

Understanding Human Rights and How they Get Implemented Brett G. Scharffs Associate Dean Professor of Law Brigham Young University Law School Associate Director International Center for Law and Religion Studies



Brigham Young University Provo, Utah

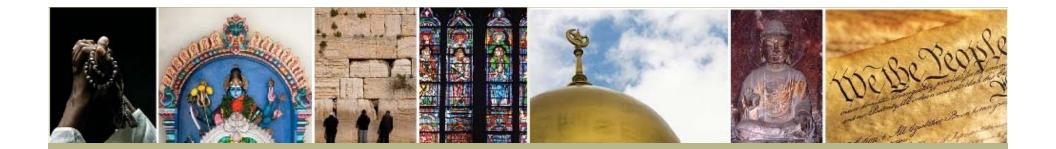




Why Human Rights?







What are Human Rights?

How are they Implemented?







Introduction

"The moral terrain of international relations was forever altered late one night in Paris, on December 10, 1948, when the General Assembly of the United Nations adopted the Universal Declaration of Human Rights without a single dissenting vote."

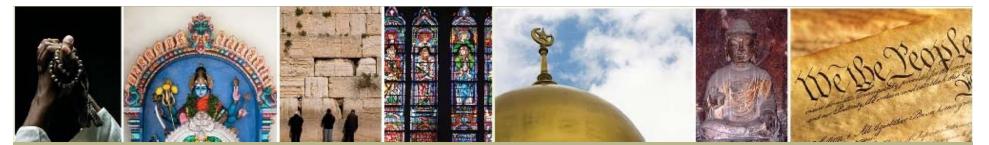
--Professor Mary Ann Glendon



of Human Rights



ADOPTED BY THE UNITED NATIONS GENERAL ASSEMBLY AN ITS 189RD MEETING, HELD IN PARIS ON 10 DECEMBER, 184



Background and Drafting of UDHR

- When UN Charter was drafted in 1945, the Great Powers – U.S., Great Britain, Soviet Union – showed little interest in the human rights project
- UN Charter briefly mentions but does not give content to idea of human rights
- The allied powers had described the war as a fight for freedom and democracy, and those who longed most for such freedom were slow to forget the world they envisioned

Background and Drafting of UDHR

- As appalling photographs from Nazi concentration camps surfaced, U.S. agreed to creation of special commission on human rights
- President Harry Truman had responsibility of appointing a U.S. delegation
- Turned to Eleanor Roosevelt, the still-mourning widow of President Franklin Delano Roosevelt.
 - Some opposed her appointment because of her inexperience in international relations, and her liberal and outspoken nature





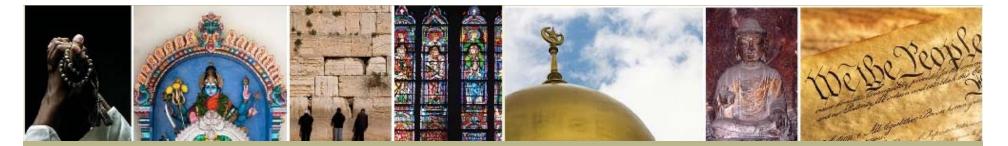
Background and Drafting of UDHR

18 Nations on the Commission on Human Rights

Australia Belgium Byelorussia Chile China Egypt France India Iran Lebanon Panama Philippines Ukraine The Soviet Union The United Kingdom The United States Uruguay Yugoslavia







Introductory Proclamation

The Universal Declaration of Human Rights declares itself to be "a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance...."





Preamble

 Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,





Preamble

• Whereas disregard and contempt for human rights have resulted in barbarous acts which have outranged the conscience of mankind. . .,





Preamble

 Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights be protected by the rule of law....





Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.





Article 1 (Framework for Human Rights Discourse)

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

- Human beings
- Born
- Free

Equal
In dignity
And rights
Endowed
Reason
Conscience
Spirit of brotherhood





Ren in Article One of the Universal Declaration of Human Rights

"All human beings are born free and equal in dignity and rights. They are endowed with reason and **conscience** and should act towards one another in a spirit of brotherhood."

