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## Religious Human Rights and Religion in Schools

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### INTRODUCTORY APOLOGY

This paper is a brief discussion of international human rights norms relevant to religious education in public schools, as they are interpreted by the competent international bodies. Internationally recognised human rights, whatever their ultimate philosophical foundation, form part of international law and, as such, they must be discussed in terms of legal doctrine to be fully understood.

As a historian of religion addressing a conference of religious studies scholars, I acknowledge that both both the topicality of the subject matter, and my own competence to discuss it, may be in doubt. As to competence, I am an amateur in human rights law, but I try not to be a dilettante. As to topicality, I beg to differ. The phenomenon of international human rights is highly relevant to the scholarly study of religion, for numerous reasons, of which I will mention only two.

First, international human rights pose a challenge to the essentially pre-modern norms and values that inform all the major religious traditions. International human rights have in a very short time become a nearly hegemonic moral discourse. They pose radically liberal and egalitarian values of individual freedom and non-discrimination. Religious traditions and authorities, on the other hand, have to a great extent conserved ideologies of hierarchical inequality, particularly between men and women. The attempts of religious traditions to cope with the human rights challenge is a case study in modern religious change and applied hermeneutics.

Second, in the mid-20<sup>th</sup> century the freedom of religion or belief was proclaimed as the universal right of all human beings *qua* human beings, to be guaranteed by states as a matter of international law. This should itself be seen as a major event in the history of religion, even if the scholarly discipline has been a bit slow to notice.

All the countries represented at this conference have agreed to be bound by the international norms I will survey. This may seem a peripheral concern where the introduction of religious education is concerned. While human rights allow states considerable freedom to shape their educational system, however, they also do place certain constraints on religious education that are worth reviewing.

In the following, I will first review the most relevant sources and their authoritative

interpreters. I will then survey the chief relevant principles found in these sources, and discuss some possible tensions and conflicts between those principles. Finally, I will discuss the most recent case of religious education violating religious human rights, which happens to come from my home country, Norway.

#### SOURCES AND COMPETENT AUTHORITIES

International human rights have been recognised in numerous instruments of international law since the UN Charter (1945) and the Universal Declaration of Human Rights (UDHR, 1948). Among the most important binding instruments for our present purposes are the *International Covenant on Civil and Political Rights* (CCPR, 1966) and the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR, 1950, as revised in 1998), with additional Protocols – especially the first *Optional Protocol* (OP) to the ECHR.

The international bodies competent to interpret these instruments are the UN Human Rights Committee (HRC) for the CCPR, and the European Court of Human Rights in Strasbourg for the ECHR. Both these bodies can hear individual complaints, and have generated a considerable *case-law* interpreting the treaties. The ECHR has the strongest international enforcement mechanism of any human rights treaty: Decisions of the European Court are binding on the contracting parties, which is to say, on the 46 current member states of the Council of Europe.<sup>1</sup> The findings of the HRC are not directly binding, but they *are* the competent interpretation of a legally binding treaty by some of the top international experts. The HRC also issues *general comments* clarifying the interpretation of various articles of the CCPR.

Another highly relevant treaty is the *UN Convention on the Rights of the Child* (CRC, 1989), which has received the broadest international support of any human rights treaty (192 state parties as of 2004). Its monitoring body, the Committee on the Rights of the Child, reviews state reports and issues recommendations and general comments, but cannot (yet) review individual complaints.

Over the decades the UN has issued non-binding Declarations on the elimination of various forms of discrimination. These have given rise to binding Conventions on the elimination of all forms of racial discrimination (CERD) and discrimination against women (CEDAW). However, the UN has not followed suit with a Convention to follow up the 1981 *Declaration on the Elimination of All Forms of Discrimination Based on Religion or Belief*; talks have been stalled for decades and will likely remain so. The 1981 Declaration itself, however, contributes to interpreting the provisions on religious freedom and non-discrimination in existing treaties.

The UN does have a Special Rapporteur on the Freedom of Religion or Belief, a position held by Mrs Asma Jahangir (of Pakistan) since 2004, and for the decade before that by Mr Abdelfattah Amor (of Tunisia), who took an interest in the role of education. On the 20<sup>th</sup> anniversary of the 1981 Declaration, a conference on School Education in relation with Freedom of Religion or Belief was held in Madrid.

The other *International Covenant* of 1966, on *Economic, Social, and Cultural Rights* (CESCR), also contains a relevant article on education. Of some relevance is also the *UNESCO Convention against Discrimination in Education* (1960). Various treaties and

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<sup>1</sup> Save for Monaco, which is only a signatory, not a party.

declarations on minority rights may also be relevant; these are not surveyed here. Finally, it is worth mentioning that the OSCE has become something of a watchdog on religious liberty issues, and that its documents set out in the greatest detail the implications of freedom of religion.

