5 The Human Rights Committee

5.1 Introduction

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

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

¹ Although declarations are conventionally not considered binding, several authors claim that the UDHR for all means and purposes is considered *jus cogens* and therefore binding upon all members of the international community of states. See Morsink 1999, Taylor 2005.
² A/RES/543 (VI), 1952.
³ Article 40(4) reads in full: “4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.”
⁴ The CESCR is an anomaly in the monitoring mechanism: it is the only committee that has been created after the adoption of the instrument it is set to monitor. When the ICESCR entered into force in 1976, the ECOSOC appointed a working group to take care of the reporting procedure created by the Covenant. With an unclear mandate and no formal rules of procedure, the working group failed to deliver any consistent review effort (Alston 1987). To amend the situation, the ECOSOC adopted resolution 1985/17, in which the CESCR was established along similar lines as...
The HRC does not have the competence to review individual communications under the Covenant. Nor is it authorized to make recommendations or suggestions, only comments of a general nature. While the committee in the early years interpreted this provision strictly, issuing only general viewpoints in annual reports to the GA and comments on the interpretation of particular treaty provisions, later years have seen a shift towards the procedure of adopting concluding observations, in which states parties receive concrete, substantial feedback on their implementation measures.

The ICCPR mentions religion in articles 2 (non-discrimination), 4 (non-derogation), 18 (freedom of religion or belief), 20 (prohibition of hate speech), those already established for CERD, allowing both suggestions and recommendations of a general nature.

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

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

7 Article 4 reads in full: “1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. 2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision. 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.”
(the rights of the child),\textsuperscript{10} 26 (equal protection before the law)\textsuperscript{11} and 27 (the rights of minorities).\textsuperscript{12} As such, the Covenant has by far the largest interface with religion of any international human rights treaty. Articles 2 and 26 expand the scope of non-discrimination established in the UDHR, listing “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. While article 2 lists these issues related to the enjoyment of the rights outlined in the Covenant, article 26 reproduces the same list related to the more general requirement of equality before the law. Article 4 prohibits derogation (exemption) for rights in the Covenant during times of crisis, if this is based “solely on race, color, sex, language, religion or social origin”, and lists article 18 on the freedom of religion or belief as an example of a right that is non-derogable.

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

\textsuperscript{8} See chapter 3.
\textsuperscript{9} Article 20 reads in full: “1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”
\textsuperscript{10} Article 24 reads in full: “1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. 2. Every child shall be registered immediately after birth and shall have a name. 3. Every child has the right to acquire a nationality.”
\textsuperscript{11} Article 26 reads in full: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
\textsuperscript{12} Article 27 reads in full “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”
Of all the provisions in the ICCPR, article 18 is the singularly most important norm on religion, arguably not only in the Covenant, but in international law more generally as well. It enshrines the freedom of thought, conscience and religion, and reproduces article 18 of the UDHR, but with two important differences. First, the article replaces the word “change” with “have or adopt a religion or belief of his choice”, a modification that was made during the drafting process at the request of several Muslim countries in which conversion was prohibited (Taylor 2005: 29). Second, the article outlines possible restrictions on the “manifestation” of religion or belief, and safeguards the liberty of parents and legal guardians to ensure the religious and moral education of their children, both of which are near identical to related provisions in the European Convention on Human Rights (1950), article 9.¹³ The phrasing of the limitation clause, that manifestations of the freedom of religion or belief may only be limited if “prescribed by law and (...) necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”,¹⁴ is indicative of the broad interface between religion and society, providing a taxonomy of potential conflicts that can arise when “private” beliefs are translated into “public” acts.

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

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

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

¹⁵ While Mahmood and Danchin primarily address the practice of the ECtHR, I consider their observation to be relevant to the universal level as well, since the normative architecture of the ECHR is largely identical to the UDHR and the ICCPR.
While limitations on health grounds are fairly unambiguous (Taylor 2005: 322), what constitutes acceptable limitations based on morals is more unclear, as such limitations, according to the HRC, “must be based on principles not deriving exclusively from a single tradition”, a clarification that is intended to prevent public morality from being dictated by a single majority religion (Taylor 2005: 327). However, it simultaneously issues a stamp of approval to lawmakers and the judiciary to decide what such public morality may look like, and in what ways manifestations of religion or belief may threaten it. Considering the complex interrelationship between law, religion and morals as co-dependent and co-constitutive (Kirsch and Turner 2009: 3) and the corresponding tendency of modern state-made law to displace religion as the arbiter and enforcer of morality (Sullivan 2005: 39), the approval of limitations based on morality gives state authorities ample space to limit manifestations of religion or belief according to a domestic hierarchy of morality.

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

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

¹⁶ Additionally, the preamble of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief insists that “the practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development”, and acknowledges the harm that can be caused by religion when used as a means of “foreign intervention in the affairs of other States”, or in a manner inconsistent with the Charter (Evans and Whiting 2006: 13).
tutes morals, public order or the fundamental rights and freedoms of others ultimately comes down to the legal, political and religious arrangements of each state party.

