

INTERNATIONAL AGREEMENTS AND RELIGION IN SCHOOLS

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by Christopher Hardaway\*

“José Luis Yagüe says he does not mind the Nativity scene or the carved statue of St. Christopher that adorns his 5-year-old daughter’s public school [in Spain] in the city center. But the teacher who stands at the entrance each morning, ‘wooing the children to choose her class’ on Roman Catholicism is too much he says. ‘You don’t see the English or German teacher saying, ‘Come to my class, it’s great fun,’” said Mr. Yagüe, a self-described atheist. ‘I fail to understand the support still given to religion by this supposedly secular state.’”

New Law Requires Roman Catholicism Classes in Spain’s Schools, by Dale Fuchs, *New York Times*, December 21, 2003.

“At an elementary school outside Philadelphia [Pennsylvania, U.S.A.], kindergartners get to choose their favorite book for a parent to read to class. One 6-year-old chose the Bible, but the school refused to let his mother read it.”

Philly Schools in Legal Spat over Bible, by Joel Rose, National Public Radio, May 22, 2005.

INTRODUCTION

While this study focuses on international law and religion in schools, the roots of international agreements on religion in general, can be found as early as 628 C.E., when Mohammed and his Meccan rivals signed a ten-year truce at Hudaibiyah.<sup>1</sup> This treaty allowed for the return of Muslims to Mecca for three days. Later, the inhabitants of the conquered territories of Spain were impressed by the tolerance the Muslims offered in the 713 Treaty of the Surrender of Orihuela, wherein the Christians were allowed to keep their churches and their monasteries, and the Jews their synagogues. This tolerance was reciprocated when Ferdinand and Isabella completed the Spanish Reconquista and the Muslim Emirate of Granada fell in 1492. The Treaty of Granada<sup>2</sup> provided similar protections to the Muslims (although the promises

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<sup>1</sup>*Al-Hudaibiyah Treaty*, March 628 C.E.

<sup>2</sup>*Treaty of Granada*, 1492. Selected portions can be found at [www.cyberistan.org/islamic/treaty1492.html](http://www.cyberistan.org/islamic/treaty1492.html).

were soon broken when the Spanish Inquisition was given a free hand resulting in a mass exodus of Muslims and Jews). In 1192, when the Third Crusade led by Richard the Lionheart fell short of conquering Jerusalem, he reached a peace accord with the Muslim commander Saladin under which Jerusalem would remain under Muslim control, but allowed unarmed Christian pilgrims to visit the city.<sup>3</sup>

Precursors to current agreements include the 1555 Peace of Augsburg which attempted to bring peace to the Holy Roman Empire in the face of the Reformation. In pertinent part, the Augsburg treaty prohibited doing “any violence or harm to any estate of the empire on the account of the Augsburg Confession<sup>4</sup>, but let them enjoy their religious belief, liturgy and ceremonies . . .” thus granting Lutherans religious tolerance. While this was rescinded in 1629 by Ferdinand II, it was resurrected by the Treaty of Westphalia in 1648. After eighty years of war between the Spanish and the Dutch, and ending the Thirty Years War, the Treaty of Westphalia was signed by all the European powers except England, Poland, Moscovy (early Russian empire), and Turkey. Article XXVIII provided that all Lutherans who “demand it, shall have the free Exercise of their Religion, as well in publick Churches at the appointed Hours, as in private in their own Houses, or in others chosen for this purpose by their Ministers, or by those of their Neighbours, preaching the Word of God.”

Bilateral treaties involving imposition of religion were not passé after the Treaty of Westphalia. A result of the “opium war” between Britain and China was the Treaty of Tien-Tsin signed in June of 1858. One provision:

“The Christian religion , as professed by Protestants or Roman Catholics, inculcates the practice of virtue, and teaches man to do as he would be done by. Persons teaching or professing it, therefore, shall alike be entitled to the protection of the Chinese authorities, nor shall any such, peaceably pursuing their calling, and not offending against the law, be persecuted or interfered with.”<sup>5</sup>

The first truly global treaty referencing religious freedom was the Covenant of the League of Nations formed in 1919. Signatories included countries located in North America (but not the United States), South America, Central America, Europe, Asia, and Africa. The Covenant provided that

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<sup>3</sup>*The Quest for Jerusalem, 1070-1313*, Prof. Carl Edwin Lindgren, <http://users.panola.com>

<sup>4</sup>The Augsburg Confession is the first of the great Protestant Confessions. All orthodox Lutheran Churches base their teachings upon this treatise, drafted in 1530 by Lutheran nobility at the behest of Charles V (Holy Roman Emperor), because they believe it to be the Word of God.

<sup>5</sup>Treaty of Tien-Tsin, Art. VIII. Copy can be found at: <http://web.jjay.cuny.edu>

administration of other territories will “guarantee freedom of conscience and religion. . .”<sup>6</sup> The Covenant was enforced by the first Permanent Court of International Justice, which also heard cases involving other post-World War I treaties. In May of 1922, the German-Polish Convention regarding Upper Silesia was signed in Geneva. The Allies had partitioned Upper Silesia so as to give German about two-thirds of the land and three-fifths of the population, with no particular regard to what the people involved wanted. Article 106 of the Convention provided that a minority school should be created if at least forty children belonging to the same religion and an application was made.<sup>7</sup> The Germans complained to the Permanent Court of International Justice that Polish officials wrongfully struck 7,114 entries of children in the registers of minority schools.<sup>8</sup> The Germans contended that a mere assertion of minority status was sufficient, and no investigation of authenticity should be allowed, since majority students needed only to assert their majority status. The International Court disagreed, and held that the Polish government could strike the names of minority children if found to be wanting after investigation.<sup>9</sup>

Following World War II and the creation of the United Nations, numerous international conventions, declarations, and treaties were ratified that directly or indirectly impacted the position of religion in schools.

Lest we believe that religion and schooling is a 20<sup>th</sup> Century issue, the following excerpts provide an historical backdrop:

“Forasmuch as the good education of children is of singular behoof and benefit to any Common-wealth; and whereas many parents & masters are too indulgent and negligent of their duty in that kinde. It is therefore ordered that . . . [everyone shall teach] their children & apprentices so much learning as may enable them perfectly to read the English tongue and knowledge of the Capital Lawes . . . Also that all masters of families doe once a week (at the least) catechize their children and servants in the grounds & principles of Religion. . .”  
Massachusetts Law of 1642

“It being one chief project of that would deluder, Satan, to keepe men from the knowledge of the Scriptures, as in former times by keeping them in an unknowne tongue, so in these latter times by perswading from the use of

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<sup>6</sup>Covenant of the League of Nations, Article 22. Copy can be found at [www.yale.edu/lawweb/avalon/leagcov.htm](http://www.yale.edu/lawweb/avalon/leagcov.htm).

<sup>7</sup>Publications of the Permanent Court of International Justice, Series A, No. 15, April 26, 1928, Collection of Judgments No. 12, Rights of Minorities in Upper Silesia (Minority Schools), page 36.

