of the major conflicts in the world today have a cultural dimension. We are seeking to defuse those tensions by finding answers to some of the most urgent issues of our day: How do we build inclusive societies? How can we strengthen education and empower women? How do we drown out the siren songs that divert young people to extremism? In short, how do we build communities rooted in "convivencia" - living together in peace based on *trust* and mutual respect? In the process of building inclusive societies, trust itself must be inclusive. It takes each and every one of us. After all, peace and reconciliation cannot be imposed. They are seeds planted by people, nurtured by communities. Day after day, after day. The Alliance (of Civilizations-n.r.) cultivates through outreach, through understanding, through education. And we know that education is more than learning. Sometimes it is also unlearning.

Peace and reconciliation have to be planted by people and nurtured by communities.

We must let go of the stereotypes of the monolithic "other". We must put an end to labels that do more to divide than define. I am not naive about the challenge. There is unease in our world. Tensions rooted in fear. Fear driven by ignorance. We live in a world where, too often, division sells. It wins votes. It gets ratings. It is much easier to blame others than to think for oneself. And yet wherever I go, I have found something else - a growing realization that we are in this together. A sharper awareness that my child's future depends on your child's future. A greater understanding that we are a single global family with many members and no monoliths. *We are not there yet.* The journey is long.

3 Selected Speeches. Extracts from: *Remarks to the Third Forum of the Alliance of Civilizations by UN Secretary-General Ban Ki-moon*, see at: http://www.un.org/sg/selected-speeches/statement_full.asp?statID=834

Together we are better

I can see on the horizon a world that understands that, together, we are better. I can hear shouting replaced with listening. I can feel a force committed to making it happen. Governments, civil society, *the* private sector, the faith community, young people. You - and all this Alliance represents. A global social movement, an Alliance of Humanity.

Regardless of religious tradition, we have a common faith; a faith in our shared future. Let us harness our common humanity and make a better world.

Equal in dignity and in rights: Is it still a dream for far too many people⁴?

*Navi Pillay*⁵

[In June 1993], more than 7,000 people participated in the World Conference on Human Rights in Vienna. Western countries favored civil and political rights; the Eastern bloc and many developing nations argued that economic, social and cultural rights, and the right to development, had priority. In addition, a sizeable group of countries were vigorously arguing that the Universal Declaration of Human Rights was the product of a specifically Western culture and that in reality human rights should be considered relative to the characteristics and traditions of different cultures.

Moreover, the world was in the midst of a series of dramatic upheavals. Some of these - like the fall of the Berlin Wall were very positive; and some - like the sudden rash of deeply destructive internal conflicts - extremely negative. The end of the Cold War had made it seem the right moment for a new world to re-view its agenda for human rights.

The Vienna Consensus

And yet, as discussions unfurled, a consensus emerged. The key to this was the notion of universality, indivisibility and interrelatedness of all human rights. You see, a number of states had been resisting the entire concept of economic and social rights because they saw them as aspirations rather than rights intrinsic to human dignity and freedom. The vision of an inter-related and inter-dependent constellation of human rights allowed for economic and social rights to be on board, as well as the right to development.

4 Message from the High Commissioner of the United Nations for Human Rights, on the occasion of the conference in Vienna in June 2013. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13488&LangID=E>

5 High Commissioner of the United Nations Human Rights in Geneva in September 2008. Her mandate was renewed until September 2014. She is a lawyer (Doctor of Juridical Science, Harvard University). Prior to her appointment to the UN, she was, among other positions, lecturer at the University of KwaZulu-Natal (South Africa), and a judge of the International Criminal Court (ICC) in The Hague (2003-2008).

The debate regarding the alleged cultural specificities of human rights was resolved with an equally deft and inclusive approach. Of course all countries are indeed not the same, and all voices must, naturally, be heard. But these cultural specificities in no way erode the universality of human rights.

The formula that ultimately created consensus on this point was the following: you choose your path, but the goal is something we hold in common. Your specificity will influence the way you move forward. But that goal - of human dignity and human freedom via implementation of the human rights elucidated in the International Bill of Rights - is something that we all share.

And so the assembled delegates overcame major differences on contentious issues such as universality, sovereignty, impunity, and how to give a voice to victims. The result was a powerful outcome document: the Vienna Declaration and Programme of Action (VDPA). The VDPA is the most significant human rights document produced in the last quarter of a century and one of the strongest human rights documents of the past hundred years. It crystalized the principle that human rights are universal, indivisible, interdependent and interrelated, and firmly entrenched the notion of universality by committing states to the promotion and protection of all human rights for all people "regardless of their political, economic, and cultural systems."

The Vienna Conference led to historic advances in many vital areas, among them women's rights; the fight against impunity; the rights of minorities and migrants; the rights of children. Much progress has occurred, thanks to the path laid down in Vienna. We can justly celebrate a number of important landmark agreements, including the world's first permanent International Criminal Court - the creation of which received a significant boost at Vienna - as well as new mechanisms to promote and protect the human rights of women, minorities, migrant workers and their families and other groups. Vienna opened the door to stranger UN human rights mechanisms, including an expansion - that still continues today - in the number of special procedures. But we must recognize that in many areas, we have failed to build on the foundations of the VDPA. The inspiring opening promise of the Universal Declaration - that all human beings are born equal in dignity and in rights, and that these will be respected as such - is still only a dream for far too many people.

Failure to protect

Time and again, the international community has promised to protect civilians from slaughter and gross violations of rights. And yet even as I speak to

you now, women are being abducted and raped, hospitals are being targeted, and indiscriminate shelling and deliberate massacres stain the earth with the blood of innocents. All this is intolerable. And yet it continues to happen. Some promises have been half fulfilled and others are not.

When we come here (to Vienna), we are not celebrating history. We are talking about a blueprint for a magnificent construction that is still only half built. It is essential that we view the VDPA as a living document that can and should continue to guide our actions and goals. Human rights are still not universally available, or viewed as indivisible and interrelated despite our promise to make them so. States still continue to make arguments about cultural relativity. Women, minorities and migrants are still discriminated against and abused. The right to development is still not accepted by everybody. Power still corrupts and leaders are still prepared to sacrifice their people in order to retain it.

The way forward

It was in Vienna that non-governmental organizations spearheaded a drive for the creation of the post of High Commissioner for Human Rights, This was to ensure that an independent, authoritative voice would speak out against human rights violations wherever they occur; to coordinate and support the work of a range of different bodies; and to utilize the weight of the United Nations to support human rights for all. It is my honor to occupy that post today.

We have a huge task - to promote and protect the human rights of everyone everywhere - and clearly insufficient resources to carry it out. We need to do our utmost to revive the spirit of the Vienna Declaration, and relearn its messages. We must refocus on its startling clarity of purpose which, at the time, we had scarcely dared hope to achieve. It reaffirmed the dignity and rights of all, and showed us how to achieve them. It crystalized the concepts of universality, and impartiality with regard to justice. It showed us the way forward and to some extent we have followed that path. But, sadly, reprehensibly, we also continue all too often to deviate from it.

People of faith are a strong influence on group and individual conduct⁶

Kofi Annan⁷

“You meet during a period of sharply increasing intolerance, extremism and violence. Recent developments in the Middle East have only fuelled this trend. Relations between adherents of major world religions have been particularly affected. If unaddressed, these may even threaten stability in many places (...).”

Driving disturbing developments is the growing tendency to articulate differences in terms of identity - be it religious, ethnic, racial, or otherwise - rather than in terms of opinions or interests. For whereas opinions and interests may be open to re-evaluation and negotiation, identities rarely are. This has entrenched today's identity-fuelled differences, and made solutions appear elusive (...).

[...] People of faith are a strong influence on group and individual conduct. As teachers and guides, you can be powerful agents of change. You can inspire people to new levels of commitment and public service. You can help bridge the chasms of ignorance, fear and misunderstanding. You can set an example of interfaith dialogue and cooperation.

Together, you can help chart a path of moderation for the devout, showing them that they can remain true to their convictions and beliefs while engaging fully in the changing world around them.

Your deliberations should also enable you to make an important contribution to the “Alliance of Civilizations”, which I launched at the initiative of the Spanish and Turkish Prime Ministers. This initiative is intended to respond to

6 Secretary General SG/ SM/ 10632. Department of Public Information, News and Media Division, New York. Extracts from the text of former UN Secretary-General Kofi Annan's message to the Second Congress of World and Traditional Religions in Astana, Kazakhstan, delivered by Sergei Ordzhonikidze, former Director-General of the United Nations in Geneva on 12 September 2006. Ref.: Secretary General SG/ SM/ 10632. Department of Public Information, News and Media Division, New York. <http://www.un.org/News/Press/docs/2006/sgsm10632.doc.htm>

7 Former Secretary General of the United Nations. He received awards including the Nobel Peace Prize in 2001 and many titles, including those of Doctor honoris causa in law (9/03/2004, Carleton University) and an honorary doctorate (1/11/2008, University of Neuchâtel). He is currently involved in a large number of organizations with a global mission.

the need for a committed effort by the international community -- in both its intergovernmental and its civil society forms -- to bridge divides and overcome prejudices, misconceptions, and polarizations, which potentially threaten world peace. Meetings such as yours will be essential for its ultimate success, a goal made all the more urgent by recent alarming events. It is in this spirit that I encourage you to spread its message of dialogue and peaceful coexistence in your communities.

The biggest challenge of 21 century is religious hatred

Heiner Bielefeldt

Interview with Professor Heiner Bielefeldt, Special Rapporteur of United Nations on Freedom of Religion or Beliefs, produced by Liviu Olteanu, Secretary General of the IADRL, 9 July 2013.

Introduction

The International Association for the Defense of Religious Liberty (IADRL) is cooperating with international and regional organizations and is participating as a Permanent Representative to the UN in Geneva, New York and Vienna and as a Main Representative to COE, EP and OSCE.

We cooperate with governments and parliaments, diplomats and politicians, NGOs and civil society, universities and scholars, religions and churches, religious minorities and other stakeholders in the defense of human rights, religious liberty and of conscience for *all people*. We consider the organizing and participating in interreligious & interfaith meetings one of the most important tools in favor of the respect for dignity, non-discrimination and understanding of the protection of religious liberty, no matter one's thinking, religion or belief.

IADRL believes in the importance of the continued *education* and *training* of human rights and religious liberty at all the levels: politics, state institutions, religious, university and civil society. Our international association works through organizing –and participating in- conferences, symposium and panels of governments, parliaments, universities, as well as participating by written or oral statements to the international and national institutions, etc. We organize roundtables, concerts and religious liberty festivals and monitor legislation, the application of legislation, and trends on religious liberty issues. By publishing materials such as “Conscience and Liberty” magazine, books and by all of the previously stated methods and more, we can contribute to the understanding, respect, tolerance, defense, and peace between people in spite of their differences.

For our organization, the dignity of each person is important and we defend the principle of religious liberty for all people.

This year “Conscience and Liberty” magazine will publish a special edition, which will look at religious liberty starting from the beginning of its first edition published in 1948, and also celebrate the anniversary of 1700 years since the Edict of Milan (313-2013).

Professor Heiner Bielefeldt is the honored guest of the “International Association for the Defense of Religious Liberty” (IADRL) organization. Of German origin, he succeeded Mrs. Asma JAHANGIR (Pakistan) in August 2010, as the United Nations Special Rapporteur on freedom of religion or belief⁸.

A prominent international human rights expert, he has taught on this subject and also Politics at the University of Erlangen in Nurnberg, Germany since 2009. After having studied Philosophy and Catholic Theology at the University of Tübingen and the University of Bonn – alongside other studies (i.e. Philosophie) - he held various posts at the universities of Toronto, Heildeberg, Manheim, Tübingen, Bonn, and Erlangen; he also directed the German Institute for Human Rights from 2003 to 2009. In addition, Heiner Bielefeldt is the author of numerous important works on human rights and religious freedom.

The AIDLR especially appreciates the excellent reports that Mr. Bielefeldt regularly submits to the United Nations.

Interview

Attorney Liviu Olteanu (LO): *The preoccupation of this year’s special edition of “Conscience and Liberty” magazine is about “Human rights and religious freedom in the world: A new balance or new challenges”. Professor Bielefeldt, do you believe that there is more religious liberty balance or tension (challenges) in the world today?*

Professor Heiner Bielefeldt (HB): The tensions are obvious. Tens of millions of people – Jews, Baha’is, Christians, Muslims, Hindus, Buddhists, Mormons, Jehovah’s Witnesses, agnostics, atheists, adherents of indigenous religions etc. – suffer from grave violations of their freedom of religion or belief. Such violations have many different root-causes. They may be perpetrated in the name of religious or ideological truth claims in the interest of fostering national cohesion, under the pretext of defending law and order or in conjunction with counter-terrorism agendas. Often you find a mix of all of this. Typical targets of abuses are members of those religious or belief communities that have, or are said to have, a tendency to evade state control and, at the same time, are

8 <http://www2.ohchr.org/english/issues/religion/>

perceived as not really fitting into the historical and cultural makeup of the country. Perpetrators include non-state actors who frequently operate in a political climate of impunity, thus indicating direct or indirect state involvement or even a human rights protection vacuum. People considered as “heretics” or non-believers become victims of mob violence and they may encounter big obstacles when trying to find a job. This list of violations could go on forever and ever. As you know, those working on freedom of religion or belief certainly have a lot of work to do.

LO: *Is Religion, and Religious liberty especially, a Solution or a Problem for worldwide security and peace? Do you believe that ‘diplomatic-interreligious meetings’ and ‘diplomatic-civil society/NGOs meetings have a positive impact on religious liberty challenges? Why or why not?*

HB: In general my answer to your second question is yes. But it depends on what you mean by “diplomatic”. People at times remain a little suspicious of nice diplomatic language fearing that it doesn’t always reflect genuine commitment. I sometimes share this suspicion. When recently attending a conference of the Alliance of Civilizations I heard diplomats demanding that “we should respect one another”. Sounds good of course, but I wondered whether the “we” also included Bahais, Ahmadis or Jehovah’s Witnesses. In some cases I had my doubts. Of course, the consequences should not be to stop interreligious diplomatic talks or de-legitimize such efforts. On the contrary, interreligious dialogue should become more concrete, more realistic, more precise, more substantive, more sustainable, more inclusive and more binding. In short, what we need is more rather than less initiatives of this sort.

Let me take the opportunity to praise the work of grassroots organizations, many of which work under very complicated circumstances. Only yesterday I came back from Sierra Leone. The Inter-Religious Council, broadly composed of Anglicans, Methodists, Baptists, Sunnis, Shias, Ahmadis and others, has contributed enormously to the ongoing reconciliation process after a horrible civil war that had torn the country apart. So, in general, I consider a culture of regular inter-religious communication extremely important for creating a societal climate conducive to the enjoyment of freedom of religion or belief. To respond to your first questions, of course, working on freedom of religion is also peace work in the broader understanding.

LO: *What do you consider are the greatest challenges for religious liberty in the 21st Century and what can diplomats and politicians do to solve religious liberty issues?*

HB: In my view, the biggest challenge is religious hatred. Being confronted with extreme manifestations of collective hatred belongs to the worst experiences you'll make when working in this area. I guess no one knows an easy recipe on how to tackle this huge challenge. But the "Rabat Plan of Action" of 5 October 2012 dealing with incitement to national, racial and religious hatred at least contains quite important insights, which came about as the result of a series of workshops that the Office of the High Commissioner on Human Rights (OHCHR, based in Geneva) had conducted in all regions of the world and with broad participation of experts from different disciplines. The Rabat Plan of Action points to the need of speaking out publicly against religious hate propaganda while at the same time appreciating the positive significance of freedom of expression for the flourishing of a culture of religious tolerance. Politicians and diplomats carry special responsibilities in this regard, but the Rabat Plan also underlines the important role of civil society in giving moral support to targeted minorities. Dealing with hatred, of course, implies tackling societal root-causes, including the utilization of religion for political gains, such as narrow versions of national "identity politics". Tight control agendas in combination with exclusivist national identity politics create the breeding ground for the most extreme forms of hatred and violence. You may think of Nigeria, Burma, Pakistan and finally countries in all regions. Here you also see that working for freedom of religion or belief necessarily takes you into highly politicized territories. Let me briefly point to a totally different sort of challenges, i.e. challenges of a more conceptual nature. Perhaps more than any other human right, freedom of religion or belief is exposed to countless misunderstandings. This can be dangerous, especially if the human rights nature of religious freedom is questioned or even denied. For instance, religious freedom has been wrongly associated with restrictive agendas, including anti-blasphemy agendas which in countries like Pakistan have a devastating effect on minorities. Some people seem to forget that the right we are talking about is a universal human right to freedom, after all. As such it shows a positive interrelatedness to other rights of freedom, including freedom of association, freedom of assembly, freedom of expression etc. However, in the eyes of some observers freedom of religion or belief has received a somewhat dubious reputation as an allegedly "less liberal" right. Of course, this is nonsense. It also frequently happens that religious freedom is perceived as generally hampering gender-related anti-discrimination policies – in my opinion another terrible misunderstanding. So there is undoubt-

edly a real need for emphasizing the human rights nature of freedom of religion or belief. Before assuming my mandate I didn't know how much clarification work needs to be done in this field.

LO : *Why did the mandate change from “Special Rapporteur on religious intolerance” (according to Commission on Human Rights, resolution 1986/20) to “Special Rapporteur on freedom of religion or belief” (according to Commission on Human Rights, ECOSOC decision 2000/261 and General Assembly resolution 55/97)? What were the limits of the previous mandate and what are the advantages that come with this change?*

HB: The new title is more explicitly based on human rights. I therefore clearly prefer it to the previous title. Freedom of religion or belief goes far beyond tolerance in that it originates from the due respect for the dignity, freedom and equality of all human beings. Moreover, it constitutes an indispensable part of the broader human rights agenda.

LO : *The Universal Declaration of Human Rights, through Article 18, has a special relevance on the issue of religious liberty regarding the right of every person to adopt or to change a religion. But when you look at the geopolitical and globalization context and the threat of fundamentalism, extremism, or terrorism, do you believe that in the present it would be possible to obtain this same agreement regarding the right to change one's religion? Why or why not?*

HB: I don't want to speculate too much in this regard. But as you know, the term “change” triggered a heated controversy already in the preparatory process of Article 18 of the 1948 Universal Declaration. In negotiating the wording of Article 18 of the International Covenant on Civil and Political Rights, the same controversies started again. States finally agreed on the formulation that everyone should be free “to have or adopt a religion or belief of his choice” which is an obvious equivalent to the right to change. However, as a matter of fact, many states restrict this indispensable part of freedom of religion or belief, and the restrictions can go so far as to amount to a total denial. I therefore devoted one of last year's thematic reports to this issue.

For many states and for many religious communities, the right to change may well be one of the most challenging components of freedom of religion or belief. However, it is exactly this component that also indicates the paradigm shift which human rights in general epitomize. Rather than protecting specific

religious values, practices, truth claims or doctrines as such, freedom of religion or belief empowers human beings to find their own ways in the broad field of religions or beliefs. Without the right to change, freedom of religion or belief would thus lose its character as a human right that aims at empowering human beings. Even the right to retain one's inherited faith, which of course enjoys equal protection under freedom of religion or belief, can't have the status of an authentic right to freedom unless human beings are respected in their freedom to reconsider their religion or belief, to express personal doubts and, depending on their own decisions, to change, abandon or renounce their previous faith and adopt another religion or belief. That is why we have to stand firm to defend this crucial part of freedom of religion or belief.

LO : *As important international legislation, the International Covenant on Civil and Political Rights (ICCPR) from 1966/1976 has authority over world governments that have signed into and ratified this law. In spite of the ratification of ICCPR why do you believe that Articles 18, 19 and 27 are still the objects of applicable tension for many UN states?*

HB: Many states utilize religion for purposes of fostering national identity – often at the exclusion of minorities. We have countless reports on this. Typically this has negative implications for minorities. Members of minorities frequently encounter unreasonable bureaucratic restrictions; in some countries they have problems to contract valid marriages and regulate family matters legally; they often face direct or indirect discrimination in the labour market, in educational institutions or in health care systems; and their children may be exposed to spontaneous or even orchestrated harassment in school. As a consequence of being portrayed as a threat to national, cultural or religious cohesion, members of minorities may suffer from stigmatization and concomitant acts of hostility in their everyday life. Existing prejudices and stereotypes can be further stoked by the media, sometimes to the degree of demonizing minorities as inimical forces allegedly operating in the service of foreign powers. Persons belonging to minorities, but also dissidents, “heretics”, apostates, sceptics etc. become victims of physical attacks perpetrated by state agents or non-state actors or a combination of both. To cut it short, the root-causes of violations are manifold. To eradicate them requires trust building and persuasion, which in many countries is a long-term project even if governments are willing to do their best. Unfortunately, some governments prefer to turn a blind eye to existing problems or even play with resentments for short-lived political gains.

LO : *The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief from 1981 is a cornerstone, important and special UN Declaration, though it doesn't have similar legislative value as the ICCPR. But in the context of your recent and excellent 'Religious Minorities Report' presented to UN HRC, what importance and role do you believe that the states of the world have to give in sustaining and implementing all articles of the "1981 Declaration"?*

HB: I read the 1981 Declaration in conjunction with Articles 18 of the UDHR and the ICCPR. The 1981 Declaration, in particular its Article 6, spells out the various elements that are needed for any consistent implementation of freedom of religion or belief. It points to the private and public and as well as to the individual and communitarian aspects entailed in this human right. So states could use the declaration as a check list when setting up policies of implementing freedom of religion or belief.

LO: *Robert Seiple, the first American Ambassador At-Large on Religious Freedom stated, "The governments that ignore the religious liberty of the minorities or discriminate against them, cannot obtain security for the majority". Do you believe that this statement stands true today?*

HB: Yes, absolutely. Systematic discrimination against minorities are mostly indicative of a general disrespect for human rights which, sooner or later, will also negatively affect members of the majority. To formulate it in positive words, safeguarding the human rights of minorities constitutes a crucial part of a society's common good and fosters a healthy development of democracy. My colleague Rita Izháq, Independent Expert on minorities, once used the analogy of women's rights activists who of course should try to get men on board of their agendas, persuading them that in the long run society as a whole would benefit. The same is true for the rights of minorities that might be misperceived as privileging certain groups at the expense of the majority but as a project from which finally the whole society will benefit.

LO : *When could we have an International Covenant on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief in the United Nations, as is the ICCPR? Or, is this only a dream today?*

HB: I'm afraid we'll not see this in the next ten years or so. Moreover, we should also remain careful in this respect. Given the current climate in the international community, a covenant on this issue would likely be used by many states to dilute existing standards of freedom of religion or belief. My advice for the next years would be: Let's defend and further develop the solid standards that we have, in particular with Article 18 of the UDHR, Article 18 of the ICCPR and the interpretative work accomplished by the UN Human Rights Committee (i.e. the expert body in charge of monitoring the ICCPR).

LO : *After 9/11, we can see more resolutions on religious freedom or belief in the UN initiated by Western countries and, recently, also by Islamic countries (OIC). There are also many meetings, conferences, symposiums, and guidelines which are growing in the entire world, whether at a governmental, UN, OSCE, COE or EU level. Why do you think this occurs, what message does it give to society, and how can the UN receive more political power for the implementation of these resolutions?*

HB: The numerous resolutions show that the topic remains politically hot. While 20 years ago many academics were still convinced that religion would gradually become a merely private matter, we have recently witnessed the great public influence that religious communities and religious leaders, more specifically play in many societies – for the better or the worse. Safeguarding freedom and equality of human beings – and indeed all of them – in this often contentious and highly emotional field requires enormous investments. At the same time, one should bear in mind that all important changes finally must come from within a society; they can't be just imposed. International organizations such as the UN can play a supportive role by engaging in capacity building on the ground (e.g. the establishment of national human rights institutions), by insisting on the implementation of binding standards, by conducting regular monitoring, by facilitating communication across political and religious boundaries etc.

LO : *What value and impact did the recent EU FORB Freedom of Religion and Belief Guidelines have on EU foreign policy?*

HB: The EU has committed itself in a public document to use all its diplomatic facilities in a coordinated manner to monitor the situation of freedom of religion or belief worldwide. This can include sending observers to tri-

als, inviting members of harassed minorities to conferences, supporting inter-religious dialogue initiatives and even speeding up the issuing of visas in crisis situations. Coordinated efforts of 28 EU member states can actually make a great difference and could impress states that continue to abuse religious freedom. – A few months ago (in March or April 2013), Norway’s foreign office issued a similar paper more specially focusing on religious minorities. If more states decide to follow this example, we might even be able to see a diplomatic competition over who is best in promoting religious freedom. That would be an interesting exercise.

LO : *How can existing and emerging obstacles to the enjoyment of the right to freedom of religion or belief be identified and solved?*

HB: It is important to establish good connections with people working on these issues in the various countries themselves. Normative standards are universally binding, but the learning processes which countries have to go through in order to fully implement freedom of religion or belief nonetheless remain very different ones. For instance, in most Arabic states a Muslim woman is not allowed to marry a Christian man. I just returned from Sierra Leone, a country with a Muslim majority population, in which all forms of interreligious marriages easily receive the blessing of families, communities and religious leaders. Headscarf debates in France or Germany have very different features from those taking place in the UK or Canada. Conscientious objection to military service continues to be a big political issue in states like South Korea, where hundreds of objectors are imprisoned, while this topic naturally doesn’t play a role in countries that have abolished mandatory military service. In short, the recommendations which I have formulated concerning various countries are always very specific although at the same time based on universal normative standards. In any case, you have to familiarize yourself with each context on which you work. It’s an ongoing learning process.

LO: *What can the UN do when states refuse to accept and receive the Special Rapporteur’s visits or recommendations?*

HB: The Universal Periodic Review (UPR) as practiced in the UN Human Rights Council since 2008 has led to an impressive increase of “standing invitations” to mandate holders. However, in practice we still often face problems when applying for a visit. One should not forget that Special Rapporteurs

work pro bono which means they all have another job to perform. In my case, I have the full teaching obligations at my university in Erlangen-Nuremberg and hence cannot undertake any official country visits during the semesters. One of the obvious weak points within the current system of Special Procedures is a general lack of systematic follow-up activities concerning recommendations. In September, I will participate in an interreligious conference in Cyprus which will give me an opportunity to follow up on recommendations enacted through last year's official visit to this country.

LO: *What role does civil society and INGOs have today toward the United Nations in regards to peace, understanding and stability between people, cultures and religions of all places?*

HB: To give you a short answer: without civil society organizations the whole system would largely remain inefficient. Human rights and all the other goals mentioned in your question can only develop through the critical interplay of government and non-governmental organizations. While governments carry formal responsibilities under international law, various organized and spontaneous monitoring systems must complement one another. When attending UN meetings in Geneva and New York I always meet with NGOs as well, and it's there that I really feel at home. It is good that different NGOs have different profiles.

We need those who work on human rights broadly, across the entire spectrum of rights, such as *Amnesty International* or *Human Rights Watch*, but equally important are the contributions of highly specialized organizations like *International Association for the Defense of Religious Liberty* (IADRL) who have a particular expertise in promoting freedom of religion or belief. So please continue your commitment and network with others in order to create practical synergies.

LO: *Thank you so much for your kind consideration regarding IADRL. In order to create "practical synergies" and promote human rights and religious liberty for all people, the International Association for the Defense of Religious Liberty is committed to international or national levels - by its network and chapters - to promote and defend the principle of religious liberty and is working to stress respect for one's differences as a useful tool for PEACE and UNDERSTANDING between people.*

For the concluding question of this interview, Professor Heiner Bielefeldt, what are your main requests and recommendations regarding religious liberty and issues of conscience in favor of peace and understanding between people?

HB: Oh my goodness, there is too much I could say. Now that I have just returned from Sierra Leone I would like to take this opportunity to present the culture of inter-religious cooperation that I have witnessed there as a best practice example. The joint efforts of religious communities – Christians and Muslims from different denominations – to rebuild the country after a brutal civil war are amazing. And this comes from one of the economically poorest countries in the world.

Let me conclude with a message of hope based on experience: human beings can make a difference, and commitment to peace can bear fruits.

LO: *Thank you so much Professor Heiner Bielefeldt, Special Rapporteur of United Nations on Freedom of Religion or Belief. We appreciate your interview for this edition of Conscience. We wish you many victories at international levels in favor of people or persons, children, students, women, migrants, religious minorities and other people that are persecuted or discriminated regarding the liberty of conscience and religion. We like to help and cooperate with you and the Office of High Commissioner of Human Rights in defending the dignity of the person and human rights for All people.*

United Nations Human Rights Council and its Resolutions on Freedom of Religion or Belief

*Laura Dupuy-Lasserre*⁹

The enjoyment of the freedom of religion or belief by all persons is still a challenge, as it is the realization of many other human rights, unfortunately.

Building on Article 1 of the Universal Declaration of Human Rights, of 1948, which states that “All human beings are born free and equal in dignity and rights”, the universality, indivisibility, interdependence and interrelationship of all human rights and fundamental freedoms was clearly stated in the Vienna Declaration and Program of Action of the UN Summit on Human Rights held in Vienna in 1993, twenty years ago. It also stated in its paragraph 5 that “The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms^{1a}.”

This sets the framework to address any human rights problem, while reminding of the individual duties and state responsibility as stated in Article 29 of the Universal Declaration, “(2) In the exercise of his 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^{2b}.” Therefore the rights of others will always impose some limits, as does the law to preserve public interest in a democratic society- referring to non-abusive or discriminatory legislation.

Regarding specifically the freedom of religion or belief, one must have in mind Articles 18 and 19 of the Universal Declaration¹⁰¹, as well as Articles

9 Ambassador, Permanent Representative of Uruguay since 2009 and former President of the Human Rights Council (2011-2012) to the United Nations in Geneva and other international organizations.

10 1 UDHR, 1948:

Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes

18, 19 and 20 of the International Covenant on Civil and Political Rights -ICCPR-¹¹², since this human right is very much connected to the enjoyment of the freedom of opinion and expression.

These instruments already provide a clear guide on how to implement both and the ICCPR goes even further on some allowed restrictions. The practice though shows certain abuses of the application of limitations to these rights and therefore, the relevant human rights treaty bodies such as the Committee on Human Rights or the Committee on the Elimination of Racial Discrimination -CERD-, have attempted to help orient States Parties through their specific concluding observations, as well as through general comments on is-

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.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

11 2 ICCPR, 1966:

Article 18

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.

Article 19

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.

Article 20

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.

sues of particular interest¹²³. In the same way, Human Rights Council thematic special procedures, like the Special Rapporteur on Freedom of Expression and Opinion¹³⁴ and the Special Rapporteur on Freedom of Religion or Belief¹⁴⁵, or even the Independent Expert on Minority Issues and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, have been providing advice through their reports to the Council or the UN General Assembly and through public communiqués as needed.

For years, through different joint communiqués, UN and regional Rapporteurs on freedom of opinion and expression have been reminding of the need to focus on human rights and its violations (for example, an attack or discrimination against persons based on their adherence to a religion or belief or for being non believers), rather than on protecting religions per se, calling to leave aside controversial concepts like defamation of religions, which can be applied in a discriminatory manner protecting one religion or belief over others or used to prevent normal criticism toward powerful religious leaders or more broadly silence members of religious minorities or non believers, intimidating them and reducing their participation in society and even sometimes sentencing them to the death penalty or a life-sentence for non serious crimes, or through criminal types very vaguely defined (different laws on apostasy, blasphemy, inciting religious unrest, contempt of heavenly religions, outraging religious feelings, etc.).