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

5.2 General Comments

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

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

\textsuperscript{17} CCPR/C/21/Rev.1/Add.4, 1993.
or retain one’s belief, effectively eradicating any ambiguity stemming from the drafting process leading up to the adoption of article 18.

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

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

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

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

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\(^{18}\) A/HRC/19/60: 72, 2011. Also ambiguously, the committee asks states to “include in their reports” information on practices considered to be punishable as blasphemous, without explicitly commenting on the desirability of blasphemy legislation.

\(^{19}\) CCPR/C/21/Rev.1/Add.5, 1994.
not have minorities: Rather, the existence of minorities, and the corollary legal obligation to protect these, was not to be decided by the state party, but by “objective criteria”, a concept the committee did not elaborate further. In states where minorities existed according to such criteria, the committee clarified that due to the enrichment of the fabric of society as a whole that minorities brought, a positive obligation to protect “their identity and their enjoyment and development of culture and language and to practice their religion” arose from article 27. The comment pointed out that minority rights, while individual in nature, presuppose the ability of groups to maintain their culture, language and religion, and stressed that positive measures set in motion to protect article 27 may constitute “legitimate differentiation”, but should nevertheless be considered against the protection against discrimination offered in articles 2 and 26.²⁰

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

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

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

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


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

5.3 Individual Communications

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

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

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

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

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

5.3 Individual Communications

5.4 Reporting Guidelines

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

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

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

37 CCPR/C/2009/1.
38 CCPR/C/2009/1: 83.
40 The Centre has been in operation since 2008, and is dedicated to the promotion of the role of NGOs in the reporting procedure of the HRC, and capacity-building among NGOs reporting to the committee. http://www.ccprcentre.org/about-us/ (accessed 31.08.2016).
ities), in which the non-existence of minorities is no excuse for not legislating on the issue (CCPR 2010: 37). On article 18, the guidelines largely reproduce those published by the HRC, but with an extensive excerpt from general comment 22, and the relations between this article and the general comments on privacy, equality and the family (CCPR 2010: 71). This interconnection between the freedom of religion or belief and other rights is also emphasized in the concrete reporting guidelines for article 23 (right to a family) and article 26 (equality before the law), where the nexus between religious and civil law in particular is emphasized (CCPR 2010: 78, 85).

5.5 The Religion of the HRC

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

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

41 While the special rapporteurs that have been active to date have shown certain differences in their interpretation of the mandate, particularly on the topic of prevention vs. protection (Evans 2006: 85), none have expressed reservations towards the HRC’s interpretation of article 18.
ination also influences the view of the committee of preferential treatment of religious traditions more generally, which it has warned strongly against.

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

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

5.6.1 The Freedom of Religion or Belief

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

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

The monitoring practice of the HRC on the freedom of religion or belief from 1993 to 2013 can roughly be divided between recommendations on conscientious objection to military service one the one hand, and limitations on the right to change and/or manifest a religion or belief on the other. On conscientious objection, the HRC has long held an interest in the subject, evident already in its general comment no. 22, where it observed that the right can be derived from article
18 of the ICCPR, stopping short of asserting that it is part of the right to freedom of religion or belief. This caution notwithstanding, the committee observed already in 1994 following its review of the report from Libya that “The lack of provision for conscientious objection to military service is [a] concern”. Similar observations have been issued throughout the 1990s and 2000s and up to the present, as the committee developed a standardized recommendation, observing that “The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination”.

Recommendations that states should adopt legislation allowing for conscientious objection have been issued regularly and repeatedly to states from many parts of the world, indicating the continued concern of the committee with the limited access to object to military service for conscientious reasons.

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

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43 The same recommendation, with only minimal differences, has been issued to Venezuela (CCPR/CO/71/VEN: 26, 2001), The Dominican Republic (CCPR/CO/71/DOM: 21, 2001), Azerbaijan (A/57/40 (I): p. 51: 21, 2002) and Viet Nam (CCPR/CO/75/VNM: 17, 2002).
46 CCPR/C/SR.1334: 9, [1994], 1996.
Another recurring criticism in the practice of the committee on conscientious objectors has been directed towards the tendency of states to favor some categories of objectors over others, as the consistent preference for objectors belonging to the Jehovah’s Witnesses in Finland,⁵¹ the requirements for objectors to belong to religions on an official, government-sanctioned list in Ukraine⁵² or registered religious communities in Uzbekistan,⁵³ and the requirement that objectors belong to clearly pacifist sects in Kyrgyzstan,⁵⁴ or have pledged a holy vow in Kazakhstan.⁵⁵ Finally, the committee has criticized states for not allowing conscientious objection once the duration of military service is underway,⁵⁶ and for not implementing the right fully in practice.⁵⁷

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

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

A Moroccan Muslim woman could marry a Jewish or Christian man only if she converted to Islam; by contrast, a Moroccan Muslim man could marry a Jewish or Christian woman even if she did not convert. Since the rules for inheritance were different depending on whether Muslims, Jews or Christians were involved, the religious statutes prohibited inheritance between Muslims and non-believers. Moroccan consulates and embassies abroad disseminated information to foreign women who wished to marry Moroccan men about the problems of inheritance that could arise if a woman did not convert to Islam.\footnote{CCPR/C/SR.1365: 62, 1994.}