<sup>8</sup>Id. at p 10.

<sup>9</sup>Id. at pp. 43-47.

tongues, that so at least the true sence and meaning of the orginall might be clouded by false glosses of saint seeming deceivers, that learning may not be buried in the grave of our fathers in the church and commonwealth, the Lord assisting our endeavors, it is therefore ordered that every towneship . . . shall then forthwith appoint one within their towne to teach all such children as shall resort to him to write and reade, whoe wages shall be paid either by the parents or masters of such children . . .” Massachusetts School Law of 1647 (Old Deluder Satan Law)

#### CURRENT ISSUES AND INDIVIDUAL COUNTRY CONSTITUTIONS

In our own time, the complex issue of religion in school takes on not just a spiritual aura, but, in the shadow of 9/11, a public safety concern as well. This complexity was highlighted when France passed a law banning religious symbols in public schools in March of 2004.<sup>10</sup> On the surface, the new law was aimed at protecting France’s secular culture and the strict division between church and state. But the public school debate has spread to much broader issues including immigration, women’s rights, education and concerns about Islamic fundamentalism.<sup>11</sup> In pertinent part, the law provides: “In public elementary schools, junior high schools, and high schools, students are prohibited from wearing symbols or attire through which they conspicuously exhibit a religious affiliation.”<sup>12</sup> The new law has received mixed reviews,<sup>13</sup> with some interpreting the law so as to ban not just Islamic veils, but to Jewish yarmulkes and the wearing of large crucifixes.<sup>14</sup> Contemporaneously, some German states amended their laws such that “teachers at public schools . . . are not allowed to exercise political, religious, ideological or similar manifestations that may endanger or disturb the neutrality of the country towards pupils or parents or the political, religious or ideological peace of the school,”<sup>15</sup> and

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<sup>10</sup>2004-228 of March 15, 2004 became effective September 2, 2004 at the beginning of the new school year.

<sup>11</sup>USA Today, *Effort to ban head scarves in France sets off culture clash*, by Noelle Knox, February 3, 2004.

<sup>12</sup>See note 7.

<sup>13</sup>Al-Quds Al-Arabi, a London based daily, mocked the new French Law: “It is illogical that French laws allow girls to wear short tight skirts, show their breasts, plunge into vice, and then prevent them from covering their heads.” And Morocco’s LeMatin points to the contrast between the new French law and the Pope’s insistence on proclaiming Christianity in the new European Constitution. Bad Press for Headscarf Ban, *BBC News UK Edition*, December 13, 2003.

<sup>14</sup>*Belgium Next in Line as Europe’s Veil Ban Spreads*, The Times, by Anthony Browne, January 19, 2004.

<sup>15</sup>Law of the Länder, Baden-Wurttemberg, Amendment of § 38 of the School Act, 1 April 2004.

“public servants on duty have to conduct themselves politically, ideologically and religiously neutral,”<sup>16</sup> and similar language restricting outward manifestations by teachers.<sup>17</sup> Laws like this may run afoul of the International Covenant on Civil and Political Rights (ICCPR- discussed in more detail below). The UN Human Rights Committee<sup>18</sup> has recently ruled in favor of an Uzbek student wishing to wear a “hijab” (headscarf) who was expelled in the face of 1998 law stating “Citizens of the Republic of Uzbekistan . . . cannot appear in public places in religious attire.”

Religion and school are so personal and viscerally important to all societies, that a review of current international law in this area is warranted. How far apart are countries that range from Andorra to Saudi Arabia to the United States? Before looking at international treaties, a sampling of constitutions provides some starting points. An excerpt from the early Polish Constitution of 1815 gives a preview to the homogenous route that most European nations will take in the 20<sup>th</sup> century:

“The Roman Catholic religion, professed by the majority of the inhabitants of the kingdom of Poland, shall receive the most careful attention from the government, without in any way, diminishing the freedom of other sects, which without exception shall be allowed to worship freely and publicly, and shall enjoy the protections of the government. Whatever distinction there may be between Christian sects, there shall be no distinction in the enjoyment of civil and political rights. . .”<sup>19</sup>

As we shall see in reviewing the constitutions and international treaties, such a “some of my best friends are [another religion]” or “you can practice whatever religion you want so long as it’s Roman Catholic” attitude is common in countries where one religion predominates to the extent that other religions are viewed with an intellectual curiosity reserved for non-threatening phenomena. Notice the difference between the foregoing Polish excerpt and the Constitution of the United States ratified a generation before: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .”<sup>20</sup> This contrast illustrates the determination of those

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<sup>16</sup>Law of the Länder, Hessen, Amendment of § 68 of the Public Service Act, 18 October, 2004.

<sup>17</sup>See, for example, the amendments to laws of Niedersachsen - Lower Saxony; Saarland, Bayern - Bavaria, and Berlin.

<sup>18</sup>*Hudoyberganova v. Uzbekistan*, UNHRC Communication 931/2000, 5 November 2004.

<sup>19</sup>*Polish Constitution*, Article 11. Copy can be found at [www.usip.org](http://www.usip.org).

fleeing religious persecution in Europe to America to enact new laws allowing them freedom of worship.<sup>21</sup> The Spanish Constitution theoretically guarantees that “[n]o religion shall have a state character,”<sup>22</sup> yet qualifies that in the next sentence: “The public powers shall take into account the religious beliefs of Spanish society and maintain the appropriate relations of cooperation, with the Catholic Church and other denominations.”<sup>23</sup> And while England has no written “Constitution,” its laws provide that “Religious education has to be provided in all schools financed from public funds and is part of the national curriculum.”<sup>24</sup> The Germans, in accord with the European trend, provides that religious instruction “forms part of the ordinary curriculum in state and municipal schools, excepting secular schools.”<sup>25</sup> In a portent of the French law of 2004, a German case<sup>26</sup> 17 years earlier found that the affixation of a cross or crucifix in the classrooms of a State compulsory school that is not a denominational school infringes on the Basic Law (Constitution) which holds the freedom of religion inviolable.<sup>27</sup> While we shall discuss some of Canada’s problems with international agreements below, the Canadian Constitution has recently been amended (with respect to Newfoundland) to require that “the Legislature . . . shall provide for courses in religion that are not specific to a religious denomination. . . Religious observances shall be permitted in a school where requested by parents.”<sup>28</sup>

The former Soviet bloc countries are, not surprisingly, manifestly more ambivalent about religion, taking their cue from Karl Marx: “Religion is the sigh of the oppressed creature, the heart of a heartless world, and the soul of soulless conditions. It is the opium of the people.”<sup>29</sup> While the Russian Constitution has some ambivalent language regarding religion in schools, a

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<sup>20</sup>*U.S. Constitution*, 1<sup>st</sup> Amendment, 1791.

<sup>21</sup>See, for example, *The Mayflower Compact*, 1620.