The idea behind a human rights approach is to protect every single person independently of his or her “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”, recog-

12 3 **General comments** by h.r. treaty bodies:

general comment 22 of the UN Human Rights Committee on the right to freedom of thought, conscience and religion (article 18) - link: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/9a30112c27d-1167cc12563ed004d8f15?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d-1167cc12563ed004d8f15?Opendocument)

general comment 34 of July 2011 (CCPR/C/GC/34) on Article 19: Freedoms of opinion and expression and the relationship between articles 19 and 20 of the ICCPR - link: <http://www2.ohchr.org/english/bodies/hrc/comments.htm>

general recommendation 15 by the CERD on article 4 of the Convention - link: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/e51277010496eb2cc12563ee004b9768?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e51277010496eb2cc12563ee004b9768?Opendocument)

13 4 **A/67/357 (of 7 September 2012)** focused on how to reconcile the need to protect and promote the right to freedom of opinion and expression, on the one hand, and to combat discrimination and incitement to hatred, on the other, with recommendations to combat hate speech effectively without unduly curtailing the right to freedom of opinion and expression.

14 5 **A/HRC/22/51 (of 24 December 2012)** on the need to respect and protect freedom of religion or belief of persons belonging to religious minorities and **A/HRC/19/60 (of 22 December 2011)** on the role of the State.

nizing they have equal and inalienable rights; being this protection not a privilege given by a state but based on the inherent human dignity, and on the need to promote his or her development free from fear and want^{3c}. The freedom of thought, conscience and religion is a “neutral” freedom not attached to an idea or object. Accordingly, no predominant or “superior” ideology or “truth”, including religions or beliefs, should be imposed on anyone, history having already shown the impacts of totalitarianism. Furthermore, some protection and reasonable accommodation to facilitate a free and non-discriminatory development of each individual and communitarian identity may be needed, while respecting the rights of others and recognizing that all societies -though with a clear national identity- are more or less multicultural. The principles of equality and non-discrimination are key.

Problems arise all over the world, as it has been stated by internationally recognized experts and also by states’ representatives, during inter-governmental dialogues, such as the Universal Periodic Review (UPR) of the HRC. Problems may arise in countries where there is a state official religion, where there is not a clear division between the political and spiritual aspects, and repressive or arbitrary laws or jurisprudence may be applied, but also in secular countries, if different religious expressions or signs may be restricted without a clear public interest justification and end up negatively affecting the enjoyment of other rights as well. Most clearly, negative stereotypes may happen everywhere, basically but not only based on historic reasons and when exposed each time more in this globalized world to migrations and social and cultural diversity. Crisis may also exacerbate xenophobia and even be used for political purposes. Scapegoats change in societies.

To combat this negative stereotyping and the discrimination, hate and violence that may result, the key lies in education, public-awareness campaigns, political or social and religious leaders expressions and professional training which promote understanding of different cultures and religions, tolerance, respect and dialogue, as well as human rights. The freedom of opinion and expression is also central in a democratic society. To combat stereotypes it should only be restricted through criminal offences following the principles of legality, proportionality and necessity¹⁵⁶. To assess the severity of the hatred, a six

15 6 paragraph 18 of the Rabat Plan of Action:

“18. Article 20 ICCPR requires a high threshold because, as a matter of fundamental principle, limitation of speech must remain an exception. Such a threshold needs to be read in consonance with Article 19 of the ICCPR. Indeed the three part test for restrictions (legality, proportionality and necessity) also

part threshold test was recently proposed by internationally recognized human rights experts, by looking into the context, the speaker, the intent, the content or form, the extent of the speech and the likelihood of harm, including imminence¹⁶⁷. For the other cases below this threshold, suppressing or criminalizing

applies to incitement cases, i.e. such restrictions must be provided by law, be narrowly defined to serve a legitimate interest, and be necessary in a democratic society to protect that interest. This implies, among other things, that restrictions: are clearly and narrowly defined and respond to a pressing social need; are the least intrusive measures available; are not overly broad, in that they do not restrict speech in a wide or untargeted way; and are proportionate in the sense that the benefit to the protected interest outweighs the harm to freedom of expression, including in respect to the sanctions they authorize.”

16 7 paragraph 22 of the Rabat Plan of Action:

“22. It was suggested to have a high threshold for defining limitations on freedom of expression, for defining incitement to hatred, and for the application of Article 20 of the ICCPR.

To establish severity as the underlying consideration behind the thresholds, the incitement to hatred must refer to the most severe and deeply felt form of opprobrium. To assess the severity of the hatred, possible issues may include the cruelty of what is said or of the harm advocated and the frequency, amount and extent of the communications. In this regard, a six part threshold test was proposed for those expressions which are criminally prohibited:

- Context: Context is of great importance when assessing whether particular statements are likely to incite to discrimination, hostility or violence against the target group and it may have a bearing directly on both intent and/or causation. Analysis of the context should place the speech act within the social and political context prevalent at the time the speech was made and disseminated
- Speaker: The position or status of the speaker in the society should be considered, specifically the individual's or organisation's standing in the context of the audience to whom the speech is directed.
- Intent: Article 20 of the ICCPR requires intent. Negligence and recklessness are not sufficient for an article 20 situation which requires “advocacy” and “incitement” rather than mere distribution or circulation. In this regard, it requires the activation of a triangular relationship between the object and subject of the speech as well as the audience.
- Content or form: The content of the speech constitutes one of the key foci of the court's deliberations and is a critical element of incitement. Content analysis may include the degree to which the speech was provocative and direct, as well as a focus on the form, style, nature of the arguments deployed in the speech at issue or in the balance struck between arguments deployed, etc.
- Extent of the speech: This includes elements such as the reach of the speech, its public nature, magnitude and the size of its audience. Further elements are whether the speech is public, what the means of dissemination are, considering whether the speech was disseminated through one single leaflet or through broadcasting in the mainstream media or internet, what was the frequency, the amount and the extent of the communications, whether the audience had the means to act on the incitement, whether the statement (or work of art) was circulated in a restricted environment or widely accessible to the general public.
- Likelihood, including imminence: Incitement, by definition, is an inchoate crime. The action advocated through incitement speech does not have to be committed for that speech to amount to a crime. Nevertheless some degree of risk of resulting harm must be identified. It means the courts will have to determine that there was a reasonable probability that the speech would succeed in inciting actual action against the target group, recognising that such causation should be rather direct.”

speech is not an option but rather strong public rejection by society or leaders of acts that may be perceived as discriminatory or offensive and not helping a better understanding between different communities, or civil or administrative sanctions with reparations for victims of discrimination or violence, as needed.

In this regard, one must celebrate the role of the OHCHR in convening a series of expert workshops held at the regional level on 2011 and 2012 as a follow-up to the 2008 Expert Seminar on the links between Articles 19 and 20 of the International Covenant on Civil and Political Rights with regard to freedom of expression and incitement to hatred (working on the demarcation from hate speech, especially in relation to religious issues, in order to assist states in the implementation of international obligations). Its outcome is the “Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”¹⁷⁸, which was adopted on the 5th of October 2012 and launched by the Office of the High Commissioner for Human Rights (OHCHR) at an event at the Palais des Nations, in Geneva, on the 21st of February 2013.

On this occasion, the High Representative of the United Nations Secretary-General for the Alliance of Civilizations, President Jorge Sampaio, referred to the need to unlearn intolerance through education, awareness, the role of the media, and intercultural dialogue, in order to tackle the root of extremism (stereotypes and misconceptions on migrants or minorities) and prevent crisis (sometimes sectarian ones which polarize and divide countries) and learn to deal with them properly. He pointed also to the strengthening of the democratic fabric of societies (respect of all human rights and freedoms) and to the Rabat Plan of Action as a frame for cooperation.

The Special Advisor of the UN SG on the Prevention of Genocide, Mr. Adama Dieng, praised the Rabat Plan of Action as a timely document. He reminded how sometimes language with implicit stereotypes can kill, instigating hatred and atrocities crimes (in reference to the Rwanda genocide). Rather than focusing on the prohibition of speech or exceptional measures according to Article 20 of the International Covenant -ICCPR-, he called to focus on prevention, looking into root causes like discrimination and racism and promoting human rights and tolerance, to counter hate speech.

¹⁷⁸ **8 the Rabat Plan of Action** on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence - link: http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf

The Special Rapporteur on Freedom of Opinion and Expression, Mr. Frank La Rue, and the Special Rapporteur on Freedom of Religion or Belief, Mr. Heiner Bielefeldt, called to read Article 20 of ICCPR in the light of Article 19, that is, to ban or stop hate speech but also to counter it with more speech, facilitating a better understanding through a free flow of ideas and information. They referred to the very precise criteria or threshold to criminalize speech -as proposed in the Rabat Plan of Action-, since it is an exception, and called not to arbitrarily criminalize speech in view of differing views or opinions or expressions of dissent. They called for prevention measures at the level of the media (voluntary ethic codes on how to handle news due to the reactions they may generate in the country or elsewhere) and of the authorities and society (positive speech reaffirming equality in terms of human rights and dignity -not to leave alone those more vulnerable- and reminding that there are speeches that though legal are not correct or helpful to promote better understanding of diversity and relationship among communities; trust building, eliminating root causes of violence: negative stereotypes and prejudices; de-escalation of tensions; symbolic acts of solidarity; minority voices on the media; importance of a vibrant culture of public discussion).

The Representative of the OIC greeted these conclusions and reminded HRC Resolution 16/18 which aims for a collective preventive action and request states to share national information and efforts with the OHCHR, reminding also the importance of regional human rights mechanism in its relationship with the U.N. system¹⁸⁹. He called to de-politicize the debate and preserve consensus around what was Resolution 16/18 at the Council.

The European Union greeted also the Rabat Plan of Action as a reference document to guide national efforts in complying with international human rights standards, and stressed its holistic approach which includes education -including on human rights- and dialogue to promote tolerance and pluralism. The role of equality mechanisms was also highlighted.

Subsequently, the Rabat Plan of Action and its conclusions and recommendations have been noted by the HRC Resolution on “combating intolerance,

189 As an example of regional standards, we may look into the American Convention on Human Rights - Art. 13 - on Freedom of Thought and Expression and relevant doctrine by the Inter-American Commission on Human Rights -IACHR- and the regional Special Rapporteur on Freedom of Expression, like the Declaration of Principles on Freedom of Expression, as well as the jurisprudence by the Inter-American Court on Human Rights. link: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26&IID=1>

negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against persons based on religion or belief”, adopted by consensus at the 22nd session, on the 21st of March 2013. A joint statement by states, of cross-regional nature, was also delivered -by Morocco- to highlight this important tool. Hopefully, it will guide our national or local efforts, and particularly our state authorities, in the executive, legislative and judicial powers. More practical follow-up by experts and technical cooperation to states might be needed.

This latest HRC Resolution, A/HRC/22/L.40, builds on the historic Resolution 16/18, of 24 March 2011, which brought the debate in the council back to its human rights focus, and proposed a plan of action to promote at the national level, leaving behind voted resolutions on the controversial concept of defamation of religions, promoted since 1999.

It also refers to violent reactions, which took place in 2012 as a reaction by believers who felt offended and had victims of their own. Obviously this is a sign of the sensitivity attached to religions or beliefs and the importance to address it in an adequate manner, respectful of international obligations on human rights. The Resolution L.40 reaffirmed that “violence can never be an acceptable response to acts of intolerance on the basis of religion or belief”, while “emphasizing the importance of respect for religious and cultural diversity, as well as interfaith and intercultural dialogue aimed at promoting a culture of tolerance and respect among individuals, societies and nations^{4d}”.

One must recognize and celebrate the role played in recent years by the Secretary General of the Organization of Islamic Conference (OIC), Ekmeleddin Ihsanoglu, in finding this constructive approach to problems that are dear to Muslims (namely combating Islamophobia), but also shared by others (who perceive as well religious persecution as a new form of racism). This was evident from 2010 at the HRC and led, in March 2011, to an important diplomatic exercise in Geneva, of listening to different views on the issue of religious intolerance in general, led by the OIC coordinator, Pakistan, and crowned by a successful consensual Resolution referring to people of all religions and beliefs^{5c}.

This Resolution on “combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against persons based on religion or belief” gave path to political efforts at the international level, like the “Istanbul Process” started in July 2011, involving western countries, aimed at supporting national efforts needed, guided by the 8 Points Plan reflected in HRC Resolution 16/18. This political support has been building up and should be promoted if concrete results on the ground are to be achieved.

Therefore, one must call for leaving aside confrontational or divisive avenues.

The old attempts to refer to the combat of defamation of religions, even though internationally legally binding instruments, have not yet disappeared, may be inspired by strong religious national identities mixed with political agendas. Though the international community has been rather united to react to any existing problem, be it Islamophobia or repression of religious minorities, etc., through a clear human rights perspective. Just to signal two examples, among others, the 127th Assembly of the Inter-Parliamentary Union held in Québec from 21 to 26 October 2012 adopted a declaration on citizenship, identity, and linguistic and cultural diversity in a globalized world¹⁹¹⁰. In the same sense, the Intergovernmental Working Group (IGWG) on the Effective Implementation of the Durban Declaration and Programme of Action (DDPA), in October 2012, looked into the role of politicians and political parties in combating racism, racial discrimination, xenophobia and related intolerance, and referred to the need to strengthen democracy, solidarity, tolerance and respect for diversity and human rights. It also encouraged “political parties and political leaders to take actions in their work to combat the continuing incidents of racial or religious intolerance and violence manifested in particular by the derogatory stereotyping and stigmatization of persons based on their religion or belief. The WG also strongly encourages all political parties and politicians to take an active and firm stance in combating hate speech, incitement to racism, racial discrimination, xenophobia and related intolerance, including vis-à-vis their own membership and candidates.”

The HRC has also been adopting resolutions on freedom of religion or belief without a vote, the latest in March 2013 (A/HRC/22/L.9), renewing the mandate of the thematic Special Rapporteur. The European Union leads this traditional initiative and has stated again, *inter alia*, that there is no hierarchy between religions or between victims of the violation of this fundamental freedom.

The UN SG publishes a report on “Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons based on religion or belief” and a panel on religious tolerance was held at the UN in New York on the 2nd of October 2012. Among other problems restated on that occasion, was that repression of freedom of religion

19 10 **Quebec City Declaration** of the 127th Assembly of the Inter-Parliamentary Union, Québec, unanimously adopted on October 26, 2012, following the debate on citizenship, identity and linguistic and cultural diversity in a globalized world - link: <http://www.ipu.org/conf-e/127/res-quebec.htm>

or belief leads to “political and social instability, unrest, at times, culminating in violent clashes and loss of life. When governments actively suppress or repress these freedoms, they marginalize religious communities, exacerbate misunderstandings, and encourage the propagation of harmful and hateful stereotypes.” “No society is perfect but the freedoms enjoyed in pluralistic societies in which diversity of religion and belief is protected, coupled with the rule of law, provide a much more stable foundation for peaceful relations between members of different religions and for positive dynamics in society at large.” The Special Adviser to the UN Secretary-General on the Prevention of Genocide, Adama Dieng, expressed the need to defuse identity-based conflicts, “In a world where societies are more and more diverse, tolerance is more likely to flourish when the human rights of all religious groups are respected and, similarly, human rights can thrive only if different groups are treated in the same way^{6f}.”

To strengthen this preventive and constructive path we all have to commit to tackle the problem of incitement to hatred, as well as all kinds of discrimination and violence that may undermine the freedom of religion or belief based on the existing human rights instruments. Human Rights Council Resolution 16/18 (now reaffirmed and strengthened by Res A/HRC/22/L.40) provides for an integral platform for international and national action, including the concrete proposals contained in the Rabat Plan of Action. There is a need for follow-up by experts, including the HRC Special Procedures and members of Treaty Bodies, regarding issues such as policy options when violence is imminent to be prepared to deal with incidents, and a role of technical cooperation by the U.N. Office of the High Commissioner of Human Rights to support its practical implementation at national and local levels, as needed.

(Endnotes)

1 ^a Author’s note: Ref : <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G93/142/34/PDF/G9314234.pdf?OpenElement>

2 ^b Author’s note : DUDH, art. 29, § 2, <http://www.un.org/fr/documents/udhr/>

3 ^c Author’s note : DUDH, art.2, § 1 ; Preamble, § 1 et 2, website : *idem*.

4 ^d Author’s note : CDH, 22e session, Resolution (A/HRC/22/L.40).

5 ^e Author’s note : CDH, 69e session, Res. A/RES/66/16

6 ^f Author’s note : <http://www.bic.org/news/panel-un-discusses-religious-tolerance>

Freedom of religion and religious minorities: notes on the contributions of the Council of Europe²⁰

Petru Dumitriu²¹

Legal background

The right to freedom of religion is guaranteed under Article 9 of the European Convention on Human Rights together with the right to freedom of thought and conscience.

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change one's religion or belief and freedom, either alone or in community with others and in public or private, to manifest one's religion or belief in worship, teaching, practice, and observance.

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.²²

The first paragraph of this Article 9 is the transposition of Article 18 of the Universal Declaration of Human Rights. It should be recalled that Article 18 was in itself a compromise between the countries that wished to protect the freedom of religion explicitly, on the one hand, and the countries that wanted to protect the freedom to choose an alternative, that is to have no religion at all, on the other hand.

²⁰ Article written on 22 April 2013.

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²² Council of Europe, Treaty Series, European Treaty Series No.5, Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols No. 11 and 14.

A general prohibition of discrimination based on religion is emphatically strengthened by Protocol No. 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

The political view of the Committee of Ministers

Most recently, the political stand of the Council of Europe was made clear in the Declaration of the Committee of Ministers on religious freedom²³:

“We, the 47 member states of the Council of Europe, strongly condemn such acts and all forms of incitement to religious hatred and violence. Freedom of thought, conscience and religion are inalienable rights enshrined in the UN Universal Declaration of Human Rights and guaranteed by Article 18 of the 1966 International Covenant on Civil and Political Rights and by Article 9 of the European Convention on Human Rights, of which the Council of Europe is the custodian. There can be no democratic society based on mutual understanding and tolerance without respect for freedom of thought, conscience and religion. Its enjoyment is an essential pre-condition for living together.”

The Council of Europe tries to consider the issue of the freedom of religion in the perspective of social cohesion and in keeping with the need of culturally diverse societies. In another declaration, the Committee of Ministers emphasized that, in order to reconcile respect for different identities with social cohesion and avoid isolation and alienation of certain groups, it is indispensable to regard respect for human rights and fundamental freedoms as a common basis for all: no cultural, religious or other practices or traditions can be invoked to prevent any individual from exercising his or her basic rights or from participating actively in society, nor shall anyone’s rights be unduly restricted on account of their religious or cultural practices²⁴.

23 Adopted by the Committee of Ministers on 20 January 2011, at the 1103rd meeting of the Ministers’ Deputies.

24 Council of Europe, Declaration by the Committee of Ministers on human rights in culturally diverse societies, 1 July 2009

Institutional tools

The situation of particular groups representing religious minorities has received considerable attention from various Council of Europe bodies. However, the organisation has not attempted to draft a catalogue of separate rights for members of religious minorities. The Council's approach is different from that of the United Nations, which has adopted a declaration on the rights of persons belonging to religious as well as national or ethnic and linguistic minorities.

Nevertheless, The Council of Europe adopted the Framework Convention for the Protection of National Minorities, which in its Article 8 includes provisions relating to the right of every person belonging to a national minority to manifest his or her religion or belief and to establish religious institutions, organisations and associations²⁵. Religion and beliefs are topics under the Framework Convention, especially when they constitute elements of the protected persons' separate identity.

The European Commission against Racism deals with discrimination and intolerance against members of different religious groups in its country reports and has issued General Policy Recommendations on specific problems related to minorities and their practice of religion.

For example, General Policy Recommendation No.5 recommends that the governments of member states, where Muslim communities are settled and live in a minority situation in their countries, among others:

- + ensure that Muslim communities are not discriminated against as to the circumstances in which they organise and practice their religion;
- + impose, in accordance with the national context, appropriate sanctions in cases of discrimination on grounds of religion;
- + take the necessary measures to ensure that the freedom of religious practice is fully guaranteed;
- + take the necessary measures to eliminate any manifestation of discrimination on grounds of religious belief in access to education;
- + ensure that curricula in schools and higher education – especially in the field of history teaching – do not present distorted interpretations of reli-

21 Council of Europe, the Framework Convention for the Protection of National Minorities, European Treaty Series - No. 157.

gious and cultural history and do not base their portrayal of Islam on perceptions of hostility and menace²⁶.

General policy recommendation No. 9 calls the governments of member states to:

- give a high priority to the fight against anti-Semitism, taking all necessary measures to combat all of its manifestations regardless of their origin;
- ensure that actions aimed at countering anti-Semitism are consistently given their due place amongst actions aimed at countering racism;
- ensure that the law provides that, for all criminal offences, racist motivation constitutes an aggravating circumstance, and that such motivation covers anti-Semitic motivation;
- ensure that the law provides for an obligation to suppress public financing of organisations that promote anti-Semitism, including political parties;
- introduce anti-racist education into the school curriculum at all levels and in an integrated manner, including content that builds awareness about anti-Semitism;
- promote learning about Jewish history as well as about the positive contribution of Jewish persons, communities and culture to European societies;
- encourage debate within the media professions on their role in fighting anti-Semitism²⁷.

Successive Commissioners for Human Rights (Commissioners) have raised Article 9 issues in their discussions with individual member states and human rights comments.

In one of his human rights comments, Nils Muižnieks called governments to stop targeting Muslims through legislation or policy, and instead enshrine the grounds of religion or belief as a prohibited ground of discrimination in all realms. States should empower independent equality bodies or ombudsmen to review complaints, provide legal assistance and representation in court,

26 General policy recommendation No. 5: Combating intolerance and discrimination against Muslims, doc. CRI(2000)21 of 16 March 2000. http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N5/Rec05fr.pdf

27 General Policy Recommendation No. 9 ECRI (European Commission against Racism and Intolerance): The fight against anti-Semitism, adopted by ECRI on 25 June 2004, ref. doc. ECRI (2004) 37. http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n9/Rec09fr.pdf

provide policy advice, and conduct research on discrimination against Muslims and other religious groups²⁸.

On various occasions, the commissioners addressed a broader context of the situation of minority religious communities. One such context is related to the freedom of religion in relation to property rights. In one of his reports, Thomas Hammarberg expressed concerns about the uneasiness and insecurity that still seems to surround religious minority groups in some European countries. He recommended awareness-raising activities in order to alert the general public to the benefits of a multicultural society and periodic, open and substantive consultations between the authorities and religious minority groups, thus ensuring dialogue and solutions to major issues affecting religious minorities' human rights.²⁹

On other occasions, the commissioner addressed the issues of the muftis and application of the Sharia law. He observed for example that the continuing practice of appointment of the muftis by the state, excluding their direct election by members of the Muslim minority, caused deep disappointment and reactions by members of the Muslim minority. He also noticed that the Sharia law-related practice, based notably on early 20th century treaties, raises serious issues of compatibility with the undertakings of a member of the Council of Europe following the ratification of the post-1948, core international and European human rights treaties which should, in any case, be effectively applied and prevail.³⁰

The European Commission for Democracy through Law (the Venice Commission) provides advice to states that are in the process of legislating questions on Article 9, on the basis of the *2004 Guidelines for legislative reviews of laws affecting religion or belief* of the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR)³¹. The guidelines constitute an exceptional tool for legislators as they not only define the basic values underlying international standards for freedom of religion or belief but also offer a comprehensive list of issues that may arise in law, from education to property rights.

28 Muslim prejudices hinder integration, Council of Europe, Commissioner for Human Rights Press Release - CommDH034 (2012) July 24, 2012.

29 Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey on 28 June - 3 July 2009, CommDH(2009)301, October 2009.

30 Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Greece on 8-10 December 2008, CommDH(2009)9, 19 February 2009.

31 Available at: <http://www.osce.org/odihr/13993>.

Contributions brought by the European Court of Human Rights³²

The Council of Europe's work in the field of freedom of thought, conscience and religion is guided by the extensive case law of the European Court of Human Rights (the Court) and the principles developed over time.

One of the principal obligations that states have assumed under Article 9 of the ECHR is that of neutrality and impartiality vis-à-vis communities of believers³³. This obligation does not automatically put into question the existence of state churches or similar historical arrangements. However, states are obliged to extend any measures they take to protect a believers' community to all communities placed in a comparable situation.

According to the court's case law, states that wish to treat some communities differently must be able to advance "an objective and reasonable justification". They must be able to show that the differences "pursue a legitimate aim" and there is "a reasonable relationship of proportionality between the aim and the means".

States must refrain from taking sides in religious disputes. Their education systems should not involve the compulsory teaching of particular Article 9 beliefs to non-followers. Most importantly, the authorities cannot invoke a person's Article 9 beliefs to refuse one's rights or opportunities that should be available to everyone.

The obligation of neutrality and impartiality does not always exclude the presence of religious symbols in some public places; this can be tolerated under certain conditions. Nor are the authorities precluded from providing objective information on the dangers involved in the activities of some believers' communities, subject to certain safeguards.

At the same time, the states have the obligation not to curtail the exercise of Article 9 activities unless this is necessary in a democratic society to further a legitimate public aim in accordance with the law.

The obligation of states goes beyond neutrality and impartiality. For example, the procedures for granting a legal status to religious organisations - in-

32 This section and the next (data collection) are partly based on the report of the Council of Europe - Thematic Debate of the Committee of Ministers: "Freedom of religion and of religious minorities," 13. December 2012. Ref. SG / Inf (2012) 31. [http://www.coe.int/t/dghl/standardsetting/cddh/CD-DH-DOCUMENTS/CDDH\(2013\)009_FR.pdf](http://www.coe.int/t/dghl/standardsetting/cddh/CD-DH-DOCUMENTS/CDDH(2013)009_FR.pdf)

33 The term also covers non-believers to the extent that they enjoy protection which conforms with Article 9 of the ECHR.

cluding that of registration - must not be unnecessarily burdensome (neither in the way they have been designed nor in practice) and must not involve a review of the “legitimacy” of the community’s beliefs in themselves.

Even when there is a specific historical background (for example, some communities have been operating in the territory of states since before the latter’s creation), states need to take a proactive approach in solving legal-personality issues. Sometimes, difficult restitution and succession issues arise. Property questions aside, the authorities should not use the legal-personality recognition procedures to question the right of believers’ communities to identify themselves in a particular way.

Irrespective of whether a community has decided to acquire legal personality, states must allow for awareness-raising by believers, for the free availability of relevant publications, for gatherings by believers (also in an organised, regular manner), and for the display of symbols.

States also have the obligation to protect believers from third parties. The prohibition of religious discrimination extends to the private sector. States must provide protection to victims. Comprehensive anti-discrimination legislation should be enacted and specialised bodies should be created. Legal aid should be available to those who wish to pursue their claims before the courts.

Data collection

Another obligation of states is related to the right not to disclose Article 9 beliefs. Although states may not oblige individuals to disclose their beliefs by, for example, making such information figure on identity documents, there are many occasions in which individuals are required to make declarations that could give an indirect indication in that respect. National arrangements must treat all beliefs and the absence thereof equally and individuals should not be required to justify their choices.

At the same time, the collection of equality data remains a sensible issue. On the one hand, accurate statistics on the performance of vulnerable groups (including many religious minorities) in key social fields are needed to design effective anti-discrimination policies and, of course, to measure their impact. On the other hand, a considerable number of states maintain that their legal orders allow little room for the collection of such data. The information collected should be kept confidential and it should be provided on the basis of informed consent and the voluntary self-identification of individuals as belonging to a believers’ community.

New challenges

The divide between secular and religious values in the intellectual and political debates seems to be increasing. Some recent declarations by European politicians indicated that religion and identity have an increasing place on the political agenda. While statements to this effect have not been entirely overt, certain factors suggest a new concern about a growing polarisation between secular and religious values in Europe.

Popular support of nationalist and xenophobic parties has increased dramatically, and even moderate politicians have started to condemn practices of religious and ethnic minorities (both old and new) in the name of Europe's secular values. The recent German court ruling on the legality of ritual circumcisions and Marine Le Pen's comments on wanting to ban the Jewish kippa and Islamic veil in the streets of France, among others, have sparked debates about whether Europe can or should tolerate values from minority religions and cultures.

Various studies show diminishing levels of trust in religious institutions across Europe and growing secularisation, even in some Council of Europe member states that still have deeply rooted religious beliefs. This may explain why religious communities have embarked on a counter-offensive against secularisation in some countries.

Religious institutions and religious activist groups have started to use the concept of natural law to defend their positions on issues such as gender equality and family law. These groups openly criticize psychological or evolutionary theories. They are lobbying on topics such as freedom of expression, freedom of assembly, the right to wear religious symbols, the legal autonomy of religious institutions, or to avoid stem cell research and abortion.

One of the problems is the confusion between belief and institutionalised religion. Churches and religious groups fight for influence and power. Adherence to a religion on the part of individuals depends increasingly on external factors and is not always reflected in day-to-day behaviour. Many matters such as the veil, which are related to religious identity, are essentially questions of culture and not of belief.

Another area of essence is the relationship between moral priorities and human rights. The debate about whether a moral system takes priority over human rights is central here. But this notion has legal and religious interpretations which are contradictory. The question as to which legal philosophy prevails will sooner or later become crucial in the debate. If these issues are not clearly de-

fined, certain religious groups, Christian as well as Muslim, may find it useful to re-interpret the values underlying the European Convention of Human Rights according to their own interests.

Cultural identity

In times of crisis, people tend to search for a sense of identity. The reinforcement of these traits in religious terms is sometimes more important than finding practical solutions. People whose beliefs are denied, who have been excluded and isolated, tend to over-affirm their values and insist on their religious beliefs as a way of defining who they are.

It should also be borne in mind that secular and religious attitudes are not necessarily mutually exclusive. Many Europeans maintain a scientific as well as belief-based approach to life, combining both and needing each at different times in their lives. In fact, the anti-religious position can go too far in this regard.

The Council of Europe is seen in some countries as a liberal agent, secularising policies and “imposing” liberal interpretations of human rights. Many cases now being brought before the European Court of Human Rights are related to the freedom of religion and concern cultural identity topics, such as the wearing of religious symbols. Bringing a case before the national courts is sometimes a conscious strategy, a step towards asking the European Court of Human Rights to take the final decision.

Since Europeans react strongly to religious conflict for historical reasons, the Council of Europe should work on new ways of resolving the conflict between freedom of expression and freedom of religion. The rulings of the European Court of Human Rights are a fundamental tool for resolving identity and religious tensions. The Council of Europe can contribute to define a “European position” on religion and belief in our societies for years to come through the decisions of the European Court of Human Rights.

The Council of Europe can serve a vital role in Europe and within European societies by resisting any attempt to divide human rights protection from religion, and by remaining vigilant against forces that try to manipulate the human need for identity or religious belief.

Sharia and human rights

The most sensible issue after the Arab Spring is the relation between Islamic legal tradition and human rights standards. Unfortunately, Western media presents mainly its most shocking aspects in order to attract a wide audi-

ence. They do not offer enough information for a proper understanding of the facts. In Europe, Muslims are the majority in some countries and a minority – usually migrants – in some others.

Sharia is the fundamental religious concept of Islam, namely its law, systematized during the 2nd and 3rd centuries of the Muslim era. Total and unqualified submission to the will of Allah is the fundamental tenet of Islam: Islamic law is therefore the expression of Allah's command for Muslim society and, in application, constitutes a system of duties that are incumbent upon a Muslim by virtue of his religious belief.

It can refer to its divine origin on a more abstract level, but is often used when referring to Islamic jurisprudence or its historical or modern practice. There are contradictions between Islamic law and human rights standards, mainly, but not only, in the field of criminal law and the punishments it prescribes (e.g. stoning, amputation, crucifixion). Consequently some Muslim countries claim special exemptions to specific international human rights conventions. There are many aspects of Islamic law, however, that are not at odds with western legal tradition (economic provisions, religious rituals).

Certainly, the strategic way out would be to adopt the legislation in such a way as to expand the compatibility between Sharia and the universally accepted human rights. There have been such attempts to link human rights standards and Sharia. A fundamental principle such as the one expressed in Article 1(a) of the Declaration of the Organization of the Islamic Conference³⁴ is promising:

All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations.

Some think that the two legal systems are not contradictory. There have been attempts to narrow the gap between both systems within the United Nation system. This has been possible regarding certain aspects of civil law. Some attempts to introduce arbitration and mediation have been successful and the legislation has been adapted in Europe in the field of anti-discrimination law to take into account certain obligations imposed by Sharia. In the field of labour legislation a lot has been done regarding religious non-discrimination. If a worker is dismissed on religious grounds in Europe, the case might end in a court.