- Chang suggested that besides reason, article one ought to include ren (仁)
- Literal translation: "two-man mindedness" a composite of man (人) and two (二)

Also: Empathy, consciousness of one's fellow men, humanity, or benevolence





Possible Impacts of *Ren* on legislation:

- Keeping the treatment of the "other" in mind, including religious minorities, when forming and implementing policies
- We are all part of a minority
 - There is no majority religion in the world
 - Easier to maintain "two-man mindedness" when continuing to remember that we are a part of a minority
 - Becomes difficult when considering oneself a member of a majority







Ren and Human Rights

- When speaking of human rights, must also speak of relational duties
 - Freedom to chose, have, and manifest religion must be considered in conjunction with social duties to uphold and sustain the law
 - Rather than focus on rights in isolation, a better approach is to focus on relationship of rights and duties





Article 2

Everyone is entitled to all of the rights and freedoms set forth in this Declaration, 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. . . .





Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. . . .





Article 18

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





"Everyone:" All human beings

- Not limited to citizens or permanent residents
- Nonresident aliens and stateless persons have the right to freedom of religion or belief
- So do foreign religious leaders, religious personnel, and missionaries
- Human beings do not lose their rights by taking on religious roles





"Has:"

- Religious freedom is not something bestowed by the state or its statutory regimes
- Individuals and religious groups have simply by virtue of their human nature





"Right:"

• Not a privilege or gift





"Freedom:"

Not reducible to equality or equal treatment





"Thought, Conscience and Religion:"

- Encompasses a broad spectrum of religious and non religious beliefs, including agnostic and atheistic
- Definitional issues may be difficult in theory, but are usually easy to resolve in practice
- UN Human Rights Committee, General Comment No. 22 (1993):

"Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms 'belief' and 'religion' are to be broadly construed."





" Change: "

- Most religious human rights experts have seen the right to convert from one religion to another or to no religion as fundamental to the freedom of religion and belief
- Not all traditions have recognized conversion as a fundamental right
- The drafting of Article 18's recognition of the freedom and right to change one's religion caused division among nations with large Muslim populations





" Change: "

- Saudi Arabia abstained on the final vote adopting the UDHR (Saudi delegate was Christian)
- Other Muslim countries did not object to the inclusion of the right to change religion or belief

For example, Muhammad Zafrulla Khan, foreign minister of Pakistan and a Muslim, promised the full support of his country

Citing a passage from the Koran, "Let him who chooses to believe, believe, and him who chooses to disbelieve, disbelieve," and noting that Islam itself is a proselytizing religion, Khan expressed his view that the freedom to change one's religion was consistent with Islam and that faith could not be obligatory

FOR LAW AND



"In Community With Others:"

 Freedom of religion or belief protects activities that have social or communal dimension





"Manifestation:"

- Freedom of religion or belief includes the freedom to manifest one's religion in "teaching, practice, worship and observance"
- These terms describe in an expansive way general types of conduct embraced within the general category of religious activity
- They should be viewed as being representative rather than exhaustive





Article 29 (permissible limitations)

 (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.





The International Covenants – ICCPR & ICESCR

- UN Human Rights Commission planned to follow up the non-binding UDHR immediately with a binding, universal convention
 - Ideological differences between East and West prevented progress on a single covenant
- In 1951 the Commission adopted a two-covenant approach
 - 15 years later (1966) ICCPR and ICESCR adopted unanimously by the General Assembly, entered into force January 1976
 - ICCPR First Optional Protocol (1966/March 1976) established individual compliance mechanism







The International Bill of Rights

- A. Universal Declaration of Human Rights (1948) (UDHR)
- B. International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)
- c. International Covenant on Civil and Political Rights (1966) (ICCPR)

Optional Protocol to the ICCPR (1996)







The ICCPR and the ICESCR

• As of 2014:

- 158 states parties to ICESCR
- 162 states parties to ICCPR
- 114 states parties to First Protocol
- US has ratified only ICCPR; China has ratified only ICESCR
- Iran and Iraq have ratified both
- Cuba, Malaysia, Myanmar and Saudi Arabia have ratified neither





ICCPR Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private to manifest his religion or belief in worship, observance, practice and teaching.