<sup>22</sup>*Spanish Constitution*, Article 16(3), 29 December 1978 with amendments through 1992.

<sup>23</sup>*Id.*

<sup>24</sup>Information provided by the British Embassy, Section 18, found at [http://www.oefre.ch/law/icl/uk00000\\_.html](http://www.oefre.ch/law/icl/uk00000_.html).

<sup>25</sup>German *Basic Law* (Constitution), Article 7(3). While this Article creates more questions than answers, it is beyond the scope of this paper to delve into the difference between “state” and “secular” schools in Germany.

<sup>26</sup>*Kruzifix-Decision*, BverfGE 93, 1, 1BvR 1087/91, 12 May 1987.

<sup>27</sup>German *Basic Law* (Constitution), Article 4(1).

<sup>28</sup>Constitution Amendment (to the Constitution of Canada, Term 17(2, 3)), 1998 (Newfoundland Act).

<sup>29</sup>Contribution to the Critique of Hegel’s *Philosophy of Right*, Introduction, Karl Marx, February 1844.

recent law provides that “teaching children religion in state and municipal educational institutions by religious organizations may be done only with the consent of the children who are studying in educational institutions, and upon the request of their parents.”<sup>30</sup> The Ukraine Constitution provides that: “The Church and religious organisations in Ukraine are separated from the State, and the school from the Church. No religion shall be recognized by the State as Mandatory.”<sup>31</sup>

Saudi Arabia provides that the principle aim of education is to instill Islamic faith in the younger generation. The incorporated preamble to the Constitution of France dictates that the state has a duty to provide a “public and secular education at all levels.” While China does not permit use of religion “to engage in activities that interfere with the educational system of the state,” newly returned Hong Kong does allow schools run by religious organizations to be continued and be subject to the ICCPR.<sup>32</sup> The other Asian behemoth, India, provides that “no religious instruction shall be provided in any educational institution wholly maintained out of State funds.”<sup>33</sup>

The proposed Constitution for Europe includes provisions impacting religion in schools: Everyone has the right to freedom of thought, conscience and religion; the Union shall respect cultural, religious and linguistic diversity; and the rights of parents to ensure the education of their children in conformity with their religious convictions shall be respected in accordance with the national laws governing the exercise of such freedom and right.<sup>34</sup> Curiously, the latter provision seems to guarantee the right to conforming education unless that State says otherwise.

Although a bit circular in concept, religious bodies themselves address the issue of religion in school. The Catholic Church has interpreted the fourth commandment<sup>35</sup> (honor your father and mother) as providing that:

“parents have the right to choose a school for [their children] which corresponds to their own convictions. This right is fundamental. As far as possible parents have the duty of choosing schools that will best

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<sup>30</sup>Order of Ministry of Education of Russian Federation, 1 July 2003

<sup>31</sup>*Constitution of Ukraine*, Article 35.

<sup>32</sup>Joint Declaration of the Gov’t of the United Kingdom of Great Britain and Northern Ireland, the Gov’t of the People’s Republic of China on the Question of Hong Kong, Annex 1.

<sup>33</sup>Constitution of India, Article 28(1).

<sup>34</sup>Draft Treaty establishing a Constitution for Europe, Articles II-70 and II-22. Copy may be found at

<sup>35</sup>Fifth Commandment in the Jewish and Protestant faiths, although the original Lutheran Catechism keeps it in the Fourth Commandment. See The Bible Exodus 20, or a comparison at <http://ccat.sas.upenn.edu/rels/002/Judaism/decalog.html>.

help them in their task as Christian educators. Public authorities have the duty of guaranteeing this parental right and of ensuring the concrete conditions for its exercise.”<sup>36</sup>

While difficult to ascertain due to the many “schools” of Islamic Law, it appears that the Islamic religion is inherently tied in to schools. For example:

“ . . .the first purpose of Islamic education must be to produce qualified citizens and leaders for the Islamic society. *Tarbiyyah*, real Islamic moral training, must be an integral part of it. This must be the soul of our education, not a ceremonial husk.”<sup>37</sup>

Martin Luther originally gave some direction under the Fourth Commandment of honoring mothers and fathers. In this manner a member will have a “godly child properly taught, reared in true blessedness;” and makes a plug for sending your children to school if parents “themselves [are] stupid and ignorant; one fool trains [teaches] another;” or “where a father is unable alone to educate his [rebellious and irritable] child, he employs a schoolmaster to instruct him.” Although the Church goes on to say that if the child is talented, “have them learn and study something . . . to have them instructed and trained in a liberal education, that men may be able to have their aid in government and in whatever is necessary.”<sup>38</sup>

#### INTERNATIONAL AGREEMENTS AND ENFORCEMENT MECHANISMS (OR NOT)

A summary of all international agreements which impact religion in schools can be found in Appendix 1. A chronological review starts with the Geneva Declaration of the Rights of the Child of 1924. This brief, unenforceable document sponsored by the League of Nations provided that the child must be given means for spiritual development. In 1948, the Universal Declaration of Human Rights provided the first statement that parents have a right to choose the kind of education that the children receive. Like the Geneva Declaration,

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<sup>36</sup>Catechism of the Catholic Church, Part Three, Life in Christ, Section Two - The Ten Commandments, para. 2229; August 15, 1997. Copy can be found at [http://www.vatican.va/archive/ccc\\_css/archive/catechism/p3s2c2a4.htm](http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a4.htm).

<sup>37</sup>Fatwa issued on 26 February 2003; may be found at <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=61931>.

<sup>38</sup>*The Large Catechism*, by Dr. Martin Luther, Translated by F. Bente and W.H.T. Dau, published in *Triglott Concordia: The Symbolical Books of the Ev. Lutheran Church*, St. Louis: Concordia Publishing House, 1921, pp.565-773.

this agreement was aspirational in nature with no enforcement mechanism. Finally, in 1950, we see provisions passed with some allegorical teeth when Europe passed the European Convention on Human rights.

#### UNITED NATIONS

The genesis of the freedoms pursued by the United Nations can be found in the Universal Declaration of Human Rights in 1948. In that document, member states agreed that education shall “promote understanding, tolerance and friendship among all nations racial or religious groups . . .”<sup>39</sup>

#### UN ICCPR

The International Covenant on Civil and Political Rights (ICCPR)<sup>40</sup> has been the workhorse for human rights since 1976. It has been ratified by 152 countries. There are three keys to the success of the ICCPR. First, it establishes the Human Rights Committee (HRC) which hears cases on violations. Second, is Article 41 which allows other States to bring enforcement actions to the HRC if they submit themselves to the jurisdiction of the HRC (ratified by 48 countries). And third is the Optional Protocol which allows individuals to bring cases before the HRC (ratified by 104 countries, excluding the United States). That being said, winning a case against a State party is not a guarantee of success as we shall see, *infra*.