#### BASIC PRINCIPLES

The ECHR and CCPR guarantee the fundamental human rights to *freedom* of religion or belief and to *non-discrimination* on the grounds of religion or belief. These treaties, as well as the Convention on the Rights of the Child (CRC, 1989), further recognise a *right of parents* to an education for their children in accordance with their convictions. The right to freedom of religion, in conjunction with the right to privacy, implies a right to *religious privacy*. Various human rights treaties surveyed here also set out positive obligations on states to *educate children for tolerance*, understanding, and respect for the human rights of religious others.

#### FREEDOM OF RELIGION OR BELIEF

The right to freedom of religion or belief is found in nearly identical formulations in the two conventions. Everyone has “*freedom of thought, conscience, and religion*”, including the freedom to “*have or to adopt a religion or belief of his choice*”, and to “*manifest*” that religion or belief “*in worship, observance, practice and teaching*”, individually or collectively, and whether “*in public or private*” (ECHR Art. 9, CCPR Art. 18). The UN Human Rights Committee, in its important *General Comment no. 22* (1993) *on Art. 18* (hereafter: GC 22), has further clarified that this right “*protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.*”

Under the CCPR this right is *non-derogable*, that is, it cannot be set aside even in times of public emergency (Art. 4.2). The right to *have or to adopt* a belief – which includes the contested right to *change* one’s religion – is absolute, but states may limit the right to *manifest* a belief. Such limitations must however be “*prescribed by law*” and “*necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others*” (CCPR Art. 18.3, cf. ECHR Art. 9.2). These and only these are the legitimate aims in pursuit of which states may limit freedom of religion or belief. In the post-9/11 environment, it is useful to note that freedom of religion – unlike e. g. freedom of expression – cannot be limited on grounds of “national security.”

A digression: The right to manifest one’s religion in public, “secular” space is strongly contested in some countries with a laïcist political tradition (francophone Europe, Turkey, some formerly Socialist countries), where a strong body of opinion sees this as endangering the secular nature of the state itself. The ban on Muslim girls wearing headscarves in Turkish universities, and recently in French schools, exemplify this ‘culture war’. As the HRC has observed, the right to manifest religion clearly extends to “*the wearing of distinctive clothing or headcoverings*” (GC 22, para 4). Workplace safety rules may nonetheless require e. g. a Sikh turban to be replaced by a crash helmet. The case of educational institutions is less obvious. The European system has consistently ruled in favour of Turkey’s headscarf ban in universities, particularly in the recent case of *Şahin v. Turkey* (2004). The European Court sees the headscarf ban as undertaken in pursuit of the legitimate aims of

protecting public order and safety and the rights of others, hereunder safeguarding the secularism that is indispensable to democracy, and carrying out the educational mission of the University, which includes promoting women's equal rights. The judgment relies heavily on an understanding of specific circumstances in Turkey, and does not necessarily apply to other countries. In another case, *Dahlab v. Switzerland* (2001), the Court dismissed the complaint of a Swiss Muslim school teacher who had not been allowed to wear her headscarf in the classroom. The Court suggested a risk of a "proselytising effect" on the young children. In both cases, the Court has expressed the view that the Islamic principles expressed by the headscarf are "hard to reconcile" with gender equality, tolerance/pluralism, and the respect for others that should be promoted in education. I believe both rulings are wrong and regrettable, but that is a subject for another paper.<sup>2</sup> There is no ruling as yet on *school pupils* wearing headscarves. At any rate, the issue bears only tangentially on religious education, and so I end the digression here.

Does the *child* have the right to freedom of religion or belief? Yes, it does, according to the most widely adopted of all human rights instruments, the Convention on the Rights of the Child (CRC, 1989). However, this was one of the most controversial points during the drafting process, and the final text only provides that states "shall respect the right of the child to freedom of thought, conscience, and religion" (CRC Art. 14). No mention is made of the right to "have or to adopt a religion of his choice", i. e., of the right to *change* religion. The right to *manifest* religion is not explicitly asserted, but it is clearly implied by the listing of the usual legitimate limitations (Art. 14.3). Most importantly, the right of the child to religious freedom is qualified by a parental right to guide the child in the exercise of this right (see below).

#### RELIGIOUS NON-DISCRIMINATION

Freedom of religion and freedom from discrimination based on religion are mutually dependent and reinforcing principles. The right to non-discrimination on is as fundamental as religious freedom, if not more so: The principle of non-discrimination pervades all other human rights. While some some human rights may legitimately be set aside in times of public emergency, such derogations may not involve discrimination "solely on the ground of race, colour, sex, language, religion or social origin" (CCPR Art. 4.1).