34 The "Cairo Declaration of Human Rights in Islam" <<http://www1.umn.edu/humanrts/instree/cairodeclaration.html>>, adopted in 1990 by the Organisation of Islamic Cooperation.

Some others notice that the criminal law under Sharia – especially its punishment system – is not compatible with the universal human rights recognized by the international community. And this seems to be one of the parts of a non-negotiable red line. In the case of discrimination of women and of non-Muslims, this line would equally be crossed if Sharia was applied.

These are cases where the limits for the flexibility of Western legislation are obvious.

Since the emergence of so-called political Islam, the introduction of Islamic legislation or a stricter version of the Sharia has become a highly political issue. However, violations of human rights are more related to political problems than to legal matters. The whole discussion is frequently used by populist politicians both in Europe and its neighbourhood. The universality of the human rights has been questioned.

At the same time, things are constantly evolving. Some of the punishments applied by Islamic criminal law, or the treatment of women, were the norm not so many years ago in Europe. Now things have changed. Providing standards and activities on Islamophobia could also deliver an early response to problems which will most probably increase in the coming decade. In the context of human rights, a review of how the case-law of the European Court of Human Rights addresses issues relating to Sharia law could be envisaged. The promotion of the membership of the Venice Commission among the Arab and Muslim countries is an obvious way to increase dialogue on the contradictions between the international law of human rights and Sharia.

The Council of Europe, with its most advanced human rights standards, can be the best protagonist in fuelling the fine tuning between the freedom of expression and the freedom of religion: The Council of Europe can aim at maximizing the influence of democracy and human rights awareness among Muslim believers, while minimizing the incompatibilities between Sharia and the human rights and fundamental freedoms which have been recognized as universal by the United Nations. Correct legal practices and, above all, sensible politics and elimination of excess at the European level will certainly help solutions at the global level. The power of the Council of Europe is soft in political terms but hard in normative and monitoring terms.

Secularism: confronting a familiar enemy

Robert Seiple³⁵

On the 10th anniversary of "9/11", the Mayor of New York City unilaterally decided that no religious leader would have a role in the commemorative events. Mayor Bloomberg apparently forgot that this disaster did not have people rushing to military bases or flocking to the steps of City Hall. No, the magnitude of events drove the population to our houses of worship. For weeks, churches, synagogues, and mosques entertained overflow crowds, worshipers seeking help, healing and assurance that the Divine still transcended the depravity unleashed on our world. But in the Mayor's mind, religious sensitivities bore the potential for needless controversy. Ironically, religion would no longer have a role in a narrative that was really all about religion.

There is a metaphorical equivalent in China today. China has legislated the right to religious freedom³⁶. But government bestowed rights, by definition, are not "inalienable". Once given, governments can also dictate how those rights are to be exercised. In China, one has the freedom to believe but lacks the freedom to practice that belief. **The lack of implementation rights negates the pretense of this human right.** China fears that which is not understood, that which can't be controlled. Besides, as the Mayor's actions suggest, secularism is all about freedom from religion. This is not a new phenomenon. Two thousand years ago a carpenter from Nazareth rode a small donkey into Jerusalem. The event drew crowds. There was singing and palm waving, a veritable parade. The Pharisees, the religious leaders of that day, got nervous. **Jesus was told that he would have to quiet the crowds if he didn't want his parade permit revoked.** His response suggested that a crowd coerced into silence would be replaced by the stones of the Judean countryside rising up to sing at the top of their collective voices. The triumphal entry into the holy city continued [The Bible, Lk 19:28-40].

35 Roving United States ambassador for International Religious Liberty (1998-2000). He is currently the President of IRLA (in the US). He is also the founder of the *Institute for Global Engagement* and was the President for eleven years. He was the President and Director General of the *Council of America's First Freedom*.

36 See the Constitution of 1982 and amendments until 2004, chapter II, article 36 : <http://patrick.doan.pagespersoorange.fr/constitution.htm#retindex>

Secular discomfort with things religious has been around a long time! Sadly, so have the Pharisees. Today, I am most concerned with the Pharisees, the religious establishment, the so-called guardians of all things spiritual. My thesis is straight forward: **the church has been complicit in the secularization of the West.** This is not meant to be a blanket indictment on all denominations or all ecclesial orders, but each house of worship will be able to find itself on one side or the other of this secular divide.

The church has massively misunderstood what it means to be “in the world, but not of the world.” [Lk 17:11,16]. Unfortunately, many feel that relevance can only be achieved through an embrace of our current culture. Take consumerism for example, what former Czech President, Vaclav Havel, speaking to a joint US Congress, called “a selfish cult of material success.”³⁷ A segment of the church has been much less poetic, referring to this phenomenon as a “Health and Wealth” gospel. “When you pray for that Winnebago (motor home), don’t forget to tell God what color you want.” Absurd? Yes, but prevalent, and the ultimate trivialization of the gospel. We’ve become a nation of safety nets, protective insurance and a long-term investments, as we clothe our relevance with our wealth, **a far cry from the One who removed His robe to wash the feet of His disciples.**

Our strongest beliefs, our oldest creeds, have been softened by church leaders who seemingly yearn for this culture’s endorsement. Moral “certitude” has been replaced by an “easy ecumenism,” a toleration that ensures a lower spiritual common denominator as differences are brushed aside. We no longer have a clear “place to stand” [Ps 40:3].

Sin has been downgraded to a sickness, nothing more than a low grade cultural infection. Jesus has been modernized and domesticated, an exercise carried out with no thought of the pitfalls involved. Hell is no longer the ultimate separation from God, but rather a fear-monger’s myth from which we need to separate. Resurrection comes across as triumphalism by some and a mere feeling of an uplifted spirit by others. The authority of the sacred texts is brushed off as irrelevant musings, an unfortunate crutch for the weak among us. A prophetic word has succumbed to cheesy psychobabble, or legalese, if property rights are involved!

Denominational leaders have set the agendas and “diversity” tops the “to do” list. Indeed, for many, **diversity has replaced orthodoxy on the altar of worship.** This diversity represents reductionism of the worst kind. The Biblical

37 21-09-1990 speech. <http://old.hrad.cz/president/Havel/speeches/1990/2102.html>

text, for example, trumpets a God and a world that “He so loved”, that “whosoever” believes might receive the ultimate blessing of eternal life (John 3:16). The concept of the “whosoever” is key. **All may partake, enrollment is open, free of distinctions, devoid of bias, and not a hint of coercion to muddy the waters of free choice.** This is diversity kept whole, a common freedom to believe or not, where in the words of the Apostle Paul, “there is neither Jew nor Greek, male or female, rich or poor.” (Gal3:28)

Unfortunately, many churches have reduced diversity to a lifestyle issue viewed solely through the prism of sexual orientation. **This is where the last remaining energies of a weakened institution are being exhausted**, where an uncritical embrace of culture has challenged theological boundaries.

Dr. John Seel, a cultural renewal entrepreneur, sums up the secular transformation of our religion this way:

“Religious conviction has become a consumer choice, riddled with expressive individualism and couched as the therapeutic self-help church of Oprah.”³⁸

More succinctly, we have met the enemy³⁹ and they are us! Today, religious freedom has been upstaged by religious pluralism, a pluralism defined largely by culture. Ironically, the one institution, the church, designed to impact culture has been co-opted and held captive by that culture. William Wordsworth was prescient when he penned his poem, “The World is too much with us.” In all too many occasions, the church has provided “a form of godliness, denying the power thereof.” (II Timothy 3:1-5) and, like Solomon’s foreign wives (1 Kings 11:2), **we have had our hearts turned away from things spiritual to the more secular trappings of culture.**

As a result, we have lost our prophetic voice and our seat at the table of relevance. Is it any wonder that church attendance has slipped, that national denominational offices are short of cash, that **certain age groups have all but disappeared from the Sunday pews?** The challenge of a Christ-centered life and the way of the cross is not being delivered with the same passion that characterized the “learned obedience” of Christ’s Gethsemane experience [He 8:5]. In fact, it is absent.

38 ‘The Church of Oprah’ is the title of an article published in 2000 by Christianity Today featuring Oprah Winfrey, American TV host and producer, known for her talk-show, ‘The Oprah Winfrey Show’. The show has made her one of the most influential women in America, a symbol of spirituality and philanthropy.

39 ‘We Have Met the Enemy and He Is Us’, title of a cartoon by American Walter Kelly, *We Have Met the Enemy and He Is Us*, Paperback edition, 1987.

What can we do? **How do we go about the task of “cleansing the temple?”** American intellectual Norm Chomsky responded to the speech Havel gave to Congress this way:

“An embarrassingly silly and morally repugnant Sunday school sermon.⁴⁰”

Obviously we cannot look to the secularist, and a secular society for help. **The church has to regain the high ground, and it just may start with language reclamation.**

My colleagues have endured a decade of me railing against that overused word “toleration” in our international covenants concerning religious freedom. For me, toleration is a passport to “easy ecumenism”, a condescension of beliefs moving us ever closer towards a lowest common denominator. Toleration is forbearance, not equality, a cheap form of grace bestowed on those I don’t particularly like.

I’ve argued for “respect”, a knowledge-based respect that elevates both our discourse and our actions. Know your own faith at its deepest and richest best, and know enough about your neighbor’s in order to show it respect. **Respect must be built on a comprehensive understanding of the “other.”** Superficiality renders one irrelevant in our increasingly chaotic and dangerous world.

But I think there is more we can do to squeeze the counterfeit out of our places of worship. Paul, writing to the church in Ephesus, reminds us that our respect for others comes out of a “reverence for Christ” (Eph. 5:21). Serving others, submitting to others, sacrificing if necessary, are actions that reflect this Christ directed reverence. We are to love one another, an old commandment with a new twist, “as I have loved you.” » [Jn 13,34]. We serve one another as an expression of how we have been served by Him. And very quickly our human rights are inextricably tied to the values, worth, dignity, and non-coercive methodology of the God of Abraham. An inescapable rationale emerges for human rights. There is no more reluctance or inability to find rationale’s place within our international covenants. **The “why” has been answered.** It is this reverence for Christ, God incarnate in the world that directs us to lead by serving, submitting and, when necessary, sacrificing. As Paul writes, we become “imitators of God”, providing “a fragrant offering” [Ep 5:1-2], ultimately

40 ‘On Václav Havel’s Speech’ extract from A. Cockburn, *The Golden Age Is In Us*, Verso Books; 1995, pg 149-151.

www.Chomski.info/letters/199003.htm

so attractive that even **the mayor of New York must set aside his secular bias and acknowledge the transcendent reality of faith.**

Are there any models where the church has demonstrated its capacity for this unique role? Gratefully there are many, but I want to highlight one that is very special to me. A few years ago, I visited a church in the Central Highlands of Vietnam. The church was celebrating 65 years of service. **When one looks at the last 65 years of Vietnam history, this was certainly going to be a significant event.** War with France and a protracted conflict with America left a very vulnerable church fighting to withstand the most secular ideology of an imposed Communist rule. More recently, over 400 churches were bulldozed into oblivion in the Highlands. Congregations were scattered, **leaders were hunted down and killed.** Although this war on religion had stopped prior to our visit, no one doubted the vulnerability of the church we were scheduled to attend.

The visit was almost cancelled. Monsoonal rains picked this weekend to hit. Bad roads were made worse by horizontal rain turning muddy thoroughfares into dangerously slippery paths through the mountains. Surely no one would be at the church.

To our surprise, we were the last to arrive after the church and the two additional “overflow” tents were filled. **There were over 20,000 worshippers already on site to celebrate this day!** They were there to celebrate a faith not co-opted by culture, a faith not diluted by atheistic pressure. The ultimate secularists would not have the final say; this church, this witness, would make sure of that.

We, along with our government “mindere” were ushered to the front of the church. **There, we witnessed what it means to have “a reverence for Christ.”** The program followed that of a normal celebration, complete with Bible readings, speeches, and testimonies. But the highlight of the afternoon came at the end of the service when 450 young ethnic minorities formed a choir facing the congregation.

These were children whose parents and grandparents fought on the side of America during the Vietnamese war. Some would say they managed to always be on the wrong side of history. Oppressed, marginalized Christians vulnerable in the extreme-now gathered in front of us ready to display their convictions in song.

They sang the Hallelujah Chorus [Haendel]. **They sang as only Vietnamese can sing, at the top of their voices.** They sang with tears in their eyes, smiles on their faces. We stood. **We felt we were on holy ground.** Our tears began to flow with the choir. **All of us knew that something very beautiful was**

happening there that day. The “rocks” outside of Jerusalem were raising their voices in triumph. Faith, irrepressible, reverential faith was alive and speaking truth. **Secularism was not the answer.** The light of freedom of religion would not be extinguished. I’ve often wondered what our government minders talked about that night over dinner!

The youth choir sang the Hallelujah Chorus through twice! “For the Lord God Omnipotent reignith” [Rev 20:6]

Not the Communist Party. Not geo/political realities. Not manufactured pluralism. But the

“King of Kings and Lord of Lords”

Not the false gods of consumerism, political power or universalism. This was “Hallelujah” time, an intensely felt excitement, and a “reverence for Christ.”

The church was acting out its beliefs, its long and learned obedience, and its tangible presence in a difficult land. This church that had gone “through the valley of the shadow of death”, **was 65 years old.** It was alive and well, “and the gates of hell would not prevail against it.” **Neither would secularism.**

The Edict of Tolerance (Edict of Milan) and the development of the relationship between the state and the religious communities⁴¹

Harald Mueller⁴²

It was in Milan on February 313 that the Western Roman Emperor Constantine 1st and the Eastern Roman Emperor Licinius, his future adversary, signed an agreement known as the Edict of Tolerance, subsequently referred to as the Edict of Milan. This agreement dealt with the relationship between state and religion, notably Christianity. The fact that this event dates back exactly 1700 years provides an opportunity to reflect on a few of its consequences. From the perspective of Christianity, and also placed within the context of the terrible persecution carried out in 303 under Diocletian – and pursued with even greater brutality by his successor Galerius in the eastern part of the empire – the Edict of Milan constituted a positive turning point if one considers this excerpt:

“When I, Constantine Augustus, as well as I, Licinius Augustus, fortunately met near Milan and were considering everything [...], we thought, among other things [...] that those regulations pertaining to the reverence of the Divinity ought certainly to be made first, so that we might grant to the Christians and others full authority to observe that religion which each preferred; whence any Divinity whatsoever in the seat of the heavens may be propitious and kindly disposed to us and all [...]. And thus [...] we thought to arrange that no one whatsoever should be denied the opportunity to give his heart to the observance of the Christian religion, of that religion which he should think best for himself [...]”⁴³”

41 Article written on 11 April 2013.

42 Harald Mueller is a judge at the Court of Hanover, honorary member of the German Association for Religious Freedom and Director of the Institute for Religious Freedom at the Friedensau (Germany) University of Theology.

43 German text: http://de.wikipedia.org/wiki/mailänder_vereinbarung. French text <http://bcs.fttr.ucl.ac.be/fe/03/leonard.html#Milan>. Latin texts on religious tolerance (IIth – IVth centuries) by Albert Léonard, professor at Leuven University, published in *Latinter*, 11th year, n° 2, June 2002, p. 34-43.

The Edict of Milan thus ranked Christianity side by side with the other religions practiced in the Roman Empire. It was preceded by an edict from the Emperor Galerius on 30 April 311 that allowed Christians to rebuild their churches and to meet on the understanding that they did not disturb public law and order⁴⁴. Shortly before his death, Galerius put a stop to the persecutions that he had ordered against Christians, having understood that they were senseless. Christianity thus became an accepted religion – *religio licita* – with some degree of legal recognition. Galerius' decree did not however include special treatment for Christians. The Edict of Milan, which came later, developed the instructions given by Galerius and extended them to both parts of the empire. Although Christianity at this point did not have any form of privileged status amongst the religions, simply the freedom to practice one's religion was – at least according to the text of the edict – a guarantee for all equally. This later changed because two generations later, under Theodosius I, the Edict of 28 February 380 proclaimed Christianity to be the state religion. All other religions were banned and after a certain period of grace, their followers were persecuted⁴⁵. How could this have happened so quickly?

One can only explain the transformation of persecuted religion to state religion if one remembers that the Roman Empire adhered to the principle of unity between religion and the empire, according to the belief of pagan antiquity. Religious law (*jus sacrum*) was considered to be part of public law (*jus publicum*)⁴⁶. Since antiquity, Roman emperors had been given the title of Divus after their death, which was also the case for Constantine. During his life, he afforded himself the same rights with regards to the church as previously with the pagan cults. In 321, he decreed that Sunday was a rest day⁴⁷; and in 325, he called a meeting with the Council of Nicaea and took part in debates regarding the nature of Jesus, whereas he did not yet officially belong to the church. He was only baptised in 337 on his deathbed. Before Constantine, the fact that rapidly expanding Christianity refused any form of religious worship of the emperor was considered to be a violation of the constitution, and as Christianity could not be eradicated, the problem was solved by giving it a predominant position

44 http://de.wikipedia.org/wiki/toleranzedikt_des_galerius

45 Karl Heussi, *Kompendium der Kirchengeschichte*, 3th ed. Tübingen 1913, p. 97; v. Campenhausen/de Walle, *Staatskirchenrecht* 4^e éd., Munich 2006, p. 5 ; Lucio de Giovanni, *L'Éditto di Milano : testo, contesto e peso storico*, Chiesa e Potere, Turin, 2013, p. 22.

46 v. Campenhausen/de Walle, loc. cit.

47 Heussi, p. 94.

amongst the religions and by placing the emperor at its head. A theologically neutral state was simply inconceivable at the time.

The mistake inherent in the Edict of Milan did not lie in its statement, of which the wording clearly advocated the coexistence of different religions, but rather in a view of the state that granted its sovereign enormous influence over religious matters. That is how the western part of the Roman Empire saw the development of “Caesaropapism”⁴⁸, a term used to refer to the relationship between church and state in the Byzantine Empire until its fall in the 15th century. The Western Roman Empire collapsed in 395 under pressure from barbarian invasions. This resulted in a power vacuum of which the Roman bishops took advantage and which finally led to papal rule.

The political clashes between church and state under the Holy Roman Germanic Empire (962 - 1806) increased throughout the Middle Ages until the beginning of the modern era. While the temporal rulers attempted to exploit the church for their political ends, the church for its part used this political wing to target real or imagined adversaries. The Reformation constituted a turning point that was bound to have consequences on the balance of power between church and state – since there was now not just one church in the empire but two confessions in competition with each other. To all intents and purposes, the unity sought since antiquity between the empire and religion no longer existed. Protestantism had gained such ground that it could no longer be eradicated as the minorities had been. The Augsburg Treaty, signed in 1555 under the threat of a political implosion, represented considerable progress: it admittedly did not, as in the ancient world, contribute to overcoming a sense of violation of the constitution but it nonetheless made it bearable. The application of the *cuius regio – eius religio* principle gave everyone religious freedom to the extent that the refusal to adopt the confession of the sovereign gave one the right to emigrate (*jus emigrandi*). The territories therefore initially retained a certain religious homogeneity. In the Protestant states, the disappearance of the Catholic ecclesiastical jurisdiction left a gap filled by the ruler who acted as a sort of “Notbischof” – a sort of deputy bishop.

This episcopacy of the ruler⁴⁹ led to a close link between throne and altar that up to a certain point echoed the Constantinian model. In 1799, in his essay

48 v. Campenhausen/de Walle, loc. cit.

49 Martin Heckel, Kirche und Staat nach evangelischem Verständnis, in *Handbuch des Staatskirchenrechts der Bundesrepublik Deutschland*, tome 1, 2^e edition, Berlin, 1994, p. 186,188.

Discourse on religion, Friedrich Schleiermacher already described the “marriage” between the church and the state⁵⁰ as “unhappy”. He had developed the concept of a Protestant Church as “a self-governing unity” rather than being intimately bound up with the organisation of the state⁵¹. The Protestant Church was only freed from it after the First World War with the collapse of the still functioning state church system. The Catholic Church’s situation differed in that it was bound by Rome’s jurisdiction and did not require a ruler acting as bishop⁵². But in its relationship with the state it achieved similar results, albeit with a legal justification differing from that of the Protestant churches. The separation process was probably easier in Germany due to the fact that in the second half of the 19th century, the Catholic Church was subjected to strong political pressure.

In short, one can conclude that the close links established between the state and the church through Constantine’s policy durably shaped the belief that the large churches had their role to play, right into the heart of the 20th century. In 1965⁵³, Joseph Ratzinger described the Vatican II Council’s position on religious freedom and the relationship between church and state as marking the definitive end of the Constantinian era in the Catholic Church. He explained that the stranglehold of the church on the state since Constantine, which had reached its peak in the Middle Ages and in absolutist Spain from the beginning of the modern era, is amongst the heaviest encumbrances of the church in today’s world. According to him, the conceptual merger that was made between faith in an absolute truth embodied in Christ and an institution convinced of its supreme power to serve as a temporal judge, had a profound impact on minds and thereby on the ecclesiastical doctrine pertaining to the relationship between church and state. Ratzinger deplored the inability to understand, beyond the confines of one’s own religion, the situation of others that one could only judge according to criteria that would be foreign to them⁵⁴. He was referring to the position of his church in relation to the heterodox believers and the

50 Friedrich Schleiermacher, *Über die Religion*, published by Christian Albrecht, Francfort/Main and Leipzig, 2008, p. 143. In French: *De la Religion. Discours aux personnes cultivées d’entre ses mépriseurs* (1799), new French translation by Bernard Reymond, Van Dieren Éditeur, Paris, 2004.)

51 Quoted according to Gregor Etzelmüller, www.ekd.de/kirchenrechtliches_institut/download_etzelmuller02_08.pdf

52 v. Campenhausen/de Walle, p. 20, 28 ; Dietrich Pirson, *Die geschichtlichen Wurzeln des deutschen Staatskirchenrechts*, p. 14 in *Handbuch des Staatskirchenrechts*, volume 1, 2nd edition, Berlin, 1994.

53 Joseph Ratzinger, *Ergebnisse und Probleme der dritten Konzilsperiode*, Cologne, 1965.

54 Ratzinger loc. cit. p. 31-32.

minorities which – contrary to the established Protestant churches that were subject to the Peace Treaties of Augsburg (1555) and, around a century later, Münster/Osnabrück (1648) – were in fact subjected without any protection to the combined agitation of church and state. The judicial proceedings against the heretics in the Middle Ages were the sad climax of this reality.

The Protestant Church indeed also opposed religious minorities right up to the 19th century⁵⁵. In Germany an attempt was made to repress the appearance of the free churches, such as the Baptists or Methodists, and to impose legal permits on them. The refusal of certain standards, including children's christenings, could thus be denounced by the local pastor to the consistory of the church, leading to immediate reprisals by public authorities. These might involve injunctions against preachers or measures against parents decided upon by the guardianship courts, such as the forced christening of babies. It should be noted that the concept of the corporative category was also prevalent at the time. That which was considered important was not the individual's decision according to his or her conscience, but rather his or her total integration within the community to which he or she belonged, with the obligation of fulfilling all the requirements connected with this membership. Failure to comply was considered to be an attack on the established order – a phenomenon that dated back to the time of the Ancient Empire.

When this manner of thinking was increasingly questioned in Europe in the mid-19th century, the Catholic Church reacted. In his "Syllabus Errorum", Pope Pius IX included the idea of religious liberty and a possible separation of the church and state among the errors of modern, liberal thinking (art. 55 and 77 of the Syllabus). And it was another century before this resistance decreased. According to the "Dignitatis Humanae" declaration, adopted on 7 December 1965 and thus the final day of the Vatican II Council, religious freedom comes from the natural right of human dignity (art. 2): man can only be answerable to God in the liberty of faith. It carefully concedes that the Catholic Church has not always respected this principle along its journey (art. 12). In the "Gaudium et Spes" pastoral constitution, also adopted on 7 December 1965, it affirms that the political community and the church are both independent and autonomous in their own fields. (art. 76): *"All those dedicated to the ministry of God's Word must use the ways and means proper to the Gospel which in a great many respects*

55 Harald Mueller, Zur rechtlichen Lage von Freikirchen im Deutschland des 19. Jahrhunderts p. 34 (ss) in Spes Christiana, Friedensau, 2006 et www.thh-friedensau.de/de/forschung/020_Spe-sChristiana/020_Ausgaben/05_Mueller_2006.pdf

differ from the means proper to the earthly city. [...] The Church must not place her trust in the privileges offered by civil authority. She will even give up the exercise of certain rights which have been legitimately acquired, if it becomes clear that their use will cast doubt on the sincerity of her witness.” The latter point is in contrast to the Donation of Constantine, which was referred to for centuries to justify demands of the material order, even though it was known to be a fake from the 15th century onwards. Since the Vatican II Council, the different popes have always emphasised the principle of religious freedom. In one of his first public announcements, Pope Francis clearly affirmed that the role of the church was not of a political order (“*la chiesa non ha natura politica, ma spirituale*” – “her nature is not essentially political, but spiritual” 16.03.2013). It remains to be seen whether the evolution of the church corresponds to the vision developed by the pope through a symbolism that is as impressive as it is unprecedented.

In western countries, the ancient principle of unity between religion and the state is now a thing of the past. There are separation systems almost everywhere that more or less explicitly force the state to show a neutral face in religious matters and thus also limit the political influence of the church. There is almost certainly a cause and effect relationship between religious freedom and the systematic separation of church and state. But one cannot in any event assert that religious freedom is greater when church and state are more rigorously separate. After all, religious freedom could also find itself threatened by anti-clerical secularism, which bans the church and religious communities from engaging in any public act whatsoever and in the best-case scenario grants it the status of a private association⁵⁶. Even though in secularised western societies the number of people that are indifferent to any religion is increasing and the number belonging to an established church or even a free church appears to be decreasing, one cannot speak of a global decrease in the importance of religion. The acceleration of globalisation may give a lot of people the impression that national borders are losing their meaning, but religion appears in some way to compensate for what has been lost in terms of identity⁵⁷. This is particularly true for those who are suffering from the new developments in globalisation. It is therefore even more important that religious freedom is guaranteed the world over and that an appropriate balance continues to exist between the state and

56 Burkhard Josef Berkmann, *Vom Pluralismus zum Laizismus ? Österreichisches Archiv für Recht und Religion* 2012, 112 and beyond.

57 Silvio Ferrari, *Religion, nationalisme, droits de l’homme et mondialisation, Conscience et Liberté* n° 73, 2012, p. 66.

religious communities. The evolution over the past 1,700 years since the Edict of Milan has demonstrated that the ancient vision of unity between religion and the state can only lead to interference on the part of both the churches and the political institutions in their respective fields of competence, and to the exclusion and persecution of religious minorities.

Although in the western sphere of influence, within the context of the modern conception of human rights, this principle now appears to be a given, a certain scepticism still exists as far as predominantly Islamic countries are concerned. Indeed, the principle of unity between religion and the state seeks to prevail in these regions – partly in its extreme form and with all the negative outcomes that this implies from a western perspective, both for individual religious freedom and for that of the various communities. One can only hope that the evolution of the concept of human rights will be able to find a way forward there. Given the explosive nature of the political situation, the world cannot afford to take as long to achieve this as the period that has elapsed since the Edict of Milan.

Dignity linked to religious freedom

*José Miguel Serrano Ruiz-Calderon*⁵⁸

1 Dignity and common custom

As we have previously discussed, dignity is the fundamental topic in the bioethical debate. The “Strasbourg Convention for the Protection of Human Rights and Human Dignity⁵⁹” makes special reference to human dignity. Through this reference the Law recognizes the sanctity of human life. This concept stems from a basic intuition and from a tradition, without which basic elements of our social structure would be left without support. That is, we understand that the concept of dignity is complex and has its specific history. This recognition of human dignity flourishes in the context of Western civilization, although we believe it can spread to other areas and, in this regard, would lead to universal concepts. In what we may call our common tradition, we encounter the confluence of classical Greco-Roman thinking, Christianity and democratic development that have illuminated the discernment of human dignity. Paradoxically, we can say that Western society has produced major political systems which have most harshly violated human dignity, as in the case of totalitarianism that originated in the West, though some of its most enduring effects were certainly experienced in the East.

It also seems clear that the very concept of dignity is itself at risk due to the specific developments within the Western tradition. Where once this threat was Totalitarianism, a typically Western phenomenon, nowadays it has been replaced by Scientism.

In conclusion we can affirm that one of our main problems is explaining how a concept that finds its explanation in a very specific tradition and that by

58 Professor of Philosophy of Law and researcher of the Institute of Human Rights at the Complutense University of Madrid. He is also a member of the Spanish Bioethics Committee and member of the Guarantees Commission for the donation and use of human cells and tissues.

59 *The Convention for the Protection of Human Rights and the Dignity of the Human Being with regard to the application of biology and medicine, or Convention on Human Rights and Biomedicine* was adopted on 19 November 1996 by the Committee of Ministers of the Council of Europe and opened for signature on 4 April 1997.

virtue of this has been translated as law in the Declarations of Human Rights and in some main postwar constitutions, can be used in two ways: to both affirm the sanctity of human life and to justify euthanasia.

1.1 Genesis in Common good

It is well known that not all civilizations place human dignity at the centre of their value system. Therefore the concept of dignity that appears in the Declarations of Human Rights from postwar constitutions, has had an arduous genesis to arrive at the concept that links to what the legal philosopher John Finnis has named the common good⁶⁰. The idea is for humankind to experience equal dignity, this implies equal rights and the same protection of fundamental rights. The thesis we support is the regard for dignity that appears in the radical definitions, is totally different from the center ground that we have defined to the point of characterizing it.

In this way the evolution of the concept of dignity is a paradox with regard to its starting point. Indeed, at this auspicious moment in history, it serves to justify equal dignity, however, its starting point is clearly anti-equality since what is different is worthy, what is excellent, that which is not possessed by all.

1.2 External circumstances

According to the American author Leon Kass⁶¹ this paradox does not stand alone. The concept of dignity, for example, includes two meanings that are diametrically opposed. One regarding external circumstances or the behavior of others, the other regarding the subject's response to this great challenge in their life. In a sense, martyrdom is radically undignified and yet, the discourse on the dignity of mankind has been consistently referred to as how we face up to this final challenge.

Originally the adjective of dignity appears linked to that which has special nobility, usually derived from strength or superiority. There are dignified and undignified animals, in certain religious traditions and within our culture in general. In this sense certain food prohibitions are linked to the "unworthy" character of the animal in question; reinterpreting them from the topic of health, if you like from the "religion of health" is a peculiar anachronism.

60 John Finnis, "A fragile argument supporting for euthanasia" in John Keown, *Euthanasia Examined: Ethical, Clinical and Legal Perspectives*, John Keown, Eds., Cambridge University Press, 1997.

61 Leon Kass, *Life, Liberty and the Defense of Human Dignity*, Encounter Books, San Francisco, 2004, p. 206.

In regard to mankind, dignity was linked to certain roles as in military and priestly ones but not in others. Another example of these distinctions is found in Cicero's theoretical evolution view; he considered that the adjective of dignity referred to the special value of mankind in relation to the animal kingdom⁶².

Within law, the main purpose of dignity was linked to the behavior required of a person or role. In certain societies, undignified behavior that did not correspond to this role had a penalty. To complicate matters furthermore, in some societies certain types of behavior were considered shameful by the law. Think of aristocratic society for instance and even some bourgeois societies - the act of something legally irreproachable or rather legally obliged, such as refusing a duel.

We conclude therefore, that in order for modifications to be made to the concept of dignity the most important step to take is in its application to the value of human beings. This undoubtedly occurs in Christianity. Thomas Aquinas exemplifies that humanity is unique when asking theoretically why people use the term "person" to refer to mankind he suggests that this indicates the special dignity of the term "person"⁶³.

The reference to dignity, is not of course, only related to religious thought; in fact the equal dignity of human beings can be found in the Universal Declaration of Human Rights, on which, with certain optimism, it was hoped to establish the postwar order of things.