A common theme in ICCPR actions brought before the UN Human Rights Committee (UNHRC) involves generic religion classes; i.e. a non-denominational religious ethics class. In 1978, the General Secretary of the Union of Free Thinkers in Finland (Mr. Erkki Hartikainen) brought a case before the UNHRC citing a Finnish law that said, in part, “the curriculum of a comprehensive school shall . . . include religious instruction . . .” subject to the Religious Freedom Act which stipulates that if religious instruction is given in a government-subsidized school, a student shall be exempted upon demand of a guardian and given instruction in the history of religion and ethics.<sup>41</sup> Mr. Hartikainen maintained that the Finnish law violated Article 18(4) of the ICCPR which provides that State parties undertake to have respect for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions.<sup>42</sup> Mr. Hartikainen alleged, the

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<sup>39</sup>Universal Declaration of Human Rights, Article 26(2), 1948. Copy can be found at [www.un.org/Overview/rights.html](http://www.un.org/Overview/rights.html).

<sup>40</sup>A copy of the ICCPR can be found at [http://www.unhcr.ch/html/menu3/b/a/\\_ccpr.htm](http://www.unhcr.ch/html/menu3/b/a/_ccpr.htm)

<sup>41</sup>UNHRC Communication No. 40/1978, Hartikainen et al. v. Finland.

<sup>42</sup>Approximately 86% of the Finnish population are members of the Evangelical Lutheran Church. See U.S. Department of State International Religious Freedom

offered “history of religion” courses violated his Atheist beliefs and were actually doctrinal in nature. The UNHRC decided that even though the Finnish government had some problems with the alternative course, they were making progress toward the requirement that instruction be given in a neutral and objective way which respects convictions of parents who do not believe in any religion.<sup>43</sup>

Norwegians Unn and Ben Leirvåg have a non-religious humanist life stance. In 1997, the Norwegian government introduced a new mandatory religious subject in the school system entitled “Christian Knowledge and Religious and Ethical Education” (CKREE) which their daughter was required to take. CKREE teaching included a “thorough knowledge of the Bible and Christianity” along with more secular knowledge of religions in general. When the Leirvågs applied for an exemption for their daughter, it was partially rejected and substitute religion courses had to be taken. They complained to the UNHRC.<sup>44</sup> Even though the CKREE law provided that teaching “shall not involve preaching,” the UNHRC concluded that the schools were teaching not just religious knowledge, but the actual practice of a particular religion. For example, some children had to recite religious texts in the context of a Christmas celebration although they were enrolled in the exemption scheme. As such, said the UNHRC, Norwegian law violated Article 18(4) of the ICCPR. Norway did make some changes by tinkering with the exemptions scheme, and will amend the education act to make it more “value neutral” and to not overtly emphasize Christianity; though some regard the changes as insufficient.<sup>45</sup>

In 1996, a Canadian case provided guidance on school funding which, ironically, is the reverse of favoring a primary State religion.<sup>46</sup> Mr. Arieh Waldman is a Jewish father of two children enrolled in a private Jewish day school. In Ontario, Roman Catholic schools are the only non-secular schools receiving full and direct public funding. Other religious schools must fund through private sources including tuition. Mr. Waldman paid \$14,050 in tuition, which tax credits reduced to \$10,810; in addition he had to pay property taxes for public schools he did not use. At the time of the Confederation of Canada in 1867, Catholics represented 17% of the population and Protestants 82%. Concerned that the Protestant majority might use its power over education

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Report 2003, Finland.

<sup>43</sup>Mr. Hartikainen had a point; the course plan included: stories of the childhood of Jesus; what was Jesus like; miracles performed by Jesus; Jesus as ideal; and Francis of Assisi and his solar song. *Id.* at Footnote 1.

<sup>44</sup>UNHRC Communication No. 1155/2003. *Leirvåg et al. v. Norway*.

<sup>45</sup>Religious Human Rights and Religion in Schools, by Christian Moe, Conference Paper at *Religion in Schools: Problems of Pluralism in the Public Sphere*, Kotor, Montenegro, April 2005.

<sup>46</sup>*Waldman v. Canada*, Communication No. 694/1996, 5 November 1999.

to take away the rights of the Catholics, the Constitution guaranteed provinces exclusive jurisdiction to enact laws subject to the Education Act.

The Education Act provided that “separate schools” were entitled to full funding just as public schools were. “Separate schools” were defined as Roman Catholic Schools. Thus, Roman Catholic schools are under the full supervision of the State, treated just like public schools, and are treated differently than “private schools.” The issue presented to the UNHRC was: Whether public funding for Roman Catholic schools, but not for schools of the author’s religion, which results in him having to meet the full cost of education in a religious school, constitutes a violation of Mr. Waldman’s rights under the ICCPR, Article 26. This Article provides that all persons are equal, and there is to be no discrimination on the basis, *inter alia*, of religion. In ruling in Mr. Waldman’s favor, the Committee held that while the ICCPR does not oblige States to fund schools which are established on a religious basis, if it does choose to do so, it must make the funding available without discrimination.

While Norway’s response to the UNHRC decision in Leirvåg might be less than hoped for by the complainants, Canada has just thumbed their nose at the UN. It’s an important question, as there is really no enforcement arm in any of these treaties. The ruling gave Canada 90 days to respond. The Minister of Foreign Affairs for Canada had attempted to get the Ontario Minister of Education to work on compliance with the decision. Ontario had responded that there was no plan to extend funding to private religious schools, and was going to adhere to its constitutional commitment to fund Roman Catholic schools. In effect, the State of Ontario was telling the federal Canadian government to go pound sand. As a result, Canada responded to the UNHRC by letter in February 2000 and “explained the exclusive jurisdiction of the provinces in matters of education and conveyed the position of Ontario.”<sup>47</sup> In effect, Canada has said they will not comply with the decision. As of January 2, 2004, Mr. Waldman reported to the United Nations that its ruling has still not been implemented.<sup>48</sup>

## UN CONVENTION AGAINST DISCRIMINATION IN EDUCATION

Article 5 of the 1960 UN Convention Against Discrimination in Education<sup>49</sup> includes agreement of the parties to respect the liberty of parents to choose

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<sup>47</sup>Debates of the [Canadian] Senate (Hansard), 2<sup>nd</sup> Session, 36<sup>th</sup> Parliament, Volume 138, Issue 61, June 1, 2000; Hon. Dan Hays (Deputy Leader of the Government) Delayed Answers to Oral Questions in response to questions raised by Hon. Noël Kinsella.

<sup>48</sup>Communication A/56/40 and A/57/40, to the United Nations Human Rights Committee.

<sup>49</sup>A copy of the Convention can be found at <http://www.unhchr.ch/html/menu3/b/d/educ.htm>.

schools in conformity with their religious convictions and that no persons should be compelled to receive religious instruction inconsistent with his or her own convictions. It would seem that this UN Convention would be heavily utilized, except that it has limited enforcement provisions. The parties agree to modify domestic legislation and set national policy in line with the Convention. The only enforcement permitted is for one member state to bring up another before the International Court of Justice;<sup>50</sup> a review of the decisions by that court show none involving this Convention. No individual petitions are permitted. Ninety-one countries have ratified this Convention and the United States is not among them.