Non-discrimination is handled somewhat differently in the two conventions. A state must ensure the rights in the CCPR to all people under its jurisdiction "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" (CCPR Art. 2.1). The ECHR adds "association with a national minority" to the list (ECHR Art. 14).

On a narrow reading, differential treatment of people is not explicitly declared to be illegal discrimination unless, in the stock phrase, it "nullifies or impairs" another human right. In a given case that might involve discrimination, the European Court is usually able to find a violation of some "substantive" right, and therefore rarely deems it necessary to consider whether there has also been discrimination with

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<sup>2</sup> See the the forthcoming book *Islam in Europe: Emerging Legal Issues*, ed. W. Cole Durham (Leuven, Paris, Peeters: ?), where my contribution on the 'Refah case' very briefly sets out my objections. An earlier [paper on the Refah case](http://folk.uio.no/chris/moe) is still available online at <<http://folk.uio.no/chris/moe>>.

regard to that right. Anyway, the European Court has come to interpret the principle more broadly, so that there may be a violation of Art. 14 even where another Article, taken alone, is not violated (Ovey and White 2002: 349). The CCPR, furthermore, provides that “(a)ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law” (Art. 26).

None of this precludes “affirmative action” or positive discrimination measures to improve the lot of underprivileged groups, but such measures must be proportionate to an objective and reasonable aim. Furthermore, in the recent *Thlimmenos v. Greece* (2000), the European Court set out the novel doctrine that the right is also violated “when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.” This marks a possibly huge shift in the whole human rights approach to human equality.

#### THE PARENTAL RIGHT

In addition to the fundamental principles of religious freedom and non-discrimination for all, the conventions set out a right specifically for parents (or legal guardians) with regard to the education of their children: “the liberty (...) to ensure the religious and moral education of their children in conformity with their own convictions” (CCPR Art. 18.4). The ECHR similarly speaks of the parents’ “religious and philosophical convictions” and their right to have these respected in any and all State education (ECHR OP Art. 2). This right, then, in principle extends to all school subjects, not just religious education. An important corollary is parents’ right “to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State (...)” (CESCR Art. 13.3).

The CRC broadens the parental right into a right and duty “to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child” of all the rights in the convention (CRC Art. 5). This provision is reiterated specifically with regard to the child’s right to religious freedom (CRC Art. 14.2). Even so, some Muslim-majority states have made reservations against this article.<sup>3</sup> The Holy See (the Vatican) has declared that it “interprets the articles of the Convention in a way which safeguards the primary and inalienable rights of parents”; in this context it refers specifically to Art. 14.<sup>4</sup>

Nearly all the international case-law concerning schools and religion has revolved primarily around the parental right. These cases have been raised in Nordic countries and the UK, that is, those parts of Europe with a strong tradition for established churches. Relevant cases before the European Court in Strasbourg have concerned somewhat peripheral issues: compulsory sex education, physical punishment, and compulsory attendance for Jehovahs’s witnesses at a national holiday parade.

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3 Algeria, Bangladesh (14.1), Brunei, Indonesia, Iraq, Jordan, Malaysia, Maldives, Morocco, Oman, Syria, and the UAE. Some Muslim states, such as Iran, Kuwait, Mauritania, Qatar, and Saudi Arabia, tabled general reservations to any article of the convention that might be contrary to Islamic law. On the other hand, some other countries objected to these wide-ranging reservations on the ground that they were not compatible with the “object and purpose of the Convention.” Belgium and the Netherlands declared that they would interpret Art. 14 as including the child’s right to change or choose religion. – See ‘Declarations and reservations’ to the CRC online.

4 *Ibid.*

In *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (1976), parents protested against compulsory cross-curricular sex education. The Court found, however, that ECHR OP Art. 2 does not ban the teaching of knowledge that is, directly or indirectly, of a religious or philosophical nature, as long as it is presented in an “objective, critical, and pluralistic manner.” What the school is not allowed to do is to indoctrinate or proselytise. This is a useful clarification.

In *Campbell and Cosans v. United Kingdom* (1982), parents objected that physical punishment of their children in school was against their philosophical convictions. In this case, the Court *inter alia* defined a “philosophical conviction” as more than just any belief: It had to be a belief with “a certain level of cogency, seriousness, cohesion and importance” about “a weighty and substantial aspect of human life and behaviour”. The parents’ objections met these standards and the UK was found to have violated OP Art. 2.

In *Valsamis v. Greece* (1996), however, parents belonging to Jehovah’s Witnesses complained that their daughter had been punished by the school for refusing to take part in a school parade on the National Day of 28 October. They cited their pacifist convictions and the military colouring of the celebration. The Court, however, found no violation of ECHR OP Art. 2, opining that the parade in question could not really “offend the applicants’ pacifist convictions”.