ICCPR Article 18

-
- "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
- Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
- The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."





ICCPR Article 19

- 1. "Everyone shall have the right to hold opinions without interference.
- 2. "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. ...





ICCPR Article 19

3. "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals."





ICCPR Article 20







"...2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."









ICCPR Article 21

"The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."





ICCPR Article 27

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





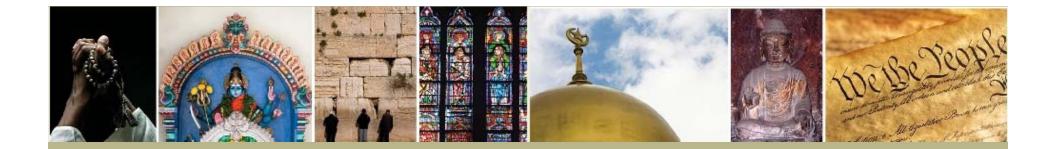


ICCPR Optional Protocol, Article 1

"A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant."







Other International Human Rights Treaties

- A. Genocide (1948)
- B. UNESCO Convention Against Discrimination in Education (1960)
- c. Racial Discrimination (1965)
- D. Discrimination Against Women (1979)
- E. Rights of the Child (1989)





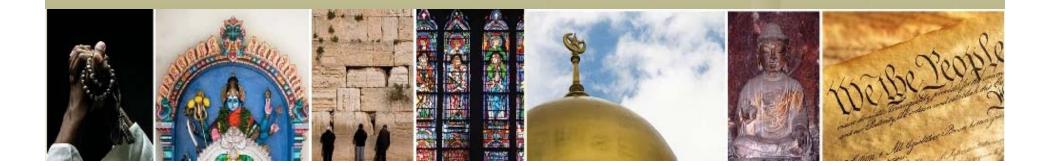
Other International Human Rights Instruments 1981 Declaration on the Elimination of All forms of Intolerance and Discrimination Based on Religion or Belief

- Adopted as U.N. Declaration (not a treaty) in 1981
- Repeats a number of provisions from earlier binding documents
- Article 6: Freedom of thought, conscience, religion or belief.



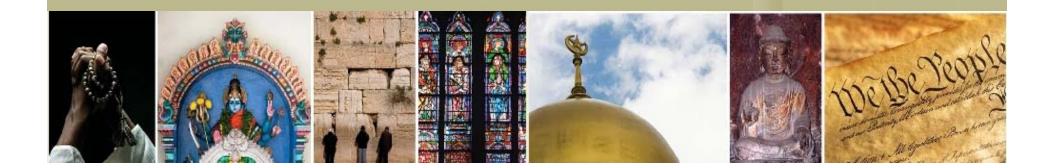
The 1981 Declaration

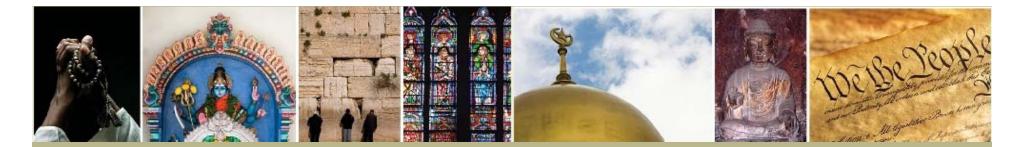
- Article 6: Freedom of thought, conscience, religion or belief shall include
 - a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
 - b) To establish and maintain appropriate charitable or humanitarian institutions;
 - c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
 - d) To write, issue and disseminate relevant publications in these areas;
 - e) To teach a religion or belief in places suitable for these purposes;



The 1981 Declaration

- Article 6: Freedom of thought, conscience, religion or belief shall include
- f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.





UN Monitoring Institutions

UN Commission on Human Rights

2006 Replacement, UN Human Rights Council

UN Human Rights Committee (monitors compliance with ICCPR)

A number of other UN institutions have significant impact: UNESCO, ILO, WHO, etc.