#### UN DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF

Declarations of the General Assembly of the United Nations are even more difficult to enforce than conventions. Article 5 of the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief says that no child shall be compelled to receive teaching on religion or belief against the wishes of his parents. Article 7 summarily provides that the rights in this document shall “be accorded in national legislation.” No enforcement provisions are provided.

#### COUNCIL OF EUROPE

The Council of Europe is that continent’s oldest political organization, founded in 1949. It is composed of 46 countries and, while not a prerequisite, it is a *de facto* precursor to membership in the European Union. As part of its mission to defend, *inter alia*, human rights, the Council of Europe passed the Convention for the Protection of Human Rights and Fundamental Freedoms (CPHR) in 1950. Of interest to us are provisions which parents have cited when complaining of government religious promotion or discrimination in their children’s education. These provisions include: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”<sup>51</sup> (not a particularly successful allegation, notwithstanding some of our experiences in physical education classes). A more productive allegation involves violation of the following clause found in Article 9:

“Everyone has the right to freedom of thought, conscience and religion . . . this right includes freedom . . . to manifest his [*sic*, this was 1950

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<sup>50</sup> Article 8 of the Convention.

<sup>51</sup> Convention for the Protection of Human Rights and Fundamental Freedoms.

after all] religion or belief, in worship, teaching, practice and observance.”<sup>52</sup>

What sets this Convention apart from other aspirational fuzzy declarations (such as the Universal Declaration of Human Rights), and in line with the United Nations Human Rights Commission, is the establishment of an enforcement court. “To ensure the observance of the engagements undertaken. . . there shall be set up a [permanent] European Court of Human Rights.”<sup>53</sup> Under the original Convention, there were two enforcing bodies: the European Commission of Human Rights and the European Court of Human Rights (ECHR). The Commission filled a screening and mediation role often rendering a non-binding opinion, after which it could refer cases to the Committee of Ministers for a political solution, or to the ECHR for final judgment. Eventually, in 1998, Protocol 11 eliminated the Commission and created a more flexible ECHR. Another rare provision among treaties is that while a State may bring a complaint to the ECHR as one would expect, the Court may also receive applications from “any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the [signing states].” And the signatory states are admonished “not to hinder in any way the effective exercise of this right.”<sup>54</sup> While the signatory states “undertake to abide by the final judgment of the Court in any case to which they are part[y],”<sup>55</sup> it is unclear what consequence would occur if a losing state folded its arms and said “no” – a fate similar to Mr. Waldman, above, is possible.

A more specific provision relating to our topic can be found in Article 2 of Protocol No. 1 to the CPHR, to which the parties agree:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”<sup>56</sup>

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<sup>52</sup>Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 with Protocol Nos. 1, 4, 6, 7, 12 and 13. 4 November, 1950. Article 9.

<sup>53</sup>Id. at Article 19.

<sup>54</sup>Id. at Article 34; although these individuals must exhaust all domestic remedies and they must file for relief within six months of the date of the final decision. (Article 35).

<sup>55</sup>Id. at Article 48.

<sup>56</sup>Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March, 1952. Article 2.

An illustration of this latter provision involves Elias and Maria Valsamis who are the parents of Victoria and all are Jehovah's Witnesses, a religion whose basic tenet is pacifism.<sup>57</sup> Twelve-year-old Victoria attended school in Athens, Greece and, upon request of her parents, was exempted from attending religious-education lessons and Orthodox Mass, but the State school required her to participate in a parade celebrating National Day commemorating the war that broke out between Greece and Fascist Italy in 1940. The ECHR held that Greece had not violated Article 2 of Protocol No. 1 to the CPHR by holding that it could discern nothing concerning the parade "which could offend the applicants' pacifist convictions.

The ECHR has also addressed states requiring religious education of atheists. When Anna-Nina was seven years old, her mother, Lena Angeleni, applied to a Swedish school board for an exemption for her daughter from participation in the teaching of religious knowledge.<sup>58</sup> However, the *skollag* (Swedish School Act) allowed exemptions only when the pupil belongs to a religious community which has obtained government permission to provide substitute religious education. Ms. Angeleni argued violations of Article 2 of Protocol No. 1 (above) which, reading between the lines of the opinion, would have been a valid claim, except Sweden had approved the Protocol with the reservation that dispensation for not taking classes based on the Swedish Church were contingent upon receiving some other religious education, i.e. no atheists. No claim was allowed. Anna-Nina also brought a claim of her own based on Article 9 of the CPHR (quoted above) against which Sweden had made no reservation. And, in fact, the Court made a finding that Article 9 affords protection against indoctrination of religion by the State. But Miss Anna-Nina had failed to overcome the Sweden's assertions that the subject of religious knowledge aims at teaching *about* religion, not *in* religion. Therefore, no relief for atheists in Sweden.

In 1971, Danish parents Viking<sup>59</sup> and Annemarie Kjeldsen asked the Minister of Education to exempt their nine-year-old daughter from sex education classes saying they wished to give her the instruction themselves. When this was refused they filed an action before the ECHR alleging violation of Article 2, Protocol 1 (parents rights to education conforming to their convictions). The Court found no violation and "[b]esides, the Danish State preserves an important expedient for parents who, in the name of their creed or opinions, wish to dissociate their children from integrated sex education; it allows parents either to entrust their children to private schools . . . or educate

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<sup>57</sup>Valsamis v. Greece, ECHR, 74/1995/580/666, 18 December 1996.

<sup>58</sup>Angeleni v. Sweden, Eur Comm HR 10491/83, 1988.

<sup>59</sup>But that the author's parents had the courage to name their son "Viking."

them . . .at home, subject to suffering the undeniable sacrifices and inconveniences . . .”<sup>60</sup>

In 1976, fifteen-year-old Jeffrey Cosans was ordered to report to the school headmaster to receive corporal punishment for taking a prohibited short cut through a cemetery. Upon his father’s advice, he reported but refused the corporal punishment. He was immediately suspended, and his parents applied to the Court for relief.<sup>61</sup> In finding for the Cosans, the Court found that Jeffrey’s “return to school could have been secured only if his parents had acted contrary to their convictions, convictions which the United Kingdom is obliged to respect under the second sentence of Article 2 [Protocol 1].” The Court rejected a claim under Article 3, which prohibits torture and inhuman or degrading treatment or punishment. The ECHR deemed the judgment satisfied when the United Kingdom passed The Education (No. 2) Act of 1986 which abolished corporal punishment in state schools.<sup>62</sup>

In a corollary case, parents “X, Y and Z” complained that a 1979 Swedish law making corporal punishment of children by their parents a criminal offense. When the State included this information in school curriculums, X, Y and Z averred that this violated Article 2 of Protocol 1 (parents rights to education conforming to their convictions) because their Protestant free church congregation believed physical punishment of children was necessary as justified by reference to Biblical texts (e.g. Proverbs 13:12, Hebrews 12:6) and doctrinal works such as Luther’s Large Catechism. The Commission held against the parents based upon the prohibition of corporal punishment being only referred to in official publications, and was not a doctrine taught to students.<sup>63</sup>

In two related cases, a father complained that the State violated Article 2, Protocol 1 (parents rights to education conforming to their convictions) because the State would not pay for transportation to a “favoured” school.<sup>64</sup> No violation was found. Similarly, parents who wanted their children to attend single sex school, filed a complaint under Article 2, Protocol 1. The Commission found reasons given for refusing the applicants’ children places in selective State schools, i.e. the unavailability of places, the maintenance of efficient education in such schools and the efficient use and distribution of resources between these and other schools in the area, and the fact that the

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<sup>60</sup>Kjedlsen et al. v. Denmark, ECHR, 7 December 1976.