In its concluding observations, the committee stopped short of declaring the rules in violation of article 18, expressing its “concern” at the impediment placed upon the freedom to change religion.\footnote{A/50/40: 112, 1995.} Following its next review of Morocco in 2000, the committee hardened its approach, observing that “the Covenant requires religious freedom to be respected in regard to persons of all religious convictions and not restricted to monotheistic religions, and that the right to change religion should not be restricted, directly or indirectly”.\footnote{A/55/40 (I): 117, 2000.} This stance was followed up in 2004, when the committee flatly observed that “article 18 of the Covenant protects all religions and all beliefs, ancient and less ancient, major and minor, and includes the right to adopt the religion or belief of one’s choice”.\footnote{CCPR/CO/82/MAR: 21, 2004.} Hence, over the course of ten years, the committee moved from considering prohibitions on conversion an “impediment” to article 18 and to declaring such prohibitions to be outright violations.

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

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

\textsuperscript{68} A/57/40 (I), p. 75: 20, 2002 and CCPR/CO/84/YEM: 18, 2005.
\textsuperscript{69} CCPR/C/DZA/CO/3: 23, 2007.
\textsuperscript{70} CCPR/C/SDN/CO/3: 26, 2007.
\textsuperscript{72} CCPR/C/MDV/CO/1: 24, 2012.
\textsuperscript{73} Indonesia, (CCPR/C/IDN/CO/1: 6, 2013).
\textsuperscript{74} Germany (CCPR/CO/80/DEU: 19, 2004).
\textsuperscript{76} Baha’is in Tunisia (A/50/40: 112, 1995) and Egypt (CCPR/CO/76/EGY: 17, 2002), Sunni Muslims in Iran, (CCPR/C/IRN/CO/3: 25, 2012) and Non-Muslims in the Maldives (CCPR/C/MDV/CO/1: 24, 2012).
\textsuperscript{77} CCPR/C/FRA/CO/4: 23, 2008.
\textsuperscript{79} CCPR/C/IRN/CO/3: 24–25, 2012.
\textsuperscript{80} CCPR/C/KWT/CO/2: 23, 2011.
\textsuperscript{81} CCPR/C/MDV/CO/1: 24, 2012.
\textsuperscript{82} A/49/40 (I): 351, 1994.
\textsuperscript{83} CCPR/CO/83/GRC: 14, 2005.
land,\textsuperscript{84} and to the suggestion that Indonesia reform its educational curricula in order to promote religious diversity.\textsuperscript{85}

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

\section*{5.6.2 Minorities and Discrimination}

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

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

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

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

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

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90 CCPR/CO/76/EGY: 17–18, 2002. The assertion in the state report was that “the different communities, sectors and groupings of the Egyptian nation are woven together into a single fabric” (CCPR/C/EGY/2001/3: 675, 2001).
authorities to be a religious tradition, but rather a “deviation” from Islam. The questions were entirely dismissed by the state delegation, who assumed that Baha’is had the same freedom of religion as everyone else in Tunisia, and did not experience persecution. The committee was not assured by this statement, expressing its concern in its concluding observations that the right to freedom of religion or belief, while “generally well-protected”, was not made available to all beliefs, advising the state party to take its recent general comment on article 18 into account.

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

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

93 A/50/40: 91, 98, 1995. None of these concerns were reiterated in the consecutive review of Tunisia in 2008 (CCPR/C/TUN/CO/5, 2008).
whether the information has been accurate, and on legal grounds, as the committee has argued that the factual existence of minorities would be principally irrelevant to the legal obligation on states parties to adopt legislation that would implement the protections of minorities enumerated in article 27 of the ICCPR. The legal dimension of this issue was also addressed by the committee in its general comment on article 27 (see above).

States that have claimed to have no minorities include France, Senegal, Libya, Kuwait, The Dominican Republic, Gambia and San Marino. The explanation for this non-existence varies: During the review of France in 1997, the delegation insisted that the French constitution was based on the dual principles of equal rights for all citizens and the unity of the nation, upholding the rights of all citizens to belong or refuse to belong to any group. The committee questioned how this policy, which had given rise to a declaration on article 27, affected the special protective measures available for distinct native populations in Breton and the Overseas Territories, the Basque and more recently arrived immigrant groups. In its concluding observations, the committee took note of the declaration on article 27, but did not accept the claim that no ethnic, religious or linguistic minorities existed on French territory, recalling that the mere fact that everyone has equal rights before the law excludes neither the existence, nor the entitlements of minorities under article 27.

Following the examination of the consecutive report of France in 2008, this view was reiterated and expanded to concerns with the access of individuals from minorities to join the workforce and representative bodies.