With reference to both of its modern meanings - equally the sacred value of human life and the acceptance of Kantian ethics of man as a legislator - dignity refers to that which is beyond worth. Mankind's value is beyond measure. As Kant notes, in his "kingdom of ends" "everything has a price or its due worth; that which is beyond any price is dignified, it is beyond comparison"⁶⁴. "Dignity is an end in itself".

The legal innovation of our times lies in defining absolute dignity, not a quantitative measure of it. This is expressed by what the law stipulates as "fun-

62 Roberto Andorno, "La distinction juridique entre les personnes et les choses: à l'épreuve des procréations artificielles", (The legal distinction between people and things: the test of artificial procreation), LGDJ, Paris, 1996, p. 72; see Cicero, *De Officiis* (Translation by C. Appuhn, Cicero, Duties), Garnier, Paris, 1933, Book I, XXX. <http://remacle.org/bloodwolf/philosophes/Cicero/officiis1.htm>

63 See Thomas Aquinas, *Summa Theologica*, Prima pars: General morality, God, Creation, Quest. 29, art. 1, art. 2, sol. and ad. 1, art. 3, sol. 2 ad. 3 Digital Edition: Library Edition du Cerf, 1999.

64 E. Kant, *Groundwork of the Metaphysics of Morals*, trans. V. Delbos, http://classiques.uqac.ca/classiques/kant_emmanuel/fondements_meta_moeurs/fondements.html

damental equality” and is demonstrated by an equal representation of individuals, excluding no one facing the law; in so doing the law assures that everyone has equal rights to life.

This ultimate truth about dignity has also been referred to as the sacredness of human life and is present in the so-called religious argument, as defined by the German philosopher Spaemann. From his perspective, being religious is not about any particular religion, it is about “Why one is religious?” As the argument can only be comprehended when mankind discovers something that is sacred. That which is sacred is beyond measure, it cannot be proved or functionally derived, it is good understood as an absolute teaching.⁶⁵

In his appearance before the Spanish Senate Committee for the study of euthanasia [which he held from September 1998 to November 1999, translator’s note], the Professor of Metaphysics Eudaldo Forment affirmed the difference that exists between: dignity of life and personal dignity; and how dangerous it is when the later depends upon the first. Indeed this dependence prevents the equal dignity of all people and undermines the basis of fundamental rights. The metaphysical position explains that one is in fact always a person never in power, always an actual person and always a person to the same degree.⁶⁶

The metaphysical meaning of a person allows us to avoid the modern day danger of ranking a person on any scale, which on the contrary is what occurs when we base the formal constituent of a person on their qualities. If we used the example of good health, the person that had better health would be considered superior, while the person with worse health would be inferior; in some cases it could even lower the threshold to a question of personality, for example when referring to the case of those who are dying.

The personal status based on the right to life that remains intact even in the moments of greatest impairment of the right to life. The concept of ontological dignity supports, in turn, that of ethical dignity and takes us back to the problem of freedom and volition. The discrepancy occurs between those who defend the dignity of every human being and those who argue, for example, that if someone asks to die they should be given that right.

We therefore observe the possible effects of a definition of dignity that can turn against those who fail to fully comply with certain parameters. We

65 Robert Spaemann ‘Felicidad y benevolencia’, Rialp, Madrid, 1991, p 150. English edition: Happiness and Benevolence, T.& T.Clark Ltd; New edition edition (1 Jan 2005)

66 Eudaldo Forment, Testimony before the Senate Committee on Euthanasia, Senado-Commission, 26 October 1999, no. 502, p 2-3.

think of what happened to certain definitions of “good life” in the past; such is the case of Aristotle, so successful in other fields. Aristotle in fact, refused the definition of good life for women and slaves, and this was probably true from the perspective of the social conditions endured by some groups during almost all ages. This description can be used in two ways, critically to show its inconsistency and deal with slavery or prevent discrimination against women, but also uncritically - precisely to prove these prejudices. The same can happen with the deconstruction of the concept of dignity.

For example, the Italian bioethicist, Singer, as well as other authors such as Alberto Gubilini and Francesca Minerva, link dignity, or if you prefer, it's subjective right, to the possession of rational autonomy and the ability to perceive unpleasant sensations.⁶⁷ Indeed, a new example of this use of the “scientific debate” for cultural reversion, which would take us to the era of the wide expanse of infanticide, has occurred in the *Journal of Medical Ethics*. In an article by Alberto Giubilini and Francesca Minerva, *After birth abortion: Why Should the baby live?*⁶⁸, sustaining that the reasons for abortion, not only eugenic, should be extended to infanticide for a period varying from the purely eugenic reasons to immediate detection of “neonatal deficiency”. Otherwise granting the parents a term to evaluate the other causes, usually related to the parents own convenience, that are to be considered.

The authors do not consider themselves to be radical; they quickly make clear that they would prefer early abortion, but they are making a proposal on the basis of medical ethics, less frequently referred to in other cases.

The article rounds up the type of the complacent bioethics denounced by Kass, starting with the game of euphemisms. They prefer to call infanticide “postnatal abortion”, but do not clarify the obvious fact with any critical application of ethics. The main reason for the euphemism is to conceal the act.

The editor of the magazine, Julian Savulescu, tried to convert the infanticide proposition case into a case of immoderate reaction towards the “academic discussion”. I'm afraid it is very difficult to give this argument any credibility.

It is not true that magazines such as the aforementioned support any argument presented in an academic way. In fact, a review of the positions on

67 At this point consult the article of Adriano Pessina “Se questa e una persona”, in *L'Osservatore Romano*, 22-03-2012.

68 *After-birth abortion: why should the baby live?* *Journal of medical ethics*, from 23/02/2012: <http://jme.bmj.com/content/early/2012/03/01/medethics-2011-100411.full>

abortion or euthanasia of large bioethical establishment journals proves that his position is biased. There are not, for example, a significant number of items differing from the main view of favoring the death of people in a persistent vegetative state by means of dehydration. That is to say, the magazine considered it plausible to argue in favor of infanticide, within medical ethics, as one step further in the already accepted argument.

The already accepted argument is that abortion for any reason (with some moralist exceptions concerning sex selection) and neonatal euthanasia are acceptable from the position of medical ethics. The proposition of the article, for which the authors are responsible but also the journal that evaluates and suggests it, is that infanticide should be allowed in any case in which abortion is permitted, i.e. in all cases.

Besides the sophisticated system to convince us that the protection of a living human being is only valid when the person is included in the arbitrary proposition of the authors, the article is very revealing about the consequences of abortion as a means of absolute control of a strong will over a human being in a position of weakness. This leads him to the conclusion, for example, that men found in a phase of serious deterioration do not differ much from disabled infants (referring to those who support the neonatal euthanasia). Both groups of people have no self-consciousness, neither are rational or independent; thus considerations about the right to life and respect for autonomy would not apply to them. In the words of Singer, even if they are alive biologically, they are not so biographically.⁶⁹

As noted before, the fundamental problem is in introducing a quantitative criterion that is usually defined as qualitative in the definition of dignity. In history quantitative criterion has certainly been the most used. This criterion allows one to define subjects with more dignity and less dignity, resulting in a scale of men according to their qualities, a scale that has been created according to the criteria in force at each era of history. In fact, historically having this process allowed for such descriptions of the subject of social order that lacked dignity along with others who were less worthy. This approach has not been used precisely for the benefit of those defined as “unworthy” and there is no reason to think that this constant historical will not repeat itself in the future.

Along these lines, it could be considered that dignity is a cultural matter, understood as relative, and not essential to the human person; although it

69 Singer, Peter, *Ética práctica*, 2 ed, Cambridge University Press, 1995,p 237.

would be necessary to make clear the meaning of “not essential”. Those who think this way express that dignity is an arbitrary allocation. The basis of this consideration is a biological thought. Thereby the former member of the Ethics Committee of Spain claimed: dignity is not an essential element for human beings, but is a cultural attribute that we have given to ourselves.⁷⁰

2. Dignity and Law

2.1 Acknowledgement of dignity

Human dignity as a legal concept received its most important acknowledgement in the constitutions enacted after the Second World War, especially by the defeated powers. It also appears specifically in the Spanish Constitution of 1978 which could be considered a post-war constitution. To a large extent it is the ultimate realization of a concept that is grounded in our legal tradition. It has thus been argued that the Spanish legal custom is centered on recognition of the dignity and centrality of it in social life. Both concepts would derive from scholastic philosophy. The *Laws of the Indies*, a maximum practical representation of the Second Scholastic would be a clear example of the concern for the dignity of the person, inheriting a tradition which goes back to medieval charters, the basis for many of the individual freedoms⁷¹.

In the current legislation, the dignity of the person is the focus of management based on the Universal Declaration of Human Rights and the European Convention, and of course on the standards required by the EU itself and NATO.

2.2 Dignity in the statements of Rights

However, the plurality of conceptions collected by the statements lead us to affirm that John Foster Dulles, U.S. Secretary of State, was right when the Universal Declaration was drafted, when considering that the Declaration was a

70 “Personally I do not think that dignity is essential to humans, but a cultural attribute that we have given ourselves since we have the rational capacity to produce this series of judgments. Because if dignity were intrinsic, it would have to be of genetic origin; and if it did, it would have to bear the genetic responsibility - not to mention the burden - of all beings who have preceded us, including the reptiles themselves”. Marcelo Palacios, Testimony before the Senate Committee on Euthanasia, Senado-comisión, 8 de abril de 1999, p 23.

<http://www.condignidad.org/zarchivos/legales/marcelopalacios.pdf?phpMyAdmin=f1e07de20b1b35aced62f91283ff0938>

71 See for example Alfonso García Valdecasas, *El hidalgo y el honor, The gentleman and the honor*, Biblioteca Contemporánea, Madrid, 1958.

crucial achievement of democracy over the totalitarian states or those who were on their sustained march toward totalitarianism.

But after more than sixty years after the Universal Declaration was issued, it is appropriate to ask ourselves whether we have succeeded in meeting its fundamental objective that, from my point of view, was to avoid the state temptation to set filters for personal condition and recognition of the fundamental rights. It is commonly said that it was desired to avoid the arbitrary use of that capacity; I think that the key would more likely be in the statement of a reality that all states admit, which determines all discrimination as arbitrary.

2.3 Sub-division of human life

Undoubtedly, after decolonization, the new push against slavery, recognition of women's equality and overcoming the totalitarian regimes in Central and Eastern Europe, we have advanced in the process of extending the defense of dignity; however, discrimination between human beings has returned by the path of the temporary sub-division of pre-natal life. In this way and along with abortion, a decrease is made possible by the combination of assisted reproduction and regenerative medicine. It is this process that, according to José Luis Requero⁷², produces the effect of legal sub-division of human life. The beginning of the process, as the author states, is given in the judgment of the Constitutional Court 53/85 and it is definitely expressed in 14/2006, where through the acceptance of the term pre-embryo the sub-division is radicalized. As Requero says, "If the unborn child is not the holder of his/her right to life, but life as embodied in its evolutionary stage puts him/her at a lower level – this is a constitutionally protected legal right -, for the fetus the fate of the embryo is more problematic. The level of protection drops further with the introduction of the pre-embryo: the Constitutional Court understands that acts contrary to the dignity of the human person cannot be taken away from the embryo and its fate."⁷³

In the analysis of constitutional jurisprudence, Andres Ollero was especially acute when analyzing the handling process that the embryo suffers *in vitro*. As he states, referring to the STC 212/1996: "Following the life's earlier

72 "Reality is harsh and it can be summed up in a statement that I have already put forward: let us just say, between you and me, that the legal status of the unborn child is highly precarious. Since the crime of abortion was decriminalized 20 years ago, in three cases, thanks to the classification system ..." J. L. Requero, "Derecho a la vida y vida embrionaria", Right to life and embryonic life, *Persona y Derecho*, 54, I (2006) p 217.

73 *Idem*, p 219.

state as a continuum, it begins to sub-divide... The continuum has disappeared. We do not find ourselves before a legal right - human being or vital subject destined to become a person - rights holder - in the absence an action... What we should now put to the vote is whether it is permissible to fabricate human beings or even if it is permissible to fabricate people.⁷⁴

The crux is apparently in the differentiation between a person and human individuals, part of which contemporary thought uses to dismantle the strongest effects of the 1948 proposal. On this differentiation the Italian philosopher Sergio Cotta already warned us when he said: "It can be concluded on the debated issue: above philosophical differences, the most serious and constant theoretical speculation agrees in stating the real identity of the person and of the human individual. The true watershed in this common tradition exists between the thinkers who see the person as a participant in the divine transcendence, or open to transcendence or in connection with the self; and those who, on the contrary, consider it settled in immanence. In none of these currents can the widespread modern opposition between person and individual be easily found. The person is the human individual. This precise meaning is shown here by using the term⁷⁵."

The distinction between person and human individual occurred in regard to prenatal life, from the complete acceptance of the concept of pre-embryo in the Warnock report⁷⁶, though this was later abandoned, therefore achieving the intent to devalue its worth.

The threat to the philosophical and legal concept of "person" is therefore the application of this term, in a restrictive way, which is used only for the fully developed person or the person who lives in "fully dignified conditions." This allows, for example, the destruction of surplus embryos within the assisted reproductive technique or the use of these for experimental purposes or for tissue and cell procurement, allegedly used for curing certain diseases. This route is worrying because there is a constantly growing category of members of the hu-

74 Ollero A, *Bioderecho: entre la vida y la muerte, Bio-right: between life and death*, Thomson Aranzadi, Navarre, 2006.

75 Sergio Cotta, "Persona", *Anuario de Derechos Humanos*, Human Rights Annuary, Vol I, Complutense University, Madrid, 2000, p 31. Spanish version: <http://revistas.ucm.es/index.php/ANDH/article/view/ANDH0000110013A/21043>, p. 29-30.

76 *Fertilization and human embryology*, report of the British Commission of Inquiry, which formally imposed the term "pre-embryo" (M. Warnock, *Report of Inquiry into Human Fertilisation and Embryology*, London, 1984).

man race whose life is not protected and because the arguments that are used to prove the value of a “semi-dignified” life are increasingly trivial.

2.4 Dignity in the Spanish Constitution

Regarding the concept of dignity in the Spanish Constitution, Jesus Gonzalez Perez held a naturalist perception. For this author, Article 10.1 of the text to which we refer is the consecration of the person and his dignity as a guiding principle of the legal order⁷⁷. As Hernández Gil indicated at the time, this is not only about a specific legal provision, but outwardly shows how the constituent understands the foundation of the legal order and social peace. This would obviously link the Spanish constituent, as previously the German or Italian, to a concept of natural law which is the base for dignity and recognizes its true meaning. Obviously this does not mean that the Constitution hosts a particular school or has what you might call a finished design. We can conclude that, as in the majority of the founding positions of the fundamental rights, such as the American founding fathers, the basis of the legislation is the recognition of pre-existing rights, not in the sense of rights prior to the political community, but rights recognized by the community in its constitution. It is a given term, not one that is built.

As indicated in an opposite view by Nicolas Gomez Davila: “The first revolution flared up when it occurred to some fool that rights could be invented⁷⁸.” This reading has been described as naive and subject to revision by positivist schools that have dominated in recent years. It is interesting to note that whatever is meant by dignity, once it is formalized, is not appropriate to give it a meaning that mainly satisfies the rebuilders of this concept. This is what happens to most defenders of the radical agenda. They are truly consistent when they insist that the concept of equal dignity, which is what legislation provides, is meaningless. At the same time they re-interpret the concept depriving it of a definite sense. Dignity cannot be what occurs to the legislator, to the constitutional interpreter or to the doctrine, depending on the specific agenda of the moment. If so, it would be pointless to have collected it in constitutional texts so insistently and with such relevance. We would then witness a constitutional amendment in a certain direction, carried out by those who have no power to address it. This is more shocking in more rigid systems than the Spanish one.

⁷⁷ Jesús González Pérez, *La dignidad de la persona*, The Dignity of the Person, Civitas, Madrid, 1986, p 80.

⁷⁸ Nicolás Gómez Dávila, *Escolios a un Texto Implícito: Selección*, Villegas Editores, Bogota, 2004.

González Pérez insists that, regardless of the ambiguity of the terms used by the constituent (author of the Constitution) - value, sometimes; principles, other times - we find ourselves in front of a general principle of law that does not lose its nature when being taken in by the existing law. Of the three types of general principles - the natural law, traditional and political, this one is includible in all three. If there is something permanent in the Law, it is the dignity of the person. For many, dignity would also be a principle initially recorded in our legal custom. Finally, as recognized by the Constitution, it is a guiding principle of political order.

Regardless of its nature, much discussed nowadays, the functions of the general principles have been specially considered by the Spanish doctrine. Dignity would be a directly applicable principle not needing mediation. It would also be the foundation of order, for example as guidance in the interpretation of the law itself, which results in a standard of conduct and a limit of the exercise of rights by imposing two types of obligation on the behaviour of man. One, in relation to others: a positive obligation by which mankind should seek the utmost respect for the dignity of people whom he/she relates to, and a negative one, when the dignity of others operates as a limit in the exercise of his own rights. Finally, the principle we analyse has the function of integration of the legal system, as stated in Article 1.4 of the Civil Code⁷⁹.

2.5 Dignity in the German Constitution

Under the important position that dignity has in the Basic Law of Bonn, the German doctrine made a great effort in structuring the system. The most classical position remained defined by G Dürig⁸⁰, who referred to the principle of non-exploitation on a Kantian basis. The concept, however, has been rebuilt until it became unrecognizable, in both what affects the beginning of life and its end, as we shall see in due course. As a result of this reconstruction, even authors who were critical toward the above related concept were shocked by the effects that had been produced and which they probably did not foresee. So Böckenförde, seeing the effects of reconstruction, pointed out alarmingly in the *Frankfurter Allgemeine Zeitung* on September 3, 2003 that “human dignity

79 “4. The general principles of law apply in the absence of law or custom, without prejudice to the fact that they help shape the legal system.” Spanish Civil Code, Preliminary Title, c. 1, art. 1.4, text in Spanish: <http://civil.udg.es/normacivil/estatal/cc/tprel.htm>

80 Günter Durig, *Der Grundrechtssatz von der Menschewurde* “The fundamental right of human dignity,” in *Archives of Public Law*, 1956.

was tangible.” All of this in a context in which they discussed whether it could be interpreted that torture itself was not contrary to human dignity.

It is for these reasons that we understand that dignity is a fundamental element of the struggle for Rights in the description of Ihering⁸¹.

So Ignacio Gutierrez said that “Therein lies the struggle for Rights, with a capital R. Not a struggle for limited and limitable rights, the struggle to impose the tiny rights under the law or the constitution, subject to a legal regime that necessarily constrains them, but the struggle for the Rights understood as a principle of collective behavior based on the mutual recognition of the dignity of each individual⁸².”

81 Rudolf Von Ihering, ‘The Struggle for Law’, Bibliolife, 2009.

82 Ignacio Gutiérrez Gutiérrez, *Dignidad de la persona y derechos fundamentales*, (Human Dignity and Fundamental Rights), Marcial Pons, Madrid, 2005, p 36.

Religious Liberty and Global Security⁸³

*John Graz*⁸⁴

Condemned by some to disappear like a ripe fruit fallen from a tree, religion is once again hitting the headlines with a vengeance. To quote a phrase from André Malraux, “The twenty-first century will be a spiritual one, or will not be at all.” How prophetic! The twentieth century, which saw the rise of totalitarianism and the near success of Communism, came to an end because we were able to call for “the end of ideology.” It was the century of great dreams drenched in blood and of dashed ambitions. Religion, naturally, filled the void left by these ideologies. All but forgotten were its excesses, its outbreaks of intolerance, and just its good side remained in mind – love, joy, peace and above all hope. It was several years before a new phrase appeared: “religious terrorism”. It was some time before rediscovering that those churches that had been oppressed could be tempted to, in turn, become the oppressors. A few years were enough to realise that fanaticism and intolerance were not the sole preserve of minorities or of new religious movements. They could equally be found in the more traditional major religions. As things progressed, what became of religious liberty? We saw a resurgence after the fall of Communism, but then it had to fight to maintain its foothold. Will it survive the challenges of terrorism and national security?

I have divided this article into three parts:

- I. The status of religious liberty around the world and the role of governments
- II. Religious liberty following 11 September
- III. Some recommendations

83 Article published in the Journal ‘Conscience and Liberty’ no. 64, 2003.

84 Secretary General of the IRLA (US) since 1995. A Doctor of Religious History, he is an expert in interreligious dialogue. He has organized many conferences attended by global experts on religious freedom, as well as several religious freedom festivals worldwide. He has received numerous awards, including the Prize of religious freedom in 2013, the *J. Reuben Clark Law Society* and *International Law Centre* October 10, 2013. In addition to being a prolific writer, he is the executive producer of the television programme *Global Faith* and *Freedom* (Global Faith and Freedom). He is also the General Secretary of “Global Christian Forum.”

I. The status of religious liberty around the world and the role of governments

A. Religious liberty in the world

The United Nations Special Rapporteur for the freedom of religion and belief declared on 10 June 2002, during the World Congress for Religious Liberty in Manila, Philippines, that: “Progress made in the realm of freedom of religion and belief is under threat...We are in danger of travelling back down the road that leads to disaster.”⁸⁵

Every year, the *International Religious Liberty Association* (IRLA) publishes a global report on religious liberty. All the countries are grouped into five categories according to the degree of freedom displayed. Categories 1 and 2 represent those that practise and protect this freedom; categories 4 and 5 are for those that deny it completely.⁸⁶

In 2001, ten countries were placed in category 5 and twenty-three in category 4. In 2002, eight countries were graded a category 5 and twenty-five a category 4. Apparently, not a lot had changed. The 11 September had not, it seemed, changed the landscape of freedom. The zones of greatest freedom were the Americas, Oceania, Western Europe and sub-Saharan Africa; the zones of greatest intolerance were concentrated about the Middle East and Asia. As for Central Asia and Eastern Europe, they underwent a difficult apprenticeship in religious liberty with some positive signs and a temptation to return to intolerance.⁸⁷

B. The role of governments

Nowadays, we observe four types of politics practised by governments around the world that affect the lives of believers:

1. Governments that practise a policy of intolerance

The reasons are ideological, as in North Korea, Vietnam and China, or religious, as in Saudi Arabia, Iran, Sudan or Pakistan.

The Law against blasphemy

In his report to the Human Rights Commission, the Special Rapporteur for Freedom of Religion and Belief cited the case of a Christian Pakistani

85 Abdelfattah Amor, ‘Religious Freedom: A Basis for Peace and Justice’, in *Fides et Libertas*, 2002, p. 20.

86 *Religious Freedom World Report 2001*, General Conference of Seventh-day Adventist Church, Department of Public Affairs and Religious Liberty, Silver Spring, Maryland, USA.

87 *Religious Freedom World Report 2002*, op. cit., p. 3-7.

citizen accused of blasphemy and condemned to death. According to the Penal Code 295c, blasphemy against the Koran or the Prophet is a crime. Here is the official response of the Pakistani government to the Special Rapporteur of the United Nations. It has been summarised in six parts:

Ayub Masih said (to his spokespeople) that his religion was true and theirs was false. He further stated that the religion preached by Mohammed (“Peace be upon him”) was absolutely false. He strongly recommended that they should read the book by ‘Salman Rushdie’[...] (this was on 4 October 1996 at 3pm).

On 16 October 1996, the accused was brought to trial after an investigation.

On 27 April 1998, Ayub Masih was sentenced to death by the “District and Session” judge in Sahiwal. The convicted Masih appealed to the High Court in Lahore.

4. On 25 July 2001, the Lahore High Court dismissed the appeal and upheld the death sentence by the court in Sahiwal.

5. The decision was challenged by the accused.

6. Ayub Masih is being held in the new Central Jail in Multan⁸⁸. More than six years have elapsed. Ayub Masih may spend his life in prison waiting to be executed for having uttered this controversial speech.

Saudi Arabia and institutional intolerance

Saudi Arabia is without doubt the most extreme case of institutional religious intolerance. Seven million foreigners live and work within its territory. Between three and four hundred thousand are Christians, one hundred thousand are Buddhist or Hindu. Religious Police control the practices of the inhabitants. The conversion of a Muslim to another religion is subject to the death sentence. Religious activities and the presence of a priest for non-Muslims are banned⁸⁹.

2. Governments which suffer pressure from a church or a religious majority

We find this type of situation most commonly in the ex-Soviet bloc countries. Bills are proposed which give privileges to the church or the religious majority, in contradiction to a policy of non-discrimination. In Cambo-

88 *Ibid.*

89 *Ibid.*, pg. 88, 89. See also ARIFE, 2001, pg 478-482. *Seven countries have a law that condemns to death those who abandon Islam for another religion: Afghanistan, the Gulf States, Saudi Arabia, Somalia, Sudan and Yemen.*

dia, the government has recently informed the non-Buddhist religious groups of some new regulations. These concern Christians and Muslims in the first instance. According to our correspondent, four measures have been stipulated. - there must be a two kilometre separation between churches or religious centres - public evangelism is forbidden - distribution of tracts is forbidden - door-to-door techniques are forbidden⁹⁰.

The government of Belarus has also adopted a very restrictive law. In Afghanistan, as the wording of a new constitution is in the process of being drafted, the American Commission on Religious Liberty has addressed a letter to President George W. Bush denouncing the continuing abuses of human rights and the application of Sharia Law by the government, the abuses towards women and young girls, as well as the use of the Law against blasphemy to oppose reformers⁹¹.

3. Governments that have lost control of religious extremists

The governments in Indonesia, Egypt, Nigeria and India have been powerless to protect their religious minorities from extremist violence. It is an impotence that has continued to increase. But we also find nations that are hostile to religious minorities who protect and even favour religious terrorism.

India becomes fundamentalist

The list of governments that have struggled to control religious extremists includes Indonesia, Egypt, and India. According to its constitution, India is effectively a democracy and a secular republic. But the actual government bows to pressure from fundamentalist Hindus⁹². Article 25 of the constitution protects religious liberty, but a committee has been created in order to revise the constitution. In many states, conversions have been banned or rendered extremely difficult. In November 1999, the state of Orissa voted in a law which banned any conversion without first seeking the permission of the local police and the magistrate in the district concerned. In 2002, an "anti-conversion" law was voted in by the legislative assembly of the state of Tamil Nadu. In the state of Uttar Pradesh, the most populous in India, a bill that limited the construc-

90 Email dated 25 February 2003, *Camera*, Vol 2, no. 2.

91 United States Commission on International Religious Freedom, 'Afghanistan, Back to the Past' 26 February 2003.

92 See article by Maria Missa, 'Religious Bigotry is Poisoning Indian Democracy', published in the *Financial Times*, 4 March 2003, pg. 15.

tion of places of worship was voted through. Following protests, the bill was withdrawn. To quote our association's local correspondent: "During the last four years, a wave of terror has swept over missionaries in the states of Uttar Pradesh, Haryana, Punjab and Andhra Pradesh."⁹³

Incitement to hate unpunished

Religious extremists incite hatred and the government does not react. Our correspondent in India writes: "Fundamentalist groups in the states of Gujarat and Andhra Pradesh freely print and distribute hate literature against Christians, which effectively encourages the violence."⁹⁴

On 9 August 2002, in Taxila near Islamabad, Pakistan, three nurses were killed and twenty people injured by a grenade attack in a Christian hospital. Following the event, Christians "expressed their fears that the attacks had been the result of calls to hatred by the local religious leaders against (them) Christians."⁹⁵

Religious hatred has brought about the torching of several Protestant churches in Russia. In Georgia, a defrocked priest, Basil Mkalavishvili, is responsible for a series of violent attacks on non-orthodox believers. "The members of several Christian denominations were harassed, beaten and threatened during an oecumenical service held in a Baptist church in Tblisi on Friday 24 January 2003."⁹⁶ The European Baptist Press Service reported that "despite the awful attack the previous year at a Bible depot, Mkalasihvili and his group have never been tried or punished for their actions."⁹⁷

4. Governments that put a security policy in place in the face of terrorism

Paradoxically, the fight against terrorism has produced a series of new legislation that justifies or legalises violations of religious freedom. For the sake of security, certain countries justify a discriminatory situation. One should mention the anti-terrorist laws in Australia, in Canada, the US, France, India,

93 IRLA Correspondent, letter of 5 February 2003, pg. 2.

94 Ibid.

95 ENI, 22 January 2003.

96 EBPS, 27 January 2003.

97 Ibid.

Hong Kong⁹⁸, Japan and Great Britain⁹⁹. In its report on China, Human Rights Watch stresses that President Jiang Zemin declared, at the end of 2001, that “the current international and domestic conditions have resulted in strengthening the control of the government over religion¹⁰⁰.” Which for China is really saying something.

II. Religious liberty following 11 September

The attacks on 11 September did not improve the degree of religious liberty around the world: far from it! In his report to the Commission on Human Rights, the United Nations Special Rapporteur on Freedom of Religion and Belief drew up a table of the past twenty years. He wrote: “[...] the situation concerning freedom of religion or belief around the world seems more worrisome.” He cited the 2001- 42 Resolution of the Human Rights Commission which, in its preamble, states: “[...] with concerns that serious instances of intolerance and of discrimination based upon religion or belief, including acts of violence, intimidation and coercion motivated by religious intolerance, occur in numerous regions around the world, and threaten the enjoyment of human rights and fundamental freedoms¹⁰¹.”

After the fall of Communism, there was a noticeable gradual decline of political control of religion in the name of political ideology¹⁰². Post 11 September has seen a return to state control in the name of security and the war on anti-terrorism.

In Geneva, on 12 April 2002, in front of the Human Rights Commission, Kofi Annan, the Human Rights Secretary General declared: “Counter-terrorist security cannot be achieved by sacrificing human rights. To try and do such a thing would give the terrorists a victory way beyond their expectations¹⁰³.”

The Special Rapporteur revisited this theme in Manila by specifying the danger threatening us all: “Since 11 September, the fight against terrorism seems to have served to justify the most serious attacks against human rights

98 Keith Brasher, ‘Hong Kong Puts Forward Bill on Stringent Security Laws’, NY Times.com, 13 February 2003.

99 Silvio Ferrari, ‘Religion and Security in Europe after September 11’.

100 In APD, 11 January 2003 and APIC, Fribourg, and ENI Agency, Geneva, Switzerland.

101 14 March 2002. In E-CN.4-2002-73, pg. 36.

102 Ibid.

103 United Nations Press Release, Commission on Human Rights, 58th Session, 12 April 2002, pg. 1.

on the part of countries who are traditionally known for protecting these rights and for the lessons they strive to give in this domain¹⁰⁴.” With regard to the consequences of the return to the security imperative, the Special Rapporteur said: “The immediate danger is that religious liberty is contextualised. We are returning to a situation where the larger religions are asserting themselves at the expense of smaller ones¹⁰⁵.”

Religious liberty contextualised

Faced with the need to protect the population, everyone must sacrifice something. According to Silvio Ferrari, the position occupied by religious liberty will diminish in the following ways: - in a general manner: security measures will reduce certain fundamental rights, for example, missionary activity in foreign countries. Governments will refuse to issue or renew visas. - in an indirect manner: by state control of domestic life and the organisation of religious communities. - in a direct manner: by the dissolution of religious groups even before any offence is committed. The French Anti-Cult Law of June 2001 was a sort of preamble. Religious minorities are doomed to become the scapegoats of society¹⁰⁶. In this vein, a special mention should go to the American reaction and in particular to the USA Patriot Act.

USA Patriot Act¹⁰⁷

Signed by President George W. Bush on 26 October 2001, the USA Patriot Act is a good example of the return to safe politics. Its objectives were to warn of future terrorists attacks against the United States. The bill mentions religious liberty on two occasions and in a positive light. Paragraph 102 mentions that American Muslims “have the same rights as every American” and that the laws and civil liberties should be respected for everyone, including American Muslims. In paragraph 1002, the Act asserts that “acts of violence or discrimination against American citizens, including American Sikhs” are condemned by Congress¹⁰⁸.