Two relevant cases before the UN Human Rights Committee have dealt with the more centrally interesting question of teaching a particular religion in public schools.

In *Hartikainen v. Finland* (1978) a Finnish teacher (and secretary-general of a free-thinkers’ association) complained of a violation of CCPR Art. 18.4 because children of atheist parents had compulsory religious instruction in school, with textbooks written by Christian believers. However, students could apply for exemption, and have alternative instruction in ethics and the history of religions. The HRC found that this arrangement did not violate Art. 18, as long as the alternative instruction was given neutrally and objectively and respected the conviction of parents who believed in no religion.

In *Leirvåg et al v. Norway* (2004), on the other hand, the HRC found a violation of the parental right in Art. 18.4. We shall return to this case in the last section.

#### ‘RELIGIOUS PRIVACY’

A right to what we might call ‘religious privacy’ is not explicitly set out in the leading human rights instruments, but it can be derived from the right to freedom of religion in conjunction with the right to privacy (CCPR Art. 17). Thus the HRC finds that “no one can be compelled to reveal his thoughts or adherence to a religion or belief” (GC 22, para 3).

This strong view of religious privacy obviously poses some problems for public policy, such as the reasonable wish to get reliable statistics on religious adherence. Most importantly in our context, the introduction of religious school subjects – especially compulsory ones from which parents may wish to claim exemptions – would seem to compel parents and children to reveal their religious adherence or non-adherence. European case-law, as we have seen, require parental convictions to

have “cogency, seriousness, cohesion and importance”, which is rather hard to prove without stating to the authorities what those convictions are. This is one example of an inherent conflict of norms pertaining to religious freedom.

#### THE DUTY TO EDUCATE FOR TOLERANCE

Human rights documents set out certain positive obligations on states regarding the content and purpose of education: Education “shall be directed to the full development of the human personality (...) and shall strengthen the respect for human rights and fundamental freedoms”; it shall also “promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups” and “further the activities of the United Nations for the maintenance of peace” (CESCR Art. 13.1). This repeats almost word for word the 1960 UNESCO Convention (Art. 5.1(a)), but the CESCR adds that education should also “enable all persons to participate effectively in a free society”. The same principles, with somewhat different wording, recur in the CRC (Art. 29), which adds “equality of sexes” and “persons of indigenous origin” to the mix.

In the 1981 Declaration (Art. 5.3), the UN added the almost scarily idealistic aims that the child shall be brought up inter alia “(...) in a spirit of (...) peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.”

Education, then, shall clearly promote human rights, tolerance, understanding, and respect for religious others. At the same time, however, education shall be directed to “(t)he development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own” (CRC 29 (b)).

Without a doubt, these nice wishes imply the removal of negative stereotypes and religious prejudices from textbooks. Furthermore, since it is hard to teach understanding and respect for religions without imparting some factual knowledge about them, it seems that public curricula should include at least some minimal content on various religions, not least the religion that forms part of the child’s “own cultural identity”.

#### TENSIONS AND CONFLICTS OF NORMS

At face value, international human rights basically involve two parties, the State and the individual. The State is charged with safeguarding the rights of the individual, which are formulated in individual terms. However, there is a recognised community dimension to many rights, which can be fully exercised only “in association with others”, such as the right to free association, or the right to manifest one’s religion in communal worship. Protection of individual rights hence means also the protection of religious communities. Where religion in schools is concerned, as we have seen, a fourth party enters into the picture: parents.

The broadly formulated international principles we reviewed above can easily come into tension with each other. Tensions may occur on all sides of the quadratic relationship between children, parents, the community, and the state. I will consider

only a few in the following.

#### PARENTS' VS. CHILDREN'S RIGHTS

Parents' right to an education for their child in accordance with their own philosophical convictions may clash with the child's freedom of religion or belief. In that case, what is the state to do?

As set out in the opening articles of the Convention on the Rights of the Child, in all state actions concerning children “(...) the best interests of the child shall be a primary consideration” (Art. 3.1). However, the rights and duties of parents or legal guardians shall be taken into account (Art. 3.2). Indeed, as we have seen, states shall “respect the responsibilities, rights and duties of parents (...) to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention” (CRC Art. 5).

The child, then, is not fully trusted to be able to determine its own best interests, nor is the state trusted to determine those interests for the child on its own. The best interests of the child are assumed to be closest to the heart of the child's parents. Indeed, leaving the immature child to exercise e. g. its freedom of religion on its own not only entails the risk that the child will make “irresponsible” choices, it also involves the very real possibility that the state might get the child's consent to ideological indoctrination contrary to the parents' religion.

Parents cannot be fully trusted either. The state may intervene to protect children from the equally real danger of parents' abuse and neglect (for which parents sometimes claim religious legitimation). But even with the best of parental intentions, parents will inevitably determine the child's best interest from their own quite different adult perspectives.