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

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99 See below.
100 See below.
101 See below.
102 A/55/40 (I): 475, 2000. This concern was reiterated following the 2011 review of Kuwait (CCPR/C/KWT/CO/2: 31, 2011).
103 See below.
104 The state party was considered without a report (CCPR/CO/75/GMB: 24, 2004)
107 “In the light of article 2 of the Constitution of the French Republic, the French Government declares that article 27 is not applicable so far as the Republic is concerned” (United Nations Treaty Collection, https://treaties.un.org/ (31.08.2016)
the committee on claims in the state report that there were no minorities in the state party, \(^{111}\) members of the state delegation insisted that there were numerous minority groups “of all kinds” in Senegal, but they intermingled widely, so there was no discrimination between them, \(^{112}\) a claim one member of the committee described as “unacceptable”, reminding the delegation of the obligations arising from article 27. \(^{113}\) These concerns were also reiterated in the concluding observations issued after the review. \(^{114}\) Similar claims as to the non-existence of minorities due to their close integration with the majority culture were dismissed by the committee following the review of The Dominican Republic. \(^{115}\)

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

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

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\(^{111}\) CCPR/C/SR.1619: 42 Klein, 45 Yalden, 49 Pocar, 1997.
\(^{113}\) CCPR/C/SR.1619: 63 Klein, 1997.
\(^{118}\) A/54/40 (I): 139, 1999. The issue was not reiterated in the concluding observations following the consecutive review of Libya in 2007 (CCPR/C/LBY/CO/4).
\(^{119}\) A/50/40: 322, 1995. Similar concerns were expressed by the committee following the review of the state party in 2002 (A/57/40 (I): p. 36: 23, 2002), and expanded to a concern with increasing assaults on members of Muslim and Jewish minorities following the review in 2006 (CCPR/C/UKR/CO/6: 16, 2006).
Germany\textsuperscript{122} and Serbia and Montenegro\textsuperscript{123} for their more robust protection of “national” over other minorities, whereas Mongolia\textsuperscript{124} has been criticized for its recognition of only one ethnic minority, and Greece\textsuperscript{125} for its refusal to recognize minorities beyond the Muslims protected under the provisions of the Lausanne treaty.

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

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

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

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

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

\textsuperscript{122} See below.

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

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

\textsuperscript{125} See below.

\textsuperscript{126} CCPR/C/SR.1552: 42, 1996.
with the German definition of minorities in relation to traditional areas of settlement in particular regions, suggesting that the protection offered by article 27 was intended to cover all minorities, whether they were immigrants or refugees.\textsuperscript{127} Following the consecutive review of Germany in 2004, the committee did not reiterate its concerns with the preference for some minorities over others, focusing instead on the ill treatment of some minority groups by the police, and the challenges faced by the Roma community in housing and employment.\textsuperscript{128} Following the latest review of Germany in 2012, however, the committee entirely ignored the provisions of article 27, expressing its concern with the problems faced by immigrant communities in housing under articles 2 and 26 on non-discrimination, and the racism experienced by members of the Jewish, Sinti and Roma communities under articles 2, 18, 20 and 26.\textsuperscript{129}

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

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

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

\textsuperscript{129} CCPR/C/DEU/CO/6: 7/17, 2012.
\textsuperscript{130} CCPR/C/SR.2268: 35, 2005.
\textsuperscript{132} CCPR/C/SR.2268: 37, 2005.
maintained by the state party on associations using “Turk” or “Macedonian” appellations in their names.¹³³

As displayed by the early reviews of Egypt and Tunisia, the HRC has consistently expressed its concern with the interface between the recognition and protection of religious minorities and other rights covered by the Covenant, in particular legislative frameworks on the freedom of religion or belief that favor one religious tradition to the detriment of others, and states where religious minorities are harassed, persecuted or otherwise abused, either by state officials or by others. The nexus between minority rights and the freedom of religion has been explicitly emphasized by the committee following its reviews of Sudan,¹³⁴ Morocco¹³⁵ Israel,¹³⁶ Jordan,¹³⁷ and Iran.¹³⁸

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

¹³⁴ A/53/40 (I): 131, 134, 1998. The issue was not raised following the consecutive review of Sudan in 2007 (CCPR/C/SDN/CO/3, 2007).
¹³⁵ See below.
¹³⁸ See below.
¹⁴² A/50/40/12, 1995.
¹⁴³ CCPR/C/SR.1788: 7(18), 2000. The list of issues is not available online, but is reproduced in the summary records from the 1788th meeting of the HRC.
ever, the question remained unanswered, and the committee once more focused its concluding observations on the implementation of article 18 and the excessive restrictions against other religions than Islam in Morocco.

During the review of Iran in 2011, the state delegation explained that there were no restrictions on religious minorities, although it was “no secret” that there were conflicts between members of the Baha’i faith and local communities, often because of the proselytization of the former, which forced the Government to “intervene and restore order”.¹⁴⁴ Baha’is who complained about religious persecution were mainly individuals “involved in crime”.¹⁴⁵ The committee found these answers insufficient,¹⁴⁶ expressing numerous concerns with the treatment of religious minorities in Iran, in particular the Baha’i community and the Christian community, but also the Kurds, Arabs, Azeris and Baluch “in schools, and publication of journals and newspapers in minority languages”, violating numerous articles of the Covenant, including articles 18, 19, 20 and 27.¹⁴⁷