This was not just a well-intentioned bill since some people have already been convicted. Despite this, the new law has some negative effects upon hu-

104 Ibid.

105 Ibid.

106 Silvio Ferrari, op.cit

107 H.R. 3162

108 ‘Patriot Act : The Sequel’, The Washington Post, 12 February 2003.

man rights in augmenting the power of the state in the realm of surveying people. The law defines the term 'terrorist' in such a vague way that it could harm innocent people. The fact that non-citizens can be held for up to seven days, without proof, is an attack on human rights. Act II, which has yet to be voted, raises even more concerns, in particular where it requires citizens of Muslim countries who are living in the United States to register. Treating a religious group in a particular manner can open the door to different injustices affecting other religious groups. The objection of human rights associations and numerous legal experts is that the USA Patriot Act II unilaterally increases the power of the government, removes people from the protection of the law and places them in an alternative legal system. According to the Washington Post, "the project contains numerous troubling aspects. It increases the power of the secret services at the expense of traditional justice. It authorises the surveillance of foreigners suspected of terrorism and makes them the purpose of the law rather than subjects to whom the law applies¹⁰⁹."

What will be the outcome of the counter-terrorist battle on the relationship between church and state? In the short term, a limitation of religious liberty. In the long term, the danger is even more real. Ferrari highlights two major consequences: 1. A weakening of the wall of separation and increasing control of the state over religious groups; 2. A strengthening of the distinction between church and traditional and non-traditional religions. This is a very European tendency, inscribed in the constitutions of Lithuania (Article 43), and Greece (Article 3) and in many draft bills. This tendency is likely to risk heightening the tensions between Europe and the United States.

Are security and freedom of religion irreconcilable?

The battle against insecurity and terrorism has already provided an alibi for suppressing or limiting religious freedom in many countries. This type of politics is detrimental to the interest of the country and to civil peace. "Religious liberty should be treated as a matter of security, not just as a human right; and we should unequivocally defend the idea that regional security can be assured only if religious liberty is guaranteed and the legitimate activities of groups or individuals maintained¹¹⁰."

The International Pact relating to civil and political rights (Article 18) and the European Convention for the Protection of Human Rights and Funda-

109 The Washington Post

110 Robert Sieple, 'Security and Religious Freedom', in *Liberty*, January-February 2003, pg.3.

mental Liberties (Article 9) do not mention national security as a restriction to religious freedom. The commentary to Article 18 of the International Pact for Civil Rights and Politics defines religious liberty as a fundamental liberty which should not be revoked, even during times of major crisis¹¹¹.”

A group of experts from the International Religious Liberty Association is working on a document called: “Guiding Principles and Recommendations on Security and Religious Freedom.” According to the group, “security should not become society’s ultimate goal, even at times of terrorist threats. Regimes that have been established under the auspices ‘of national security’ have demonstrated just how harsh and incompatible they are with a human rights culture¹¹².”

History is filled with examples that prove the devastating effect of religious intolerance in the name of security. The Roman Empire would have had a completely different fate if it had kept to the Edict of Milan, which granted religious liberty to all. One can imagine a different history for Europe without the Inquisition, and for France without the virtual eradication of the Cathars in the 13th Century, and then the Huguenots. I share the view of Jeremy Gunn where he writes: “[...] national leaders need to understand that they are in the process of sabotaging state security when they employ politics which do not guarantee the respect of human rights, and they heighten state security when they defend the respect for human rights¹¹³.”

One should not forget that religious freedom is a fundamental liberty that takes its roots from Biblical revelation and is also found in many other religious customs. It was a factor of progress and prosperity when it was shown due respect. Its denial resulted in discrimination, a brain drain and sometimes even civil war. No one should be considered a second-class citizen because he/she has utilised his/her free choice to live in accordance with his/her conscience.

III. Recommendations

I would not like to conclude this article with a positive note and a few recommendations. It is true that religious freedom around the world is in danger, but there is also some good news. For example, the recent French approach to new religious movements conforms much more to its tradition of defending

111 General Comment, no.22 (48).

112 IRLA Group of Experts, «Preliminary Guiding Principles and Recommendations on Security and Religious Freedom», Paris, 4 February 2003

113 Jeremy Gunn, «Security and Religious Freedom — Thematic Topic for the IRLA Meeting of Experts in Leuven», *Projet de déclaration*, 8 January 2003.

human rights. There is the interest of Qatar for legislation that would respect the rights of Hindus and Christians living within its territory¹¹⁴. And, in Iran, the proposals of economist Abdolkarim Soroush, one of Khomeini's allies in 1980 who inspired the Cultural Revolution and is now the reformist philosopher: "Mr. Soroush has come to think that religion must remain separate from worldly power, and he is opposed to using Islam as the state ideology, even though he sees Islam essentially linked with democracy¹¹⁵."

In order that the legitimate protection of the security of citizens should not become an alibi for restricting religious liberty, states should:

- 1) encourage dialogue between those responsible for security and religious leaders;
- 2) promote the study and comparative analysis of current legislation;
- 3) urge the churches and religious communities to teach mutual respect and peace.

The believers, no matter what their religion, as well as humanists ought to become champions of peace, of reconciliation and of freedom. There is nothing more deplorable than to see believers using violence, claiming the privileges of the state in order to limit the freedom of other believers. This is not really the image of a loving God that is being communicated. The words of Jesus should be taken seriously when He says: "Blessed are the peacemakers, for they will be called Sons of God."

114 In World Wide Religious News (WWRN), Communiqué by APD, 23 January 2003. *PTI News*, 22 January 2003

115 «The Surreal World of Iranian Politics, Anatomy of a Power Struggle», in *The Economist*, 18 January 2003.



CHAPTER

3

**Freedom and Religious Liberty: 1700 years of history
since the Edict of Milan (313 – 2013)**

**Remembering history in order to better promote
freedom and peace in the world.**

The role of religions for peace.

I. THE HISTORY OF RELIGIOUS FREEDOM

The Persecution of the Christians in the early centuries AD¹

*Marta Sordi*²

In ancient Roman tradition, both in the republic as well as in the empire, the right of the citizen to religious freedom stemmed from the right of the deity to be worshipped according to the style and form which pleased him: in the *senatus consultum de Bacchanalibus*³ from 186 BC, the condemnation of the Bacchanalian rights were relaxed and replaced by a conditional authorisation which could be obtained on a case by case basis from the city praetor once it was obvious that it would be impossible to renounce these rights *sine religione et piaculo* (without a religious act or atonement), that is to say without fear of offending the deity. Similarly, in the Edict of Toleration by Galerius in AD 311, the right to freely practise their religion was granted to Christians; however we quickly notice that the latter, under the effects of persecution, no longer honoured the heathen gods as they should nor their God⁴. The Edict of Constantine and of Licinius in AD 313, the so-called Edict of Milan, granted “to Christians and to all the freedom to practise the religion which they have chosen”, in order that “everything that is divine in heaven may be benevolent and favourable towards us, as well as those who have been placed under our authority”⁵.

In ancient Rome, it is thus this notion of divine right which could be used to secure the solicitude of the state which constitutes the basis of the individual right of freedom of conscience and which promotes the tolerance of the principle which the apologist Athenagoras, in his Supplication to Marcus-

1 Article published in the journal 'Conscience and Liberty' no.10, 1975.

2 Professor of ancient history at the Sacred-Heart Catholic University of Milan, where she held the Chair of Ancient History for more than twenty years.

3 *senatus consultum de Bacchanalibus* (“senatorial decree concerning the Bacchanalia”)

4 Lactance, *De mortibus persecutorum* (“The Deaths of the Persecutors”) 34,3.

5 Lactance, *ibid*, 48,2.

Aurelius and to Commodus in 176-177 AD, witnessed to the people: "Because on the one hand you judge it impious and reprehensible to not believe in God and on the other hand you judge it necessary that each person worships the gods of their choice, in order that through a fear of their divinity they refrain from injustice." This profound conviction was however not sufficient to prevent religious persecution; repeatedly throughout the course of history, the Romans provided evidence of intolerance that implied the following: that it was directed towards foreigners' worship under the republic and at the start of the imperial era, or towards Christianity during the first three centuries of the empire; it was always motivated by the fact that the outlawed religion was equated with superstition and magic and they tasked the religions to outlaw the erroneous and evil practices believed to be a sacrilegious perversion of religion and contrary to nature and ancestral traditions. The Christian emperors from the fourth and fifth centuries cited the same reasons against paganism.

The ancestral tradition, the *mos maiorum* appeared to the Romans as the ultimate criterion in matters of religious orthodoxy; it was the determining factor to differentiate a religion that was permitted: *religio licita*, and a superstition that was not allowed: *superstitio illicita*. During the first three centuries, it is what the public and the masses, even more so than the state, often cited as an insurmountable obstacle to the acceptance of the Christians.

At the heart of this attitude one must recognise the mistrust by the ancient world of any type of innovation. The pejorative sense, given in both languages of the civilised world at that time, of the verb "to innovate" is reflective: in Greek (*neotherizein*) as in Latin (*res novas moliti*), signifying "to overthrow the established order" or "endangering public order". Because they brought with them a new religion and a hitherto unseen moral, the Christians were very easily seen as "extremists" in the eyes of the public, the conservative intellectuals who had a monopoly on culture, and the fanatical masses, most particularly in the cities of the Eastern side of the empire where Christian minorities were much stronger and more numerous than in the West. For the central government, this was only the case later and under the pressure of public opinion. Contrary to what was often claimed, the refusal to participate in imperial worship was not the deciding cause of the persecutions, except under Nero and Domitian (the elite of the Roman ruling class with their Stoical training, who, incidentally, held the same position at the time as the Christians). This was, at most, the pretext used by the critics of Christianity, in particular to the provincial governments, in order to find a political reason for an aversion whose cause was more deeply rooted and went back further in time; an aversion of psychological and

religious, cultural and ideological origins akin to the old ethnical antagonism pitting the Romans against the Jewish communities that thrived on superstitious fears, especially in the Greek towns of Asia and Europe; simply said, it was a pretext to obtain from the state a repressive intervention that it was hesitant to bring about.

These preliminary remarks seemed necessary to me to show the character, sometimes complex and at the same intermittent persecution of the Christians during the first three centuries of the Roman Empire. Now let us examine more closely the various stages of this persecution and its more conventional methods.

Known early on by the Roman government as one of the sects of Judaism in Palestine, the Christians (for whom the name '*christiani*', with a typically Latin ending, was in use around AD40 amongst the Romans in Antioch, seat of the Syrian legate; it was adopted to specifically designate the disciples of Christ) were considered favourably up until AD62, maybe because they saw that the messianism of Jesus had a purely religious nature, free of political implications; it was a tool to use to pacify the revolutionary messianism of the Zealots who were devastating Palestine and who would later head the great revolution of AD66 against the Romans. The fact that in AD62 the high priest Ananus judged the temporary absence of the Roman procurator in Judea to be a "favourable opportunity" to exact justice and execute James the Lesser, then head of the Christian community in Jerusalem; the removal of the high priest by the Romans and King Agrippa [Herod Agrippa II, *translator's note*] as a result of this trial⁶ shows how the Romans had, until then, sympathetically considered the spreading of the Christian teachings in Palestine: this attitude seems to agree with that which they adopted until the spring of the year AD36, when the legate of Syria deposed Caiaphas from his duties as high priest⁷. This deposition, explained no doubt by the arbitrary conviction of Stephen by Caiaphas, assured peace for the church "throughout Judea, Galilee and Samaria" (Acts 9:31). The imperial political turnaround concerning the Christians was confirmed between AD 62 and AD 64: Nero decided to incriminate the Christians of Rome in the city fire⁸. However, the decision to blame the Christians because of their particular faith would have preceded the fire, which simply provided the opportunity to intensify and make even harder the oppression of which the original manifestation was the second trial of Paul and his death sentence.

6 Flavius Josephus, *Antiquities of the Jews*, XX, 200.

7 Fl. Josephus, XVIII, 95 sqq.

8 Tacitus, *Annals* XV, 44.

The legal basis for the persecution under Nero remains a matter of debate: opinion is now split between those who think that a special law was applied to Christians and those who believe the contrary, that they were punished on the basis of the usual laws (fire, infanticide, incest, illegal association, the crime of treason) and those who conclude that the implementation of coercion, coercive power, i.e. the application of a straightforward police service. As for me, I acknowledge Tertullien when he states⁹ that the origin of the persecution was found in an ancient senate-consult from Tiberius' era, which Nero was the first to make use of: this entailed, amongst other points, the fact that the measures against the Christians did not stop after the abolition of the *acta (ruling)* of Nero after the latter's death and condemnation of his memory (*damnation memoriae*). If we go beyond the legal aspect, it seems important to consider that the change in direction in the imperial politics towards the Christians coincided with certain changes in Nero's general politics, with the great turning point in AD 62 that marked the abandonment of the emperor of the line that went from Caesar to Claudius and was one of ascendancy, the escalation of the cult of the emperor and orientalist leanings, as well as the definitive split with Seneca and the Stoics established by the events of 65/66 AD. There were no significant links between Christianity and Stoicism, yet that did not mean that their respective ethics displayed, in practice, certain aspects in common and that the language they used was often the same. This was principally the result of an identical attitude towards the state: the loyalty contained in Paul's epistle to the Romans and the first epistle of Peter and the affirmation that they contain – that all authority comes from God and is worthy of being obeyed and respected not through fear but because one's conscience dictates it – the resulting ability to coexist based on both submission to an authority conceived as a service and to freedom – all these factors, although founded on different principles, are found in the attitude of the 1st century Stoics: from Seneca to Musonius Rufus, from Persaeus to Thrasea Paetus, who objected as obstinately as the Christians to the cult of the emperor and the transformation of the principality into a domination.

What Nero attacked in both Christianity and Stoicism was doubtless a similar antagonism, spiritual and "ideological" at a time when he had started to give a theocratic twist to the principality. Under Domitian, as under Nero, the persecution associated the Christians with the Stoics within a period of a few years; AD 93 was when the philosophers were deported from Rome, when

9 Tertullian, *Apologetic V*, 1 sqq.

the individuals from the ruling classes who had drawn motives of political opposition from philosophy and mainly from Stoicism were either condemned to death or exiled, such as Junius Arulenus Rusticus and Herennius Senecion; AD 95 saw the condemnation of Christians, also Consul Flavius Clemens and his wife Flavia Domitilla, of another Flavia Domitilla, apparently a niece of Flavius Clemens, all three relatives of the emperor and all “with many others, amongst whom was Manius Acilius Glabrio, accused of Jewish practices and with atheism”¹⁰.

The brief but violent persecution that took place under Domitian, which was claimed, wrongly, not to have existed, in contrast to that of Nero, hit the ruling class of Christians and then extended to the aristocrats who were incriminated *en masse*. The method for identifying the Christians was probably the expansion of the *Fiscus iudaicus* (a tax paid by the Jews to benefit the prince) as vouched for by Suetonius¹¹, a method which aimed to show up the distinction between the Christians and the Jews. It obliged the former to either pay double the amount in drachma, and as such being similar to the Jews with the immunity and privileges granted by Rome to the followers of a religion that was different to that of the Romans yet legally recognized (*religio licit*), or to openly admit to following a religion not recognized by the senate, i.e. a *superstitio illicita*, an illicit superstition which, ruling out all other worship, could carry the accusation of atheism. Their refusal of all the imperial gods and their practice of non-authorised worship meant that Christians were no longer the beneficiaries, not even implicitly or in an ill-defined sense, of the immunity accorded to followers of a *religio licita*, such as Judaism.

It was enough that the hostile forces of public opinion should be felt even more strongly and that, in the emperor’s interest, the political will to cover up for the Christians began to weaken (this will was demonstrated once again by Nerva, when he exercised his veto – according to Cassius Dio (Vol 68, 1, 2) – regarding the accusations “of impiety and of Jewish practices”, the effigy of the emperor on coins being a reminder; the Christians could from then on be legitimately incriminated for the practice of a *superstitio illicita*, in this case, the Christian faith. That was the legal situation which became more stable in the second century; throughout the period which stretched from Trajan to Marcus Aurelius, the attitude of the emperor towards the Christians was governed by the imperial rescripts. That is the official responses which the emperors gave at

10 Cassius Dion 67, 14.

11 Dom. 12,2.

each new appeal to the magistrates or to the communities. We are aware of rescripts from Trajan, Hadrian, Antoninus Pius; however, only with that of Trajan's has the text of the request to the magistrate (Pliny the Younger, legate in Bithynia between AD 111-133) been conserved along with the response from the emperor¹²; this allows an insight into the legal situation suggesting that the rescript and political intent were the basis of the imperial decision. Also, modern-day experts who have studied this subject have focused their attention on these documents. Some believe that contained within is the proof that no special law targeting Christians was in existence, whereas other experts - and they are absolutely justified, in my opinion - can show, using these same documents, that the practice of Christianity was already liable to legal action before Trajan. Indeed, all the requests by Pliny, which explain his inexperience because he had not participated in previous measures against Christians, focus on those relating to the nomenclature or designation, that is to say, the question of the application of punishment (about which he had no hesitation condemning to death confessed Christians) for the mere fact of adhering to Christianity or, consequently, regarding offences (*flagitia*) inherent to their adherence to Christianity. What prompted him to address Trajan was the dramatic situation in his province where he would have, by continuing to apply the criterion adopted so far and given the proliferation of anonymous denunciations, put to death an enormous number of people, including women and children, only guilty in his eyes of a politically harmless *superstitio*.

In his response, the emperor deliberately ignores the request about the nomenclature and the requests concerning the possible discrimination, but he suggests a fairly straightforward course of action and ultimately, a non-hostile one towards Christians: they need not be the object of investigation; anonymous denunciations need not be taken into consideration; legal action should not be exercised except when an accusation conforms to the law; whoever confesses to being a Christian will be condemned whereas whoever denies being a Christian and demonstrates that he is not by offering a sacrifice to the gods would be absolved with no further investigation into his past. The religious offence for which the individual was liable to being pursued, but not the community, remained, according to Trajan (who also kept silent on the veiled references made by Pliny about the refusal of imperial libations and the establishments of prohibited associations) an offence unique to Christians; He gave in to public opinion, which called for persecution, by following up the denunciations (as

12 Pliny, *Letters X*, 96/97.

long as they were not anonymous), but at the same time he endeavoured to contain this persecution within specific limits; barring being personally denounced, the Christians were guaranteed, individually and as a community, that the state would not intervene and would voluntarily ignore them; by avoiding specifying about the nature of the fault which constituted being a Christian, Trajan sought above all to avoid the transformation of an individual offence into a collective crime. This protection was ambiguous in nature, containing an implicit invitation to the Christians to inhabit a semi-clandestine situation, and it demonstrated in essence the imperial attitude towards the Christians in the second century, which, by its inherent contradictions, was done to displease both Christians themselves as well as their adversaries. The former, through the intervention of the apologists, repeatedly solicited the state for the abolition of the condemnation based on the *nomen* (and for the recognition of Christianity as an authorised religion), whereas the latter insistently demanded the adoption of compulsory searches. In the second half of the second century, the spread of Montanism amongst Christians, which had everything including fanatical intransigence and openly provocative anti-government features, led the government to change its policy: Marcus Aurelius was perhaps the only emperor to have persecuted the Christians for purely political reasons and who regarded the spread of their religion - which he confused with Montanism - as a threat for which he had to, in his capacity as emperor, mount a legitimate defence. Compulsory searches were adopted in 177 in Gaul, after the episode of the martyrs of Lyon, and at the same time in Asia, after a publication by Melito of Sardis. The persecution was introduced by Celsus¹³, a contemporary and possibly a spokesperson of Marcus Aurelius, as a defence on behalf of the emperor. But Marcus Aurelius' concerns were founded on a misunderstanding: neither the bishops of the High Church nor the great majority of Christians shared the anti-state bias of the Montanists; and in the wake of the troubles caused by the followers of the 'New Prophecy', the Apologists of 176/177 (Athenagoras, Melito, Apollinaris) confirmed the loyalty of Christians towards the state. The call to Christians by Celsus to emerge from clandestinity and to actively co-operate with the state was not without its repercussions. An instruction issued by Tertullian¹⁴ that has had (incorrectly in my opinion) its historical truth discounted, attributed a decree to Marcus Aurelius which, while not dismissing the existing acts for making the practice of Christianity a crime, nevertheless

13 VIII, 68, Bader.

14 Tertullian, *Apologetic*, V, 6.

sought to discourage individual denunciations and to provide safeguards for Christians willing to participate in the life of the state. It is without doubt the reign of Marcus Aurelius marked a turning point and that after the death of the emperor the church was seen to be gradually emerging from its clandestinity (towards the end of the second century, it began to claim ownership of places of worship and of burial), and it witnessed the progressive integration of Christians into the life of the state. Around the time of the Severan dynasty, the climate resulting from a religious and cultural syncretism that had been adopted and encouraged by educated Syrian-speaking princesses meant that Christianity was not just tolerated: it henceforth stirred the sympathies and interest of even those within the court circles.

The episode of the legate of Caracalla in Arabia who, wishing to hear the lessons of Origen and seeking the arrival of the latter in the province, requested permission from both the prefect of Egypt and the Bishop of Alexandria; the fact that Hyppolite and Bardaisan dedicated theological tracts to emperors and empresses, the interest in the theology of Origen from Empress-Dowager Julia of Mamaea, mother of Alexander Severus, and the obvious goodwill of the latter towards the Christians were all significant aspects of the new status and stepping stones of friendship by which relations grew, at that time, between the Roman State and the Christians.

The hostility of public opinion and the conservative intellectuals still prevented even the emperors who were most amenable towards Christianity from legally recognising it; and it allowed, yet still, scattered instances of persecution (most notably in the provinces). On the other hand, we must exclude - and most modern historians currently admit this - the existence, attested to in the sources of the fourth century but ignored by contemporary authors, of a general persecution ordered by an edict of Septimius Severus.

The religious policy of Severus continued, except during the brief period of the reign of Maximinus Thrax, until the reign of Philip the Arab, of whom it was said he was simply a Christian; on the other hand, in the light of the Christianity - real or supposed - of this emperor and of his clear goodwill towards Christians, for which he was reproached by the most hard-line pagans, it is easy to explain the anti-Christian reaction of Decius as well as his notorious edict. It seems to me that according to a chronological analysis of the documents that have reached us today, we can site this at around April 250 when sufficient evidence of the acceptance of the persecution had been gathered in the provinces of Africa and the Orient provinces; and it was, above all, the realisation that this was a propaganda exercise aimed at winning the favour of the pagan masses as

well as the conservative members of the senate and the ruling classes – on behalf of an emperor who had come to power by a military coup.

Enforced varyingly according to how well received the persecution was in the public's opinion, the edict, which did not specifically mention Christians, required that every citizen throughout the empire should sacrifice to the gods (this was what Trajan had demanded as a negative proof of citizens suspected of practising Christianity); it only provoked superficial renouncement and, in reality, did not impact the situation. What was even more humiliating – because of the numerous apostasies – however bloody, Christians could consider Decius' persecution, as soon as it was over, as a timely means of awakening the faithful, which a prolonged peace had corrupted¹⁵. Opponents of Christianity discovered that in order to fight it, it was no longer possible to hold on to ancient legislation, which did not condemn it except as an individual religious offence yet deliberately ignored the existence of the Christian community; from now on it was necessary to recognise its existence and hit Christianity in its capacity as a church.

This is what Valerius did with his edicts of 257 and 258. Paradoxically, it was the interest of a critical nature shown by Valerius towards the Christians and his decision to renew the former deeply anti-Christian legislation, that through his meticulous edicts, which struck at Christianity rather than at the church as a hierarchy and in its structure, which evolved into a situation from a legal field that allowed the Roman State, for the first time, to afford positive attention on Christianity and on the church. Indeed, in 260 when Gallienus (finding himself ruling alone after the imprisonment of his father) wanted to end the persecution, found it was not possible to simply restore the old conditions; instead he was forced to formally revoke the edicts already in place (it was simply not enough to deny them) regarding the existence and structure of the church, and he had to recognize the latter as a hierarchy and as a community subject to the law and entitled to own property.

From that moment and up until the proclamation of the edicts of persecution by Diocletian, that is to say about forty years, the church established a legitimate association within the heart of the empire and Christianity became a *religio licita*. The exemptions granted during this period to the Christian magistrates to practise pagan worship, attest, just as much as did the condemnation, in 295, of Maximilian as a conscientious objector but not in his capacity as a Christian despite his repeated profession of Christian faith; and even the text

15 Cyprian, *De Lapsis* 5.

of the Edict of Sophia, through which Galerius put an end in 311 to the persecution launched by Diocletian and which granted to Christians once again the right to exist as such and the right to create communities¹⁶.

In 313, the Edict known as the “Edict of Milan”, fruit of the agreement between Constantine and Licinius, went well beyond just tolerating the facts and rights realised by the Edict of Sophia. It didn’t just stop at expanding the concessions granted by the latter by decreeing the immediate restitution of confiscated property to the church but by transforming the spirit. From then on Christianity no longer represented, as it did for Galerius, a mistake that needed to be tolerated since it could not be corrected, but became a religion respected by the state with the right of the individual to freely choose his religion by following his own conscience and, above all, worship of the divine of whom he should consider it his supreme goal to remain in favour¹⁷.

The alliance with the divine, the choice of the strongest god - not by looking at the number of his followers but according to his divine power – capable of saving the empire became, after the military, economic and natural disasters of the third century as was the case in ancient times, the main idea of the religious politics of Rome. Choosing the God of the Christians was for Constantine in 313, (just as it was for Aurelius favouring the sun or for Diocletian imposing Jupiter as *optimus maximus*) a political choice as well as one which elevated the politics of the state with regard to the divine. This attitude is reflected within the Treaty of Milan, where the respect due towards a god is the main point, the dominant element of the imperial political programme. It appears from the text that absolute tolerance, the full religious liberty granted by the treaty “to Christians and to all”, is in Constantine’s politics with regard to divinity only a primary phase; namely the search for a compromise with a pagan brother while waiting for the evolving situation to allow Constantine to be the sole emperor and for the religion chosen by him to become the official religion of the empire. Following the reasoning of the ancient Roman religion, this was considered: as an alliance between Rome and its gods following the logic of Aurelius and Diocletian and, finally, to be in accord with the observed reality of an “era of dread”.

16 Lactantius, *De Mortibus Persecutorum*, 34.

17 Lactantius, *ibid.* 48.

Constantine¹⁸

*Pierre Lanares*¹⁹

“Constantine was the first Christian emperor to establish a model for relations between church and state. This model still exists today in certain countries and has influenced the entire development of Western civilization.” This declaration by H. Bainton, history of religious liberty specialist, highlights the importance of the actions of Emperor Constantine²⁰.

In order to understand the work of Constantine, it is necessary to broadly outline the historical framework in which it existed. Diocletian (284-305) had the task of preserving the unity of the empire, a unity that was founded on a religious basis. His first coinage proved that the state was not established on the authority of the senate or on that of the army, but under the protection of Jupiter. The official speeches of this very religious emperor show the hallmarks of the fervour that he demonstrated towards the gods, in particular towards Mithras, the great benefactor.

The decree of March 295 on marriage states: “We have no doubt that the invisible and kind gods are well disposed towards the Roman people, if while under our authority they maintain a godly, quiet and peaceful existence.” “In 296, a decree against the Manichaeans says:” The ancient religion should not be criticised by a new religion ...” “We are determined to punish the obstinate wickedness of men who replace the old worship of the gods by new sects...” “The plague of this evil (Manichaeism) must be eradicated and destroyed within our era.” In 299, the Christian officers of the Roman army were persecuted for their faith.

18 Article published in *Conscience and Liberty* magazine no. 10, 1975.

19 The work of Professor Pierre Lanares, in his role of Secretary General, was decisive for the International Association for the Defence of Religious Liberty. Pierre Lanares also endeavoured to structure the association, and to establish its credentials. From 1966 onwards, several national branches of the association were created in many countries throughout Western Europe, in French-speaking Africa and in the Indian Ocean. It was during his term of office, in 1978, that the International Association for the Defence of Religious Liberty achieved the status of NGO (Non-Governmental Organisation) to the United Nations and to the Council of Europe in 1980.

Organising conferences, seminars and meetings of experts, as well as the publication and international edition of “*Conscience and Liberty*” and the promotion of religious tolerance through education also formed part of his mission..

20 Hermann Dorries, *Constantine the Great*, Harper and Ro, NY, 1972, préface VIII.

On 23 February 303, it was decided by decree to destroy the churches and to confiscate church property as well as prohibit meeting for worship. Two more decrees followed concerning the clergy. The fourth decree in 304 forced everyone to offer sacrifices and eat the meat and wine destined for the gods.

It seems that Galerius, emperor with Diocletian, was the principal instigator of the persecution. He abolished it by decree in 311 in which he sought to justify himself. This edict of tolerance recognised officially that the long-awaited pagan religious revival had not been realised.

In 306, Constantine received his emperor's purple colours. After having adored the god Hercules, like his father, he chose the worship of the sun god in 310. The emblem of the invincible sun was engraved on his coinage.

Constantine dreamt of taking possession of Rome. Having reached the edges of the city, he suddenly saw a vision of a cross of light and he received the mysterious order to place the religious symbol on the shields of his soldiers. Thus, armed with this symbol, the soldiers engaged in battle and gained possession of the city on 28 October 312. On the third anniversary of this victory, Constantine engraved the monogram of Christ on his helmet. This action was a visible sign of his commitment...He believed that if the previous emperors had failed in their persecutions, it was because they were unaware of the almighty power of the God of the Christians who, alone, could provide the victory to his army.

This battle won by a Christian emperor would play a decisive role in the destiny of the Roman Empire.

The day of his triumphal entry into Rome, the emperor did not offer his habitual sacrifice at the temple of Jupiter. Nor did he offer any sacrifices from then on. He even relinquished those dedicated to him which were offered during worship. He dedicated the Lateran palace to the bishops and ordered the construction of a basilica. He had built a colossal statue, the embodiment of which held in his hand a long lance in the form of a cross. During the course of 312 and 313, he returned those properties that had been confiscated from the Christian communities.

In February 313, he confirmed the decree of Tolerance (Edict of Milan) already published in Nicomedia by his brother-in-law Licinius. Christians and pagans were now free to practise their religion: "[...] that every divinity in heaven should be benevolent and well-inclined towards us and to all citizens of the empire." The Christians were the first to benefit from this declaration. Because of this Constantine became the founder of Christian Europe.

But a war broke out between Licinius and Constantine. Each strove to enlist the gods in order to obtain the support of their disciples. Licinius declared: "Constantine does not battle against us but against the gods. If during

the battle the gods reveal themselves to be an effective support, we will march against those who turned against them. But, if the foreign God should overcome then we will have sacrificed ourselves in vain to our gods.”²¹ Licinius was defeated and as was usual at the time, executed. This episode marked the end of the fight for overall monarchy.

Constantine understood that in order to be assured of divine protection, prayer was indispensable. He surrounded himself with bishops, minted coins, and decorated his palace with tangible signs of his conversion to Christianity. At the inauguration of Constantinople on 11 May 330, Constantine left his mark – a cross carved on a globe – on a silver coin.

Constantine refused to allow his statue to be erected in any temple, just as he forbade any sacrifice to the emperor. However, it was an attitude that risked diminishing his status if he did not succeed in convincing people of his divine mission. Additionally, he endeavoured to make the laws more humane. “Man is more than the law,” he declared. He admitted that certain cases should be referred to the bishops who, indirectly, have jurisdiction over civil matters. Thereafter, ecclesiastical tribunals became important to the state.

In re-organising the army, Constantine reinstated those who had been unjustly dismissed and at the same time he offered those soldiers who wished to, on account of their conscience, the opportunity to leave the army. It was true that those in the military were endlessly confronted with an excess of blood and their daily life was entirely steeped in pagan rituals. Even the meat they ate had been offered to the gods beforehand. This is why the Christians considered any service incompatible with their faith. At the Council of Arles in 314, it was established that those soldiers who spilt blood were to be excluded from taking Communion.