The notion of the “evolving capacities of the child” (CRC Artt. 5, 14.2) is therefore crucial. It introduces an element of developmental psychology: Parental guidance will be decreasingly needed as the child grows older and more mature and becomes increasingly able to make his or her own decisions. This is recognised inter alia with regard to the child's right to a voice in matters that concern the child:

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. (CRC Art. 12.1)

This principle is also recognised as a qualification on the rights and duties of parents to provide direction to the child in the exercise of his or her right to freedom of thought, conscience and religion (CRC Art. 14.2). Some countries have implemented this in their legislation. In Norwegian law, for instance, 15-year-olds may legally abandon their parents' religious affiliation.

Since the major religions perpetuate themselves primarily through transmission from parents to children, and tend to oblige their adherents to bring up their children in the faith, religious spokesmen are prone to overstating the role of this right. The Holy See, which has declared that it will interpret the CRC with stress on the “primary and inalienable rights of parents,” appears to understand the parental right as a first-order human right, as important as freedom of religion and religious

non-discrimination.

This, I think, is a misrepresentation. In my view, the parental right is properly understood to be subsidiary and instrumental to the securing of the child's religious freedom. It is intended as a safety for the child's freedom of religion against the power of the state to indoctrinate, until the child is deemed capable of increasingly making its own decisions. I believe this would be borne out by a study of the drafting history and interpretation of the right, which I will not undertake here.

#### PARENTS', CHILDREN'S, AND COMMUNITY RIGHTS VS. THE STATE'S POSITIVE OBLIGATIONS

The normative content of all the relevant religions in their premodern formulations, as well as in many modern revivalist formulations, differs from fundamental principles of gender equality and religious tolerance underlying international human rights. Human rights quite simply represent a revolution in attitudes to gender and to religious others, relative to all religious traditions. With children from some religious backgrounds, teaching a human rights-based curriculum unavoidably means instilling in children norms and values that conflict with those of their home and immediate community.

As we have seen, such teaching, promoting respect for human rights and fundamental freedoms – including equality of the sexes – is mandated by several human rights instruments, including the CRC (Art. 29).

However, and at the same time, education shall be directed to “(t)he development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own” (CRC 29 (b)). Respect for one's own culture may be a precondition for respecting others, but that observation hardly solves the conflicts between traditional cultural norms and human rights norms.

A strong argument tipping that conflict in favour of rights, not tradition, is the Women's Convention's somewhat eerily phrased requirement that states “take all appropriate measures (...t) to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (CEDAW Art. 5(a)). This should not be seen as a trump card, though. An aggressively modernising state might consider “appropriate measures” what others would consider unacceptable indoctrination. Some kind of balance still needs to be struck between women's right to equality and believers' freedom to hold patriarchal beliefs, and it is by no means obvious where.

If parents do not have the right to opt their children out of a neutral knowledge-oriented subject, as the case of *Kjeldsen et al v. Denmark* suggests, what about a value-oriented subject that stresses human rights? On the one hand, the potential for conflict with religious convictions becomes, if anything, deeper. On the other, the human rights treaties actively require such teaching. One must assume, therefore, that this requirement further limits parental rights.

Yet another alignment is when the state seeks, as nation-states almost inevitably do, to promote the cultural identity of the dominant or majority group (or, in some cases, of a nation-building cultural project that seeks to include more than one group). Backed by cultural legitimacy and operating in tandem with social pressures, the state can put formidable pressure on parents and children to conform.

Norway's decision to educate all children about Christianity, the historically dominant religion of the majority, as a tool for the integration of people from various cultural and social backgrounds, may be seen as one instance of state backing for the majority community's culture that runs the risk of conflicting with parents' and children's religious rights (see further below). The recently introduced confessionally-segregated religious education models in countries such as Croatia, Serbia (not Montenegro) and Bosnia avoid the trap of seeming to impose one community's religion on all. The overt favouring of only those monotheistic religions considered "historical" in a given country, however, may raise issues about the rights of others, a question I will not pursue here.

## IMPLICATIONS FOR THE INTRODUCTION OF RELIGIOUS EDUCATION

### IS THERE A RIGHT TO RELIGIOUS EDUCATION?

The freedom of religion or belief surely includes the right to give and to receive religious education or instruction, including the right of religious communities to choose their religious teachers, "to establish seminaries or religious schools",<sup>5</sup> and "to teach a religion or belief in places suitable for these purposes."<sup>6</sup> Opinions may presumably differ on what places are suitable for teaching religion. In some countries, a strong body of opinion would consider public schools unsuitable. State authorities, though, should clearly not restrict people's access to the religious teaching provided by religious communities or other private institutions.