On the topic of other rights violations suffered by religious minorities, the committee has issued concluding observations on a sliding scale, from their “inadequate protection” in the Dominican Republic,¹⁴⁸ their denial of rights in social and economic fields in Croatia¹⁴⁹ and Yemen,¹⁵⁰ xenophobia and intolerance in Liechtenstein,¹⁵¹ Belgium¹⁵² and Lithuania¹⁵³ to more structurally oriented differential treatment in Bulgaria,¹⁵⁴ Iraq¹⁵⁵ and Thailand,¹⁵⁶ outright violence, attacks and hate crimes in Romania,¹⁵⁷ The United Kingdom,¹⁵⁸ Russia,¹⁵⁹ Poland,¹⁶⁰ Austria,¹⁶¹ Georgia,¹⁶² Ukraine,¹⁶³ Armenia¹⁶⁴ and Turkey.¹⁶⁵

¹⁴⁴ CCPR/C/SR.2836: 6, 2011.
¹⁴⁵ CCPR/C/SR.2836: 9, 2011.
¹⁴⁹ CCPR/CO/71/HRV: 22, 2001. Similar concerns, but limited to the plight of the Roma and Serb minorities, were expressed by the committee following the 2009 review of Croatia (CCPR/C/HRV/CO/2: 18–19, 2009).
¹⁵⁰ CCPR/C/YEM/CO/5: 12, 2012.
¹⁵² CCPR/CO/81/BEL: 27, 2004. These concerns were reiterated and expanded by the committee following the 2010 review of the state party (CCPR/C/BEL/CO/5: 22, 2010).
¹⁵³ CCPR/C/LTU/CO/3: 15, 2012.
¹⁵⁶ CCPR/CO/84/THA: 24, 2005.
Taken together, the practice of the HRC on religious minorities indicates the long and troubled history of the minority concept in international law, as numerous states have drawn upon historical arguments to explain their refusal to recognize specific rights for minority groups. While few have been as critical as the Libyan delegation, claiming that the recognition of minority rights would represent an effort to “Balkanize” Libya, many have referred to the importance of deep historical entanglements to the recognition and protection offered to religious minorities. This has been particularly entrenched in European states like Germany, Greece and Italy, where “old” minorities enjoy more expansive protections than more recently arrived communities.

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

158 CCPR/CO/73/UK: 14, 2001. These concerns were reiterated following the 2008 review of the UK (CCPR/C/GBR/CO/6: 16, 2008).
159 CCPR/CO/79/RUS: 24, 2003. These concerns were reiterated following the 2009 review of Russia (CCPR/C/RUS/CO/6: 11, 2009).
160 CCPR/CO/82/POL: 19, 2004. These concerns were reiterated following the 2010 review of Poland (CCPR/C/POL/CO/6: 6, 2010).
162 A/57/40 (I): p. 56: 17, 19, 2002. The issue of differential treatment of minorities was raised by the committee again in the concluding observations following the 2007 review of Georgia, but this time in relation to the preferential treatment of the Georgian Orthodox church, under reference to article 18, not article 27 (CCPR/C/GEO/CO/3: 15, 2007).
163 CCPR/C/UKR/CO/6: 16, 2006. Similar concerns were expressed by the committee following the 2013 review of Ukraine (CCPR/C/UKR/CO/7: 11, 2013).
norities seems to suggest that the committee is able to recognize religion both as belief and identity. Compared with the practice of CERD, the observations issued by the HRC are more explicit about which dimension is at play, referring issues pertaining primarily to belief to article 18 and minority issues on identity to article 27, with occasional pointers to other rights as well.

5.6.3 Organizations

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

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

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

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

¹⁶⁷ While the former special rapporteur on the freedom of religion or belief, Heiner Bielefeldt, has stopped short of directly contradicting this moderate stamp of approval for the recognition of particular religions, he has significantly sharpened the conditions for such arrangements spelled out by the HRC, practically suggesting the outright disapproval of any form of state, or official religion (A/HRC/19/60: 71–73, 2011).
article 6, access of religious communities to some mechanism to register and attain legal personality can clearly be inferred as a vital part of the normative framework of religious freedom.

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

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

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

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


igious denominations of their right to freedom of religion or belief, indicating that the material consequences of potential restrictions were more important than the nature and criteria of recognition or registration in itself.\footnote{171}

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

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

\footnote{171}{A/49/40 (I): 235, 1994.}
\footnote{172}{A/49/40 (I): 158, 1994.}
\footnote{173}{A/54/40 (I): 285, 1999.}
\footnote{174}{CCPR/C/SR.1347: 80 Evatt, 88 Lallah, 1994.}
\footnote{175}{A/49/40 (I): 351, 1994.}
\footnote{177}{CCPR/C/SR.1396: 22, 1995.}
\footnote{178}{CCPR/C/SR.1396: 37 Medina Quiroga, 1995.}
\footnote{179}{A/50/40: 212, 1995.}
This critical line towards state favoritism was followed up and linked to formalized registration practices during the reviews of Slovakia and Lithuania in 1997, where the committee for the first time expressed its views on legal provisions spelling out the criteria for religious organizations to obtain official registration. Unlike its previous observations on the boundaries between state and religion, these reviews addressed the viability of concrete legal mechanisms whereby states assessed the religiosity of applicant communities. In the case of Slovakia, the committee asked the state party to provide more information on the nature of registration criteria in its list of issues.\(^{180}\) During the review, the state delegation provided a comprehensive account of the procedure:

