

INTRODUCTION TO HUMAN RIGHTS' INSTRUMENTS AND MECHANISMS¹

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This text will focus on the bodies, human rights instruments and mechanisms within four institutions: The United Nations, the Council of Europe, the European Union and the Organization for Security and Cooperation in Europe (OSCE). The text will also give some examples on how to advocate for human rights in the context of freedom of religion or belief.

Introduction

After a state has ratified a convention or a certain directive it is obliged to put it into practice, which means to respect its principles towards people. After the WWII, in order to prevent further violations of human rights and here let us remember the Holocaust, States created international organisations which among peace security and economic issues have a priority to deal with human rights issues. United Nations (193), Council of Europe (47), European Union (27), OSCE (56) have set up a variety of instruments and mechanisms to provide the protection of the rights of the individuals in order that they can work against the human rights' abuses. That means that Individuals, can bring their complaints, for example, to the European Court for Human Rights in Strasbourg. The purpose of this article is to provide brief information on some of the key bodies and mechanisms that can be used to highlight human rights concerns.

UNITED NATIONS (193)

Churches have been advocating for justice and human rights on the level on the United Nations' for a long time. Following is one of the examples. For the Universal Declaration of Human Rights: Rev Frederick Nolde, Lutheran Minister from the USA, was involved in the formulation of Art. 18 on FoRB: "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." Art. 2 (1) protects from religious discrimination and Art. 19 advocates for freedom of expression, which would include religiously motivated speech.

The United Nations was founded in 1945 and has 193 member states. The main UN structures could be divided into 2 parts: **Treaty and Charter-based bodies.**

Example of Treaty: International Covenant on Civil and Political Rights (**Human Rights Committee**); Examples of Charter-based bodies: Security Council, General Assembly, and **Human Rights Council**. The UN also provides "consultative status" for NGOs. The Conference of European Churches has this status.

¹ The text is based on the book International Religious Freedom Advocacy A guide for Organizations, Law and NGOs. H. Knox Thames, Chris Seiple, Amy Rowe, Institute for Global Engagement 2009. Therefore we do recommend you this book if you wish to prepare the training on how to advocate for freedom of religion or belief. <http://www.globalengage.org/research/books/838-the-handbook-of-international-religious-freedom-advocacy.html>

The Treaty bodies

The core international human rights treaties are monitored by 9 human rights treaty bodies:

- a) Human Rights Committee (CCPR)
- b) Committee on Economic, Social and Cultural Rights (CESCR)
- c) Committee on the Elimination of Racial Discrimination (CERD)
- d) Committee on Elimination of Discrimination Against Women (CEDAW)
- e) Committee Against Torture (CAT) & Optional Protocol to the Convention against Torture (OPCAT) – Subcommittee on Prevention of Torture (SPT)
- f) Committee on the Rights of the Child (CRC)
- g) Committee on Migrant Workers (CMW)
- h) Committee on the Rights of Persons with Disabilities (CRPD)
- i) Committee on Enforced Disappearances (CED)

Here we will elaborate upon the Human Rights Committee, as a treaty-based body.

Human Rights Committee (HRC) was founded on the basis of Art. 28 ICCPR. The role of the HRC is to monitor the implementation of the ICCPR. States Parties are committed to submit reports every 5 years. The role of the HRC is to review the submissions and provide “concluding observations” (good practices) as well as to give “general comments” on how to implement FoRB for instance. The HRC has its own complaint mechanisms. The First Optional Protocol to the Covenant gave the power to the HRC to receive communications from individuals (only from countries which ratified the protocol). States can also file complaints against another State parties. This mechanism is usable if all domestic remedies are exhausted. The complaint will be firstly reviewed by the Human Rights High Commissioner, acting as a Committee secretariat. The HRC will share the submission with the accused country which has 6 months to submit its application. If a violation is found, then the HRC will recommend remedial action.

Charter-based Bodies:

UN Security Council (5 permanent member² states and 10 non-permanent members - serving for 2-year terms) is the most powerful Body. The UN Charter gives to the Council the responsibility for maintaining peace and security. For FoRB advocates this is a difficult venue to access. Nonetheless, the submission of violations can be sent to the *UN Secretary General*. The UN General Assembly discusses human rights and fundamental freedoms, peace and security issues. Resolutions and declarations issued by the General Assembly are not binding on the member states. The Declaration on the Elimination of All forms of Intolerance and of Discrimination based on Religion or Belief (1981) is not legally binding. Professor Malcolm Evans argues that the Declaration should be transformed into a Convention³. The Third Committee on Social, Humanitarian and Cultural affairs of the General Assembly is the one where the UN Special Rapporteur on FoRB submits his report. Usually this Committee is the target group for the FoRB lobbyists.