1. UN Commission on Human Rights







First human rights body established by the UN.

Stage 1 (1946-55) drafting key international human rights instruments

Stage 2 (1960-81) ideological arm wrestling culminating in 1981 UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief

Stage 3 (1981 – present) Monitoring and implementation of human rights; Commission appointed Special Rapporteur (on Freedom of Religion or Belief).

2006 Human Rights Commission replaced with Human Rights Council.





2. UN Human Rights Council

Inter-governmental body within the UN. A subsidiary body of the United Nations General Assembly. Established by UN Resolution on 15 March 2006.

Works closely with the Office of the High Commissioner for Human Rights (OHCHR) and engages the United Nations' Special procedures.

Universal Periodic Review assesses the human rights situations in all 193 UN Member States.





3. UN Human Rights Committee

Treaty body created to oversee state compliance with ICCPR

Committee members are prominent global human rights experts who serve in their personal capacities

Independent expert organ responsible for interpreting Covenant provisions





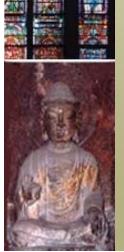


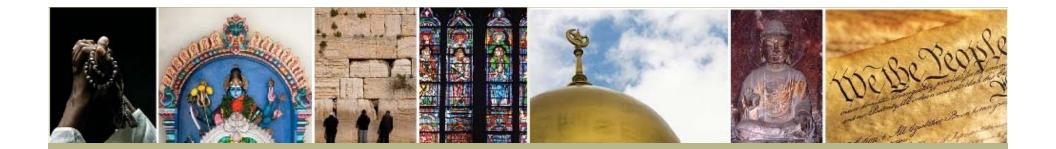
3. UN Human Rights Committee

Three primary functions:

- 1. Reviewing reports filed by States
- 2. Producing General comments that interpret Covenant provisions
- 3. Reviewing individual complaints by individuals in States that have ratified the Optional Protocol



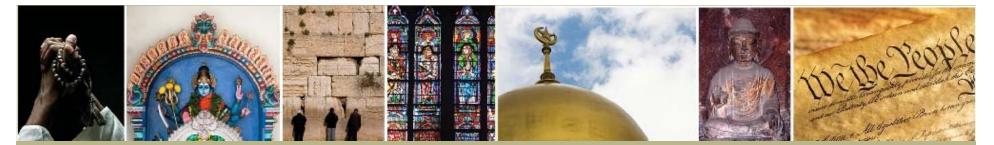




Regional Human Rights Treaties

- A. European Convention on for the Protection of Human Rights and Fundamental Freedoms (1950)
- B. American Convention on Human Rights (1969)
- C. African Charter on Human and Peoples' Rights





Regional Human Rights Treaties European Convention on Human Rights

Article 9, Freedom of Religion or Belief

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



IV. Other International Human Rights Instruments European Convention on Human Rights

Article 9, Freedom of Religion or Belief

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.





IV. Other International Human Rights Instruments European Convention on Human Rights

Article 9, Permissible limitations

- Forum Internum
 - May not be subject to limitation
- Forum Externum
 - Manifestations are subject to carefully defined limitations





IV. Other International Human Rights Instruments European Convention on Human Rights

Article 9, Permissible limitations (external forum)

- "Prescribed by law"
 - Rule of Law constraint
- 5 Legitimating Grounds
 - Public safety
 - Public order
 - Public health
 - Public morals
 - Protection of the rights and freedoms of others



Necessary in a democratic society





European Court of Human Rights

- Individuals can bring claims against their governments
- 47 countries
- 800 million people
- 18 time zones
- 10,000 + judgments (2008)
- ~ 50,000 submissions per year
- ~ 50 important religion cases



ECHR – Key Provisions



The guarantees:

- the right to life;
- the right to a fair hearing in civil and criminal cases;
- the right to respect for private and family life;
- freedom of expression;
- freedom of thought, conscience and religion (Art. 9);
- the right to an effective remedy;
- the right to peaceful enjoyment of one's possessions;
- the right to vote and to stand for election.