<sup>61</sup>Campbell and Cosans v. United Kingdom, ECHR 7511/76, 25 February 1982.

<sup>62</sup>Effects of Judgments or Cases 1959-1998. No. 20. Case of Campbell and Cosans v. the United Kingdom, judgment of 25 February 1982 (Series A no. 48). ECHR.

<sup>63</sup>X, Y and Z v. Sweden, Eur Comm HR, 8811/79, 13 May 1982.

<sup>64</sup>Cohen v. United Kingdom, Eur Comm HR, 25959/94, 28 February 1996.

applicants cannot afford private education, cannot be viewed as conflicting with the requirements of Article 2, Protocol 1.<sup>65</sup>

Finally, the CPHR has been cited in a couple of ancillary cases. The first involves a new small secular school in Austria which requested state subsidies similar to those awarded larger religious schools, again citing Article 2, Protocol 1. The Commission denied relief because the applicant had not pointed to any instances of new church schools of a similar size receiving subsidies.<sup>66</sup> In another case, the Commission denied relief to a Muslim part-time teacher who complained that he was not permitted to attend Friday afternoon prayers and still apply for full-time employment.<sup>67</sup> This, he said, violated Article 9 which guarantees freedom of religion and to manifest, practice and observe that religion. The Commission found no violation, primarily based on the specific facts of the case which, in short, were that the state had tried to work with Mr. Ahmed, but he had some time absent without leave. One is left with the impression that with better facts, the Commission might have held the other way.

#### ORGANIZATION OF AMERICAN STATES (OAS)

In 1890, nations in the region formed the Commercial Bureau of American Republics, which evolved into the Pan American Union and later, in 1948, twenty-one nations of the Western Hemisphere formed the Organization of American States (OAS). The OAS Charter affirmed their commitment to common goals and their respect for each nation's sovereignty, and was ultimately ratified by 35 nations. Also in 1948, the member states approved the American Declaration of the Rights and Duties. This Declaration included provisions that every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private;<sup>68</sup> and every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity. In 1978, the American Convention on Human Rights ("Pact of San Jose, Costa Rica")<sup>69</sup> entered into force; of interest to us, is Article 12 which provides, in part, that everyone has the right to freedom of conscience and of religions, and parents "have the right to provide for the religious and moral education of their children . . . in accord with their own convictions." Nine member countries have not ratified this Convention,

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<sup>65</sup> A v. United Kingdom, Eur Comm HR, 10228/82, 1985.

<sup>66</sup> Verein Gemeinsam Lernen V. Austria, Eur Comm HR, 23419/94, September 1995.

<sup>67</sup> Ahmad v. United Kingdom, Eur Comm HR, 8160/78, March 1981.

<sup>68</sup> American Declaration of the Rights and Duties of Man, Articles III and XII. A copy may be found at <http://www.cidh.oas.org/Basicos/basic2.htm>.

<sup>69</sup> A copy can be found at <http://www.oas.org/juridico/english/Treaties/b-32.htm>.

including the United States. The American Convention also formalized and authorized enforcement mechanisms by creating the Inter-American Commission on Human Rights (IACHR) (Chapter VII), and the Inter-American Court of Human Rights (Chapter VIII). As in the original European Charter on Human Rights, the Commission acts as a screening and mediation body, with unresolved cases being submitted to the Court for adjudication. The IACHR is currently reviewing about 800 petitions.<sup>70</sup> Finally, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador) entered into force in 1999. While this agreement does not exactly roll off the tongue, it does hold this key provision in Article 13: “In conformity with the domestic legislation of the States Parties, parents should have the right to select the type of education to be given their children, provided that it conforms to [basic principles described].” This Protocol still awaits twenty-one ratifications including the United States.

The research shows only one case published by the Inter-American Court of Human Rights on religious issues. In 2001, Matías Insunza Tagle was a fourth year law student at the University of Chile and a student representative. He had not seen the film “The Last Temptation of Christ” owing to the judgment of the Supreme Court of Chile which had prohibited the exhibition of the film in Chile.<sup>71</sup> Mr. Tagle asserted that the censorship amounted to a violation of Articles 12 (Freedom of Religion) and 13 (Freedom of thought and expression). The Commission had recommended to the Court that it find a violation of Article 12 because, in its opinion, the movie was a work of art with religious content.<sup>72</sup> The Court disagreed holding that prohibiting the exhibition of the film “did not impair or deprive anyone of their right to maintain, change, profess or disseminate their religion or beliefs with total freedom.”<sup>73</sup>

#### AFRICAN UNION (f/k/a Organisation of African Unity or OAU)

In 1999, the Heads of State and Government of the Organisation of African Unity issued a Declaration calling for the establishment of an African Union (AU) and the transformation occurred on July 10, 2002. The AU is modeled after the European Union and is headquartered in Ethiopia. While the AU is primarily focused on global integration for its member’s states, it continues to foster human rights as well. The African (Banjul) Charter on Human and

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<sup>70</sup>The IACHR is unique in my research in that they provide an on-line form for submitting a petition alleging human rights abuses. See <http://www.cidh.oas.org/denuncia.eng.htm>.

<sup>71</sup>The 1988 movie portrayed Christ with mortal feelings and emotions.

<sup>72</sup>*Olmedo Bustos et al. v. Chile* (“The Last Temptation of Christ” Case), para. 77, Inter-American Court of Human Rights, February 5, 2001.

<sup>73</sup>*Id.* at para. 79.

People's Rights<sup>74</sup> was adopted in 1981 and ratified by all 53-member countries in the AU. Article 8 guarantees the profession and free practice of religion, while Article 17 states that the duty of the State includes the right to education and the promotion of morals and traditional values. The rights under this Charter were to be enforced through the creation of the African Commission on Human and People's Rights. A later Protocol created an African Court on Human and People's Rights. The African Court only accepts submissions from signatory states or the Commission, and no individual petitions are allowed. In 1999, the African Charter on the Rights and Welfare of the Child entered into force. This Charter provided that the state parties were to respect parents' decisions to choose schools to ensure the religious and moral education of the child.<sup>75</sup>

In 1991, the Commission received a communication submitted by the Jehovah's Witnesses of Zaire alleging persecution "including arbitrary arrests, appropriation of church property, and exclusion from access to education."<sup>76</sup> The Commission sent several letters to Zaire obtaining no response. In October 1995 the Commission notified the Heads of State regarding serious and massive violations of human rights in Zaire. No other action was reflected in the decision.