² Russia, China, France, United States of America, United Kingdom

³ http://www.forum18.org/Archive.php?article_id=1580

UN Human Rights Council (2006, 47 member states) is the successor of the Human Rights Commission which was not functional. HR Council is an intergovernmental organisation within the UN System for monitoring human rights' violations. It has the task to promote respect for universal human rights and freedoms, to review these standards and to provide technical assistance to governments. They meet 3 times per year. It is responsible for ***special procedures*** within the UN. The Council names the special rapporteurs, representatives and WG for specific investigations. The Council has established the Universal Periodical Review (UPR) mechanism as well as the Advisory Committee to support its work which replaced the Sub-Commission on Promotion and Protection of Human Rights – 18 experts. FoRB advocates mostly attend its yearly sessions. NGOs can speak during most of the Council sessions and lobby for the resolutions and declarations. The advocate needs to have consultative status to attend the Council sessions.

Universal Periodical Review – first session began in 2008. Every UN state will be reviewed. WG of countries, conducting the reviews, will deal with the NGOs and states submissions. The aim of the review is to improve the situation on the ground. The review is done in Geneva 3 times per year. All those who would like to submit information on compliance would need to have consultative status. (CEC has it.)

Special Rapporteurs – Human Rights Council may use the ***special procedures*** and appoint a special rapporteur, who is an independent expert, who should examine the topics based on UN documents.

- a) The Special Rapporteur⁴ on Freedom of Religion or Belief (since 1986) is a key factor for FoRB advocacy NGO's. The Declaration from 1981 serves as guidance for his/her work. The rapporteur receives information from NGOs, churches and religious communities. Over the years, the CSC has developed a good working relationship with its office⁵ and sometimes has contact on a daily basis. Anyone can submit a communication on violation of FoRB. Consultative status is not needed. The rapporteur can act independently vis-à-vis the state where violations are alleged. The rapporteur can make state visits and hold consultations with NGOs. The Special Rapporteur submits an annual report as well as recommendations. Its office has developed a questionnaire for individual cases.
- b) The Special Rapporteur on Promotion and Protection of Freedom of Opinion and Expression can also be contacted for violations or limitation of religious expression.
- c) The Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance has the task of dealing with Anti-Semitism, Christianophobia and Islamophobia.

Other Important UN Bodies

Office of the UN High Commissioner for Human Rights

The UN office of the High Commissioner for Human Rights was established in 1993 (not a Treaty or Charter-based body) which also deals with issues of FoRB. The High Commissioner is in charge of the office coordinating UN programmes and working with governmental organisations and NGOs. Ms. Navi Pillay⁶ was nominated in 2008 by the Secretary General and approved by the General Assembly. There are regional offices in a

⁴ Mr. Heiner Bielefeldt, since 1. August 2010

⁵ On the basis of the CSC intervention Special FoRB rapporteur Asma Jahangir visited in 2009 Ohrid Archbishopric of the SOC in Macedonia. In 2011 they were informed about the detention of the Bishop of Neapolis, Porfirios representative of the Church of Cyprus to the EU.

⁶ Term for 4 years (renewal)

number of countries which do monitoring of the human rights' situation and investigate violations.

The International Criminal Court (ICC)

The ICC is the first permanent, treaty-based, international criminal court established to prosecute people who commit the most serious crimes of concern to the international community, such as genocide. After years of negotiation about the setting up of an international court, the UN General Assembly organised a diplomatic conference in Rome in 1998. This resulted in the adoption of the Rome Statute, the treaty that establishes and governs the ICC. The treaty came into force on 1 July 2002 and the ICC can therefore only prosecute crimes committed on or after that date.

The ICC is an independent international organisation and is not part of the United Nations system. It is located at The Hague in the Netherlands. Although the Court's expenses are funded primarily by the States that have ratified the treaty, it also receives voluntary contributions.

See more on: <http://www.icc-cpi.int/Menus/ICC/About+the+Court>.