An important element of Constantine’s legislation has survived to this day: it concerns Sundays. At this time, Jews and Christians observed the seventh day of the week (the Biblical Sabbath). Throughout his earthly life, Christ showed his respect for this day set apart in order to glorify the Creator. As for the pagans, they honoured the first day of the week dedicated to the sun, the supreme astrological god. Furthermore, traces of this adoration can still be found in the meaning of the word “Sunday” in the English or German form: Sun... day, Sonn...tag.

The edict of 7 March 321 stipulated: “The Emperor Constantine to Helpidius: That all judges, the populations of towns, and all the body of tradesmen should refrain from work on the day sacred to the sun. However

21 Cited by H. Dorries, *op.cit* p57.

those involved in agriculture should consecrate themselves freely and without constraint to farming the fields, for fear that because of this interruption they would miss the opportunity offered by heavenly providence; it often happens that no other day is more suitable for sowing crops or planting vines.”

Several decrees signed by Constantine and successive emperors regulated the nature of Sundays in more precise wording. The church did not display any particular interest in this decision. The substitution of Sunday as Sabbath had not yet entered into their consciousness. The spirit of the day consecrated to the sun did not correspond with the day that the Christians worshipped their creator. Later on, the church would find that this change of day was the means of facilitating the admission of the pagans into their midst by inviting them to come and worship in place of going to a pagan temple.

More than a century later in 360, the Laodicean Council, without actually abolishing the day of the Sabbath, encouraged the transfer of a rest day from Sabbath to Sunday (canon 29). In 425, the Emperor Theodosius II banned certain activities on Sundays because the clergy deemed them to be contrary to its sacred nature. It was not until the 6th Century that the church took a definitive stance in favour of Sundays at the 2nd Council of Macon in 585.

Constantine called this day of rest “the day of the sun”, something which pleased the pagans. He himself was in favour of this cult. His commemorative arch is a monument erected for sun worship and for a long time after his conversion, the coins continued to be minted with the image of the sun god on them. It was Theodosius who changed the terminology of Sunday to the “day of the Lord”, thus placing all the citizens of the empire under the influence of the church and the state, thereby constituting an excellent basis for the unity of the faith.

The prosperity of the state depended on Christian worship being observed by all the subjects within the empire.

What leant importance to Constantine’s decision was the legal character that was reinforced in the Middle Ages by the church and state. It was also that the rest it offered placed an importance on the social aspect of Christianity, and finally that the celebration of the divine worship remained the essential matter considered when establishing this day.

In ancient Rome, prosperity of the nation depended upon the favour of the gods. Religion was not considered an individual experience from within, but as a public act performed in a location designated by precise regulations. Augustus considered himself responsible for the empire and, as a result of his religious life, took the name of Supreme Pontiff. This was the control of religion by the state. When Christianity became the official religion, Constantine

took up the same role of pontiff without having been baptised and without ever having participated in a communion. He was content to read the Holy Scripture and pray, none of which prevented him from calling himself "the Bishop of the Outside", from convoking councils and prescribing by law obedience to the conciliar canons.

For Constantine, Christianity was a new religious teaching, a peace-loving law which stood in for civil order and represented a moral force. When heresy manifested itself at the heart of the Christian Church, Constantine considered that, according to Roman tradition, it was natural to intervene in order to maintain public order and the re-establishment of religious unity.

Contrary to the spirit of the Gospels that offered each person the freedom of choice, Constantine placed his subjects before the need to accept official doctrine. The church, in consideration of the huge advantages it gained from the situation, did not oppose the authority of this meddling protector. It took centuries for the Christians who wanted to remain faithful to the true Gospel message to accept, at the cost of unspeakable suffering, the value of other religious communities until the right of every human being to his own beliefs was finally recognised.

However, Constantine's example was long lasting and numerous heads of state wanted to follow in his footsteps for controlling religion or enslaving their policies. They just had to put into practice the rule that Constantius, Constantine's son, expressed to the Council of Milan in 355: "That which I desire will become the law of the church."

The church itself favoured this compromise between paganism and Christianity to kindle the conversion of the pagans. But it was at the expense of the integrity of the message for which it was responsible. The Emperor Aurelian (270-275) had built a magnificent temple in Rome for the worship of the sun, and he decreed that December 25 would be the official holiday to celebrate the invincible sun. At the time of Constantine, the church chose December 25th to honour the Christ who is "the Sun of Justice" and decided to fix the date of the birth of Jesus that day.

The edict of Theodosius I in 380, which made the Christian Church the official church, led to the elimination of paganism. This attitude was diametrically opposed to that of Diocletian in the early fourth century. But it was this same spirit of intolerance used in the service of the Christian Church. These were the principles that would later be used by Zwingli and his followers to exterminate the Anabaptists in Zurich.

When Constantine forbade the assemblies of the heretics and transferred their places of worship to the Catholics, the Christians, forgetting the persecu-

tion they had endured, accepted this decision while praising the emperor.

The church did not realise the harm it was doing to its followers and the state. It did not take long to justify coercion and make use of the state to establish unity of the faith. This system, of course, only presented negative aspects. The church practised a charitable, educational and social act. On some occasions, it was an element of national unity but it was no longer the prophetess who fought for God's sovereignty and human freedom.

It could not fail to be corrupted by the exercise of power. "The rigour of a system that oversees all human conditions in a precise hold, passionate bitterness of clerical conflicts, are not sufficient to excuse the collapse of the blandly religious freedom granted by the church protected by the emperor."²²

A Jesuit, Joseph Lecler, has highlighted the consequences of the policies of Constantine and his successors:

When applying corporal punishment to dissidents, she would quarrel for centuries over the distinction between the spiritual and the temporal upon which the autonomy of the church had been based up until that time. Imperial proceedings against schism and heresy mostly favoured Caesaropapism and, during the sixteenth century, justified the spiritual power of the Protestant princes.

Penalties against schism and heresy have steadily worsened since Constantine (exile, imprisonment, confiscation of property, infamy, execution by fire).

"The imperial policy of the fourth and fifth centuries therefore appears quite decisive. Alone, it does not explain the medieval intolerance but it has at least paved the way"²³.

Another Jesuit speaking of his church after Constantine says: "In the fight against heresies, there was too much intolerance and oppression of freedom of conscience. In defence of the true doctrine, the essence of Christianity - love - was often renounced and the dignity and personal freedom of its enemies were abhorred."²⁴

We must be attentive to the actions of Constantine to discern his ever subtle and pervasive influence, in order that the religious freedom he had wanted to establish by the Edict of Milan should not be destroyed by compromises that seem advantageous to both parties but which are in reality a fool's bargain for those involved, and a cause of suffering for those who are subjected to them.

This study was partly inspired by the work of H. Dorries "Constantine the Great".

22 Charles Pietri, *Mythe et réalité de l'Église constantinienne*, Les quatre fleuves, N° 3, Seuil, 1974, p. 30.

23 Joseph Lecler, *Histoire de la tolérance au siècle de la Réforme*, Auber, Paris, 1955, T1, p. 76,77.

24 Joseph Lecler, *Pas de monopole dans la promotion de la liberté*, Conscience N° 93, mars 1974.

II. RELIGIOUS LIBERTY FROM DIFFERENT PERSPECTIVES

The Meaning of Freedom according to Orthodox Thinking The Christian, a Free Being²⁵

*Emilianos Timiadis*²⁶

There is hardly a problem more fascinating, more current and leads to the heart of Christianity than that of freedom. It is right that the language of freedom occupies a relatively limited place in the New Testament; it is not from this angle that the salvation brought by Christ is generally presented. It is no less true that St. Paul mentions in magnificent terms the point of making the vocation of the Christian an ideal and the object of his most ardent desires.

In the study of the virtues, the greatest difficulty is in defining their limits. As human nature has an innate inclination to indefinitely expand the scope of the virtues mentioned in the New Testament, it is necessary to locate the perfect balance point where each virtue ceases to be legitimate and becomes excessive.

This rule, valuable in all areas, becomes essential when it concerns religious liberty. Taught by Christ, developed by St Paul, it occupies a predominant place in the Gospel. Having been delivered from his sins, the faithful person recovers his freedom. Within the creation story, he was the only being endowed with the ability to choose. He himself made his choice. His conscience led him to discern the different ideas motivating the choice and suggested which preference to give; but in neither case did it pressure him. Even the Creator respected man's decision. Let us consider the prodigal son: in this parable, the father did not exercise any restraint when the son decided to leave home to go away on an adventure; he simply outlined the drawbacks and the dangers of his decision, but he did not oppose it.

25 Article published in the journal 'Conscience and Liberty' no.13, 1977.

26 Emilianos Timiadis, Greek Orthodox bishop of the Ecumenical Patriarchate, was Metropolitan of Sylvania and representative of the Ecumenical Patriarchate to the WCC for 50 years (1959-1964). He is the founder of the EIIR (international and interdenominational meeting of priests/nuns).

1. God Respects the Freedom of Man

The archetype is similar to the antitype. Man is created in the image of the divine model. As he was incarnated, Christ freely chose to disregard his grandeur to save man and restore his freedom; man was free from that moment on to choose his own destiny. This freedom matches perfectly with human dignity. Creation would not fulfil its purpose if man were not distinguished from the animals by certain superior qualities.

It is good to note that the Pauline moral is unaware of everything that would have the appearance of casuistry. The faithful can breathe freely. Once he had cleared the vast field of ritual acts imposed by the law, Paul refused to replace one ethic with another. He wanted to create adult consciences and not abandon man to be led as a child. In order to behave well, the Christian indeed benefits from a gnosis, a supreme knowledge that penetrates every aspect of life. He is a gnostic acquainted with sacred wisdoms. Gnosis and conscience complement each other; within this blend the Greeks perceived the famous “Sophia”, the highest form of wisdom humanly undisputed. “Who is truly free?” the Greeks asked each other. “He who is devoid of passion,” replied the philosophers. The ascetics found true liberation in submitting the physical to the spiritual. Today, monks and men living in the world still ponder the question: “Who is free and at what point in time?” Each person considers freedom from his own point of view. A truly free individual might be considered by some as a slave bound by his concerns and, paradoxically, a real slave could consider himself completely free. What a contradiction!

The monastic principle of despising the world, *contemptus mundi*, together with its equivalent, *saeculi actibus se facere alienum* [to make oneself a stranger to the world’s business], finds its motivation in a higher calling; to surpass earthly realities and loosen the bonds of time in order to discover one’s true vocation; rejecting the world to finally possess complete freedom to consecrate oneself to the everlasting God. It is not obliteration, it is surpassing. The monk knowingly limits his vision of terrestrial and of transitory matters in order to better prepare himself for spiritual contemplation. In the *Vita Antonii* we read that despising demons as well as abasement promote the elevation of the human faculties towards heavenly horizons and bring our nature closer to that of God (Life of Anthony, Chapter 38 pg. 26, 897).

St Paul is the only New Testament writer who uses a vocabulary that frequently revolves around the word “freedom.” He uses the adjective *eleftheros*, the substantive *eleftheria* and the verb *eleftheroo* more frequently than other

terms. He maintains an intimate truth, a freedom of conscience, an independence vis-à-vis an external force, and confirms access to a better world. But since all conscience suffers destruction, the remedy would be a continual restructuring by grace - the help of the Holy Spirit (*de auxiliis gratie*). A thought that the freethinkers have distorted was in circulation amongst the Corinthians: man cannot in any way control himself. They went so far as to say that fornication was a legitimate need of the body, one of human nature's pressing needs of the same ilk as eating and drinking. The clarification provided by Paul is still valid: man, a free being, should not let himself be dominated by anything. Man's freedom is conditioned. Any other interpretation would lead to disastrous consequences of self-determinism or autonomous morality.

St Paul is aware of the pagan cowardice, particularly of the epicureans. Without arguing the "everything is permitted" thinking in vogue at the time, he repeats the formula but takes care to add an essential modification brought by Christianity: "But not everything is beneficial" (Not everything is good for me) (1 Cor. 6:12). Of course, we could make full use of all the pleasures for our own personal satisfaction, but not without reflecting on just how our attitude serves our own interests - both immediate and in the future - and if they are appropriate for the human nature, whether consecrated or secular. The human being must find and retain a balance between carnal desires and spiritual needs. By omitting these two factors, he runs the risk of warping the meaning of his life and of upturning the organisation of his faculties. The redeemed, according to Paul, have a unique calling: they have become collaborators, the *synergos* with God in order that His kingdom is established on earth as it is in heaven. In this context, he is called to re-establish order and harmony in this disorganised and disorientated world, and to rebuild it from its cosmic dimensions. Man is not an imitator. He is an original inventor. Conquering space and technical progress, due to the genius of truly free beings, can be used for peaceful purposes for the general good.

For God, human freedom is without limits; He does not desire to intervene by force and trample on free will. Created in the image of God, man can rejoice in the ability to elevate himself to reach the heights of the divine model in order that he becomes divine and *microtheos*. But he might just as equally refuse, or even disobey and revolt, without any interference from on high. When Christ invites his disciples to follow Him, He allows them complete freedom in their choice: to accept or refuse. Likewise, the Gospels do not impose any further on this free being, which is man. This freedom of choice is attested to by St Basil the Great concerning baptism (*De Spiritu Sancto*, 12, pg 32, 117).

To take this point further, man can in fact ignore, despise and even deny his Creator. God can tolerate persistence in wrong-doing, unbelief, despair and atheism. Denial of God is foreseen in the plan of salvation and far from responding with hatred, God responds to it with mercy. At Calgary, Christ prayed for those who were crucifying Him and for Israel. His compassion is without bounds, surpassing all human expectation. His creatures might refuse the lordship of God, but religious liberty remains the most sacred value for God.

2. Human freedom is violated by man

Thus God considers that man's freedom is unrestricted. But man needs to have his limits. Not to recognise this leads to self-determinism. While man is a being chosen by God for a semi-divine dignity, he is at the same time obviously a fallen being, imperfect and subject to sin. His judgement does not incorporate all the elements that would result in perfect choice. His conscience has suffered the harmful effects of his fall. He is in need of the continuous guidance that the Holy Spirit offers him through the church. Membership of the Christian in the church has no other significance except as assistance, a father-like support in the different walks of the spiritual life. The freedom of an individual takes on another form when he integrates himself into a group, when he lives within a community. Regarding this matter Paul's epistles are rich in instructions, guidelines and exhortations. A freedom that is badly controlled and non-disciplined risks destroying the freedom of man. The more we rejoice in being "free", the more we need to be aware of our responsibility. When "I do what I want" my freedom is only illusory; St Paul showed very clearly that, in fact, I suffer from cowardice when I succumb to hypocrisy. Man cannot, of his own accord, stay free. He has been set free by Christ who offers him the means to safeguard this freedom. So let us banish from our minds this twisted idea of a captive freedom.

Nowadays we, unfortunately, observe how the individual can detach himself completely from his community; we need to look for the reason in this detachment from freedom. This dislocation of life is an alarming phenomenon. Just as humans no longer attach themselves to anything, they are isolated, anonymous beings withdrawn into themselves. They are like nomads, rootless. Each one endeavours by any means to remain anonymous, "free", a bird without a nest and no strings attached. They categorically refuse to belong to any specific group in order to live as they please, rejecting all responsibility and dismissing

any commitment. Sometimes within this sphere are certain single people who live on the margins of human society in order to escape domestic obligations.

Yet, God respects the freedom that he intended for man. Consequently, the church cannot grant freedom through such and such ruling, and even less by pretending to act generously! This freedom has been granted to the church right from the beginning. It is not the church's responsibility to take it away or to control it. It remains inviolably attached to its core, confirmed within its conciliar decrees (see Canon 6 of the Council of Neo-Caesarea and Canon 8 of the Seventh Ecumenical Council, Constantinople, on the subject of admission to baptism or how a heretic or schismatic can gain entry to the church by virtue of pressure put upon them).

Yet, through the ages, the church strayed away from the divine example. Gradually as it developed, institutionalised restrictions were imposed which marked the different stages. Frequently brought accusations against the church should not always be attributed to slander. The encyclical letters of the past sufficiently inform the historian of the narrowness of view with regard to the press, of the expression of thought among intellectuals: see the *Romani Pontificus Providentia* Decree by Pius V, 1572. His successor, Gregory XIII reinforces in his Bull *Ea est* the sanctions against non-censured publications. Sixtus V ordered that the one responsible for a publication, albeit modest, should have his hand cut off and his tongue torn out. Therese d'Avila recounts in her autobiography how she suffered as a result of the Index [of Forbidden Books], written by the Grand Inquisitor Don Fernando de Valdes. Other popes had the same attitude: Alexander VI, *Bull Inter multiplices* (1501); Leo X, *Inter sollicitudines*, 1515; Pius VI *Quod aliquantum*, 1791; Gregory XVI, *Mirari vos* encyclical. Only around the time of Leo XIII and Benedict XV did granting freedom of expression begin, even though a retraction was printed later on in the encyclicals *Immortale Dei*, 1885, and *Libertas praestantissimum*, 1888 by Leo XIII.

We live in a pluralistic society, enjoying extensive means of communication and saturation where all the faiths, sects and ideologies can practise openly. It would be unrealistic to harden oneself against everything that does not form part of our own conviction by means of restrictions and resorting to secular powers. It is becoming more and more difficult to protect the believer from being proselytised by another religion. He can be contacted not only through the press and the radio but even more so through personal and professional contact. It does not appear that the people most exposed to this pluralistic penetration –for example in the United States - succumb to irreligion, indifference or the work of proselytism. However,

no one will accept that the faithful are a passive epiphenomenon or that they would not be subject to real influences. The solution in every case is not to pass out laws or to apply restrictive measures. The public should instead acquaint themselves with the ideas and thinking of other religious beliefs without falling into confusion and syncretism; the way our world is organised brings us closer to each other much more easily than before.

Believers are not considered as a monolithic entity set in stone. They are a fluid and mobile reality. They are destined to be able to judge, to discern and to discuss in an ecumenical spirit devoid of fanaticism. Their cooperation is essential in a practical domain to maintain and consolidate peace, to promote friendly relations in all areas of human life. They can adapt more easily to the aspirations of the modern world and to other beliefs if they endeavour to better understand their faith and to reject, with a generous spirit, all prejudices. No church can develop whilst being static and conformist. The upheavals in this century demand an updated interpretation and a new means of tackling religious liberty. Far from attributing the state with a sacrosanct nature, the church should defend itself by its influence and its own spiritual strength.

[...]

3. The freedom of man and the truth revealed

The defensive attitude of the early church is easily explained. With its position still fragile in the pagan world, the bishops were forced to advise caution and restrict dealings with heretics. They followed the example of St. John the Evangelist: this apostle of charity indeed recommends that the faithful have no communication with dissidents (2 John 10, 11). However, a clarification is needed. While Christian authors severely opposed heresies, as they were a distortion of the truth and a departure from the apostolic teaching, they nevertheless showed charity to the heretics. St. John Chrysostom did not approve of the hostility towards them. Instead he urged the Orthodox Church to show great understanding and have compassion on those who sincerely, for one reason or another, had abandoned the doctrine of the church. Persecution as well as excessive measures against the heretics came mostly from the secular powers. The empire did not tolerate that peace and order should be troubled by doctrines in conflict with the church that was established and protected by the state. This

was Constantine's design. Heretics and especially gnostics were considered not only as adversaries of the church, but as enemies of the state.

In his letter to some deaconesses, daughters of Count Terence (c. 372), St. Basil of Caesarea describes them as fearless fighters who have remained beyond the reach of Arius's heresy. However he insists "they should avoid all communion with the Arians and avoid conversation with them as something harmful to souls..." (Epistles. C.V.34).

In a letter, this time addressed to the priests of Tarsus (AD 372), St. Basil wrote at length on the sad state in which the church found itself. He favoured a union with heretics, but was opposed to any concession on faith ... "The union would work if we wanted to comply with the condition of the weakest on the points where we do not cause any harm to souls" (Ep. CXIII).

The previous year Basil had already sent one of his relatives, Artabios, Bishop of Neo-Caesarea, an urgent call for rapid action and solidarity. Any delay could risk exacerbating the security of the whole church. He writes (in 377): *"Know that, if we do not undertake the same struggle in favour of the churches as do the opponents of blessed doctrine struggle in favour of their destruction and complete disappearance, nothing will prevent the truth from perishing, overthrown by its enemies; and ourselves somewhat affected by a condemnation for failing to deploy all our zeal and enthusiasm in our mutual understanding and agreement on the things of God, to show all the solicitude possible for a union of the churches. I pray thee, banish from your soul the thought that you do not need to be in communion with anyone ... the scourge of war, which revolves all around us, will come to us ..."* (Ep. LXV).

Faced with schismatics and heretics, the fathers of the church called for tolerance, mercy and love of the faithful. The first deserve leniency because they are victims of unforeseen and difficult to clarify circumstances. It is for this reason that St. John Chrysostom disavows the pretext claimed by some that those who are in error are effectively deprived of our charity. He refers to Paul's exhortation to Timothy that God's servant must not strive but be gentle toward everyone. He is responsible for instructing - while keeping a tone of moderation - those who resist the truth, to see if God will give them knowledge (2 Tim 2, 24-25.)

He writes: *"And why do you say that if they are not our enemies but they are gentiles, should we not hate them? Of those whom we should hate, it is not the gentiles. That is their error. It is not of man. It is the evil that causes this, that's whose fault it is. In effect, man is the work of God. The error lies with the devil. Do not confuse that which is of God and that which is of the devil... St Paul, who loved God so much, did he detest them because of this? No, absolutely not. On the contrary, he*

loved them and did everything for them... It is the work of the devil to separate us from each other. He puts all his efforts into erasing the charity among men in order to block every avenue of reform – in order to maintain one in his error, the other in his hatred and thereby to close off to them the way of salvation” (Homily 33, 4-5 in Epistle I ad Corinth, pg. 61, 282-283).

4. A requirement of freedom: to respect it in other people

Today’s world requires us more and more to meet individuals and groups whose religious or philosophical ideas differ from ours. Mutual respect for the beliefs of others is an absolute necessity; it derives from love. If the greatest of all virtues is love, how could we despise the religious or ideological opinions of our neighbours, however remote they are from ours? The structure of society is pluralistic. There is no country or nation with a single faith. But the attitude of a believer to those who belong to other faiths is clear: not only should they not disapprove, much less malign their convictions, but instead strive to find common ground between their beliefs.

In addition, ecumenism requires new duties for everyone. It is no longer enough to merely tolerate a type of interfaith coexistence, but instead it involves sincere research animated by love to know and re-evaluate the richness in traditions of others. We are witnessing major historical events. Confusion rises up against certainty, despair against hope. Our generation rejects any reference to history. The world before us does not want or cannot believe. How is it possible to give it back its faith? In the past we followed two paths, which although diametrically opposed offered the same inadequacies: firstly, looking to God exclusively; on the other hand, a complete interest in man. The first method has some serious shortcomings: an egocentric quietism focuses the attention on God, forgetting that of his image. The second method is equally flawed because it gives prominence to the anthropocentric standard, which is completely unrelated to the Supreme Being. Our problem today is in aligning the vertical with the horizontal, theology with sociology, with each maintaining its integrity.

Another aspect of the problem is our responsibility to our kinfolk, as well as towards heretics or unbelievers. As St. Paul said, “Be blameless before the Jews, Greeks, and the Church of God” (1 Cor. 10:32). Commenting on this passage, St. John Chrysostom paints this beautiful portrait of a Christian:

“We are the light and the leaven, the torches and salt; we must illuminate and not spread darkness; we must be a tonic and not a dissolving element; we must attract

the infidels and not put them to flight. Why chase away those we need to attract? ... This is the rule of Christianity in all its perfection; here is the definition with nothing missing; this is the highest pinnacle: to find a common interest ... Indeed, nothing can make us imitators of Jesus Christ as our zeal for the good of others" (Homily 25, I in Epist. ad I Corinth. pg 61, 208).

Here we must do justice to the outline by *Libertate Religiosa* which re-examines the same problem in the context of the ecumenical movement. Obviously it emphasises respect for religious freedom for all and by all. Already, the Charter of Human Rights of the United Nations, a similar resolution to the Ecumenical Council of Churches, had reaffirmed the human right to freely practise religion or to adopt a particular ideological opinion. Considering the restrictions decreed against that freedom in some non-Christian countries, they had tried to ensure that man was given some essential guarantees. This plan falls within these lines by requiring Catholic majority countries to respect the beliefs of other Christians. From respect and understanding will develop, hopefully, closer collaboration for the common good of all.

St. John Chrysostom, who had studied in depth human solidarity and the duty of every Christian faced with shared dangers, develops this idea of mutual support with surprising tolerance. His starting point is the doctrine of the Mystical Body. He illustrated this with an example from everyday life. When a fire breaks out, the owner of the house next door does not ask who owns the house in flames. The question of race, social class or religious beliefs does not pose any problems for him. He knows that if the fire is not quickly contained, a disaster will arise and its consequences may be incalculable.

"When you feel very little concern for your neighbour, be aware that you have no other means of saving yourself, and if only out of self-interest look out for your brother and everything that is related to him...(those who don't) imagine what punishment awaits them! As the fire gains ground and grows in intensity, it will burn everything they own and because they have refused to protect the interest of their neighbour, they will also lose all their possessions. God, indeed, only wanted to make a united body of all men, and that is why he planned everything in such a way that the interest of each would be directly linked to that of his fellow man. That is so we can see that the world forms such a well-organised whole. Let no one seek his own interest if he wants to be sure to find it. And let it be understood that relinquishing riches, martyrdom, or anything else can protect us if we have not attained perfection in charity. (Hom.35,4 in Épist. I ad Corinth. PG61,210-212)

It is in this context that we must consider the issue of religious freedom. Since most of our brothers, whichever denomination they belong to, are

facing the same problem of detachment from the world of all that is holy, we are bound to each other, united in solidarity and a shared responsibility: to protest against our rejection to the rejection of off-balanced men, to uplift the church together and meet the needs of the world with an open heart. We cannot under any circumstances bury ourselves in a denominational isolation; it is anti-ecumenical.

A world torn apart and Christianity without unity should not leave us inactive and satisfied. Our generation disapproves in a disagreeable manner of our historical disputes. Non-Christians scorn our weakness, our inability to find a way to reconciliation. Sectarianism and fundamentalism often create barriers to the efforts of the brave workers who seek agreement. The performance of today's Christianity is no different from that outlined in his era by the great Patriarch of Constantinople:

"I see the body of the church laid out at this moment on the ground like a dead corpse. Like a corpse which has just had its life taken away, I see the eyes, the hands, the feet, a neck, a head, but what I do not see is a limb fulfilling its function. Here, too, all those who are present have a shared faith but it is not an active faith. We have extinguished the vital heat. We have turned the body of Christ into a dead corpse. If these words are appalling, even more appalling is the truth that reveals itself in the facts. We call ourselves brothers but our actions show us to be enemies. We are all, by name, members of each other. But we are in fact split apart like wild beasts. I do not want to show off our faults, but what I have said I have said to shame you; it has been to lead you back" (Homily 27, 4 in Epist. II ad Corinth, pg 61, 588).

It is high time to forget, to forgive. Let the churches rally their troops, theological and pastoral, that they should teach their believers the meaning of the message given by Christ just before dying for the world: "That they should be one." The time has come to bridge our denominational barriers and to assume, with a different mentality and a much more open heart and mind, our common responsibility. It will not be despair or taking flight that will resolve our divisions, but love. Let us examine and keep in view this ideal description of an ecumenical man as described by St. John Chrysostom:

"See here the extreme pain expressed in this image of a devouring fire (it is the exclamation of St. Paul: Who is weak without my weakening with him). I'm in the flame. The fire consumes me, what a terrible ordeal" ... What stifled him, what crushed his heart, what tore his soul apart was to have to suffer so much for the weakness of each one who was ailing, whoever it might be. His character was not to grieve with the more esteemed without taking care of those who were beneath him; even the most despicable, he regarded like one of his relatives. Hence his words: "Who is

weak ?" It seemed he alone was the entire church, as he was tormented by each of its members" (Homily 25, 2 in Epist. II ad Corinth, Pg 62, 572.)

Thus, the fathers of the church revived the spiritual foundations of freedom by means of a brotherly interest in one's neighbour. Freedom, and it is not a bad idea to say it again, is a gift, a grace that frees us from ourselves and from our neighbours. The church, faithful to the principle of subsidiarity, must strive therefore to impose the minimum requirement while maintaining maximum freedom. According to the vicissitudes of history, the church focuses on freedom sometimes, sometimes on the love of the community. This dual aspect presents a counterfeit of obedience that turns into servitude or the cowardice of authority that hides behind an exterior of cautiousness.

A crusade of churches has therefore become an absolute necessity. This is also the channel forged by the Second Vatican Council: forgetting the past in reconciliation and fraternal cooperation with all men, even the non-believer. Shall we remain insensitive to this call?

Religious Freedom and Human Dignity²⁷

*Monsignor Pietro Pavan*²⁸

I. An untenable interpretation

During the course of the years following the Council, and particularly in more recent times, a fairly common doctrinal position from within the pre-conciliar Catholic tradition concerning the right to religious freedom has recently come to light. This is the view that *only* someone who is in the *truth*, therefore *only someone who is Catholic*, may have and in fact does have an *original* or natural right to religious liberty; whereas someone who is not Catholic has the right to religious freedom which can only take the form of a positive right granted by the state for the benefit of everyone; a right granted in this day and age by almost every state as the result of the historical situation that has been established within each state as well as in their relations towards each other; a right which could disappear at any time in a more or less distant future if important changes take place in human co-existence.

In this regard, a few observations are evident.

It is altogether reasonable that the document “*Dignitatis humanae*” – as well as all the other documents of the Council – should be chosen by scholars, Roman Catholics or otherwise, for a thorough examination. Either to specify the doctrinal content with as much clarity as possible, or to re-examine with

²⁷ Article published in the journal ‘Conscience and Liberty’ no.11, 1976

²⁸ Italian Cardinal Bishop Pavan was rector of the Pontifical Lateran University. Expert at the Second Vatican Council, he collaborated in drafting papal documents such as the Encyclical *Pacem in Terris*.

greater attention the relation between the content and certain pre-existing positions of the Church in this area, or even to see if the contents are susceptible to further development. This is especially so as the Christian-inspired socio-political idea is not a closed system but on the contrary, as one would say an open system.

This is why the Church – hierarchy and laity – under the somewhat urgent stimulation of history, subjects itself to an endless enucleation for ever newer suggestions. This thought is like a seed that grows into a tree, and one of the most difficult and delicate tasks for men of study is to distinguish, from out of these new recommendations, the elements that follow an irreversible step forward in the development of this thinking, elements which are wholly linked to the current situation from the moment they have been developed and which, at the point when the situation ceases to exist, disappear in the same way.

In addition, it is not difficult to understand that among learned Catholic men, there could be some who continue to believe (entirely in my personal opinion), that only he who professes to the true religion has or can have a natural right to freedom in the matter of religion. However, upon examination of the Council document, if we begin with the assumption that it is only valid insofar as it is located in the aforementioned doctrinal opinion, or even more surprisingly if every effort possible is made to prove that this opinion is confirmed by the document itself, then it is an unacceptable conclusion for the simple reason that it does not correspond with the truth. The declaration “*Dignitatis humanae*” is what it is, and must be understood by giving the wording from which is it comprised the meaning that it has in its usual form and within the context of the declaration itself. And what better reason than that this wording has been meticulously chosen after a long-running debate, and which has been carried out with great attention and steady commitment on the part of many Council fathers. Early in the development process of the document, they often found themselves in differing positions and even sometimes radically opposed. However, throughout the process, the differences were ironed out little by little and any opposition was reduced in order to achieve, by the final phase, a convergence of opinions that extended to almost every single one of the bishops concerned.

II. A universal right

Regarding the nature of the right to religious liberty, there is no doubt that such as it is defined and proclaimed in the Council document and in the

minds of the fathers, it is a right which does not allow discrimination; it is identical for all, namely, it is a universal right which belongs to all citizens of all civilised societies of Catholic and non-Catholics, Christians and non-Christians, believers and non-believers. It is so because it is based, as shall be explained shortly, on the inherent elements of the *individual being*, these elements which can be found within *each* human being, *everywhere* and *at all times*.