Furthermore, the positive obligations on states to educate for tolerance and understanding of other religions presumably imply that the public school curriculum should contain *some* content about various religions, not least those that inform the pupils' own cultural identity.

However, human rights clearly do *not* oblige the state to provide something called "religious education" in the public school system. The positive obligations just mentioned do not mandate the introduction of a school subject specifically about religion. Nor, according to the European Court's ruling in the *Belgian Linguistic* case (1968), does the parental right in ECHR OP Art. 2 involve any "right to obtain from the public authorities the creation of a particular kind of educational establishment".

On the other hand, human rights also do not *ban* the teaching of religion – whether as confessional religious instruction or as a non-confessional knowledge-oriented subject – in public schools. They do, however, place certain restrictions either on how such a subject is taught, or on the degree to which it can be compulsory for all,

5 General Comment no. 22, para 4.

6 1981 Declaration, Art. 6(e).

which somewhat limits what models of religious education states may implement.

#### HUMAN RIGHTS AND RELIGIOUS EDUCATION MODELS

International principles clearly do not prescribe any specific model for education about religion. Just as different countries have widely different historically rooted models for state-church relations, that are all considered to be compatible with the basic requirements of international human rights, it seems safe to assume that they may also teach children about religion in a range of different ways – e. g. confessionally and non-confessionally, in integrated or segregated classes – and yet remain within the limits of international norms. This is not to say, however, that the models of all states are within those limits or that the international system does not express certain preferences.

In particular, the UN Human Rights Committee, in its General Comment on Article 18, has clarified the implications of religious freedom for public school instruction. “(S)ubjects such as the general history of religions and ethics” may be taught “in a neutral and objective way”. “(I)nstruction in a particular religion or belief”, on the other hand, “is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.” These are the main guidelines, and they appear to have been fairly consistently applied by the HRC in the cases of *Hartikainen* and *Leirvåg*. They countenance essentially two models, a segregated confessional model with exemptions or alternatives, and a neutral and objective knowledge-oriented model.

However, “exemptions or alternatives” that would take some children out of the classroom when religion is discussed are in some tension with the aims for education stated in human rights treaties. As the UN Special Rapporteur on Freedom of Religion or Belief, Mr Abdelfattah Amor inveighed in favour of integrated education, against what he dismissed as the “ghetto approach”, stressing that “(w)ith religious education in school there is always a danger of focusing too much on the particular identities of the pupils and hence on what separates instead of what unites us as human beings.”<sup>7</sup> This points to a need for joint education in order to meet the state’s positive obligations to educate children for tolerance, understanding, and respect for other religions and for human rights.

On the other hand, one might note that Norway’s obligatory primary-school religion subject has recently been censured by the UN Human Rights Committee as a violation of parental religious rights. The Norwegian subject, touted by its supporters as an example of the integration approach par excellence, blurs the lines between the two basic models countenanced by the HRC.

#### THE RECENT CASE OF NORWAY

A few background facts are indispensable:<sup>8</sup> Norway has an established Church. The Norwegian Constitution (section 2) provides that the official religion of the realm shall remain Lutheran Protestant. This has several practical consequences that

<sup>7</sup> Abdelfattah Amor, “How to Follow Up on Madrid – Aims and Challenges”, in *Teaching for Tolerance and Freedom of Religion or Belief. Report from the preparatory Seminar held in Oslo December 7-9, 2002*, ed. Lena Larsen and Ingvill T. Plesner, Oslo Coalition on Freedom of Religion or Belief; see also Amor’s “Introductory Note” to the 2001 Madrid Conference

<sup>8</sup> See further the contributions of Anne Stensvold and Anne Mette Ofstad.

potentially conflict with religious human rights. For our purposes, the most interesting is the constitutional obligation on members of the state Church to raise their children in the same religion (*ibid.*). This has been implemented in the current Education Act's section 1.2, commonly called "the object clause" because it states the aims or objects of primary education in Norway. Among these worthy aims is to give children a "Christian and moral upbringing." The practical upshot, in recent decades, was compulsory religious education in the Lutheran Protestant confession as part of the school curriculum for children whose parents were members of the state Church (as the vast majority of Norwegian citizens remain). The curriculum was drawn up by state school authorities, and it was not intended as a replacement for Church catechism, which was taught separately outside the school.

Most of us, I think, got through this without major scars on our soul, and at least picked up some worthwhile familiarity with biblical stories, but the views of the free-thinking child were disregarded and in a sense branded wrong by the adults in authority responsible for our education. Until 1997, however, other children had the option of taking a non-compulsory subject that taught about religions and "life stances" from a neutral perspective.