The most important UN Human Rights Treaties are:

- a) The International Covenant on Civil and Political Rights
- b) The International Covenant on Social, Economic and Cultural Rights
- c) The UN Convention on Rights of the Child
- d) The Convention against Torture

COUNCIL OF EUROPE (47)

If one would like to advocate on FoRB issues to the CoE, the Committee of Ministers, Parliamentary Assembly, Commissioner for Human Rights and European Commission against Racism and Intolerance would need to be approached. The European Court on Human Rights plays an important role against FoRB violations. CEC has participatory status in the CoE and plays an important role through the NGO platform. CEC is also invited to participate in the CoE WGs, like Human Rights of Members of the Armed Forces, to contribute to the development of CoE documents like the White Paper on Intercultural Dialogue etc. When advocating against violations of FoRB, the Secretary General can be approached. The Convention on Protection of Human Rights and Fundamental Freedoms (1950) is a legally binding instrument for the 47 member states. Art. 9 ECHR is related to the FoRB.

European Court of Human Rights - The victim of a violation can file a complaint to the Court when the domestic remedies are exhausted. For the Complaint Procedure, see the website of the Court. The ECHR is an international court. It rules on cases brought to it by states or individuals alleging violations of civil and political rights set out in the European Convention on Human Rights. Individuals can apply to it directly. The Court's case-law makes the Convention a powerful tool for meeting new challenges and strengthening the rule of law and democracy for the 800 million people living in the 47 Council of Europe states that have ratified the Convention.

Committee of Ministers - The Committee of Ministers is made up of the Ministers of Foreign Affairs of all 47 member states, represented by their Permanent Representatives and Ambassadors. The Committee can decide, by majority vote, to request the European Court of Human Rights for Advisory Opinions on legal questions concerning the interpretation of the Convention and Protocols. The Committee is also responsible for supervising the execution of the judgments of the European Court of Human Rights – see below.

Parliamentary Assembly (PACE) - PACE has 630 parliamentarians (315 representatives and 315 substitutes). Parliamentarians are sent on fact-finding missions to member or observer states. The Assembly can pass non-binding resolutions. They issue an annual human rights report. They have 12 committees, some of which do address FoRB. Its President should be provided with information on violations of FoRB issues.

Congress of Local and Regional Authorities- This body brings together elected representatives of the local and regional communities.

Conference of INGOs - The Conference of INGOs is composed of over 400 International NGOs that have been granted 'participatory status' at the Council of Europe. The conference is a recognized institution and constitutes the Civil Society pillar in the political dialogue of the Council of Europe. Conference of European Churches is its member.

Commissioner for Human Rights - The Commissioner is an independent institution within the Council of Europe, mandated to promote awareness of and respect for human rights in the 47 Council of Europe member states. The current Commissioner is Nils Muižnieks from Latvia (term 6 years). He cannot bring a case to the ECHR neither can he defend individual cases, but he can submit written comments and participate in the cases before the ECHR. He should identify possible "shortcomings in the law and practice of the member states concerning compliance with human rights". He can undertake missions to member States, talk to governments and NGOs. His recommendations are presented to the Committee of Ministers and the Parliamentary Assembly. Moreover he can issue recommendations on specific issues and meet with victims of violations of the FoRB.

European Commission for Democracy through Law – Venice Commission - The Venice Commission is an independent consultative body of the CoE. The experts review domestic legislation regarding constitutions or laws impacting international human rights and CoE standards. They can issue their own nonbinding guidance and their own opinion as a response to CoE countries or bodies. The Commission is active on the issue of church-state relations and has constantly criticised the registration system in religious laws. Petitions can be submitted to the Commission by governments.

European Commission against Racism and Intolerance (ECRI) - ECRI is an independent human rights' monitoring body led by Executive Secretary and staff. Each CoE member may appoint one expert and a deputy to serve in their private capacities for a five-year term. Their task is to combat racism and xenophobia. This body will take action to combat violence, discrimination and prejudice, namely on religious grounds. ECRI carries out country-by country monitoring and issues reports on matters of racism and xenophobia. ECRI's rapporteurs visit the countries and meet with NGOs. Then they write their report. When a report is adopted, the Committee of Ministers sends it to the respective government. Churches can forward information based on discrimination and intolerance on religious grounds. CSC of CEC WG for human rights has recently paid a visit to ECRI.