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

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

\(^{180}\) The list is not available through the official documentation systems of the United Nations, but is referred to in the summary records of the third meeting with Slovakia (CCPR/C/SR.1591: 52, 1997).
function freely. In order to rectify this situation, the committee recommended that the Slovak authorities adopt “all necessary measures” to amend the relevant legislation.¹⁸⁴

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

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

Despite similarities, the criteria for registration in Lithuania differed from the Slovak approach in several respects: rather than requiring a minimum membership, the state party employed the distinction between “traditional” vs “non-traditional” religions, in explicit violation of the guidance offered by the HRC in general comment no. 22 (see above). The state delegation stressed that the registration procedure was closely tied to the restitution of property, although only religious communities operative during Communism were eligible to apply.¹⁸⁶

The committee observed in its concluding observations that registration requirements, and distinctions between religious communities in that connection, could result in religious discrimination, recommending that the state party ensure that no such discrimination take place.¹⁸⁷ The committee’s concerns were reiterated following the 2004 review of Lithuania.¹⁸⁸

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

¹⁸⁵ CCPR/C/SR. 1635: 40.
committee expressed its concern with the application of minimum membership requirements, distinguishing between different categories of registration and the extent to which non-registered communities may be able to function freely. All of these issues relate to the distinctions made by state parties between religious communities that were historically recognized, and the treatment of more recent or numerically insignificant communities. Second, the committee did not seem to have a clear position on the topic of restitution of church property confiscated by Communist authorities prior to 1990, as the Slovak authorities were commended for this system, while the Lithuanian version was ignored. Third, both states indicated moral limitations to the registration of religious communities, an issue that the committee elaborated extensively on in its general comment (see above), but ignored during the reviews.

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

190 CCPR/C/79/Add.120: 16, 2000.
195 CCPR/CO/81/LIE: 13, 2004. Although the concluding observations do not mention the Catholic Church directly, the summary records indicate that the differential treatment in question referred to the special status of the Catholic Church (CCPR/C/SR.2205: 39).
197 CCPR/C/DNK/CO/5: 12, 2008.
199 One notable exception is the 2000 review of Ireland, where the committee engaged the practical preference bestowed on religious organizations, who could be exempt from anti-discrimination legislation in employment processes, even for non-religious functions, which could lead to discrimination (A/55/40 (I): 443, 2000).
Parallel to these mild reproaches, the committee has displayed a more active interest in the potential for discrimination in registration procedures. In particular, the committee has been dismissive of any form of compulsory registration regimes, which have mainly been identified in Eastern European and post-Soviet states. These restrictions vary, from the prohibition of unregistered religious activity in Uzbekistan, Kazakhstan and Turkmenistan, to the absolute ban on some religions in Tajikistan, restrictions on non-registered religious practices in Azerbaijan, and the correlation between registration and status as conscientious objector to military service in Kyrgyzstan and Ukraine. These states generally display a severely restrictive approach to any manifestations of religion or belief, encompassing education, draconian terrorism legislation and various administrative penalties, including limited printing quotas for religious texts, all of which have been roundly criticized by the HRC.

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

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200 CCPR/CO/71/UZB: 24, 2001. These concerns were reiterated following the 2005 (CCPR/CO/83/UZB: 22, 2005) and 2010 (CCPR/C/UZB/CO/3: 19, 2010) reviews of the state party.
201 CCPR/C/KAZ/CO/1: 24, 2011.
203 CCPR/C/TJK/CO/2: 20, 2013.
204 CCPR/C/AZE/CO/3: 13, 2009.
206 A/57/40 (I): p. 35: 20, 2002. Similar concerns, albeit without direct references to the registration regime, were expressed following the consecutive reviews of Ukraine, in 2006 (CCPR/C/UKR/CO/6: 12, 2006) and 2013 (CCPR/C/UKR/CO/7: 19, 2013).
In the review of Hungary in 2002, the nature and number of acceptable criteria for the registration of religious communities was raised during the meeting between the committee and the state party. The committee expressed its concern with draft tax legislation that would be advantageous for “established churches”, to the detriment of other religious communities in the list of issues prior to the meeting. Responding to the question during the meeting, a representative from the state delegation explained that the earlier legal framework had required only the support of 100 signatories for religious communities to obtain registration with tax benefits, an arrangement that had been “abused by groups whose activities were unrelated to religious belief”. The amendments therefore featured “additional criteria”, attempting to define the notion of religion. According to the draft law, religion was

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

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

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

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

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

217 CCPR/C/MNG/CO/5: 24, 2011.
218 CCPR/C/77/L/LUX: 15, 2002.
219 Unfortunately, the summary records of the session, CCPR/C/SR.2080, CCPR/C/SR.2081 and CCPR/C/SR.2089 are not available in any official records of the UN, or in any other online database.
mosques,²²³ a concern that was also expressed in the concluding observations of
the committee, where it added that the state party should step up its efforts to
ensure that Islam enjoys the same advantages as other religions.²²⁴ During the
2010 review of Belgium, the registration of religious communities was not men-
tioned in the list of issues or concluding observations of the committee, but sum-
mary records from the meeting between the committee and the state party indi-
cate that the registration of mosques was well underway.²²⁵