In 1997, the alternative subject was discarded and a single compulsory Christianity and religions subject (usually abbreviated CKREE in English) was introduced. The subject was to be non-confessional, and it was not to involve "preaching", though the coverage was heavily weighted towards the historically prevalent and majority Christian religion. Curiously, this policy was promoted not only by the Christian Democrats but also, for different reasons, by the Social Democrats. One explicit aim of this change was integration; primarily, integration of immigrants' children from other religions and cultures. By learning about the religion that allegedly pervades Norwegian culture and society, they would be better equipped to understand and integrate into that culture and society. Furthermore, by having children of different religious backgrounds discuss religious and ethical issues all together, the classroom would become an arena for convergence on a "common platform of values." The underlying political philosophy, apparently, had a communitarian streak, emphasising the need for a shared core of values if society is to function.

Indeed, the subject did create a "common platform" for different religious groups, though not exactly in the way politicians had intended. That common platform, namely, was resistance to the compulsory subject. The first broad-based inter-religious body in Norway was created in large part to coordinate the religious minorities' protests.

The new subject was compulsory for all, but partial exemption was possible. Parents could get their children exempted from activities that were "clearly" religious, such as learning and reciting or singing prayers and psalms by heart. They could also get exemptions from other elements of the curriculum, but they were required to explain *how* these elements conflicted with their convictions. To many parents, this was not satisfactory. It required them to invest considerable time and effort to stay informed of what the children were to learn or do on what day. It also required the parents to state their religious beliefs to school officials, and in effect to make theological arguments. Children would have to go in and out of the classroom, with possible stigmatising effects. Even so, the distinction between "religious activities" and "knowledge" in the curriculum appeared to break down in practice, and

textbooks contained controversial passages that seemed to promote a religious viewpoint. In the final analysis, the subject was governed by the “objects clause” requiring the school to give a “**Christian and moral upbringing.**” Children were caught in the middle, in a conflict of loyalty between the school and their parents.

After two independent research teams had pointed to such problems in their evaluations, some bureaucratic changes were made to make it easier for parents to apply for exceptions. Also, it should be noted that huge efforts were put into forming and reforming the curriculum, considering appropriate pedagogical methods, and vetting the textbooks. As is typical of Norwegian inclusive, consensus-seeking politics, religious minorities were extensively consulted in the process to make the results acceptable to all.

Meanwhile, however, both Muslim and Humanist (atheist) parents took their case to the courts, demanding full exemption for their children on religious freedom grounds. They lost, all the way up to the Norwegian Supreme Court. The Supreme Court, in a strangely circular argument, found that the Education Act was not in conflict with human rights because the authorities were obliged to interpret the Act in accordance with human rights.

At this point, “domestic remedies” were exhausted, and two groups of Humanist parents took their case to international human rights bodies. One complaint was made to the European Court of Human Rights in Strasbourg, the other to the UN Human Rights Committee (HRC). The case before the European Court is still pending. The HRC case, *Leirvåg et al v. Norway*, was decided in November last year. The HRC found that Norway had violated the parents’ rights to an education for their children in accordance with their own convictions under CCPR Art. 18.3.

The HRC recalled the “object clause” requiring a “**Christian and moral upbringing**”; the lawmakers’ clarification that the subject should not be “**value-neutral**” and that it should emphasise Christianity; and the government’s admission that elements of the subject could be perceived as religious. It concluded, therefore, that the subject was not “**delivered in a neutral and objective way.**” However, an exemption system *could* make sure that only neutral and objective teaching would be given to children exempted from other parts of the subject. The HRC therefore went on to consider the exemptions scheme. It found that it imposed a “**considerable burden**” on some parents, who might be deterred from exercising their right if it created problems from children; and it noted the “**loyalty conflicts**” experienced by the children. Furthermore, it considered that “**the CKREE scheme does not ensure that education of religious knowledge and religious practice are separated in a way that makes the exemption scheme practicable.**”

Consequently, Norway was obliged to provide the complaining parents with “**an effective and appropriate remedy**” and inform the HRC within 90 days of what steps it had taken. Norway’s answer, dated 4 February 2005, was unimpressive. Once again they will tinker with the exemptions scheme to make it work better. Furthermore, they will amend the Education act so that the section on the CKREE subject (section 2.4) does not explicitly refer to the “object clause” (section 1.2 of the same act). That presumably does not change the fact that the object clause continues to govern the teaching of this subject. More promisingly, they have promised to change section 2.4 as well as the curriculum “**so that the different religions and philosophies of life are**

treated in a qualitatively equal manner”, though in what sense this will differ from the current arrangement remains to be seen. As it is, section 2.4 states the aims that different religions be taught based on “the same pedagogical principles” yet “according to their specific nature”.<sup>9</sup>

Privately, the Norwegian government is probably feeling a bit hurt that the UN committee does not understand the goodness of its intentions, or just how much time and energy Norwegians have put into making this subject acceptable to all. It is perhaps a good thing that the UN does not take these things on trust, especially since the intentions actually ought to be quite controversial.