The most important human rights instruments within the Council of Europe system are:

- European Convention on Human Rights and Fundamental Freedoms and its protocols
- European social charter (revised)
- Framework Convention for the Protection of National Minorities
- European Convention on the Exercise of Children's rights
- Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine
- European Convention on the Legal Status of Migrant Workers
- European Convention on Torture and Inhuman or Degrading Treatment or Punishment
- Convention on the Transfer of Sentenced Persons
- Convention on the Participation of Foreigners in Public and Local life
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

OSCE (56)

OSCE is the largest regional security organisation which embraces Europe and Eurasia. Freedom of religion or belief is granted by their most important documents such as:

- a) Helsinki Final Act
- b) Vienna Concluding Documents
- c) Copenhagen Concluding Documents.

CEC is very much involved in the cooperation with the OSCE in the human rights area and no accreditation is needed for submission of violations of fundamental rights.

OSCE has a Ministerial Council (Council of Foreign Affairs Ministers) which is chaired each year by a different state. The Chairperson-in-Office chairs the Human Demention Implementation Meeting. There is also a Permanent Council in Vienna where the ambassadors meet weekly during the year. The OSCE has a Secretary General who has a mandate of 3 years but cannot speak on behalf of the OSCE. This role is rather played by the Chairperson. If the Churches would like to report on the violations of religious freedom they can get in touch with the Chair.

Office for Democratic Institutions and Human Rights (ODIHR) - The ODIHR is based in Warsaw. One of the Ambassadors from the Permanent Council is chosen as its Director. ODIHR organises a yearly human rights review conference where CSC usually participates and uses the opportunity to advocate for religious freedom and human rights. ODIHR has a human rights unit, but religious freedom is handled under the Tolerance and Non-Discrimination Unit.

Advisory Panel of Experts on Freedom of Religion or Belief - The Advisory Panel is a consultative body and it provides advice to ODIHR. It has two components: the Panel and the Council. The Council has 60 experts appointed on recommendations by States, while the smaller Experts Panel is directly appointed by the ODIHR Director. Their activities are supported by the ODIHR Tolerance and Non-Discrimination Unit. There are "Guidelines for Review of Legislation Pertaining to Religions or Belief" and the Council

and the Panel can be asked for assistance on FoRB. There is no compliance procedure to the Council, but rather to the Panel. CSC of CEC has access to it.

High Commissioner for National Minorities (HCNM) Hague, Netherlands - This office was created to "identify and seek early resolutions of ethnic tensions that might endanger peace". The Commissioner can address religious freedom issues only if the national minority is recognized as a religious minority, for example like the Greek Orthodox Minority in Turkey. See *CSC training on non-discrimination/religious minorities*.

OSCE field operations – (Southeast Europe, Eastern Europe, the Caucasus and Central Asia) Representatives of religious communities can always approach the Ambassadors running the Missions.

Human Dimension Implementation Meeting - to review the *human dimension commitments* of the participating States. This is an annual two week meeting where NGOs have direct talks with the OSCE delegations. No accreditation process is requested. CSC of CEC is using this platform to advocate against violations of FoRB.

EUROPEAN UNION (27)

European Commission - On the basis of Article 17 of the Lisbon Treaty (TFEU) and Article 11, churches and religious communities, non-philosophical and non-confessional organisations and civil society are invited for an open, transparent and regular dialogue with the EU institutions. The Bureau of European Policy Advisers (BEPA) is in charge of the implementation of Art. 17. Twice per year a dialogue seminar takes place in collaboration with COMECE.

- a) One of the current Commissioners⁷ has the portfolio for justice, fundamental rights and citizenship.
- b) The Commissioner for Enlargement could be approached on FoRB issues concerning countries such as Turkey, Western Balkans etc.
- c) The High Representative for External Affairs and Security Policy should be approached on FoRB issues outside of the EU. This includes Neighbourhood Policies, Eastern partnerships etc.⁸.
- d) BEPA also organises a yearly meeting of Religious Leaders.

Internal violations of FoRB could be brought to the High Representative for External Affairs and Security Policy. The Commission has established the European Instrument for Democracy and Human Rights (EIDHR) which funds a range of different NGO projects.

Council of the European Union - The Council is the highest decision-making body and represents the 27 members. There are various committees of ministers. There is an expert in charge of the implementation of Art. 17. The President of the Council joins the yearly meeting of Religious Leaders. The Council develops the EU common Foreign and Security Policies. After their meetings they issue Council Conclusions. European External Action Service⁹ also issues a yearly Human Rights Report. The CSC has a meeting twice a year with the EU Presidency.