ECHR – Key Provisions



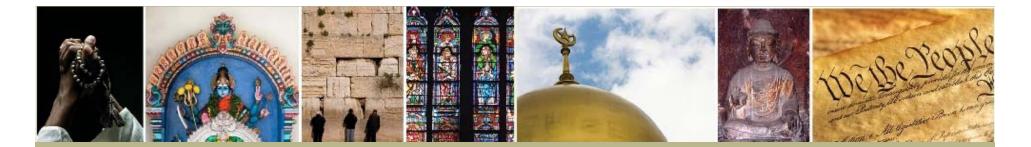
The prohibitions:

- torture and inhuman or degrading treatment or punishment;
- slavery and forced labour;
- arbitrary and unlawful detention;
- discrimination in the enjoyment of the rights and freedoms set out in the Convention;
- the expulsion or removal by a State of its own nationals;
- the death penalty;
- the collective expulsion of foreign nationals.



ECtHR – 50 Years of Caselaw

Provision	Number of Violations
Art. 6 – Length of proceedings	3559
Art. 6 – Right to fair trial	2725
Protocol 1-1 – Property	1831
Art. 5 – Liberty and Security	1287
Art. 8 – Private and family life	531
Art. 3 – Inhuman or degrading treatment	417
Art. 10 – Freedom of expression	348
Art. 2 – Right to life	146
Art 14 – Discrimination	123
Art. 11 – Assembly and Association	80
Art. 3 – Torture	48
Art. 9 – Thought, Conscience, Religion	25

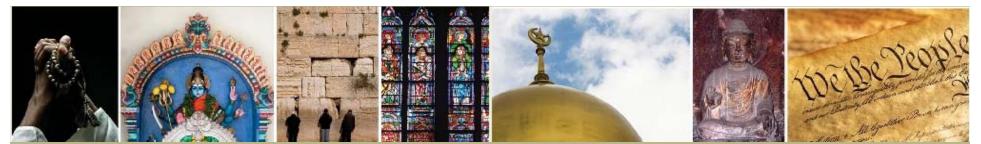


Other Mechanisms for Implementing Human Rights

"International Law" mistake







National Constitutions

Nearly every country in the world has a constitution adopted since the end of World War II.

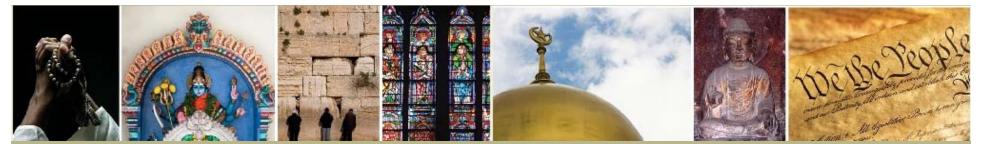
Most implement rights language from international human rights instruments.

Judicial interpretation; state implementation

(Cole Durham, Thailand, Afghanistan, etc.)







Statutes

Federal Senator Hatch – RFRA Senator Lee – First Amendment Protection Act

State

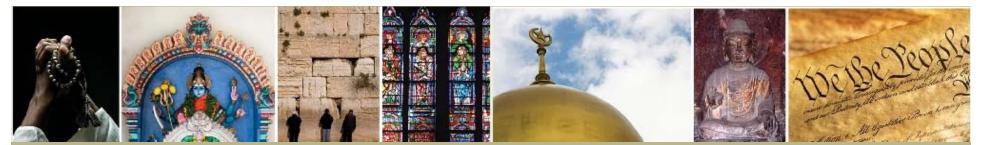
20+ state RFRAs Utah Compromise (Senator Stuart Adams)