Moreover, as soon as this law was proclaimed there was a sense of it having been received throughout the world and in all cultural societies; that is to say that it was received not only as a reaffirmation on the part of the Council, from a pre-conciliar position on this point by the Roman Catholic Church, but as a *novel* stance on the subject concerning individuals, other religious communities and civil authorities. And this is despite the fact that upon examining, with calm objectivity, this right in its most basic elements, we can conclude that it is not a novelty in the *strictest* sense for the Catholic Church. It turns out to be a clear demonstration of an immanent requirement in this tradition, or to express the same idea in more accessible terms, as a further step forward in the intrinsic evolution of the socio-political thought of Christian inspiration. It takes the form of an irreversible step forward since it is not entirely linked to historical circumstances, even though it is because of these that the Council fathers decided to examine this right and to make a pronouncement on its profound meaning.

“In addition” – declares the conciliar document – “when dealing with religious freedom, the sacred Council intends to develop the doctrine of recent popes on the inviolable rights of the human being and the legal order of society.” (*Dignitatis Humanae* 1/c).

III. Dignity of the person, the basis of the right

Another element affirming the universality of the right declared in the Council’s declaration “*Dignitatis Humanae*” is provided by the foundation that is the dignity of the human being.

Let us be clear at the outset that in this document the dignity of the person is not understood in the *moral* sense, namely the dignity that comes from the *righteousness* of one’s conscience and honesty of one’s actions. This would mean that the existence of this right is *dependent* on the straight and honest actions of men and that this right would dwindle away if this course of action ceased. It could then no longer be considered as a universal right; or one would

have to consider the word 'universal' as conditional and problematic, which would be an unfamiliar and ambiguous sense and not at all in keeping with the style of the Council documents. The right to religious freedom proclaimed by the Council is a right that is *fundamental* to each person, a right which *every* citizen possesses *as a person* and which the state *should* therefore recognise. It is not a right that the state has granted to one person as a citizen or member of a particular society. "The right of each human being to religious freedom", as declared in the Council document, "should be recognised within the legal order of society in such a way that it constitutes a *civil right*." (*Dignitatus Humanae 2/d*) It is therefore a *universal* right. It is obvious in its meaning; it is universal in an *absolute* and *apodictic* sense, as is also evident from the statement that is based on the dignity of the person as it is understood in the same document, that is to say ontologically. It is the dignity which comes back to *every* person in virtue of his own nature or of this human reality which exists; that is to say in virtue of the inherent elements of his existential being bestowed with intelligence and freedom. This is the dignity that *every* human possesses everywhere and always by the simple fact that he exists as an individual and not because he acts correctly from a moral point of view. It is the dignity that *stems from* and *depends* on his being and not from his behaviour that can be right from an integrity that corresponds to an objective truth, or right from an integrity which is the fruit of a conscience attained through an invincible ignorance.

In the Council document, three elements that constitute the dignity of the human being in an ontological sense have been examined in great detail. These three elements are:

The Responsibility with which no one can escape in establishing a relationship with God or in the decision of his eternal destiny;

Immediacy and the nature of the relationship between each person and the truth;

A personal *Identity* or the requirement for each person to *always be himself* in thought, love and action.

IV. A responsibility with which one cannot escape

Among the elements which constitute human dignity in an ontological sense, a question raised specifically in the document which we must take into account, as just mentioned, is the responsibility *no single human being* can escape when he establishes a relationship with God – that is to say when he decides

upon his eternal destiny. It is a responsibility that we must espouse because it has its source in what is *by nature* and not *by nurture*. This is why no one can replace oneself in the establishment of this relationship: “*Quifecit to sine te*,” writes Saint Augustine, “*non te justificat sine te. Fecit nescientem, justificat volentem*” (Sermon 189, 11-13; P.L. 38-823). The fact of not being able to escape personal responsibility in establishing this relationship, as well as being the indispensable arbiter of his own eternal destiny, is certainly a sign of great dignity. However, since this responsibility can only be exercised freely, it therefore implies the exclusion of coercive means - especially in religious matters; because in that area every attitude assumed or action committed, because we are obliged to assume them or commit them, hold no value; on the contrary, it makes no sense and is not acceptable to God. In fact it is specified in the document: “God, most certainly, calls man to serve Him in spirit and in truth; if this call obliges man’s conscience, yet it does not *oblige* him; indeed God takes account of the dignity of the human being that he has himself created and which should guide him in employing his own judgement and his freedom. This was shown at the utmost level in Christ Jesus, in whom God has manifested Himself fully and made known His ways.” (Dignitatis Humanae, 11/a.)

V. The immediacy and the nature of the relationship between the person and the truth

A second component of the dignity of the person, as always in the ontological sense, is formed by the immediacy and nature of the relationship between the human person and the truth.

This component is treated in-extenso in the second paragraph of Article 2 of the declaration of the Council. This article explains that human beings, intelligent and free by nature and consequently endowed with a personal responsibility in their actions, cannot detach themselves from the obligation and the duty to seek out truth, and above all that which concerns religion. Gradually adhering to this truth that they have discovered, and conforming their lives to the light and according to the duties of the truth that has been discovered or, as it can be said, translating truth into action. These are the three steps – to know, to love, to act – which allow human beings to develop and improve themselves as people. However, the truth can only be discovered in the *light* of the truth: in the knowledge - the force that comes from the outside cannot replace the internal evidence, “... the truth cannot impose itself except by the power of

truth itself that enters the mind with both gentleness and power.” (*Dignitatis Humanae*, 1/c)

Full adherence to the truth requires an act of love that can only be done *freely*; and harmonisation of life, in all its manifestations, with the known human truth has value if it is not accomplished due to stringent environmental pressures but following a *personal* decision. It is easy to understand how this demands that human beings be exempt from coercion in their social lives in order to establish their distinctive relationship with the truth. It is *a requirement rooted within the very nature of these relationships*, independent of the way in which they have been established. So, we read in the paragraph quoted that the right to immunity with regard to any intimidation will continue to exist even if it is abused; however its use may be limited or prevented if, by abusing it, public order is overturned as noted in No. 7 of the declaration. “By virtue of their dignity, all men, given their capacity as persons endowed with reason and free will and consequently endowed with a personal responsibility, are pressed by their nature and bound by a moral obligation to seek the truth and especially that which concerns religion. They are also required to adhere to the truth once they know it and to comply with the requirements of that truth throughout their lives. But men cannot meet this requirement in a manner consistent with their own nature unless they enjoy, in addition to psychological freedom, immunity from external coercion. So it is not in a person’s subjective tendency but in his very nature that the right to religious freedom is founded. This is why the right to this immunity persists even for those that do not satisfy the obligation to seek out the truth and adhere to it; its exercise cannot be prevented while it exists without a rightful public order.” (*Dignitatis humanae*, 2/b).

The immediacy and nature of the relationship between the human person and the truth although they involve, as we have seen, the exclusion of coercive means so that this relationship can be properly established, also reveal the greatness of the human being who is required to be open to the truth, in the light of the truth; continually progressing in the knowledge of the truth until it succeeds at arriving directly at the Sovereign Truth who is God himself, He who “blew into his nostrils the breath of life” (Genesis 2: 7): “You have made us for yourself, O Lord, and our heart is not quiet until it rests in You.” (St. Augustine, *Confessions*, 1)

VI. The identity or requirement of the individual to always be himself

The identity of the human being, that is to say the fact of always being oneself in thought, will and action is an objective requirement of his own dignity, felt more deeply in our time.

To think, to want and to act are the three stages by which, as we have seen, the individual expresses and develops himself, that is to say by which he expresses and develops his humanity. When these three stages naturally follow each other, they create between them a *relationship of continuity*. Each stage is in fact a development of the other; the sparks of truth that thought sets alight in the soul arouses in it impulses of love; and through these impulses they translate or materialise into action. This is why breaking this continuity (in all areas of life, but especially in that of religion) requiring the person to act contrary to his thoughts and his will or by preventing him from acting in accordance with them, is equivalent to violating a fundamental right: the right not to be forced to betray himself; and the right not to be prevented from always being himself - in thought, will and action - that is to say not being prevented from demonstrating his existence by his actions in order to grow in his humanity. Only a possible abuse of this right can justify suspending its exercise by the civil authorities in order to safeguard public order. However, it is clear that the suspension of the exercise of a right does not result in its elimination.

“But it is through the mediation of his conscience that man perceives the bidding of the divine law; it is this which he is obliged to follow faithfully in all its activities to achieve its end, which is God. He should not be forced to act against his conscience, especially in religious matters. By its very nature, in fact, the practice of religion is primarily in the inner, voluntary and free acts whereby man directs himself to God: such acts cannot be imposed, nor prohibited by any mere human power. But the social nature of man requires that these internal acts of religion should be expressed externally; for in religious matters he should exchange with others so that he may profess his religion in community form.

It is therefore insulting to the human person and to the order established by God for human beings that by refusing a man the freedom to exercise his religion in society, rightful public order has been safeguarded.” (*Dignitatis Humanae*, 3/c,d)

VII. The negative nature of the right, and the dignity of the individual

The universality of the right to religious freedom proclaimed in the document of the Council, also shows the negative character of its subject or content, which is immunity from coercion in its double meaning: not to be forced

to act against his own conscience in religious matters, and not to be prevented from acting according to it: "This freedom is to remove all men from coercion, whether from individuals, social groups or any human power so that no one is to be forced to act against his conscience or be unable to act, within reasonable limits, according to his conscience, privately or publicly, whether alone or in association with others." (*Dignitatis Humanae*, 2/a)

At the start of the development of the Council document, several fathers were inclined to believe that the subject of the right to religious freedom was the content of the different religions or the ability of every person, legally recognized and safeguarded, to profess his own religion; it is why the fathers hesitated, with good reason, to recognize this right as a universal right. Indeed, let us suppose that a religion is not true or that it contains non-truthful elements; anyone who professes that religion helps to spread the errors; but the distribution of the error is a wrong that cannot be the subject of a law, let alone the subject of a law based on the dignity of the human person. However, during the preparation of the document, in particular after the third schema, the position of the fathers no longer had any basis because already in this schema it is clearly stated that the purpose of law is the immunity from any constraint in both senses mentioned above. The immunity from coercion or exclusion of means of coercion in the development of relations of coexistence in the sensitive area of religious life is undoubtedly a universally valid criterion because it fully meets the dignity of the person; moreover, it is a test required by this dignity. Indeed, relations for human coexistence - in all sectors, but more so in that of religious life - should not, as a rule, be governed by force; they must be reconciled in the light of reason by the method of persuasion and with the greatest possible participation of citizens to realize the good of each and all, in a conscious and responsible commitment.

Concerning the matter of the negative nature of this right, those who expressed their disappointment did not fall short of the mark because they believed that a right which has a highly negative content has very little impact on religious life: this opinion lacks solid foundation nevertheless.

On this matter it would be appropriate to make a few remarks.

Firstly: it is true that today the right to religious liberty is affirmed within the legal system of almost every civilized society (cf. Pietro Pavan, *Libertà Religiosa e Pubblici Poteri*, Milano, 1965); another fairly widespread opinion, even if it is not shared by everyone (cf. Pio Fedele, *La Libertà Religiosa*, Mi-

lano, 1963) claims that this right generally contains a negative element. From all corners of the earth to the hierarchy of the Roman Catholic Church meeting in council, the following question was posed: What does the Catholic Church think of this right? In the declaration of the Council "*Dignitatis Humanae*", came the response that the Catholic hierarchy pronounced in favour of this right. Nevertheless in order to avoid any misunderstanding, they specified the following constituent principles: 1) it is a universal right; 2) it is based on the dignity of the individual in an ontological sense; 3) the subject or content is mainly negative. These three elements must be considered *simultaneously* and as a whole, because there is an *intrinsic* relationship between them through which they connect to each other; they explain and justify each other. Thus, it is only by taking into account this relationship that the Council declaration "*Dignitatis Humanae*" turns out to be well organized internally, and just as valuable to the Catholics from a doctrinal point of view; otherwise, it would not be possible to grasp the internal sequences of the different elements and the document would risk appearing less evident and even less consistent in the area pertaining to doctrine.

But it should be noted immediately – and this is my second remark – it is not because the right to freedom, as proclaimed by the Council, introduces some negative content that it loses its importance; on the contrary, it is precisely because of its negative content that this right bases itself on a *presupposition* which reveals its *very great* value. The prerequisite condition is that through this right, human beings have, as individuals, a *reserved zone* into which they are called by nature and held within through the duty to act of their own initiative and in a responsible manner. One of the greatest reasons for the existence of this right is that the intangibility of this zone has been guaranteed by the civil authorities: it is a space where a transcendent perspective for human beings opens up, a place where Christ has thrown a bright and inextinguishable light, it is there where we have begun to see with greater clarity ever since Christianity incorporated itself into the history of the human family.

In addition, the negative element of the right to religious liberty – like the negative content of any other original or natural right relating to spiritual matters – reveals and glorifies the dignity of the individual for it also has an intrinsic and vital relation to the state model that has arisen in the world of culture and the legal and political reality of the civil societies of the modern era, that is to say within the model of *democratic social rule of law*. There is no

doubt that this type of state historically derives its existence from a far greater awareness of its own dignity than human beings have acquired in modern times. This awareness, making intolerable the absolute state that existed in pre-modern times - a state in which religion had adopted the criterion "*cuius regio eius religio*", at least in Europe - led them to create a state whose main task was to ensure freedom of movement of spiritual values in the world, as well as contributing to the creation of a social environment where they could find the means and the stimulus necessary to fully develop their being.

Within the encyclical "*Pacem in Terris*", the state organised according to the social democratic right is defined as follows in terms of its historical origins, its structure and its operation in relation to the dignity of its citizens:

"In the legal organization of political communities in the modern era, we first note a tendency to draft in clear and concise forms a Charter of the Fundamental Rights of Man: a charter which is often inserted into the constitutions or forms an integral part. Second, they tend to set out in these constitutions, in legal terms, the mode of appointment of public officers, their mutual relations, the radius of their authority, and finally the means and methods they are required to observe in their management.

We can finally establish, in terms of rights and duties, what the relationships are between citizens and the public authority; and we can assign to the authority the vital role of recognising and respecting the rights and duties of citizens, to ensure mutual arbitration, defence and development.

We can certainly accept the theory that the only desire of men - as individuals or social groups - would be the first and only source where the rights and duties of citizens originate, and from where the binding force of the Constitutions and the authority of the public powers are derived.

*However, the tendencies that we have just re-established prove this sufficiently: mankind today has acquired a conscience more keen than his dignity; this is what leads people to take an active role in public affairs and to demand that the specifications of the positive law of the state guarantee the inviolability of their personal rights. They also require that governments should not come to power except by a procedure defined by the law and only exercise their authority within the limits thereof." (En, *Pacem in Terris*, N° 32)*

In conclusion, it is opportune to remark that the exercise of liberty as a right, such as it is declared by the Second Vatican Council, is secondary to the exercise of liberty as a duty, and to the exercise of liberty as love. What follows gets straight to the point: he who believes that this right finds its most solid

foundation in the response given by Christ to the teacher of the law who asked him: “Master, which is the greatest commandment in the law?” Jesus replied to him: “Love the Lord your God with all your heart, with all your soul and with all your mind. This is the first and greatest commandment. And the second is like it: Love your neighbour as yourself. On these two commandments depend all the law and the prophets.” (Matthew 22: 37-40)

Human Dignity grounded on creation in the Image of God: A legitimate foundation for peace among humans – Part I

*Ganoune Diop*²⁹

I. Introduction

Venturing to understand the nature of human beings is one of the most fascinating, complex and difficult endeavors. Much is at stake.

We are not just political beings to be regulated by state rules, or mere social beings bound to civic duties, or even mere bioethical or rational beings with obvious features that distinguish us from other entities of the natural world.

Humans are irreducible to these necessary aspects of personhood. We are fundamentally endowed with a spiritual dimension that makes each person a mystery similar to the One who according to Judeo-Christian scriptures has created humans in the image according to his likeness.

Openness to transcendence is constitutive of whom human beings are. We live with symbols and rituals. Matter cannot tell our whole story. No wonder materialism does not quench the existential thirst or quest for meaning. It cannot by itself provide the whole proof of worth. There is more to us.

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Consequently, the principles upon which are built our concepts of freedom, rights, and responsibilities cannot be wholly justified by mere materialistic ideals, as valuable as they are.

Despite attempts to account for human nature in purely materialistic categories or through the lens of a “materialistic view of consciousness with the brain considered a kind of “programmed system of calculation,” humans cannot be reduced to mechanistic organisms with mere biological programmed brains. There is more to human nature.

This article is purposed to highlight the importance of considering human dignity through the lens of creation “in God’s image” as the cornerstone for each person’s worth. Furthermore, this intrinsic or axiomatic value of human dignity is fundamental to the need for freedom, all freedoms and especially freedom of religion or belief. This is due to the unique positioning of freedom of religion or belief. Not only is freedom of religion or belief a fundamental freedom or even a first freedom as in the first amendment of the Bill of Rights in the United States Constitution, it is also connected to all the other freedoms primarily because of its intrinsic connection to human dignity.

The global community has taken enormous and significant steps in having crafted significant instruments to promote a global culture of rights. There is no lack of international conventions, agreements, covenants and treaties (bilateral treaties, multi-bilateral treaties, and multilateral treaties) that show the importance of human rights in general and freedom of religion or belief on particular. However, the question still remains to be addressed anew: What are the foundations for human rights? On what ground should advocacy for freedom of religion or belief be justified? This article attempts to make a case for the upholding of human dignity as the foundation for the promoting of human rights and for facilitation of peaceful relations between individuals and between communities.

A. Global Values and Human Dignity

The concept of human dignity is present in major texts in international treaties and covenants; it is present in the pillars of the UN as freedom to live in dignity.

A fitting place to take the pulse of what matters most to people around the world is the forum of the pillars of the United Nations.

The three pillars are the following: 1. peace and security, 2. justice and development, and 3. human rights in terms of individual liberty, personal equality, and human dignity. The concept of individual liberty can be further expanded to include freedom from want, freedom from fear, and freedom to live in dignity.

Violations of any of these pillars disrupt the dignity of human beings and erode their chances of the opportunity to live decently.

Violations of human rights have one common denominator: the ignorance, negligence or refusal to accept and affirm the dignity of every person.

The Millennium development goals as tools can also function as thermometers of what matters to people in today's world. Their implementation certainly functions as an antidote against the ills and woes of humanity. Key among what matters to people and nations are protection of every person's life, health, education, equality, development and environmental sustainability.

Beneath the justification of the acknowledgment, advocacy and protection of human rights and the need for development, there is a dimension of freedom of conscience and belief that is worth underlining.

Religious freedom has intrinsically an incontrovertible dimension of what it means to be human. It is also fundamentally grounded on human dignity. One of the pillars sustaining the concept of individual liberty is precisely the freedom to live in dignity.

The idea of dignity is to the fore in human rights documents. The Preamble of the United Nations Declaration of Human Rights begins by saying that "the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."³⁰

The concept of human dignity has drawn considerable attention from cross-disciplinary studies and practices. However, even though the human family has benefited from the competence of many people in various domains of expertise: scientists, ethicists, legislators, lawyers, economists, medical doctors, philosophers, theologians and others, the fact is that from bioethics to court decisions opinions vary as to the foundations for human dignity. For many, the issue is not only to live but also to die in dignity. So-called pro-life advocates hotly debate what that means. Moreover, is human dignity innate or is it a virtue granted dependent on merits?

The issue of human dignity informs opinions about stem cell research. Should stem cell research be limited to therapeutic goals or reproductive purposes? Article 11 of The UNESCO General Conference in the "Universal Declaration on the Human Genome and Human Rights," in 1997, states that

30 Roger Trigg, *Equality, Freedom, and Religion* (Oxford: Oxford University Press, 2012), 28.

“Practices which are contrary to human dignity, such as reproductive cloning of human beings, shall not be permitted.”³¹

A jurisprudential approach has influenced several debates on human dignity. But even here clarity of thinking is needed.

“It has been an important aspect of decisions in many cases and numerous constitutional rights or interests have been aligned with human dignity in the last fifty-eight years. Nevertheless, no organizing jurisprudence is yet discernible. An increasingly significant constitutional precept, in fact, has grown with little guidance or refinement. It is a broadly based principle, somewhat less restrained than other doctrines. Indeed, it is ultimately intertwined with much of our juristic thinking about civil and political rights and freedoms and is, therefore, more eclectic at its base, more amorphous in nature and content, but more ubiquitous in import and use than any other constitutional principle.”³²

In politics, even democracy is essentially inseparable from the concept of human dignity.³³

The root cause of suffering, the dehumanization, exploitation of the vulnerable and defenseless, the greed that systematically and systemically causes deprivation of basic subsistence to the poor, the use and abuses of women and children, the desacralization of human bodies reduced to objects of pleasure and disposables have all the same root, that of despising the truth of the infinite value and worth of every human person, in essence the dignity of every person.

The divisions, hostilities, tribal conflicts, rivalries for the control of resources at local, regional, and global levels, the search for power to dominate others and use them for one’s own interest and the wars that inflict incalculable pain and suffering to millions of people on planet earth are all expressions of this one evil: refusal to recognize and respect the dignity of every person.

31 Joe M. Kapolyo. *The Human Condition: Christian Perspectives Through African Eyes* (Carlisle, Cumbria, UK: Langham Global Library, 2013), 6-7, contends that the UNESCO conference declaration is “by and large the position of most of the scientific community, and all the countries of the world agree with this declaration, which prohibits the realization of a scientific possibility that is ethically unacceptable.”

32 Jordan J. Paust. “Human Dignity as a Constitutional Right: A Jurisprudential Based Inquiry in Criteria and Content.” *The Social Science Research Network Electronic Paper Collection*. University of Houston Public Law and Legal Theory Series 2012-A-2, p. 150.

33 Gabriel Ndinga. “De la dignité individuelle en Afrique.” In *Dignité humaine en Afrique: Hommage a Henri De Decker* (Yaoundé, Cameroun: Presses de l’UCAC, 1996), who wrote, “All being said, Africa works to promote new socio-cultural structures. We think that the real issue is about individual dignity which is necessary to reflect upon and be respected.” p. 81.

When humans give in to violence and are addicted to power, there is no end to indignity.

There is therefore the need to develop a culture not only of human rights but more deeply a culture of upholding, promoting and protecting human dignity.

Every people group faces this single challenge that determines the course of every relationship. A critical question of utmost importance is the following: How can the concept of human dignity and its implications for justice and peace be integrated into the very fabric of how people think, act, and relate to one another? This is critical. It can reverse several dysfunctions within society. It essentially contributes to the respect of common space and will lead all people of good will to participate in creating a welcoming environment for the sake of the common good. Development for the sake of others and eradication of corruption and its root, greed, will become a reality for a battered world where the poor paradoxically reside in the midst of enormous wealth and natural resources. The riches of African soil and the widespread poverty in this continent are a sad illustration of this paradox.

To improve the living conditions of millions of people around the globe, an impressive number of organizations and agencies work to inform persons and groups about their rights. These contributions of people from various fields of studies bring awareness to the human family about their rights and, at their same time, their duties or responsibilities.

A multidisciplinary approach and collaboration is warranted to concretely address the various challenges connected to the issue of human rights, the rights of minorities and all people groups. Key in this process is revisiting the foundations for human dignity.

The complexity of our topic is connected among other things to the fact that “dignity is not a property among other empirical data...Dignity is rather the transcendental ground for the fact that human beings have rights and duties.”³⁴ Having therefore a specific delineation of its meaning and scope may present a challenge. However, the wide acceptance of its foundational status in legal, political, ethical, social, and several other spheres positions human dignity as a heuristic field of study that can help heal divisions, fractions, discriminations, and other ills that plague the public square.

Human dignity is a constitutional right and an international legal precept; however, the need to take into account other perspectives that can enrich

34 Robert Spaemann. *Love and the Dignity of Human Life: On Nature and Natural Law* (Grand Rapids, MI: Eerdmans, 2012), 27.

the debate and provide a path forward in the betterment of human relations cannot be underestimated. This article postulates that the international community gains in promoting a culture of human rights by factoring in input from the realm of theology, which has a particularly important contribution to make about the importance, scope and relevance of human dignity as foundation for how we treat others.

In their own way and on their own terms consonant with their specific inner-logic, world religions address the issue of human dignity. This topic actually provides a platform where authentic interfaith dialogue can take place.

One critical, crucial piece of information that affects the very meaning of life and determines each person's worth is the foundation for human dignity. In various ways, exegetes and theologians have attempted to clarify and explain the justification for human dignity in ways that uniquely impact the worth of each person and the ways people relate to one another.

The perspective upon which this article focuses is the Judeo-Christian writings, specifically the Bible where various writers address or intimate the justification for human dignity.³⁵ It is postulated "from very ancient times theological thinking within the Judeo Christian heritage has considered the Imago Dei or the Image of God to be the corner stone of thinking concerning who humans are and their relationship to God, to other humans, and to the world around them."³⁶

Well-known thinkers from Augustine, Thomas Aquinas, Calvin to Karl Barth, to name but a few, have contributed to show the centrality of this question of human dignity especially connected to the issue of the so-called Imago Dei.

35 A comparative study of world religions and philosophies is beyond the scope of this article. Suffice it to note that as Behrouz Yadollahpour concludes, no single understanding of human dignity gains unanimity in Islamic circles. "Detailed study of the exegeses and commentaries of the Holy Qur'an indicates that no single theory regarding human dignity is dominant among them. Although they quote from the same holy text, their key question concerning human nature is entirely different from one another. Some hold that this endowed human dignity is essential to human beings of all ethnicity, skin color, etc. and that human dignity is the distinguishing feature of humankind in acquiring virtue. Others, on the contrary, don't regard dignity as essential to human kind but believe that as much as one's virtue and faithfulness increase, his requirements for dignity increases too." *2011 International Conference on Social-ity and Economics Development IPEDR vol.10 (2011) © (2011) IACSIT Press, Singapore*

36 Philip Vinod Peacock. "The Image of God for Today: Some Insights on the Imago Dei, in *Created in God's Image: From Hegemony to Partnership*." Edited by Patricia Sheerattan-Bisnauth and Philip Vinod Peacock (Geneva, Switzerland: World Communion of Reformed Churches and World Council of Churches, 2010), 22.

Main stream Christian traditions all affirm the centrality of human dignity as the foundation for how to relate, treat, and honor the worth and value of all human persons, irreducible to being objects, political beings, or mere biological entities. The consensus of thinkers from all streams of world Christianity shows an unparalleled unanimity second only to the reception of the revelation of the Trinity among Christians. The concept of human dignity based on the fact that all humans are created in the image of God constitutes the gift of the Christian world to the world and is the best platform for tangible unity among those who base their anthropology on the mystery and revelation of who God is and who those are created in his image.

The Second Vatican document *Dignitatis Humanae*, unequivocally stressed the foundational nature of human dignity.³⁷ The rich Orthodox traditions on human dignity provide critical reflections on the pitfalls of a one-dimensional humanist approach to human rights deprived of a Christian perspective.³⁸ In the context of apophatic anthropology, orthodox writers have underlined that the “decisive element in our human personhood is that we are created in the image and likeness of God.”³⁹ The WCC Faith and Order Study Document *Christian Perspectives on Theological Anthropology* can most certainly be considered a landmark publication on the issue.

B. Justification for a Theocentric Anthropology

Addressing the future of the very concept of human rights in a multi-polar world, a world of various religious and secular ideologies, John L. Allen Jr., the Vatican correspondent for the National Catholic Reporter, argues for the need of a “Catholic natural law theory and theological anthropology.” The focus of this endeavor, he suggests, should be an analysis of the spiritual dignity of the human person rather than political ideas derived from the Enlightenment.⁴⁰

His suggestion is welcome, especially in light of the broadening conversation about the universality of human rights as mainly framed through the lenses of secular rationality. The challenges brought by Asian or Islamic perspectives

37 See also the Roma Catholic document *Gaudium Et Spes*

38 See Archbishop Anastasis (Yannoulatos), *Facing the World: Orthodox Christian Essays on Global Concerns* (Crestwood, NY: Vladimir’s Seminary Press, 2003).

39 Metropolitan Kallistos Ware, *Orthodox Theology in the Twenty-First Century* (Geneva, Switzerland: World Council of Churches Publications, 2012), 32.

40 John L. Allen Jr. *The Future Church: How Ten Trends Are Revolutionizing the Catholic Church* (New York: Crown Publishing Group, 2009), 445.

on human rights also make it useful to revisit the specific contributions of the Judeo-Christian traditions in addition to the input of secular ideologies.⁴¹

Most religions, philosophies, or worldviews affirm human dignity. However, the justification for this dignity is variously construed. This is mainly due to the fact their perspectives start from different premises.

A conversation with world religions and world philosophies on the urgent consensus to uphold human dignity is one of the best platforms to promote and uphold peace and justice among people of good will.

In the second part of this article, we will focus our exploration on the biblical and theological foundations for human dignity as justification for the concept of human rights. Our approach will be based on a specifically Judeo-Christian theological anthropology perspective.

41 Tony Evans. *Human Rights in the Global Political Economy: Critical Processes* (London: Lynnie Rienner, 2011), 60-87.

From old relations to a new context⁴²

Mohamed Talbi⁴³

At the outset, we have to remember that the problem of religious liberty as a common human concern and international preoccupation is relatively new. In former days the problem was totally irrelevant. In ancient times, everybody felt it natural to worship the deities of his city. It was the job of these deities to protect the house and to look after the family and the welfare of the state. Like their worshippers, they followed the course of history. The deities of Carthage were by nature the enemies of the deities of Rome. In such a context, the refusal to worship the deities of the city was felt essentially as an act of disloyalty towards the state.

In the beginning, the situation was almost the same within the Biblical tradition. In the Bible, Yahweh acts as the God of the Jews. He constantly warns his people not to worship any other deity and to obey his law. This people with one God, is also the association of a physical entity — the twelve tribes descended from Abraham via Isaac and Jacob — with a land, Palestine. The Jewish community is an ideal prototype of unity: it obeys at one and the same time the *ius sanguinis, loci* and *religionis*, the law of blood, place and religion. It is the perfect prototype of an ethnically homogeneous community rooted in religion and shaped into a land and a state. In a way, to speak of religious liberty in such a case is literally absurd. There is no choice other than remaining in the state community or leaving it. In particular, the Jew who is converted to another religion ceases *ipso facto* to belong to his state community. So his conversion is felt as a betrayal and, as such, it warrants the penalty of death⁴⁴. If we have dwelt on the case of the Jewish community as a prototype, it is because that case is not

42 Article published in the journal *Conscience and Liberty* No. 32, 1986.

43 Professor and Tunisian Islamic scholar, he was also Dean of the Faculty of Letters and Human Sciences at the University of Tunis.

44 See Leviticus 24:10-23 and Deuteronomy 13:2-19.

without some similarities with the classical Islamic *umma*, as it was shaped by traditional theology.

For historical reasons, the situation changed completely with the appearance of the Christian preaching. From the beginning this preaching was not linked with the state, and Jesus' people, the Jewish community, rejected the call. Jesus ordered his disciples "to render unto Caesar the things which are Caesar's, and to God the things which are God's" (Mt 22:21). This revolutionary attempt to dissociate state and religion and to ensure the freedom of the individual conscience failed. The time was not yet ripe. Consequently, in the Roman Empire the first Christians were considered as disloyal subjects because of their refusal to pay honour to the deities of their city and of their social group. Accordingly, they were treated as rebels. The right to self-determination and to religious liberty were denied to them as individuals acting freely in accordance with their conscience.

To cut a long story short, let us say simply that the state and religion more or less retained the relations that they had always enjoyed. In effect, they needed each other. The intolerance of the dominant social group asserted itself everywhere in the world through internal and external wars and many forms of, more or less, tough discrimination. Of course the Islamic world, though relatively tolerant, was no exception. As everywhere in the world, human rights were flouted and they still are – although more or less ignored – in certain regions. But that does not mean, as we shall soon see, that Islam as such authorises violations of these fundamental rights.