Effectively, Norway is seeking to use public school education about the religion of the state as a tool in a new nation-building project to integrate a growing number of immigrant communities. The Balkans, clearly, are not the only area where religion is the handmaid of nation-building. Religion is a very sensitive issue and therefore a dangerous tool to use; it might well inflame relations with minorities more than it improves them. It is of particular concern that Norway has chosen to apply this tool to children, inevitably raising fears of indoctrination away from the parents’ religion, and hence placing children in a conflict of loyalty. Moreover, in a majority-minority context where the predominance of the majority is reflected in the curriculum, real classrooms are not likely to be the safe and level arena for a frank and open exchange of religious views that the framers of the subject imagined.

The CKREE subject has been subject to much tinkering and compromise over the years, blurring the difference between neutral and non-neutral education about religion. The HRC’s decision acknowledges this; it accepts the possibility that a scheme of partial exemptions can make a non-neutral subject acceptable. The Norwegian government appears to think that they have now *almost* got it right, and that just a bit more tinkering is needed. In my view, though, more fundamental policy questions need to be reconsidered, and the HRC’s rebuke is a valuable opportunity.

#### SUMMARY AND CONCLUSIONS

We may summarise the principles set out in material sources and authoritative interpretations of international human rights as follows.

- The child has the right to non-discrimination on the grounds of religion or belief, and to freedom of religion or belief (including non-belief). Until a certain age, however, the child is effectively under the guidance of the parents as concerns choice of religion and religious education.
- While religious human rights include the right to manifest one’s religion or belief, the limits to this right in educational institutions are hotly contested in some countries. The European human rights system has in several debatable rulings tended to uphold headscarf bans in the name of defending secularism, though it has yet to consider the case of school pupils.
- To protect children from state indoctrination, parents have the right to an

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<sup>9</sup> Well, what the law *actually* says is that they are to be taught according to the specific nature of the *teacher*, but this is obviously due to a grammatical error that is rather embarrassing in a law on education.

education for their child in accordance with their convictions. This gives them a right to opt for confessional private schools or, in some cases, to exemptions from the public school curriculum, but not to demand that the state provide a certain school system or curriculum. Nor can they claim exemption from general knowledge subjects taught in an objective, critical, and pluralistic manner.

- States are also obliged to promote tolerance, understanding for other cultures and religions, and respect for human rights through their education systems. This probably implies that school curricula should include some minimum factual knowledge of different religions.
- Freedom of religion implies a right to religious education, but this should be understood as a negative obligation on the state not to prevent individuals from offering or attending such education, not as a positive obligation to provide it.
- Human rights do not require public schools to offer religious education, whether confessional or not, as a specific subject in public schools; nor do they forbid public schools from offering such education.
- Neutral and objective school instruction e. g. in the history of religion and ethics is permissible, but instruction in a particular religion or belief is not, unless provision is made for non-discriminatory exemptions and alternatives that would accommodate the wishes of parents. In a subject that blurs the distinction between these models, a full exemption scheme is the safest course, but a scheme of only partial exemptions *may* safeguard the rights of parents, *if* it is practically workable.
- Among the many internal tensions between human rights norms relating to religious freedom in education, the balance between parents' and childrens' rights, as well as the safeguarding of both religious privacy and parental convictions, would seem to need further clarification.

## SOURCES

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### INTERNATIONAL HUMAN RIGHTS DOCUMENTS

Where two years are given, they are the years of adoption and of entry into force.

- CCPR:** International Covenant on Civil and Political Rights (UN, 1966/1976)
- CDE:** Convention against Discrimination in Education (UNESCO, 1960/1962)
- CEDAW:** International Convention on the Elimination of All Forms of Discrimination Against Women (UN, 1979/1981)
- CERD:** International Convention on the Elimination of All Forms of Racial Discrimination (UN, 1965/1969)
- CESCR:** International Covenant on Economic, Social and Cultural Rights (UN, 1966/1976)
- CRC:** Convention on the Rights of the Child (UN, 1989/1990)
- ECHR:** European Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1950)
- ECHR OP:** (First) (Optional) Protocol to the ECHR (Council of Europe, 1952)
- GC 22:** General Comment No. 22 on Article 18 (UN Human Rights Committee, 1993)
- 1981 Declaration:** Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (UN, 1981)

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- Belgian Linguistic Case*, Judgment of 23 July 1968, Series A, No. 6; (1979-80) 1 EHRR 252, Section I B, para 9.
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- Dahlab v. Switzerland*, App. 42393/98, Admissibility ruling of 15 February 2001.
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