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

During the review of Monaco in 2008, the committee added a new dimension
to its review of registration practices, questioning the state party on the institu-
tional framework for the registration of religious organizations. While the issue
was not raised in the list of issues or the meeting with the state party, the con-
cluding observations expressed the committee’s concern with the discretion
given the state administration in deciding what constituted the “sectarian na-
ture” of applicant communities, a term the committee also requested further
clarification of. Similar concerns about the institutional arrangements of registering religious organizations were expressed during the review of Azerbaijan in 2009, where the role of the Caucasus Muslim Board in the registration process was sought clarified in the list of issues, and again during the meeting with the state party. A member of the state delegation explained that the role of the board was to inform the relevant State committee “whether a given community which applied to be registered was Muslim or not”, stressing that no communities had been denied registration so far. The committee did not find this clarification sufficient, and expressed its concern with the lacking information about the “exact composition, criteria and prerogatives” of the Board in its concluding observations.

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

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

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

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231 CCPR/C/AZE/Q/3: 15, 2008.
this phase, the committee repeatedly expressed its concern with the potential for discrimination inherent to such constitutional provisions. These concerns were mostly directed towards Latin American states, although one Middle Eastern state, two Scandinavian and one Asian state also received criticism for their preference for a majority religious organization.

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

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

Despite the various twists and turns in the practice of the committee on the recognition and registration of religious institutions and organizations, the principle of non-discrimination runs throughout from 1993 to 2013 as an overarching concern: in every concluding observation on the issue, the primary purpose of the committee has been to insist on a level playing field, securing that all religious worldviews have equal access to organize and attain legal personhood, through which they may be eligible for whatever rights and duties the states see fit. How states should proceed in order to achieve such a level playing field, however, is entirely another matter, as the committee has refrained from proposing particular rules and regulations for the recognition or regulation of religious organizations, limiting its recommendations to general calls on states to bring their legislation in line with the provisions of the Covenant.
The unwillingness of the HRC to issue specific recommendations on the acceptable content of criteria in registration procedures echoes the general approach of the committee to the proper boundaries of religion in international law, conceived of as a private, individual matter of conscience, principally beyond state control: by evading any specific recommendations, the committee maintains the open-ended nature of the right to freedom of religion or belief enshrined in article 18 of the UDHR and the ICCPR, and its interpretation of this right as “wide-reaching and profound” in its general comment no. 22. While this unwillingness may principally conserve the intended reach of the article, it also renders the concluding observations of the committee on the topic vague and obfuscating, granting states wide measures of discretion.

5.6.4 Religious Law

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

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

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

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

The main concern of members was whether the Covenant might come into conflict with Islam. It was well known that Islam was a merciful and compassionate religion. However, in modern times, the image of Islam had been distorted and had caused the non-Muslim world to view Islam as isolated from its true nature. The Covenant was not a perfect instrument. However, it had been formulated and adopted with the help of many countries, including Muslim nations, and had to be accepted as it was.²³

Building on this general tension, another committee member observed that the Iranian constitutional provision on the role of Islam as the origin of all its other laws may be in conflict with the Covenant, which could not be applied in such a way as to reflect considerations determined by any one religion.²⁴⁰ Over the course of a record seven meetings²⁴¹ between the state party and the committee,²⁴² every possible aspect of the interface of law and religion was discussed, before the committee issued a set of concluding observations where it observed that it found it “somewhat difficult” to assess the compatibility of Iranian laws with the Covenant due to its lack of transparency and predictability. Furthermore, the committee noted “the numerous, explicit or implicit, limitations or restrictions associated with the protection of religious values, as interpreted by Iranian authorities”, seriously impeding the implementation of human rights in the state party.²⁴³

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

²⁴¹ The standard number of meetings for the review of a periodic report at the HRC is two. While the committee occasionally convenes three or four meetings for particularly broad assessments, I have never come across any other report to which the committee has dedicated seven meetings.
²⁴³ CCPR/C/79/Add.25: 6, 1993. Similar sentiments were expressed during the 2011 review of Iran, where the religious nature of the Iranian legal system became a major topic during the meeting (CCPR/C/SR.2834: 18 Flinterman, 42 Thelin, 2012), and was followed up in the concluding observations, where the committee noted with concern that “reference is made in the State party’s system to certain religious tenets as primary norms”, recommending the full implementation of the Covenant and suggested to the state party that it should ensure that “internal norms” were not invoked as justification for the non-implementation of human rights provisions (CCPR/C/IRN/CO/3: 5, 2012).
state party pointed out that some issues were beyond the reach of the federal
state, and it was up to each regional administration to govern, including “reli-
gious and social practices, customary law, the administration of civil and crim-
inal justice, property and the transfer of land and resources”. In its concluding
observations, the committee pointed out that

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

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

Similar sentiments were expressed in the reviews of France and Lebanon,
also in 1997. During the review of France, one member questioned the practice
in the French Overseas Territory of Mayotte, where women retained their status
under personal laws derived from Islam, in violation of article 26 (non-discrim-
ination before the law) and 27 (the rights of minorities) of the ICCPR, to which
the state delegation responded that anyone may repudiate the personal law sys-

tem and choose to be governed by civil law instead. In its concluding obser-

vations, the committee observed that the system in the French overseas territo-
ries “might in some situations lead to discriminatory attitudes and decisions,
especially against women”, suggesting a comprehensive study to review the
legal system in Mayotte and New Caledonia in order to eliminate possible viola-
tions of article 3 on gender equality.