Now, to avoid looking only on the negative side of things, we have to add that our common past was not entirely so ugly and sombre. We can also quote some splendid periods of tolerance, respect, understanding, and dialogue⁴⁵. Nevertheless, it was necessary to wait until the 19th century to see the right to free-thinking clearly claimed. Political liberalism and philosophical studies were then in vogue and, in fact, what was claimed was not the right to think freely but the right not to believe. So the concept of religious liberty unhappily became the synonym of secularism, agnosticism, and atheism. Consequently, religious liberty was fought against fiercely. To deal with the subject objectively, we have to free ourselves of this false notion.

We must also admit that, today, religious liberty is definitively rooted in our social life. Since the *Declaration of Human Rights* in 1948, this concept has become an essential part of international law.

⁴⁵ See for example A. Caspar, *Arab Versions of the Dialogue between the Catholic Timothy and the Caliph al-Mahdi (second / seventh century)*, in *Islamochristiana*, Rome, 1977, III, 107-175.

In addition, we live in a pluralistic world and this trend will invalidate itself in the near future. I wrote elsewhere⁴⁶ that each man has the right to be different yet, at the same time, our planet is already too small to contain all of our ambitions and dreams. In this new world in constant evolution there is no longer room for exclusiveness. We have to accept one another as we are. Diversity is the law of our time. Today, through increasingly sophisticated mass media, each person is truly the neighbour of everyone else.

From the beginning in Islamic countries, we have been in the habit of living side by side with communities of different faiths. This has not always been easy and recent events speak for themselves. But it is only recently that we have begun to be confronted with secularism. It is now our turn to experience from within the growth of agnosticism and atheism⁴⁷. We have to be conscious of this overwhelming change in our societies and, accordingly, we have to exercise our theological thinking about this completely new concept.

But before going further, it is necessary to define religious liberty. Is it only the right to be an unbeliever? One may indeed say that religious liberty has very often been identified with atheism. But this is only one aspect of the problem and, from my point of view, a negative one. In fact, religious liberty is basically the right to decide for oneself, without any kind of pressure, fear or anxiety; it is the right to believe or not believe, the right to assume one's destiny with full consciousness, the right, of course, to get rid of all kinds of superstitious beliefs inherited from the dark ages but also the right to espouse the faith of one's choice, to worship and to bear witness freely. This definition is in harmony with the Qur'ân's fundamental teachings.

The Qur'ân's basic teachings

In my opinion, religious liberty is essentially founded, from a Qur'anic point of view, first and foremost on the divinely ordered nature of man. Man is not one being among many others. Among the whole range of creatures living on the earth only man has duties and obligations. He is an exceptional being. He

46 M. Talbi, *a community of communities. The right to be different and the ways of harmony*, in *Islamochristiana*, Rome, 1978, IV, 11.

47 See Talbi, *Islam and the West. Beyond confrontations, ambiguities and complexes*, in *Islamochristiana*, Rome, 1981, VII 57-77. A sociological survey conducted in Tunisia shortly before the publication of this article (1986) showed that 5% of the population declare themselves to be openly atheists and 15% are indifferent. See A. Hermassi al-Mutaqqaf wa-l-faqih, in the Tunisian journal 'La Revue', 15-21, 1984, No. 8, p. 46.

cannot be reduced to his body because man, before everything else, is a spirit, a spirit that has been given the power to conceive of the Absolute and to ascend to God. If man has this exceptional power and this privileged position within creation, it is because God “breathed into him of His spirit” (Surat XXXII, 9). Of course man, like all living animals, is matter. He has a body created of “sounding clay taken from a fetid mud” (Surat XV, 28). But he received the Spirit. It has two aspects: an inferior aspect – composed of clay – and a superior aspect – the Spirit of God. This superior aspect, according to the comments of A. Yusuf Ali, “gives man superiority over other creatures⁴⁸.” Man’s privileged position within the work of creation is perfectly illustrated in the Qur’ân in the scene where we see the angels receiving the order to prostrate themselves before Adam (Surat 15:29; 38:72), the heavenly prototype of man. In a way, and provided we keep man in his place as a creature, we may say as Muslims, in accordance with the other members of Abraham’s spiritual descendants, Jews and Christians, that God created him in His image. A hadîth, a saying of the Prophet, although questioned, authorises this statement. So we can say that on the level of the spirit, all persons, whatever their physical or intellectual abilities and aptitudes, are really equal. They have the same “breath of God” in them, and by virtue of this “breath” they have the ability to ascend to Him, and to respond freely to His call. Therefore, they have the same dignity and sanctity that allow them to enjoy, fully and fairly, the same right to self-determination on earth and in the hereafter. So from a Qur’anic perspective we may say that human rights are rooted in what every man is by nature, and this is by virtue of God’s plan and creation. Now it goes without saying that the cornerstone of all human rights is religious liberty.

This is so evident that from the Muslim point of view I am sharing, man is not the mere fruit of “chance and necessity⁴⁹.” His creation obeys a plan and a purpose. Through the “breath”, he has received the faculty to be on a level footing with God, and his response must be freely formulated in order to have meaning. The teachings of the Qur’ân are clear: man is a privileged being with “spiritual favours” (Surat XVII:17); he was not created “without a purpose” (Surat XXIII: 115); he has a mission and he is the “Vicar of God on earth” (Surat II:30). Proceeding from God with a mission to fulfil, his destiny is ultimately

48 A. Yusuf Ali, *The Holy Qur’ân, text, translation and commentary*, ed. The Islamic Foundation, Leicester (UK), 1975, 643, footnote 1968.

49 See Jacques Monod, *Chance and Necessity*, edition. du Seuil, Paris, 1970, a work in which the famous biologist develops a materialist point of view.

to return to Him. “Whoso does right, does it for his own soul; and whoso does wrong, does so to its detriment. Then to your Lord will you all be brought back” (Surat XLV:15).

This is why it is absolutely necessary that each person be able to choose his way freely and without any kind of coercion. Every person ought to decide his own destiny in full consciousness. The Qur’ân states clearly that compulsion is incompatible with religion. “There should be no compulsion in religion. Truth stands out clear from error. Whosoever rejects evil and believes in God hath grasped the most trustworthy handhold, one that cannot be broken. God is All-Hearing, All-Knowing” (Surat II: 256).

To the best of my knowledge, among all the other revealed texts, only the Qur’ân stresses religious liberty in such an accurate and unambiguous way. The reason is that faith, to be true and reliable, needs absolutely to be a free and voluntary act. It is worth noting that the verse quoted aimed to reprove and condemn the attitude of some Jews and Christians, newly converted to Islam in Medina, who wanted to convert their children with them to their new faith⁵⁰. So it is clearly stressed that faith is an individual concern and commitment and that even parents must refrain from interfering with it. The very nature of faith, as it is stressed in the basic text of Islam in clear and indisputable words, is to be a voluntary act born out of conviction and freedom.

In fact even God refrains from overpowering man to the point of subduing him against his will. This too is clearly expressed in the Qur’ân⁵¹. Faith then is a gift, a gift of God. Man can accept or refuse it. He has the very faculty to open his heart and his reason to God’s gift. Guidance (*hudûm*)⁵² has been given him. He is warmly invited to listen to God’s call. God warns him in clear and unambiguous terms. As underlined in the quoted verse stressing man’s freedom: “Truth stands out clear from error.” — It is up to man to make his choice. Man’s condition — and that is the price of man’s dignity and sacredness — is not without a tragic element. Man can be misled. He is able to make the wrong choice and to stray from the right path.

50 See Sheikh Hamza Boubakeur, *The Qur’ân, New Translation and Commentary*, ed. Fayard-Denoël, Paris, 1972, I, 97, citing Tabari, Razi and Ibn Kathir.

51 See the Qur’ân, XXVI, 4 and commentary by Shaltut Mahmud al-Islâm’aqîdatan wa shari’acan, 2nd ed., Cairo, p. 33. See also A. Yusuf Ali, *The Holy Qur’ân, text, translation and commentary*, ed. The Islamic Foundation, Leicester (GB), 1975, p. 946 and note 3140.

52 See for example the Qur’ân, II, 3; III, 4; V 44,46; VI, 157; IX, 33; XVI, 89,102; XX, 123; XXVII, 2; XXXI, 3; XLVIII, 28; LXI, 9.

In a word, he has the capacity to resist God's call, and this capacity is the criterion of his true freedom. Even the messenger whose mission is to convey God's call and message is helpless in such a situation. He is clearly and firmly warned to respect man's freedom and God's mystery. "If it had been thy Lord's will, all who are on the earth would have believed, all of them. Wilt thou then compel mankind, against their will, to believe?" (Surat X:99). A. Yusuf Ali, in his translation of the Qur'ân, comments on that verse in this way: Men of faith must not be impatient or angry if they have to contend against disbelief and, most important of all, they must guard against the temptation of forcing faith, i.e. imposing it on others by physical compulsion or any other forms of compulsion such as social pressure or inducements held out by wealth or position or other fortuitous advantages. A forced faith is no faith⁵³. The Apostle's mission – and consequently ours – is simply confined to advise, warn, convey a message and admonish without compelling. He is ordered: "Admonish, for thou art but an admonisher. Thou hast no authority to compel them" (Q 88:21-22). In other words, God has set man truly and tragically free. What He wants is a willing and obedient response to His call in full consciousness and freedom, and that is the very meaning of the word "*islâm*."

Now we must emphasize that this does not mean that we have to adopt an attitude of abandon and indifference. In reality, we must avoid two evils. We have, of course, to refrain from interfering in the private life of another person, as we have already sufficiently stressed. It is time to add that we must also avoid becoming indifferent to anything and careless about the other person. We have to remember that the other person is our neighbour. We must bear witness and convey God's message, which is a weighty task.

Today, we are much too tempted to shut ourselves up and live comfortably wrapped in our own thoughts. But this is not God's purpose. Respect is not indifference. God Himself sets the example. He is nearer to man "than the man's own jugular vein" (Surat L:16), and He knows better than we do our inmost desires and what these desires "whisper (*tuwaswisu*)" to us (Surat L:16). He stands beside us, talking constantly to each of us, showering us with warnings and promises through a divine pedagogy suitable for people of all social and intellectual horizons and using images, symbols and words that He alone may use with total sovereignty.

And God urges us to follow his example and turn towards all our brothers without taking notice of any kind of geographical or faith barriers. "O man-

53 A. Yusuf Ali, op. cit. p. 510, footnote 1480.

kind! We created you from a male and a female, and we have made you into nations and tribes that you may know each other. Verily, the most honourable among you in the sight of God is he who is the most righteous of you. And God is All-Knowing, All-Aware” (Surat XLIX:13). A. Yusuf Ali comments on the verse in this way: “This is addressed to all mankind and not only to the Muslim brotherhood, though it is understood that in a perfect world the two would be synonymous. As it is, mankind is descended from one pair of parents. Their tribes, races and nations are convenient labels by which we may know certain differing characteristics. Before God they are all one, and the most honoured are they who are the most righteous.⁵⁴”

In other words, man is not created to be alone and to live individualistically. He was created to live in a community, to establish relationships with others and to dialogue. His fulfilment is in his reconciliation to God and to other people. We have to find the way, in each case, to bring about this double reconciliation without betraying God and without damaging the private life of the other person. To do so we have to listen to God’s advice: “Do not argue with the People of the Book unless it is in the most courteous manner, except for those of them who do wrong. And say: ‘We believe in what has been revealed to us, and in what has been revealed to you. Our God is your God and is one, and to Him we submit’” (Surat XXIX:46).

Let us note that the Arabic word used in the verse and rendered in the translation by the verb “to submit” is *muslimûn* – “Muslims”. So, to be a true Muslim is to live in a courteous dialogue with all peoples of other faiths and ideologies and to submit oneself to God. We must show concern for our neighbours. We have duties towards them and we are not isles of solitude. The attitude of respectful courtesy recommended by the Qur’ân must be, of course, extended to all mankind, believers and unbelievers except for those who “do wrong”; that is to say, for those who are unjust and violent and who resort deliberately to physical or verbal violence. In such a case, it is much better to avoid a so-called dialogue in order to avoid something worse.

In short, from the Muslim point of view that I hold to, our duty is just to bear witness in the manner most courteous and respectful of the intrinsic liberty and sacred character of our neighbour. At the same time, we must also be ready to listen to him with sincerity. We have to remember, as Muslims, that a hadîth of our Prophet states: “The believer is unceasingly in search of wisdom; wherever he finds it he grasps it.” And another saying adds: “Look for science

54 A. Yusuf Ali, *op. cit.*, p. 1407 note 4933. We will generally refer to his translation of the Qur’ân.

everywhere, even as far away as in China.” And finally, it is up to God to judge, for we, as limited human beings, only know in part.

“To each among you have we prescribed a law and rules of conduct. And if God had enforced His will, He would have made of you all one people. But His plan is to test you in what He hath given you. Pre-empt then one another in good deeds. Return all of you to God. Then He will inform you of that wherein ye differed” (Surat V:51).

“Say: O God! Creator of the heavens and the earth! Knower of all that is hidden and open! It is thou that wilt judge between Thy servants in those matters about which they have differed” (Q 39:46).

Beyond the limits imposed by traditional theology

Though all Muslims are bound by the Qur’ân’s basic teachings, Muslim traditional theology developed in a way that for historical reasons, in my opinion, does not always fit in with the spirit of the Qur’>ân. We are going to call to mind briefly two important cases: on the one hand the case of the *dhimmîs* — that is to say the situation of the confessional minorities inside the Islamic empire during medieval times — and on the other hand the case of the apostate.

Let us start with the *dhimmîs*⁵⁵. First we must emphasize that if the doors of many countries, not all of them, were opened (*fath*) by force or *jihâd*⁵⁶ — as was the general usage then — to pave the way for Islam, Islam itself was almost never imposed by compulsion. From this point of view the Qur’ân’s teaching have been fully operative. They provided the *dhimmîs* with sound protection against the most unbearable forms of religious intolerance. In particular, with two or three exceptions located in space and time, the *dhimmîs* have never been

55 There is an extensive bibliography on this subject. Article by Cl Cahlen, published in the Encyclopedia of Islam (*dhimma*), gives the most important references. The essential reference is always the book by A. Fattal, *The legal status of non-Muslims in Islamic countries*, Beirut, 1958. See also the article by B. Lewis, *Islam and non-Muslims*, in *Annales*, Paris, 1980, No. 3-4, p. 784-800. The work of Bat Yé Or, *The dhimmi, a profile of the oppressed in East and North Africa*, Paris, 1980, is biased.

56 It is worth remembering that a Muslim point of view, *jihad* is neither war nor a holy war. This is a concept designed by an orientalist. The Arabic word *jihad* literally means “effort”. *Jihad* is to fight to fulfil God’s purpose. Its extreme form is to fight against our natural evil inclinations. Therefore these are historical reasons and consequences that gave wars fought by Muslims the name of *jihad*, often for unjustified reasons. It is impossible to give a bibliography. The most recent book on the subject is a doctoral thesis by A. Morabia: *The concept of jihad in medieval Islam, from its origins to al- Ghazali*, University of Lille (France), III, 1975. See also M. Arkoun, M. Borrmans and M. Arosio, *Islam religion and society*, Paris, 1982, p. 60-62.

prevented from following the religion of their choice or from worshipping or organizing their communities in accordance with their own law. We can even say that their situation was greatly improved by the Islamic conquest. They enjoyed long periods of tolerance and real prosperity⁵⁷, very often holding high positions within the administration, in the court and in economic activities.

But it is a fact that they suffered from time to time, here and there, from discrimination. Things began to worsen seriously for them from the reign of al-Mutawakkil onwards (846-861). Discrimination, especially in the matter of dress, took a form openly humiliating. The oppression culminated in Egypt during the reign of al-Hâkim (996-1021), whose sanity was questionable. In the medieval context of wars, hostilities and treacheries, this policy of discrimination or open oppression was always prompted or strongly backed by the theologians. To understand this we have to remember that it was not then a virtue — according to the medieval mentality prevailing everywhere in the world and at the heart of communities — to consider all human beings as equal. How can we consider equal truth and error, true believers and heretics!?

So in our appraisal of the past we must always take the circumstances into account, and above all we must strive to avoid the recurrence of the same situations and errors. In any case, the Qur'ân's basic teachings, of which we have tried to bring out the inner meaning, lay down for us a clear line of conduct. They teach us to respect the dignity of the other person and his total freedom. In a world where the crime of giant holocausts have been perpetrated, where human rights are still at stake, manipulated or flatly ignored, our modern Muslim theologians must denounce loudly all kinds of discrimination as crimes strictly and explicitly condemned by the Qur'ân's basic teachings.

We must now equally consider the case of the apostate. In this field too, traditional theology did not remain faithful to the spirit of the Qur'ân. This theology seriously abridged the liberty of choice of one's religion.

According to this theology, though conversion to Islam must be and is in fact without coercion⁵⁸, it is practically impossible, once inside Islam, to leave

57 See SD Goitein, *A Mediterranean society*, vol. I, Economic Foundations, Berkeley and Los Angeles, 1967; vol. II, *The Community*, Berkeley, Los Angeles and London, 1971; vol. III, *The Family*, Berkeley, Los Angeles and London, 1978. See by the same author, *Letters of Medieval Jewish Traders*, Princeton, 1974.

58 In the methods of conversion to Islam, it is explicitly mentioned that the converted person "chose Islam freely, without fear, and in complete safety vis-à-vis danger, and without any coercion." See Muhammad B. Ahmad al-Umawî al-ma'rûf bi-Ibn al-'Attâr, *Kitâb al-wathâ'iq wa-l-sjillât*, ed. P. Chalmeta and F. Corriente, Madrid, 1983, p. 405; see also p. 409, 410, 414, 415 and 416.

it. Conversion to another religion from Islam is considered as treason and the apostate is liable to the penalty of death⁵⁹. The traditional theology rests, in its constitution, on the precedent set by the first caliph of Islam, Abû-Bakr (632-634), who energetically fought the tribes who rejected his authority after the Prophet's death and refused to pay him the alms taxes, likening their rebellion to apostasy. On the other hand they mainly put forward the authority of this hadîth: "Anyone who changes his religion must be put to death"⁶⁰. (Bukhârî, IX, 19 etc.)

I do not know, throughout the history of Islam, of any application of the law condemning the apostate to death. This law is mostly theoretical. But it is worth highlighting that during the seventies in Egypt, the Islamists narrowly failed in enforcing this law⁶¹ against the Copts who, without due consideration, converted to Islam to marry Muslim girls and who, after the failure of their marriage, returned to their former religion. Some Tunisian atheists have also recently expressed concern about this situation⁶².

So the case of the apostate in Islam, though mostly theoretical, needs to be clarified. Let us first point out the fact that the hadîth, upon which the

59 See 'Abd al-Rahmân al-Jazari, *Kitâb al-fiqh 'alâ al-madhâhib al-arba'a*, Beirut 1392/1972, V 422-426. According to the Hanbalites, the apostate must be put to death immediately. The other three schools of fiqh give him three days to think, and only if he refuses to retract should he be put to death. See also Ibn al-'Attar (330-399/942-1009), who, upon commenting on the acts of conversion prepared before notaries, defines the conditions under which the apostate must be put to death (op. cit., p. 407). Finally, note the recent work that we were unable to obtain by Nu'mân'Abd al-Razzâq al-Samarrâ'i, *Ahkâm al-murtadd ft al sharî'a al-islâmiya, dirâsa muqârana* (The provisions applicable to the apostate according to Islamic law, a comparative study), ed, Dar al-ulum, Riyadh, Saudi Arabia, 1404/198

60 In this hadith, see for example Buhârî, *Sahîh*, éd. al-Sa'b, Le Caire w.d., IX, 19; Abû Dâwud, *Sunan*, Cairo, 1952, II, 440. See also Buhârî, *Sahîh*, VIII, 201, 202, et IX, 18-20; Abû Dâwud, *Sunan*, II, 440-442.

61 See Mohamed Charfi, *Islam and human rights*, in *Islamochristiana*, Rome, 1983, IX, 15. See also Claire Prière and Olivier Carré, *Islam, War in the West?*, ed. Autrement, Paris, 1983, p. 185, which reads: "Thus in 1977, a draft law on the death penalty against "an evident apostate" is presented to Parliament. A big deal? Such a law, in fact, would affect in particular communist activists. Indeed, we have seen that they are declared atheists and apostates. It would also affect many Copts, who, in order to marry a Muslim or divorce one, declare themselves Muslims and publicly take up their Coptic religious practices later." When I was composing my correspondence, I was a million miles from thinking that the news would provide us with a tragic illustration of the provisions of Shari'a in relation to the ridda (apostasy). Mahmound Taha, hanged in Khartoum on Friday, January 18, 1985 at 10 am in the morning, was officially murdered under these provisions, and the murder is justified by a weekly journal called *al-Muslimûn* (The Muslims), from the pen of Dr. 'Abd al- Halim' Uways' (from 23-29 March 1985, p. 15).

62 See M. Talbi, *Islam and the West ... in Islamochristiana*, Rome, 1981, VII, 68, 69.

penalty of death essentially relies, is always more or less mixed in traditional writings with rebellion and highway robbery. The cases quoted of “apostates” killed during the Prophet’s life or shortly after his death, are all without exception those of persons who, as a consequence of their “apostasy”, turned their weapons against the Muslims whose community was at that time still small and vulnerable. The penalty of death appears in these circumstances as an act of self-defence in a war situation. It is undoubtedly for that reason that the Hanafi school of *fiqh* does not condemn to death the woman apostate, “because women, contrary to men, are not fit for war⁶³”.

On the other hand, the hadith authorizing the penalty of death is not technically *mutawâtir*⁶⁴ and consequently, according to the traditional system of hadith, is not binding. Above all, from a modern point of view, this hadith can and must be questioned. In my opinion, we have many good reasons to consider it as undoubtedly forged. It may have been forged under the influence of *Leviticus* 24:16 and *Deuteronomy* 13:2-10 — where it is ordered to stone the apostate to death — if not directly, then perhaps through the Jews and Christians converted to Islam.

In any case, the hadith in question is at variance with the teachings of the Qur’ân, where there is no mention of the penalty of death required against the apostate. During the life of the Prophet himself the case presented itself at various times and several verses deal with it⁶⁵. In all these verses, without a single exception, the punishment of the apostate who persists in his rejection of Islam after having embraced it is left to God’s judgement and to the afterlife. In all the cases mentioned in the Qur’ân and by the commentators, it is a question on the one hand of time-servers - individuals or tribes who according to the circumstances became turncoats⁶⁶ - and on the other hand of wavering persons attracted by the “People of the Book” (Surat II:109; III:99-100), Jews and Christians.

In light of the special circumstances, the Qur’ân argues, warns, or recommends what to do without ever making death threats.

63 A. al-Jazari, op. cit., V, 426.

64 A hadith is called *mutwâtir* when it is conveyed by several chains of transmission of secure guarantors.

65 Qur’ân II, 109,217; III from 85-89, 91,99,100,106,149; V 57-9; XLVII, 25,32,34,38.

66 See Sheikh Hamza Boubakeur, op. cit, commentary of verses III, 85,88,91,101,106; IV, 31,91,106, V, 54; XLIX, 14.

1) The Qur'ân argues

From a Muslim point of view the Qur'ân recognizes all the previous revelations, authenticates and perfects them:

“Say: We believe in God and in what has been revealed to us and what was revealed to Abraham, Ishmael, Isaac, Jacob and the Tribes, and in what was given to Moses, Jesus and the Prophets from their Lord. We make no distinction between any one of them, and to God’s will we submit (*muslimûn*)” (Q 3:84).

It does not follow that each one is permitted, at the convenience of the moment, to change his religion as he changes his shirt. Such behaviour denotes in fact a lack of true faith. It is for this reason that the following verse, a call directed to the whole of mankind, insists on the universality of Islam⁶⁷:

“If anyone desires a religion other than Islam, never will it be accepted of him; and in the hereafter he will be among the losers” (Q 3:85).

Accordingly, apostates are warned: those who choose apostasy after being convinced in their inmost thoughts that Islam is the truth are unjust, and as such they are deprived of God’s guidance, with all the consequences that follow for their salvation.

“How shall Allah guide a people who disbelieved after their belief and had witnessed that the Messenger is true and clear signs had come to them? And Allah does not guide the wrongdoing people” (Q 3:86; see also vv. 87-91).

On the other hand, the Qur'ân denounces the attitude of “the People of the Book”, who exerted pressure on the newly converted to Islam to induce them to retract. There is no doubt that the polemics between the dawning Islam and the ancient religions were intense. In this atmosphere, the Qur'ân urges the persons who embraced Islam to remain firmly in their new faith till death, to close their ranks, to refuse to listen to those who strive to render them apostates, and to keep out of their trap. They are also reminded of their former state of disunion when they were “on the brink of the pit of fire” and they are exhorted to be a people “inviting to all that is good” in order to ensure their final salvation.

“Say: O People of the Book: Why obstruct ye those who believe from the path of God, seeking to make it crooked, while ye were yourselves witnesses thereof? But God is not unmindful of all that ye do.”

“Say, O People of the Scripture, why do you avert from the way of Allah those who believe, seeking to make it [seem] deviant, while you are witnesses [to the truth]? And Allah is not unaware of what you do.”

⁶⁷ See M. Talbi, *Islam and Dialogue*, ed. MTE, Tunisia, 1972, p. 28-33; Arabic translation in *Islamochristiana*, Rome, 1978, IV 12-16.

“And how could you disbelieve while to you are being recited the verses of Allah and among you is His Messenger? And whoever holds firmly to Allah has [indeed] been guided to a straight path.”

“O ye who believe! Fear God as He should be feared, and die not except in a state of Islam.”

“And hold firmly to the rope of Allah all together and do not become divided. And remember the favor of Allah upon you - when you were enemies and He brought your hearts together and you became, by His favor, brothers. And you were on the edge of a pit of the fire, and He saved you from it. Thus does Allah make clear to you His verses that you may be guided.”

“And let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successful” (Surat III:99-104).

Thus, unceasingly and by all means, the Qur’ân strives to raise the new Muslims’ spirit in order to prevent them from falling into apostasy. The argumentation is only moral. The Qur’ân goes on: It is “from selfish envy” that “quite a number of the People of the Book wish they could turn you back to infidelity” (Surat II:109; see too III:149); you have not to fear them, “God is your Protector, and He is the best of helpers; soon shall He cast terror into the hearts of the unbelievers” (Surat III:150-151); “your real friends are God, His Messenger, and the believers. It is the supporters of God that must certainly triumph... Therefore take not for friends those who take your religion for a mockery or sport” (Surat V:58-60). And finally, those who, in spite of all that, allow themselves to be tempted by apostasy are forewarned: if they desert the cause, the cause anyhow will not fail. Others will bring it to a head.

“O ye who believe! If any from among you turn back from his faith, soon will God produce a people whom He will love as they will love Him, — lowly with the believers, mighty against the infidels, striving in the way of God, and never afraid of the reproaches of a fault finder. That is the grace of God, which He will bestow on whom He pleaseth. And God is Bountiful, All-Knowing” (Surat V:57; see too XLVII:38).

Finally, the apostates have been warned: “never will they harm Allah at all, and He will render worthless their deeds” (Surat XLVII:32).

2) The Qur’ân warns

The young Muslim community is thus given plenty of reasons to remain in their new religion. The members of this community are also warned that for their salvation they should not depart from their faith. They are urged to

follow the true spirit of Islam, and this spirit is defined in two ways: first they will love God and God will love them; secondly they will be humble amongst their brethren but they will not fear the wrongdoers and they will not make concessions to them. If by fear, weakness or opportunism, they depart from this line of conduct and fall into apostasy, they have to accept the responsibility and the punishment will be hard in the hereafter. "And if any turn back from their faith and die in unbelief, their works will bear no fruit in this life. And in the hereafter, they will be companions of the Fire and will abide therein" (Surat 2:217). The apostates will fall under "the curse of God, the angels and all men" (Surat III:87); "except for those who repent thereafter and amend, for God is Oft-Forgiving, Most Merciful" (Surat III:89). But there is no hope for those who persist in their apostasy (Surat III:90-91). These obstinate apostates will "taste the penalty for rejecting faith" (Surat III:106; see too III:140). Such men are entirely in the hands of evil (Surat XLVII:25). They secretly plot with the enemy (Surat XLVII:26-7), and "they obstruct the way to God for others" (Surat XLVII:32,34). As a result, "God will not forgive them" (Surat XLVII:34).

3) The Qur'ân advises

How to deal with such obstinate and ill-disposed apostates? How to treat those who try to draw them into their camp or manipulate them? Let us emphasize once more that there is no mention in the Qur'ân of any kind of penalty, whether death or any other. To use the Arabic technical word, we say that there is no specified *hadd*⁶⁸ in this matter.

On the contrary, Muslims are advised to "forgive and overlook til God accomplishes His purpose, for God hath power over all things" (Surat II:109). In other words, there is no punishment on earth. The case is not answerable to the law. The debate is between God and the apostate's conscience and it is not our role to interfere in it.

Muslims are only authorized to take up arms in one case, the case of self-defence, when they are attacked and their faith seriously jeopardized. In such a case "fighting" (*al-qitâl*) is "prescribed" (*kutiba*) for them even if they "dislike it" (*kurh^{um} la-kum*) (Surat II:216), and it is so even during the sacred month of pilgrimage (Surat II:217; 2:194). To summarize, Muslims are urged not to yield when their conscience is at stake and to take up arms against "those who will not cease fighting you until they turn you back from your faith, if they can" (Q 2:217).

68 *hadd* = legal punishment described explicitly in the Qur'ân.

Conclusion


It is thus evident that the problem of religious liberty, with all its ramifications, is not new within Islam. The Qur'ân deals at length with it. At the heart of this problem lies the thorny subject of apostasy. We have seen, with regard to this very subject, that the Qur'ân argues, warns, advises, but never resorts to the argument of the sword. The reason why is that argument is a stranger to faith. In our pluralistic world our modern theologians must take that into account.

We never emphasize enough that religious liberty is not an act of charity or a tolerant concession towards misguided persons. It is a fundamental right for everybody. To claim it for myself implies *ipso facto* that I am disposed to claim it for my neighbour, too.

But religious liberty is not necessarily the equivalent of atheism. My right and my duty are to bear witness to my own faith by fair means and to convey God's call. And ultimately, it is up to each individual to respond to this call or not, freely and in full consciousness.

From a Muslim point of view and on the basis of the Qur'ân's basic teachings, whose letter and spirit we have tried to bring out, religious liberty is fundamentally and ultimately an act of respect for God's sovereignty and for the mystery of His plan for man: man who has been given the terrible privilege to build, entirely on his own responsibility, his destiny on earth and for the hereafter. Finally, to respect man's freedom is to respect God's plan.

To be a true "muslim" is to submit to this plan. It is placing oneself voluntarily and freely, with confidence and love, into the hands of God.



Freedom of conscience and of religion hangs in a fragile balance... A man named Paul, at one time in his life, deprived many of his fellow citizens of their freedom. After a profound development in his own experience, he wrote: "Why is my liberty judged by another man's conscience?" (1 Cor. 10:29).

Bruno Vertallier,
*President of the International Association for the Defense
of Religious Liberty*

We are not 100% free when or as long as the Other is detained, condemned and persecuted for his/her conscience, religion or belief or because he belongs to one religious minority, and we are doing nothing for it. We don't defend one religion, church or belief, but a principle: the Principle of religious liberty for ALL people.

Liviu Olteanu,
*Secretary General of the International Association for the Defense
of Religious Liberty*

Systematic discriminations against minorities are mostly indicative of a general disrespect for human rights which sooner or later will also negatively affect members of the majority.

Heimer Bielefeldt,
Special Rapporteur of UN on Freedom of Religion and Belief

The Governments that ignore the religious liberty of the minorities or discriminate them cannot obtain security for the majority.

Robert Seiple,
the United States First Ambassador At-Large on Religious Freedom

Regardless of religious tradition, we have a common faith: a faith in our shared future. Let us harness our common humanity and make a better world.

Ban Ki-moon,
Secretary General of United Nations

