Introduction

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

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

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

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

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

² The list is divided between terms that are applied interchangeably or in relation to religion or any of its derivatives (religions, religious, religiosity) within the discourse, i.e. in legal materials,
The frequency with which the selected terms have been used by the committees during the time period in question does not in itself indicate anything about the patterns in their religion-making: Singular concluding observations can mention religion numerous times without adding much information about how the committees view the concept, whereas concluding observations that only employ the term once may offer several insights into the rationale behind the religion-making of the committees. Hence, I do not examine the prevalence with which “religion” or any other term on the list appears. Similarly, I do not review the prevalence of singular states, because their inclusion in the discourse is relative to the number of instruments they have ratified and the frequency of their reporting, which is highly erratic. To the extent that I quantify findings, I do so in terms of highlighting the prevalence of particular, broad themes in specific geographical regions or over fairly distinct periods of time.

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

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

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