In the review of Lebanon, the committee inquired about the existence, na-
ture and competence of religious courts, and the nature of the requirements
that eligibility for political office depended on membership in a religious com-


[247] CCPR/C/SR.1600: 13 Evatt, 1997. Medina Quiroga also “associated herself” with the question
at 14, and also suggested the practice may violate article 3 of the ICCPR on gender equality.
office was religious affiliation, which “had little to do with religious faith”.\textsuperscript{252} After an extensive discussion on the competence of religious courts and the consequences of membership in religious communities, one committee member concluded that religion “seemed to be an obstacle” to the full implementation of the Covenant.\textsuperscript{253} This concern was carried over to the concluding observations, where the committee pointed out that the Lebanese system of marriage laws and eligibility for political office dependent on religious affiliation did not comply with the Covenant, and recommended the state party to conduct a review of its legal framework on these issues.\textsuperscript{254}

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

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

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

\textsuperscript{252} CCPR/C/SR.1578: 50, 59, 2000.
\textsuperscript{253} CCPR/C/SR.1579: 63 Ando, 2000 (translation from the Spanish original).
\textsuperscript{254} CCPR/C/79/Add.78: 18, 19, 22, 1997.
\textsuperscript{255} CCPR/C/SR.1676: 4 Lallah, 8 Medina Quiroga, 1998. The reservation lodged by Israel reads as follows: “With reference to Article 23 of the Covenant, and any other provision thereof to which the present reservation may be relevant, matters of personal status are governed in Israel by the religious law of the parties concerned. To the extent that such law is inconsistent with its obligations under the Covenant, Israel reserves the right to apply that law”. United Nations Treaty Collection https://treaties.un.org/ (accessed 31.08.2016).
\textsuperscript{256} CCPR/C/SR.1677: 55, 57, 1998.
\textsuperscript{257} CCPR/C/79/Add.93: 29, 1998.
bia, Greece and Indonesia, the discrimination against non-Catholic couples in Costa Rica, where only Catholic marriages have civil effect, and on the binding effects and lack of appeal in decisions taken by religious courts in Ethiopia regarding inheritance, marriage, divorce and the guardianship of minors. The Philippines has been criticized for its acceptance of religious courts sanctioning underage marriages and polygamy, while Djibouti has been urged to “harmonize” its interpretations of the Islamic Sharia on inheritance, divorce, marriage and other family matters.

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

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

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

Despite its dominance, the “Protestant” notion of religion developed in article 18, where belief is primary and all its external trappings are secondary, is in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g) Not to be compelled to testify against himself or to confess guilt. 4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. 6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him. 7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.
constantly played out in contrast to more subtle and implicit notions of religion/s conceived of as identity or as a social phenomenon. Throughout its monitoring practice, the HRC has developed its approaches to religion by contrasting the freedom of each individual to the established powers of state-sanctioned religious dogma and the powers of religious institutions and organizations in society. In these observations, the committee has consistently used the norms of the ICCPR on the freedom of religion or belief, the right to non-discrimination and the rights of minorities to limit the social, political and legal influence of religious communities and organizations. In this way, the HRC frequently construes social and organizational dimensions of religion as the “other”, the counter concept and chief limitation of the rights of each individual under article 2 to equal treatment, under article 18 to enjoy freedom of religion or belief, and under 27 to profess and practice their own religion.

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

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

The tendency of the HRC to only address religion whenever it is explicitly covered by one or more of its material provisions brings its approach close to that favored by actors at the first United Nations, as an unspecified, yet ultimately benevolent force in society that should be cherished and protected. By evading the actual influence of the social, political and cultural, or simply “lived” notions of religion (see chapter 8) in the societies that it monitors, the committee has been able to focus stringently on the material provisions of the ICCPR that
explicitly regulate religion in some way or form. Whenever it has encountered states that have sought to pin down one specific approach to religion, particularly in their registration procedures, the committee has been adamant that no specific definition should be adopted. Likewise, its general comment no. 22 on the interpretation of article 18 stresses that belief and religion are to be “broadly construed”, and that they should not be limited to “traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions”. This via negativa approach secures the lofty ambitions of the political actors of the first UN to keep the concept of religion open and inclusive. However, by refusing to fill the concept with any content, and by ignoring the social and cultural role of religion in human rights treaty implementation, the HRC simultaneously complicates the “vernacularization” of the provisions on religion in the ICCPR.

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