⁷ Ms. Viviane Reding

⁸ See the latest CSC submission to the EEAS

⁹ The EU maintains diplomatic relations with nearly all countries in the world. It has strategic partnerships with key international players, is deeply engaged with emerging powers around the globe, and has signed bilateral Association Agreements with a number of states in its vicinity. Abroad, the Union is represented by a network

EU has 3 human rights mechanisms:

- a) Declarations by the President or High Representative of EEAS
- b) Demarche
- c) Sanctions.

European Parliament - The EPP group has a working group dealing with religion and politics. The working group is officially in charge of intercultural and interreligious dialogue, but they deal with freedom of religion or belief. There is also a EP working group on the European Platform for Secularism in Politics which closely monitors activities of the church/religious-related organisations and have a very critical stand towards its work. They also work on freedom of religion or belief. Secularism is defined usually as a belief¹⁰. The Subcommittee on Human Rights deals with human rights violations outside the EU. NGOs are in permanent contact with its Rapporteur and, together with MEPs, they organise the debates in the EP. As it is easier dealing with human rights outside of Europe than within borders, recently the Human Rights and Democracy Network (CSC is its member) submitted a proposal to the LIBE¹¹ Committee to work on the human rights report inside of the European Union. For the time being, the EU doesn't have an internal monitoring mechanism. The Parliament has a role to approve legally non-binding resolutions. One of the latest ones was related to the prosecution of religious minorities¹². CSC can submit amendments and influence the decision-making process. The EP has its annual human rights report. The EP has also its "delegations" which can undertake visits to a certain country or group of countries. One of the EP's Vice-Presidents is in charge of the implementation of the Art. 17 dialogue with the churches.

EU Fundamental Rights Agency (EU FRA) - The European Monitoring Center on Racism and Xenophobia was transformed in March 2007 into the EU FRA. They assist the EU member states in the implementation of the provisions of the European Charter for Fundamental Rights by collecting data, analysing the information, issuing thematic reports etc. They have Annual Report where they give information about the state of human rights within the European Union. CSC is member of the EU Fundamental Rights Platform and therefore advocates for a balance between the FoRB and Anti-Discrimination Legislation. Up until now CSC has been advocating that EU FRA takes up FoRB on its Agenda, but the Agency has stayed neutral on the issue. The next EU FRA meeting will discuss for the first time the balance between FoRB and Anti-Discrimination.

Court of Justice of the European Communities - EU law court - The Court of Justice of the European Communities (often referred to simply as 'the Court') was set up under the ECSC Treaty in 1952. It is based in Luxembourg. Its job is to make sure that EU legislation is interpreted and applied in the same way in all EU countries, so that the law is equal for everyone. It ensures, for example, that national courts do not give different rulings on the same issue. The Court also makes sure that EU member states and institutions do what the European law requires. The Court has the power to settle legal disputes between EU member states, EU institutions, businesses and individuals.

The most important human rights instruments in the EU regime

- a) Lisbon Treaty (see art.11, art.17)

of 136 EU Delegations, which have a similar function to those of an embassy.
http://www.eeas.europa.eu/what_we_do/index_en.htm (15.12.2011)

¹⁰ Secularism can be defined as a movement as well.

¹¹ Committee on Civil Liberties, Justice and Home Affairs is responsible for the human rights of the EU citizens.

¹² January 2011.

- b) European Charter on Fundamental Rights (2000) - EU Charter for Fundamental Rights (art. 10 - FoRB, art. 11 - limitation of religious expression, art. 52 - any sort of limitation, art. 12 - discrimination based on FoRB, art. 22 requires the EU to respect religious diversity). With the adoption of the Lisbon Treaty in 2009, the Charter became a legally binding instrument for the EU. That means that EU policies should be harmonised with human rights' standards laid down in the Charter. EU has developed various sets of guidance on the death penalty, LGBT rights etc. For the time being there is no guidance on FoRB. The Church and Society Commission in its last submission to the EEAS advocated for it and offered its expertise in its future development. In terms of advocacy, the CSC has badges for and can access the European Parliament during the whole year.

EU Anti-discrimination measures:

- a) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin : also called the "Race Directive" (Directive 2000/43/EC on Anti-discrimination)
- b) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation
- c) Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services
- d) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)
- e) Current state of affairs: EU is going to submit its 48 signatures to the European Convention on Human Rights

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