#### ASEAN

The Association of Southeast Asian Nations (ASEAN)<sup>77</sup> was established to accelerate the economic growth, social progress and cultural development in the region. In 1997, the ASEAN ministers agreed to enhance the spiritual, moral and cultural values of the youth.<sup>78</sup> In 2001, the ministers agreed to protect the rights of children including those of indigenous people, consistent with the customs and traditions of their respective communities and to share information on the rights of children taking into account different religions.<sup>79</sup> No enforcement mechanisms were included in these agreements.

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<sup>74</sup>A copy of the Charter can be found at <http://www.africa-union.org>.

<sup>75</sup>African Charter on the Rights and Welfare of the Child, Article 11(4). Copy of this Charter can be found at [www.africa-union.org](http://www.africa-union.org).

<sup>76</sup>Les Témoins de Jehovah/Zaire, Communication 56/91, 27 March 1991.

<sup>77</sup>ASEAN members are Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar (Burma), Philippines, Singapore, Thailand, and Vietnam.

<sup>78</sup>Kuala Lumpur Agenda on ASEAN Youth Development, Article 2(3), signed in Kuala Lumpur, Malaysia, 17 November 1997.

<sup>79</sup>Declaration on the Commitments for Children in ASEAN, paras. 3 & 4, 2 August 2001.

## CONCLUSION

A common theme running through international agreements is that the State should respect the wishes of the parents in educating their children in conformance with their convictions. What this has come to mean varies depending on what country is being examined. European countries are typically homogenous, single religion populations. Russia and China have a near-history of religious ambivalence if not hostility. The United States, whose legal history with regard to religion in school history is legion and beyond the scope of this paper, has eliminated prayer in schools, but the headlines are replete with the new wave of conservative school boards asking for “intelligent design” to be put on par with evolution in the classroom.<sup>80</sup> From our review of European decisions relating to religion in schools, it seems clear that the international law requirements were being met even though religious classes were being taught; and this is probably because of the single religion base. Atheism was not granted much respect. The worm may be turning as secularism is seen to be on the rise says U.S. News & World Report:

“From the ban on the wearing of visible religious symbols in French public schools to the refusal of the EU to include specific mention of Christianity’s influence on Europe’s distinctive civilization in its first constitution, a mountain of anecdotal evidence suggest that an aggressive form of secularism – what the British religion writer Karen Armstrong calls “secular fundamentalism” – is afoot in Europe.”<sup>81</sup>

So what impact on religion in schools has international law. From this survey, the answer appears to be a nominal impact. Our treaties and agreements all aspire to allow parents to school their children in accord with their convictions and some to protect children from state religious views; but traction is lost with the problem of lack of enforcement mechanisms and, even when mechanisms are in place, sovereign nations can refuse the authority of international tribunals. Anne Bayefsky, counsel for Mr. Waldman in the Canada school funding case, in protesting the inaction by Canada stated: “Canada is a leader in International Law, especially in the area of human rights. If Canada ignores the [Waldman v. Canada] decision, we cannot then presume to lecture countries like China and Indonesia on human rights.”<sup>82</sup>

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<sup>80</sup>See, for example, Evolution Shares a Desk with ‘Intelligent Design’, by Michael Powell, *Washington Post*, December 26, 2004.

<sup>81</sup>European, Not Christian; An Aggressive Secularism Sweeps the Continent, by Jay Tolson, *U.S. News & World Report*, May 30, 2005.

<sup>82</sup>U.N. panel: Ontario government must fund all private schools — including religious, by Bill Gladstone, *Jewish World Review*, November 10, 1999.

APPENDICES:

Appendix 1: Summary of International Agreements (Detail)

Appendix 2: Summary of International Agreements (Table form)

Appendix 3: Summary of Selected Constitutions (Table form)

APPENDIX 1

SUMMARY OF EXISTING INTERNATIONAL AGREEMENTS  
IMPACTING RELIGION IN SCHOOLS

Geneva Declaration of the Rights of the Child of 1924

Sponsoring Body: League of Nations

Date: 26 September 1924

Key Provisions: The child must be given the means for normal development, both materially and spiritually.

Universal Declaration of Human Rights

Sponsoring Body: United Nations

Date: 10 December 1948

Key Provisions: Article 26: Education shall promote understanding, tolerance and friendship among all religious groups. Parents have a prior right to choose the kind of education that shall be given to their children.

Enforcement Mechanism: Aspirational

European Convention on Human Rights; 1<sup>st</sup> Protocol Enforcement of certain Rights and Freedoms not included in Section I of the Convention

Sponsoring Body: Council of Europe

Date: 4 November 1950; 20 March 1952

Key Provisions: 1<sup>st</sup> Protocol: Article 2: In exercising authority to educate, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions. Article 9 of Convention: Freedom of thought, conscience, and religion.

Enforcement Mechanism: Article 19: European Commission of Human Rights; European Court of Human Rights.

Ratification: 45

Declaration of the Rights of the Child

Sponsoring Body: General Assembly resolution 1386(XIV)

Date: 20 November 1959

Key Provisions: Child shall be given opportunities and facilities to enable him (sic) to develop, inter alia, morally, spiritually in conditions of freedom and

dignity. Principle 7: Child entitled to elementary level free and compulsory education and: Principle 10: be protected from practices which may foster religious discrimination.

Enforcement Mechanism: Calls upon all to recognize these rights.

Convention Against Discrimination in Education

Sponsoring Body: Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization

Date: 14 December 1960 - Paris

Key Recitals:

Recalls the Universal Declaration of Human Rights asserts the principle of non-discrimination and that every person has the right to education;

UNESCO has duty to proscribe discrimination in education and promote equality of opportunity and treatment for all in education, while respecting diversity of national education systems;

Key Provisions:

Article 1: "Discrimination" includes preference or limitation based on, inter alia, religion, which has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

depriving any person access to education at any level;

of limiting any person or group of persons to education of inferior standard;

establishing or maintaining separate educational systems or institutions.

Article 2: The following is not deemed to be discrimination:

establishment or maintenance for religious reasons, separate educational systems offering an education which is in keeping with the wishes of pupil's parents, if participation is optional and the education provided conforms to standards for education of the same level.

Article 3: Assistance to educational institutions based upon restrictions or preference are not allowed.

Article 5: Education shall promote understanding, tolerance and friendship among, inter alia, religious groups.

Respect liberty of parents to choose institutions other than public schools, that provide for the religious and moral education of their children in conformity with their own convictions, so long as they conform to minimum educational standards.