Local



SLC anti-discrimination ordinance CITIZENS





Regulations

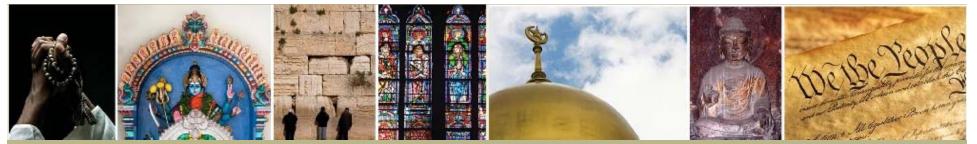
Federal IRS (Bob Jones University)

State

Governors Executive orders Regulatory agencies







NGOs

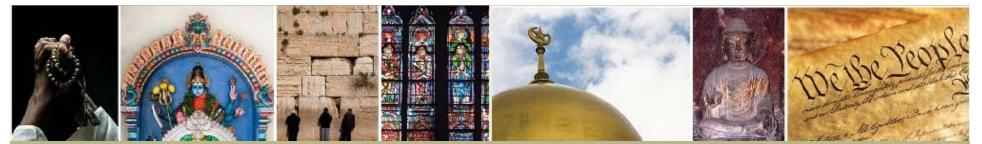
International

Human Rights Watch Amnesty International Human Rights Without Frontiers

National ACLU (historically; Jeremy Gunn) Beckett Fund (Hosanna Tabor; Hobby Lobby) Litigation support networks







Media

Traditional

TV, radio, newspapers, magazines (thanks to the press covering this conference ABC, Fox, SLT, DN,)

Untraditional

Social Media – Twitter, Facebook, Blogs (at times can feel like the Great and Spacious Building; big and elaborate; floating on air – taunts, derision, mocking, ridicule) <u>Alexander Dushku: Brown or Row</u>







Foreign Policy

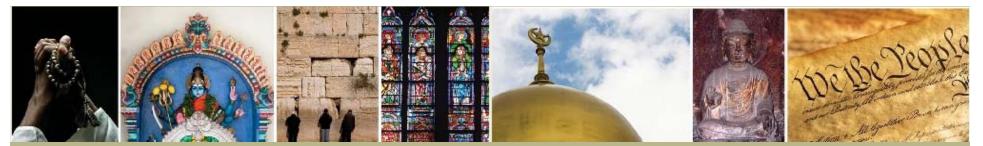
IRFA

State Department (Foreign service officers)

Commission (USCIRF) (Katrina Lantos Swett; Mike Young)

Vietnam Communist Party Secretary visit with President Obama yesterday; religious leaders

Wilton Park Conference on cooperative efforts involving foreign services



Education

Law School (Robin Fretwell Wilson) (Mark Goldfeder)

Sunday School Roots of human dignity – created in the image of God

Primary (Bill Atkin)







Local Zoning Boards

Land Use and Zoning One of the places where the most discrimination takes place

RLUIPA







National Human Rights Commission

Many Countries Australia – Neville Rochow







Bar Associations

Canada Law Societies (Trinity Western)

US

???







Lawyers

Deano Ware Gene Schaerr Matt Richards Alexander Dushku

Lance Wickman, Bill Atkin Church Area Counsel Lawyers (student interns)







Churches

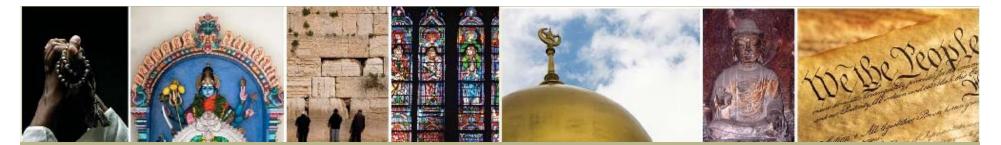
Jehovah's Witness cases

Seventh-day Adventist (IRLA)