International Covenant on Economic, Social and Cultural Rights

Sponsoring Body: General Assembly resolution 2200A (XXI) 16 Dec 1966 of the United Nations

Date: 3 January 1976

Key Provisions: Article 13: Education shall enable all persons to participate in free society among all, inter alia, religious groups. Respect liberty of parents to choose schools other than those established by public authorities which

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conform to minimum educational standards and to ensure religious and moral education of their children in conformity with their own convictions.

Enforcement mechanism: Signatory states to file reports.

### International Covenant on Civil and Political Rights (ICCPR)

Sponsoring Body: General Assembly resolution 2200A (XXI) 16 Dec 1966 of the United Nations

Date: 23 March 1976

Key Provisions: Article 17: No arbitrary or unlawful interference with privacy, family, and home. Article 18: No one shall be subject to coercion which would impair freedom to have or adopt religion or belief of choice. Freedom to manifest one's religion or beliefs subject only to limitations necessary for public safety, health, morals, rights of others. States undertake to have respect for liberty of parents to ensure religious and moral education of their children in conformity with their own convictions. Article 26: No discrimination on religious grounds.

Enforcement Mechanism: Article 28 et seq: Human Rights Committee. See also Optional Protocol below.

### SUPPLEMENTED BY

#### Optional Protocol to the International Covenant on Civil and Political Rights

Sponsoring Body: General Assembly resolution 2200A (XXI) 16 Dec 1966 of the United Nations

Date: 23 March 1976

Key Provisions: ICCPR enforcement mechanism available to individuals to bring case to the Human Rights Committee.

### American Convention on Human Rights "Pact of San Jose, Costa Rica"

Sponsoring Body: Organization of American States

Date: 18 July 1978

Key Provisions: Article 12: Everyone has the right to freedom of religion. Parents have the right to provide for religious education of their children in accord with their own convictions. See additional protocol below.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"

Sponsoring Body: Organization of American States

Date: 16 November 1999

Key provisions: Article 13: Parents should have the right to select the type of education given to their children.

### Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

Sponsoring Body: General Assembly Resolution 36/55 of the United Nations

Date: 25 November 1981

Key Recitals:

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Basic principle of the UN includes respect for human rights and fundamental freedoms without distinction as to, inter alia, religion.

Previous declarations proclaim principles of nondiscrimination and freedom of, inter alia, religion.

Religion is one of the fundamental elements of life and freedom of religion should be fully respected and guaranteed.

Key Provisions:

Article 1: Everyone should have freedom of religion.

No one shall be subject to coercion which would impair freedom of religion; Limitations on freedom of religion only as necessary to protect public safety, morals, health, and fundamental rights and freedoms of others.

Article 2: No discrimination on grounds of religion.

Article 5: Parents have right to organize life in accordance with their religion bearing in mind the moral education which they believe their child should have; Every child shall have access to education in the matter of religion in accordance with their parents and shall not be compelled to receive teaching on religion or belief against the wishes of his parents.

Child shall be protected from discrimination on the ground of religion or belief. Account will be taken of child's expressed wishes if without parents or guardian.

Article 6: All will have freedom to teach a religion or belief in places suitable for these purposes

SUPPLEMENTED BY

Resolution on Elimination of all Forms of Religious Intolerance

Sponsoring Body: General Assembly Resolution 52/122 of the United Nations

Date: 23 February 1998

Key Recitals: Reaffirms November 1981 Declaration; freedom of thought includes commitment to religion or belief whether individually or in community with others; alarmed that instances of intolerance and discrimination based on religion or belief threaten human rights.

Key provisions: Urges States to ensure educators respect different religions and beliefs and not discriminate against persons professing same.

African (Banjul) Charter on Human and People's Rights

Sponsoring Body: Organization of African Unity (n/k/a African Union)

Date: 21 October 1986

Key Recitals: Liberation of Africa to dismantle discrimination based upon, inter alia, religion.

Key Provisions: Article 17: Every individual shall have right to education.

Enforcement mechanisms: Referral to Commission and Court.

Convention on the Rights of the Child

Sponsoring Body: General Assembly resolution 44/25 of the United Nations

Date: 2 September 1990

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Key Recitals: Everyone entitled to rights and freedoms without distinction such as, inter alia, religion.

Key Provisions: Article 28: Primary education compulsory and free to all; encourage secondary education. Article 29: Education directed to development for child's parents and his/her own "cultural identity"; and preparation of the child for life in society among, inter alia, religious groups. Article 30: In States in which religious minorities exist, child belonging to such minority shall not be denied right to enjoy his/her own religion.

Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities

Sponsoring Body: General Assembly resolution 47/135 of the United Nations

Date: 18 December 1992

Key Provisions: Article 2: Persons belonging to religious minorities have right to practice their own religion. Article 4: States should take measures in the field of education to encourage knowledge of history, traditions, language and culture of minorities.

Enforcement Mechanism: Article 1: States shall adopt appropriate legislation.

African Charter on the Rights and Welfare of the Child

Sponsoring Body: Organization of African Unity (n/k/a African Union)

Date: 29 November 1999

Key Provisions: Article III: Every child shall enjoy rights and freedoms irrespective of "status."

Article IX: Every child shall have the right to freedom of, inter alia, [religion].? Parents shall have duty to provide direction in the exercise of this right. States shall respect duty of parents to provide direction of this right.

Article XI: Every child shall have the right to education including: preservation and strengthening of African morals, values and cultures; the preparation of the child for life among all peoples, ethnic, tribal and religious groups.

States shall provide free and compulsory education; encourage secondary education;

States shall respect the rights of parents to choose schools for their children other than those established by public authorities, which conform to such minimum standards approved by the State, to ensure religious and moral education of the child.

DRAFT: Declaration on the Rights of Indigenous People

Sponsoring Body: Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights of the United Nations

Date: 22 November 2000

Key Provisions: Article 13: Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions. Article 15:

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Indigenous children have right to all levels and forms of education and to establish and control their educational systems providing education in their own languages in a manner appropriate to their cultural methods of teaching and learning. Indigenous children living outside their communities have right to access to education in their own culture.

Enforcement Mechanism: Article 35: States shall take effective and appropriate measures, in consultation with indigenous peoples, to give full effect and included in national legislation.

Holy See-Israel: Fundamental Agreement

Sponsoring Body: State of Israel and The Vatican

Date: January 1994

Key Provisions: Article 6: Reaffirms the right of the Catholic Church to establish, maintain and direct schools and institutes of study at all levels.

Holy See-Italy: Agreement to Amend the 1929 Lateran Concordat

Sponsoring Body: State of Italy and The Vatican

Date: 18 February 1984

Key Provisions: Article 9: Guarantees the Catholic Church the right to freely establish schools of every order and grade and educational institutes. Pupils to have equal treatment as those at schools run by the State. Everyone shall be granted the right to choose whether or not to receive religious instruction, and choice not to receive such instruction shall not give rise to any form of discrimination.