LDS Church Amos case







Church Leaders

Six LDS General Conference addresses

Numerous speeches to non-LDS audiences







Church Public Affairs

John Taylor Michael von Rosen R. Michael Purdy







Businesses

Accommodating religious needs of employees

Equal treatment and non-discrimination





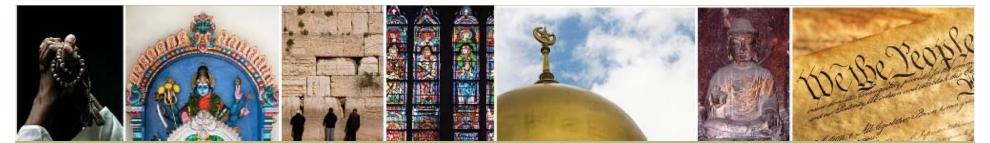


Friends and Neighbors

Conversations



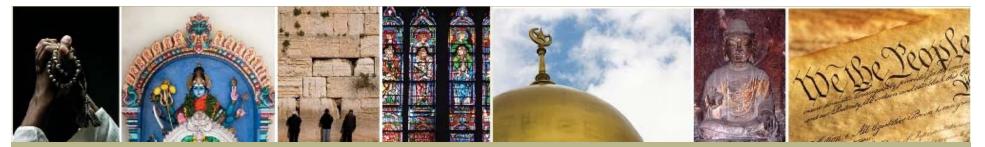




Powers of Heaven

The Pre-mortal Council in Heaven Heavenly Father's Plan Moral agency, choice, sin, Atonement, obedience, repentance Satan's Plan Coercion A lie

2 Kings 6:16: "Fear not: for they that be with us are more than they that be with them." Abraham Lincoln's caveat



Summary

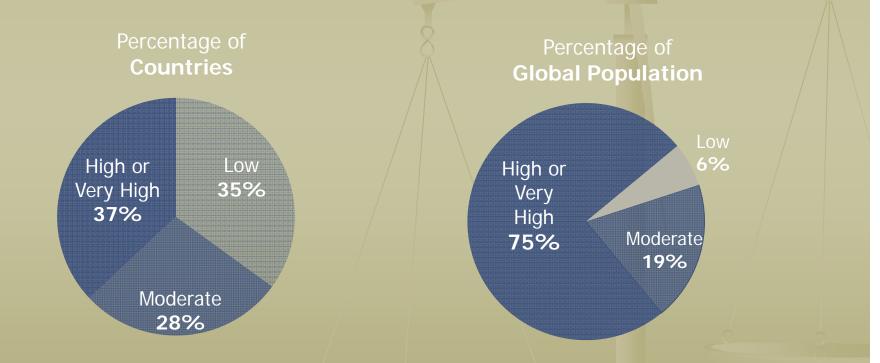
Implementation	Mechanisms
International Law	Constitutions
Statutes	Regulations
NGOs	Media Formal, Informal
Foreign Policy	Education
Zoning Boards	National Human Rights Commissions
Bar Associations	Lawyers
Churches	Church Leaders
Church Public Affairs	Businesses
Friends and Neighbors	Powers of heaven





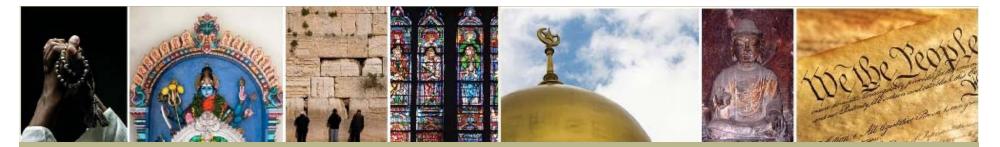
Global Restrictions on Religion

According to the 2012 Pew Forum Study: Religious freedom restrictions are high or very high in 37% of the world's countries, and 75% of the world's people live in those countries.





Data from *Rising Tide of Restrictions on Religion*, Report of The Pew Forum on Religion & Public Life, released 20 September 2012.



Conclusion

Eleanor Roosevelt's Nightly Prayer

"Our Father, who has set a restlessness in our hearts and made us all seekers after that which we can never fully find, forbid us to be satisfied with what we make of life. Draw us from base content and set our eyes on far-off goals. Keep us at tasks too hard for us that we may be driven to Thee for strength. . . . Open our eyes to simple beauty all around us and our hearts to the loveliness men hide from us because we do not try to understand them. Save us from ourselves and show us a vision of a world



made new."





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